

MEMORANDUM AND ARTICLES OF ASSOCIATION

OF

MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED

AS AMENDED ON 5th DAY OF JULY 2012

COMPANY No. C. 5/83

**THE COMPANIES ACT
(CHAPTER 486, LAWS OF KENYA)**

COMPANY LIMITED BY GUARANTEE

**MEMORANDUM AND ARTICLES OF ASSOCIATION
OF
MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED**

INCORPORATED THIS 4th DAY OF MARCH 1983

THE COMPANIES ACT

(Chapter 486, Laws of Kenya)

Company Limited by Guarantee

MEMORANDUM OF ASSOCIATION OF MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED

1. The name of the company hereinafter called “the society” is “MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED”.
2. The registered office of the Society will be situated in **Nairobi** Kenya.
3. The objects for which the Society is established are:-
 - (a) To exercise and enforce on behalf of members of the Society, being the composers of musical works or the authors of many literary or dramatic works, or the owners or publishers of or being otherwise entitled to the benefit of or interested in the copyrights in such works (herein after called “the proprietors”) all the rights, economic or moral, and remedies of the proprietors by virtue of the Copyright Act, or otherwise in respect of any exploitation of their works and in particular, to administer all the rights relating to the public performance, broadcasting, communication to the public by wire or wireless including transmissions to subscribers to a diffusion **and/or any digital** service, graphic or mechanical reproduction, translation, adaptation, **photocopying or similar reproduction (such as digital copying)** and any form of use of such works.
 - (b) To exercise and enforce on behalf of foreign proprietors of copyright works, by virtue of reciprocity or other agreements, all their rights under the Copyright Act within Kenya.
 - (c) In the exercise or enforcement of such rights and remedies to make and from time to time to rescind, alter or vary any arrangements and agreements with respect to any such exploitation of such works in regard to the mode, periods or extent in for or to which and the terms of which any such exploitation of such works may be made or employed, and to collect and receive and give effectual discharges for all royalties, fees and other monies payable under any such agreements or arrangements or otherwise in respect of any such exploitation by all necessary actions or any other proceedings, and to recover such royalties, fees and any other monies, and to restrain and recover damages for the infringement by means of any such exploitation as aforesaid of the copyrights of such works or any other rights of the proprietors or of the Society on their behalf in respect of such works, and to release, compromise or refer to arbitration any such proceedings or actions or any other disputes or differences in relations to the premises.
 - (d) To obtain from the proprietors such assignments, assurances, powers of attorney or other authorities or instruments as may be deemed necessary or expedient for enabling the Society to exercise and enforce in its own name or otherwise all such rights and remedies as aforesaid, and to execute and do all such assurances, agreements and other instruments and acts as may be deemed necessary or expedient by the Society of such rights and remedies aforesaid.
 - (e) To make and from time to time alter or vary any rules for regulating: -
 - i. the mode in which works of proprietors are to be communicated or declared by them to the Society;
 - ii. the mode in which, the periods for which, and the conditions under which the proprietors are to authorize the Society to exercise and enforce the rights and remedies aforesaid of the proprietors in respect of such works as aforesaid;

- iii. the mode and shares in which and the times at which the net monies received by the Society in respect of any such works as aforesaid are to be divided and apportioned among the proprietors interested therein respectively;
 - iv. the provision either directly or through trusts or associations, of gratuities, donations or pensions of Members or ex-Members of the Society, or their **spouse(s)**, widows, **Widowers, immediate** families or dependants; and
 - v. the administration of the property or business of the Society and any matters incidental thereto.
 - vi. **the procedures for determining complaints of breaches by members of their obligations and of misconduct by members affecting the Society.**
- (f) To distribute the net monies received by the Society in the exercise of the foregoing powers, after making provisions there out for the expenses and liabilities of the Society incurred in such exercise or in otherwise carrying out the purposes and operations of the Society and for any contributions or payments for any of the purposes specified in the next following sub-clause hereof, amongst the proprietors entitled thereto in accordance with the rules to be for the time being in force with respect to the distribution thereof.
- (g) To grant gratuities, donations, pensions, allowances and emoluments to any Member or ex-Member of the Society or any person as any time of employment of the Society, or engaged in any business acquired by the Society, and the **spouse(s)**, widows, **Widowers, immediate** families and dependants or relations or connections of any such persons.
- (h) To organise, establish, support, subscribe to and aid in the establishment and support of funds, trusts, associations or institutions charitable or otherwise calculated to benefit Members or ex-Members of the Society or persons employed by or having dealings with the Society.
- (i) To subscribe money for the relief of distress caused by natural disasters or other exceptional calamities **as may be deemed fit pursuant to Corporate Social Responsibility practices.**
- (j) To make payment by way of loan or gift or on such terms as may be thought fit for any purpose conducive to the improvement or advancement of the composition, teaching or performance or recognition of Kenyan music, or to or for the benefit of any society, association, foundation, trust company whose objects shall include any such purposes and generally to contribute to the promotion of national intellectual creativity in Kenya.
- (k) To receive contributions, subscriptions or donations for any of the purposes of the Society.
- (l) To carry on any business which may seem to the Society capable of being conveniently carried on in connection with the above objects or calculated, directly or indirectly, to enhance the value of or render profitable any of the property or rights of the Society or the proprietors.
- (m) To acquire or take part in the management, supervision or control of any business or undertake the whole or any part of the business, property, liabilities of any person, or company carrying on any undertaking or business which the Society is authorised to carry on or possessed property suitable for the purpose of the Society.
- (n) To enter into partnership or into any arrangements for sharing profits union of interests, co-operation, joint adventure, reciprocal concessions or otherwise with any person, association or company carrying on or engaged in or about to carry on or engage in any business or transaction which this Society is authorised to carry on or engage in or any business transaction capable of being conducted so as directly or indirectly to benefit this Society, and to amalgamate with or become affiliated to any such association or company and to lend money to, guarantee the contracts of or otherwise assist any such person, association or company, and to take or otherwise acquire shares and securities of any such company, and to sell, hold, re-issue, with or without guarantee, or otherwise with the same.
- (o) To take or otherwise acquire and hold shares in any other company having objects altogether or in part similar to those **of the Society** or carrying on any business capable of being conducted so as directly or indirectly to benefit this Society.

- (p) To promote any company or companies for the purpose of acquiring all or any of the property and liabilities of this Society or for any other purpose, which may seem directly or indirectly calculated to benefit this Society.
- (q) Generally to purchase, take on lease or in exchange, hire or otherwise acquire any movable or immovable property and any property and any rights or privileges, which the Society may think necessary or convenient for the purpose of its undertaking or business.
- (r) To invest and deal with the monies of the Society not immediately required in such a manner as may from time to time be determined.
- (s) To lend money to such persons and on such terms as may seem expedient and in particular to Members and others having dealings with the Society, and to guarantee the performance of contracts by any such persons.
- (t) To borrow or raise or secure the payment of money in such manner or terms as the Society shall think fit and in particular by the issue of the debentures or debenture stock, bills of exchange, promissory notes or other securities of the Society, charged upon all or any of the Society's property (both present and future), and to purchase, redeem, or pay off any such securities.
- (u) To hire or employ and remunerate any person or company for services rendered or to be rendered in placing or guaranteeing the placing of any debenture, debenture stock or other securities of the Society or in or about the formation or promotion of the Society or the conduct of its business.
- (v) To draw, make, accept, indorse, discount, execute and issue promissory notes, bills of exchange, debentures and other negotiable or transferable instruments.
- (w) To sell or dispose of the undertaking of the Society or any part thereof for such consideration as the Society may think fit, and in particular for shares, debentures or securities of any other company having objects altogether or in part similar to those of this Society.
- (x) To adopt such means of making known the operations and services of the Society as may seem expedient, and in particular by advertising in the press, by circulars, by publication of books and periodicals or by the periodicals or by the production and issue of cinema films by the making or sponsoring of wireless and television broadcasts or programmes.
- (y) To procure the Society to be registered or recognized in any foreign country or place.
- (z) To make and carry into effect any arrangement with any government state, protectorate, municipality or any such authority that may seem conducive to the furtherance of the Society's objects or any of them and to obtain from such authority any charter, rights, privilege or concession including statutory powers or provisional orders which it may deemed desirable to obtain and to carry out, use and exercise the same and comply with any conditions thereof.
- (aa) to obtain or acquire by application, purchase or otherwise, licenses, patent rights, concessions or protection and to exercise and use the same; to acquire use of any invention, mechanism or process secret or otherwise; and to acquire or register trademarks, trade names, designs; copyrights or other rights and privileges in relation to the business or obligation of the Society.
- (bb) to sell, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account to otherwise deal with all or any part of the property and rights of the Society.
- (cc) to appoint any agent or agents for the collection and recovery of any monies receivable by the Society in the exercise of its powers or otherwise for the purpose of the exercise of any such powers.
- (dd) to do all or any of the above things in any part of Kenya or elsewhere outside Kenya and as principals, agents, contractors, trustees, or otherwise and by or through trustees, agents or otherwise, and either alone or in conjunction with others.
- (ee) To sensitize the members of the society on their rights and intellectual property laws in general.**

(ff) To lobby and interact with relevant government bodies that are directly or indirectly related to the objects of the Society to ensure that laws enacted are beneficial to the music industry

(gg) To collaborate and enter into agreements with other relevant national or international bodies as may be deemed necessary, and to generally network with related organizations for the furtherance of the objectives of the Society.

4. The income and property of the Society when so ever derived shall be applied solely towards the promotion of the objects of the Society as set forth in this Memorandum of Association, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever, by way of profit to the members of the Society.
5. Provided that nothing herein contained shall prevent the payment in good faith of remuneration to any officers or servants of the Society, or to any Member thereof, or any other person in return for any services actually rendered to the Society, or be deemed to exclude any member of the Society from the benefit of any grant made in furtherance of any of the objects of the society but so that no director of the Society shall be appointed to any salaried office of the Society while he holds the office of director.

The liability of the Members is limited

6. Every Member undertakes to contribute to the assets of the Society, in the event of the same being wound up during the time that he is a Member or within one year afterwards, for the payment of debts and liabilities of the Society contracted before the time at which he ceases to be a Member, and the costs, charges and expenses of winding up the same, and for the adjustment of the rights of the contributors among themselves, such amount as may be required not exceeding **Kenya Shillings Two Hundred (KShs. 200/=) Only.**
7. If upon the winding up or dissolution of the Society there remains, after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the members of the Society but shall be given or transferred to a foundation, trust or some other institution, to be determined by the members of the society, having objects similar to the objects of the Society and which also prohibits the distributions of its or their income and property among its or their members to an extent at least as great as is imposed on the Society under clause 4 hereof.

We the several persons whose names, addresses and occupations are subscribed are desirous of being formed into a company in pursuance of this Memorandum of Association.

Rautta Athiambo P.O.Box 80366 Mombasa Civil Servant	Betty Njeri Tett Managing Director/Producer P.O.Box 42004, Nairobi
Robert Noel Simpson Businessman P.O.Box 14592 Nairobi	Daudi Kabaka Artist P.O.Box 60156 Nairobi
Rajab S. Chumbii Musician P.O.Box 72376 Nairobi	David Amunga Composer P.O.Box 28171 Nairobi
Laban Juma Toto Composer Musician P.O.Box 28777 Nairobi	Griffith Justus Siboe, Director of Culture P.O.Box 56144 Nairobi

Dated the 28th day of February 1983
Witness to the above signatures

BHAILAL PATEL Advocate
P.O. Box 42508,
NAIROBI, Kenya.

THE COMPANIES ACT

(CAP. 486)

COMPANY LIMITED BY GUARANTEE
(NOT HAVING A SHARE CAPITAL)

ARTICLES OF ASSOCIATION OF

MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED

1. Definitions and Interpretations

In these Articles unless the context requires otherwise: -

- (a) (i). "Affiliated society" means any of the societies in other countries having objects similar to those of the Society, with which the Society is for the time being **or may be** affiliated.
- (ii) "Author" means an author, adapter or translator of any words, which are or may be associated with any music.
- (iii) "Ballet" means a choreographic work having a story, plot or a obstruct idea, devised or used for the purpose of interpretation by dancing and/or miming, but does not include country or folk dancing, nor tap dancing, nor precision dance sequences.
- (iv) "Companies Act" means the Companies act (Chapter 486 Laws of Kenya) as amended from time to time.
- (v) "Composer" means a composer or arranger of any music.
- (vi) "Council" means the Governing Council for the time being of the Society, as constituted and authorised to act pursuant to these Articles.
- (vii) "Director" means a member of the Governing Council.
- (viii) "Distribution" means any distribution, which may, pursuant to the Rules, be made among the Members and affiliated associates out of the monies received by the Society in respect of the exercise of the rights, license or authority granted by them to the Society, and "distributed" and "distributable" have corresponding meanings.
- (ix) "Dramatico-musical work" means an opera, operetta, musical play, revue or pantomime, in so far as it consists of words and music written expressly thereof (but does not include a cinematograph film).
- (x) "Film Synchronization right" means in respect of any work the exclusive right to reproduce the work in any part of the world on the sound track of any cinematograph film.
- (xi) "Mechanical right" means, in relation to a musical work, the right to authorize other persons to produce such work in the form of recordings, including phonograms or other audio visual fixations, produced mechanically.
- (xii) "Member" means a Member of the Society admitted to membership pursuant to Article 5.
- (xiii) "Membership" means membership of the Society.
- (xiv) "Musical work", without prejudice to the generality of the expression, includes: -
 - (a) any part of a musical work,
 - (b) any vocal or instrumental music in cinematograph films.
 - (c) any musical accompaniment to non-musical plays,
 - (d) any words or music of monologues having a musical introduction or accompaniment,
 - (e) any other words (or parts of words) which are associated with a musical work (even if the musical work itself is not in copyright, or even if the performing rights in the musical work are not administered by the Society).
- (xv) "Performance" includes, unless otherwise stated, any mode of acoustic presentation, including any such presentation by means of broadcasting or the causing of a work to be transmitted to subscribers to a diffusion service, or by the exhibition of a cinematograph film, or by the use of a record, or by any other means, and references to "perform" and "performing" shall be construed accordingly.
- (xvi) "Performing right" means, in relation to a musical work, the right to do, or authorize other persons to do, any of the following acts: -
 - (i) to perform the work in public
 - (ii) to broadcast the work
 - (iii) to cause the work to be transmitted/**communicated to the public.**

in so far as rights subsist under the law relating to copyright in Kenya and includes such corresponding rights as subsist under the laws relating to copyright in all other countries in the world as in force from time to time.

(xvii) Proprietor” means an individual(s)/ a company that has, for a consideration, acquired ownership of economic rights in copyrighted musical work(s);

(xviii) “Publisher” means an individual(s)/ a company that has been assigned the reproduction/mechanical rights in a copyrighted musical work by the copyright owner(s);

(xix) “Rules” mean the Rules from time to time made for the purposes mentioned in Clause 3 of the Memorandum of Association

(xx) “Seal” means the common seal of the Society,

(xxi) “Secretary” means any person appointed to perform the duties of a **Company** Secretary of the Society,

(xxii) “Society” means the Music Copyright Society of Kenya **Limited**.

(xxiv) “Writer means” means a composer or author.

(xxv) “In Writing” means written, printed or lithographed, or partly one or partly another and other modes of representing or reproducing works in a visible form and incase of sending notices includes communication through electronic and other media

(xxvi) “Next of Kin” means a person appointed by a member to oversee the administration of his/her works by the Society on behalf of his/her family and immediate dependants until a successor in title is appointed.

(xxvii) “Committee member” means a member elected as a representative of the members in his/her Region in the Regional Committee, which will work under the Regional Director(s).

(b)

i) Words and expressions contained shall have the same meanings as in The Copyright Act **2001**, Laws of Kenya **and/or as it may be amended from time to time.**

ii) Words importing the singular shall include the plural and vice versa; words importing males shall include females; and, words importing persons shall include bodies corporate.

iii) Expressions referring to writing shall be construed as including reference to printing lithography, photography, and other modes of representing or reproducing words in a visible form.

MEMBERSHIP

2. Number unlimited

For the purpose of registration of the Society the number of Members is declared to be unlimited.

3. Members

The Members of the Society shall be persons who are admitted to membership pursuant to Article 5.

4. Eligibility for membership

The following persons shall be eligible for admission of membership of the Society: -

(a) Author, Composer, Publisher and Proprietor of copyrighted musical work(s).

(b) Next of kin and/or any successor in title of a deceased member.

5. Applications and qualifications for membership

(a) (i) Any person who is eligible may apply to the Society for admission to membership.

(ii) Such applications shall be made in writing, signed by the applicant, and shall be in such form as the Council shall from time to time prescribe.

(iii) Each applicant shall submit such evidence of eligibility and fulfillment of the qualifying criteria as the Council considers being reasonably necessary

(b) Each applicant shall be considered by the Governing Council or in such other manner as the Governing Council may from time to time direct.

- (c) There shall be a Membership and Vetting Committee as shall be constituted by the Governing Council for purposes of vetting new applicants and auditing members.**
- (d) The Governing Council may have power to refuse any application with reason for such refusal.**
- (e) Any person who is eligible for membership shall be admitted to membership either by the Governing Council itself or in accordance with such procedure as the Governing Council shall from time to time prescribe through the Membership and Vetting Committee.**
- (f) The Governing Council through the Membership and Vetting Committee and the Regional Committee shall ensure that genuine copyright owners are approved as members of the Society.**
- (g) Every person who has been admitted to membership shall have issued to him a certificate as to his membership in such form and signed by such officer of the Society, as the **Governing** Council shall from time to time prescribe;**
 - i) Every member on admission shall be issued with a Membership Identification Card and/or Certificate not later than Three (3) Months from the date of admission.**
 - ii) A member who loses his/her Membership Card or certificate shall be charged such amounts as the Governing Council may decide from time to time to make replacement**
- (h) Subject to paragraph (f) of this Article, a member shall be entitled: -**
 - (i) to inspect the list of voting members during the normal business hours on any day when the offices of the Society are open.
 - (ii) to be supplied by the **Company** Secretary as soon as possible with a copy of each part of the list on payment to the Society of a sum calculated at the rate prescribed from time to time under the Companies Act in respect of the provision of copies of a company's Register of Members.
- (i) The information in the list of members is confidential to members of the Society and a member who has inspected the list or has been supplied with a copy of the list or a part thereof shall not disclose any information on the list to any person who is not a member.**
- (j) Any applicant below the age of Eighteen (18) years may be considered to be a member through a Legal Guardian and will only qualify to vote when he/she attains the age of majority.**

6. Categories of Membership

- a) Interim member – from admission as a member for up to 1 year;**
- b) Full member – after One (1) year of interim membership.**

7. Assignment of rights

- (a) Every member shall, on admission, or at any time thereafter if requested by the Society, assign or cause to be assigned to the Society all rights to be administered on his behalf by the Society.
- (b) Every assignment to the Society pursuant to this Article shall be in such form as the Governing Council may from time to time prescribe and shall operate for and during the period of the assignor's membership, subject to the provisions of Articles 9 and 10.(c) The rights to be administered by the Society on behalf of a member are: -
 - (i) the performing right,
 - (ii) the mechanical right,
 - (iii) in the case of writer members only, the film synchronization right in every work composed or written by the Member primarily for the purpose of being included in the sound-track of a particular cinematograph film or films in contemplation when such work was commissioned.
 - (iv) such other rights, or such parts of the rights mentioned in sub-paragraphs (i), (ii) and (iii) as the Council may direct, for the whole world or such part, or parts of the whole world as the council may direct, in all, of or any works or parts of works, present and future, of which the member is a writer, publisher or proprietor. Provided that a decision that the Society shall administer rights other than

performing rights shall be binding upon any person who is already a member at the date of the decision unless the person **contests** that the decision shall apply to him.

(v) Any member who may wish to contest as provided under Article 7(iv) shall do so in writing to the Licensing and Marketing Committee through and in consultation with the relevant Regional Committee.

(d) Pending the assignment of rights to the Society pursuant to this Article, and in so far as such assignment may not extend, every Member by virtue of his admission grants to the Society, for and during the period of membership, subject to the provisions of Articles 9 and 10, in his name or in that of the Society but at the Society's sole charge and expense, the sole power and authority: -

(i) to authorize or permit or forbid the exercise of the rights to be administered by the Society on behalf of the Member,

(ii) to grant licences on his behalf for the exercise of such rights

(iii) to collect fees, subscriptions or monies whether for the authorised use of any of the Member's works, or by way of damages or compensation for the unauthorised use of such works,

(iv) to institute and prosecute proceedings against all persons infringing the said rights and, if the Society in its discretion thinks fit to defend or oppose any proceedings taken against any Member in respect of such rights and to compound, compromise, refer to arbitration or submit to judgement in any such proceedings, and generally to represent the Member in all matters concerning the said rights.

(v) to protect generally the said rights in the Member's works, and

(vi) to delegate authority to do any acts as aforesaid to any affiliated society and to any agent or representative in other territories, for the purpose of exercising the said rights in such territories.

(vii) To carry out any other action generally incidental to effect the said rights, including networking with anti-piracy organizations.

(e) The Society may exercise and enforce the rights of Member(s) of any affiliated societies pursuant to the terms of any contract now existing or which may hereafter be made between the Society and such affiliated societies.

(f) The Society may accept and act upon the authority of any Member of affiliated society to exercise the mechanical or performing right in their works to a greater extent than that defined in Article 1 (a) (xi) and (xvii), respectively.

(g) The Society may, by notice in writing to any Member decline to exercise the whole or any part of the performing or other right in any particular work or works of which such member is the composer, author, publisher or proprietor, and thereupon the provisions of sub-clauses (a) and (d) of this Article shall cease to apply to such right, and any assignment thereof already made to the Society by such Member shall be determined by the society:

Provided always that the Society may at any time and from time to time, by further notice in writing to such a member, withdraw such notice in respect of all or any of the rights comprised therein, whereupon the provisions of Sub-Clauses (a) and (d) of this Article shall again apply to such right or rights.

8. Membership not transferable

(a) No member shall be at liberty to transfer his membership to any other person or to alienate or exercise the rights to be administered by the Society on behalf of the Member.

(b) No member shall enter to any contract under which he shall or may be required, whether for valuable consideration or not, to write or compose any work for any non-member whether as employer or otherwise, without inserting in such contract an express provision reserving to such Member the right to be administered by the society on behalf of the Member.

9. Termination of membership

a) **By death**

On the death of a Member his membership shall cease and shall not be transmitted to any other person, but the rights (if any) already vested in the Society by the Member, or controlled by Society by virtue of his membership, shall, subject to **Article 76 herein**, remain so vested, or controlled either:

(i) for a period ending on the 31st day of December in the seventh year following the year in which the Member's death took place unless within that period an **admission** as mentioned in the following paragraphs (ii) and (iii) takes place, or

(ii) if a successor shall be **admitted** to membership during such period, then for so long as such successor remains a member, or

(iii) if a person is elected **admitted** such period to membership of an affiliated society in respect of the rights of the deceased Member, then up to the date of such election.

Any payment to which the Member would, if living have been entitled in accordance with the Rules in respect of any period prior to the **admission** of such successor shall be made to the Member's personal representative until a successor is **admitted**, or until the end of such seventh year as aforesaid, whichever is the earlier date. Upon the election to membership of any successor as aforesaid, any payment to which the Member would, if living, have been entitled in accordance with the Rules in respect of any period subsequent to such **admission** shall be made to such successor.

b) By liquidation

In the case of a Member, being a corporation or a firm, its membership shall cease, in the case of a corporation, in the event of and upon the liquidation of such corporation (other than voluntary liquidation for the purpose of reconstruction), and, in case of a firm, in the event of and upon such firm ceasing to carry on business. Upon such liquidation or cessation of business, the rights (if any) already vested in the Society by such corporation or firm, or controlled by the Society by virtue of the membership of such corporation or firm, shall subject to **Article 76**, remain so vested or controlled for a period ending on the 31st day of December in the Seventh (**7th**) year following the year which the liquidation or cessation of business occurred. Any payment to which the corporation or firm would, if it had remained a Member, have been entitled in accordance with the Rules in respect of such period shall be made to the person entitled for the time being to receive debts due to the corporation or firm.

c) Expiry of copyright

The membership of any member shall automatically cease:-

- i) upon the expiration of the longest period for which copyright subsists by virtue of statute in any country which is either a member of the Berne Union or a party to the Universal Copyright Convention in any of the works in respect of which such member is entitled to participate in distributions, or
- ii) by disposal in the case of any Member, being an executor or administrator, upon his having disposed of all interest in all performing or mechanical rights, which may have vested in him as such executor or administrator.

d) By the Governing Council

- i) The membership of a Member may for sufficient reason and at any time be terminated **and/or suspended**, either by the Council or in accordance with such general directions **as the Governing Council in consultation with the Regional Committees may from time to time give and pursuant to the termination rules and/ or as per existing Code of Conduct that shall be adopted by the Society from time to time.**
- ii) A Member shall be given notice by the Council signed by the **Company** Secretary or other officer designated by the Council determining his membership at the expiration of twenty eight days from the date of such notice, and his membership shall cease accordingly, **but the member shall continue deriving benefits from economic rights being administered by the Society.**

Provided always that if, before the expiration of such notices from the **Governing** Council, such Member shall in writing require the **Governing** Council to submit the question of the continuance of his membership to the decision of the Society in Extraordinary General Meeting or special business in an Annual General Meeting, he shall not cease to be a Member unless and until the Society in Extraordinary General Meeting or special business in an Annual General Meeting shall have approved the action of the **Governing** Council. If the Society in any of the said meeting shall approve the action of the **Governing** Council, the Member shall cease to be a Member at the conclusion of such meeting. **Provided that when the member dies the next of kin shall be allowed to apply as a member but subject to Article 28(b).**

e) By the member

Any Member may by giving three months' notice in writing to the **Company** Secretary, terminate his membership Three (3) years after his first admission to membership. At the end of the month in that Third (3rd) year corresponding to the month in which his admission to membership; and

f) Pursuant to a Membership Audit

If during an audit and vetting of membership by the Governing Council in consultation with the Regional Committees the works of a member are discovered to have been fraudulently and/or illegally declared at the Society as their own copyrighted work(s), their membership shall be terminated.

10. Pending proceedings – continuation of control of rights

If any proceedings have been instituted by or against the Society in respect of a Member's work either in the name of the Society or of the Member, and such Member ceases to be a Member during the pendency of the proceedings, any rights the subject of such proceedings which have been vested in the Society by such member, or are controlled by the Society by virtue of his membership, shall remain so vested or controlled until such proceedings are finally disposed of.

11. Cessation of membership – termination of rights, privileges.

Subject to the provisions of Articles 8 and 9, all rights privileges and obligations of membership shall cease on the date of cessation of membership. In particular, but without prejudice to the generality of the foregoing, the Member concerned shall cease to have any claim upon the assets of the Society, and shall not be entitled to participate in any further distribution, save as to any payment to which he may be entitled in accordance with the Rules in respect of any period prior to cessation of membership.

GENERAL MEETINGS

12. Annual General Meeting

The Society shall in each year hold a General Meeting as its Annual General Meeting, in addition to any other meetings in that year, and shall specify the meeting as such in the notice calling it; and not more than fifteen months shall lapse between the date of one Annual General Meeting of the Society and that of the next.

13. Time and place for Annual General Meeting

The Annual General Meeting **and any other General Meetings of the Society** shall be held at such time and place as the Governing Council shall appoint **from time to time, in consultation with the Regional Committee where the meeting shall be held.**

14. Extraordinary General Meeting

All General Meetings other than Annual General Meetings shall be called Extraordinary General Meetings.

15. Rights to convene Extraordinary General Meeting

- (a) The Council may, whenever it thinks fit, convene an Extraordinary General Meeting, and Extraordinary General Meetings shall also be convened on such requisition or in default, may be convened by such requisitions as Section 132 of the Companies Act provides.
- (b) If at any time there are not within Kenya sufficient Directors capable of acting to form a quorum any Director or any two Members may convene an Extraordinary General Meeting in the same manner as nearly as possible as that in which meetings may be convened by the Council.

NOTICE OF GENERAL MEETINGS

16. Every General Meeting and a meeting called for the passing of a Special Resolution shall be called by Twenty

One **(21)** days' notice in writing at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of meeting and, in case of special business, the general nature of that business, and shall be given, in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Society in General Meeting to such persons as are, under these Articles, entitled to receive such notices from the Society.

17. Accidental omission of notice

The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS

18. Business of General Meetings

All business shall be deemed special that is transacted at an Extraordinary General Meeting, and also all that is transacted at an Annual General Meeting, with the exception of the consideration of the accounts and

balance sheets, the reports of the Council and Auditors, the appointment of Directors in the place of those retiring, and the appointment, and fixing of the remuneration of the Auditors.

19. Quorum

No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, **Five Percent (5%)** of the total membership of **the Society** present in person shall be a quorum.

20. Adjournment for lack of quorum

If, within **an hour** after the time appointed for the meeting, a quorum is not present, the meeting if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day and to such other time and place as the Council may determine, and if at the adjourned meeting a quorum is not present within **an hour** after the time appointed for the meeting, the Members present shall be a quorum.

21. Chairperson of a General Meeting

The **Chairperson** of the Council, failing whom the Vice- **Chairperson** of the Council, shall preside as **Chairperson** at every General Meeting of the Society. If there is no such **Chairperson** or Vice-**Chairperson**, or if none of them is present within Fifteen **(15)** minutes after the time appointed for holding the meeting or none of them is willing to act as **Chairperson**, the Directors present shall choose one of their numbers to be **Chairperson** of the meeting.

22. Choice of Chairperson by Members

If at any meeting no Director is willing to act as **Chairperson**, or if no Director is present within Fifteen **(15)** minutes after the time appointed for holding the meeting, the Members present shall choose one of their numbers to be **Chairperson** of the meeting.

23. Adjournment of meeting

The **Chairperson** may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for Thirty **(30)** days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjourned or of the business to be transacted at an adjourned meeting.

24. Method of Voting

(a) At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded: -

(i) by the **Chairperson** of the meeting; or

(ii) by at least Three **(3)** Members present in person; or.

(iii) by any Member or Members present in person and representing not less than One Tenth **(1/10)** of the total votes of all Members which such Members having the right to vote at the meeting may cast on poll.

(b) Unless a poll be so demanded, a declaration by the **Chairperson** of the meeting that a resolution has by show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of proceedings of the Society, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution.

(c) The demand for a poll may be withdrawn.

25. Poll

Except as provided in Article 26, if a poll is duly demanded it shall be taken in such manner as the **Chairperson** of the meeting directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

26. Chairperson- casting Vote

In the case of an equality of votes, whether on a show of hands or on a poll, the **Chairperson** of the meeting at which the show of hands takes place, or at which the poll is demanded, shall, be entitled to a Second **(2nd)** or casting vote.

27. Time for taking Poll

A poll demanded on the election of a Chairperson of a meeting, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such a time as the Chairperson of the meeting directs; and any other business other than that upon which a poll has been demanded may be preceded with pending the taking of the poll.

VOTE OF MEMBERS

28.

(a) Every Member shall have one vote on a show of hands. No member shall be entitled to vote on a show of hands unless he is present or, in the case of a Corporation, the duly authorised representative is present in person.

(b) Next of kin and/or any successor in title of a deceased member, can vote in any poll/election of the Society.

(c) Interim members shall not have voting rights.

29. Members of unsound mind

A member of unsound mind in respect of whose estate a manager has been appointed under **Section 26 of The Mental Health Act** (Chapter 248, Laws of Kenya) may vote, whether on a show of hands or on a poll, by his said manager and any such manager may, on a poll, vote by proxy.

30. Votes on a Poll

On a poll votes **shall** be given personally.

31. Corporations' representatives

Any Corporation which is a Member of the Society may, by resolution of its directors or other governing body, authorize any person being either a director, officer or manager in the permanent and exclusive employment of such Corporation to act as its representative at any General Meeting of the Society, and the person so authorised shall be entitled to exercise the same powers on behalf of the Corporation which he represents as that Corporation could exercise if it were an individual member of the Society.

THE GOVERNING COUNCIL

32. Composition of the Council

(a) There shall be a Governing Council of the Society that will oversee all the business of the Society on behalf of the members.

(b) The Governing Council shall consist of not less than Eight (8) and not more than Nine (9) members constituted as follows:-

i) Two (2) members from Nairobi Region;

ii) One (1) Author/Composer member from each of the other Six (6) Regions, as provided in Article 64;

iii) One (1) independent/Consultant Director who possesses knowledge and skills that the Governing Council may need from time to time.

1) The duration in office of this Director shall be determined by the Governing Council but shall not exceed Three (3) years;

2) This Director shall not be eligible to vie for seat of the Chairperson or Vice-Chairperson of the Governing Council;

3) The Governing Council may revoke his/her appointment at any time by a Resolution passed by a majority of its members and the decision shall be communicated in writing to him/her within Twenty Four (24) Hours;

4) Another person may be nominated immediately in his/her place.

33. Qualification of Council members

a) Under Article 32b) i) any member who meets other criteria stipulated herein qualifies to vie for a seat in the Governing Council of the Society;

b) Under Article 32b) ii) subject to meeting any other criteria stipulated herein only Author and Composer members are eligible to vie for a seat in the Governing Council;

- c) all members who want to be elected as members of the Governing Council under Article 32b) i) and ii) above should have been a member of the Society for a continuous consecutive period of Four (4) years;
- d) A next of Kin/Successor in title of a deceased member shall not be eligible to vie for any elective post in the Society;
- e) any member vying to represent a Region in the Governing Council must have been registered as a member in that particular Region for a continuous consecutive period of not less than Six (6) months prior to the date of the notice declaring the sit vacant;
- c) Governing Council members from each Region shall only be elected by Society members from that respective Region who qualifies to vote in a poll;
- d) That every member vying for a post in the Governing Council shall be persons of high moral integrity, good and credible conduct and must meet any other qualification criteria as may be provided from time to time under the Rules and Regulations of the Society.

34. Chairperson and Vice Chairperson of Governing Council

- (a) The **Governing** Council shall **elect** a **Chairperson** and a Vice-**Chairperson** from persons who are **Regional** Directors of the Society.
- (b)
 - (i) The **Chairperson** shall be **elected** for a term not exceeding Three **(3)** years and shall be eligible for re-**election** for a further term not exceeding Three **(3)** years;
 - (ii) The Vice-**Chairperson** shall be **elected** for a term not exceeding **Three (3)** years, and shall be eligible for re-**election for a further term not exceeding Three (3)** years;

35. Directors' remuneration and expenses

- (a) The Governing Council may remunerate in such manner as it thinks fit the **Chairperson**, Vice-**Chairperson** or any Director of the Council, who shall be called upon to render any special services and which he may agree to render to the Society, or who shall have rendered any special services to the Society.
- (b) The **Chairperson**, the Vice- **Chairperson** and Directors in the Council shall also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Council, or any Committee of the Council, or General Meeting of the Society, or in connection with the Society's business.
- (c) The **Chairperson**, Vice- **Chairperson** or any Director shall be entitled to receive **remuneration and expenses as may from time to time be determined by the Society in the Annual General Meeting** for each meeting of the Governing Council or of any Committee of the Council he/she attends.

POWERS AND DUTIES OF THE GOVERNING COUNCIL

36. General Powers vested in Council

The business and operations of the Society shall be conducted and managed by the **Governing** Council, who may exercise such powers of the Society as are not, by the Companies Act, or by these Articles, required to be exercised by the Society in **a** General Meeting, subject, nevertheless, to the provisions of the said Act or these Articles, and to such regulations, being not inconsistent with the aforesaid provisions, as may be prescribed by the Society in **a** General Meetings shall invalidate any prior act of the Council which would have been valid if that regulation not had been made.

37. Powers of Attorney

- (a) The **Governing** Council may, from time to time and at any time, by power of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the **Governing** Council to be the attorney or attorneys of the Society for such purposes, and with such

powers, authorities and discretion's (not exceeding those vested in or exercised by the **Governing** Council under these Articles), and for such period, and subject to such conditions as it may think fit.

- (b) Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the **Governing** Council may think fit, and may also authorise any such attorney to delegate all or any of the powers, authorities and discretion's vested in him.

38. Execution of cheques, etc

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the Society, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such a manner as the **Governing** Council shall from time to time by resolution determine.

39. Distribution of receipts – general

All monies received by the Society in respect of the exercise of the rights, **license** or authority granted by the Members and the affiliated societies shall, subject to Article 40 be distributed or otherwise dealt with by the **Governing** Council in accordance with the Rules.

40. Distribution of receipts – specified purposes

The Council may, before making any distribution among the Members: apply out of the receipts such sums as it thinks proper of has agreed to contribute as:-

a) Gratuities, donations, pensions, etc

- (i) Gratuities, donations, **medical schemes, insurance**, pensions, and emoluments to any Member or ex-Member of the Society or any person at any time in employment of the Society, or engaged in any business acquired by the Society, and the **spouses**, widows, **widowers**, **immediate** families and **any other** dependants of any such member;

b) Superannuation and benevolent funds.

- (i) Contributions to any benevolent, pensions, or similar fund which may be established for the benefit of Members, ex-Members or employees of the society or their **spouses**, widows, **widowers**, families or **any other** dependants;

c) Subscription for relief of distress

- (i) Subscribe money for the relief of distress caused by natural disasters or other exceptional calamities **shall be determined by the Governing Council in consultation with the Regional Committees from time to time**

d) Funds for MCSK Foundation

(i) The Governing Council shall remit Sixty Percent (60%) of the funds set aside for Social Cultural Fund to MCSK Foundation.

(ii) MCSK Foundation shall allocate its funds towards gratuities, medical schemes, pension, insurance, benevolent and social cultural programs or investments or other priority needs for the benefit of the members and/or their spouses, widows, widowers, immediate families and any other close dependants.

41. Reserve fund and investment

- a) Set aside out of the receipts such sum as it thinks proper as a reserve fund to meet contingencies or for future distribution, or for repairing, improving and maintaining any of the property or premises of the Society, and for such other purposes as the **Governing** Council shall in its absolute discretion think necessary or conclusive to the interests of the Society, and may invest the several sums so set aside in such investments as it may think fit, and from time to time deal with or vary such investments and dispose of all or any part thereof for the benefit of the Society, and may divide the reserve fund in such special funds as it thinks fit, and employ the reserve fund or any part thereof for the general purposes of the Society, and that without being bound to keep the same separate from the other assets.

42. Appointment of **the** General Manager

The **Governing** Council may **from** time to time appoint any person (whether being a Member or not) as **the** General Manager and/or other officer of the Society for such term and at such remuneration as it may think fit, and (subject to any contract entered into between the **Governing** Council and such General

Manager and/or other officer) may from time to time remove him/**her** and appoint some other person as General Manager and/or other officer in his place.

43. Powers of **the** General Manager

The **Governing** Council may delegate to the General Manager and/or other officer all such of its administrative powers as aforesaid as it may deem necessary for the full and proper administration of the affairs of the Society.

44. Regulation of expenses and salaries

The **Governing** Council may regulate the general expenses of the Society and fix the salaries and emoluments of all employees, in consultation with the General Manager.

45. Payment of expenses and liabilities

The **Governing** Council shall pay and defray the expenses and liabilities of the Society, incurred in the exercise or enforcement of the rights vested in or controlled by the Society, out of the monies received by the Society in respect of the exercise or enforcement of such rights.

46. Borrowing Powers

Governing The Council may **from** time to time borrow, raise or secure the payment of such sum or sums of money as it may deem requisite for any purpose which it may deem expedient in the interest of the Society but not so as to charge any right or interest of any Member in respect of his works.

47. Alteration of Rules

The **Governing** Council may make, and from time to time, alter the Rules specified in Clause 3 (e) of the Memorandum of Association, and, without prejudice to the generality of the foregoing, may also make, and from time to time alter, separate or additional rules for regulating the provision, through trusts or associations, of gratuities, donations, or pensions for Members, ex-Members or employees of the Society, or their **spouses, widows, widowers, immediate** families or **other** dependants:

Provided that any Rules (other than separate or additional Rules) or any alterations of such Rules (other than as aforesaid) shall not take effect or come into operation unless or until the same have been approved by the Society in **a** General Meeting.

48. Minutes

The **Governing** Council shall cause minutes to be duly made in books for the purpose: -

- (i) of all appointments of officers made by the **Governing** Council;
- (ii) of the names of the **Regional** Directors present at each of the meeting of the **Governing** Council, and of any Committee of the Council and
- (iii) of all resolutions and proceedings of all meetings of the Society and of the **Governing** Council, and of any Committee of the Council; and any such minutes of any meeting of the Society, of the **Governing** Council, or of any Committee of the Council, if purporting to be signed by the **Chairperson** of such meeting or by the **Chairperson** of the next succeeding meeting, shall be receivable as prima facie evidence of the matters stated in such minutes. Every **Regional** Director present at the meeting of the **Governing** Council and any Committee of the Council shall sign his name in a book to be kept for that purpose.

DISQUALIFICATION OF **REGIONAL** DIRECTOR

49. Vacation of office by **Regional** Directors.

(a) the office of the **Regional** Director shall be vacated: -

- (i) if the **Regional** Director ceases to be a Member; or, in the case of a Director appointed as the nominee of a corporation or firm, if such corporation or firm ceases to be a Member;
- (ii) if, in the case of a Director appointed as the nominee a corporation or firm, having been nominated under **Article 32 (b)iii), if his nomination has been revoked pursuant to sub-paragraph iii)3) and 4) of Article 32(b).**
- (iii) if the Director becomes bankrupt or makes any arrangement of composition with his creditors generally;
- (iv) if the Director becomes prohibited from being a Director by reason of any order made under Section 189 of the Companies Act;

- (v) if the Director becomes of unsound mind;
- (vi) if the Director, by notice, in writing to the Society resigns his office;
- (vii) if the Director without special leave of absence from the **Governing** Council absents himself from the meetings of the **Governing** Council, either during a period of Six **(6)** successive calendar months or during a period covered by Three **(3)** consecutive meetings, whichever is the longer, attendances at meetings of the Committees of the Council to count as attendances at meetings of the **Governing** Council; or
- (viii) if the Director, or if a corporation or firm, of which the Director is the nominee pursuant to Article 32 (b) or of which he is a member, is directly or indirectly interested in any contract with the Society or participates in the profits of any contract with the Society, other than a contract in respect of any musical, literary or dramatic works in the copyright of which such, Director, corporation or firm is interested:

Provided, however, that a Director shall not vacate his office by reason of his having entered into contracts with or done any work for the Society or by reason of his being the nominee or a member of any corporation or firm which has entered into contracts with or done any work for the Society, if he shall have declared the nature of his interest or the nature of the interest of such corporation or firm in manner required by Section 200 of the Companies Act, but the Director shall not vote in respect of any such contract or work or any matter arising there out; and if he does so vote, his vote shall not be counted:

A Director shall not vacate office for being remunerated pursuant to Article 35.

- (b) Any vacancy in the **Governing** Council occurring as a result of the vacation of office pursuant to this Article shall be treated as a casual vacancy and may be filled by the **Governing** Council in accordance with Article 54.

RETIREMENT OF DIRECTORS

50. Retirement

- (a) Each **Regional** Director elected under Article 32(b) i) and ii) shall retire at the Third **(3rd)** Annual General Meeting following that on which he was last elected but shall be eligible for re-election for **One (1) more term only.**
- (b) A Director nominated under Sub-paragraph **(iv)** of paragraph **(b)** of Article 32 shall retire at the Third **(3rd)** Annual General Meeting following the date of his/**her** nomination, but unless his/**her** nomination is formally revoked pursuant to paragraph **(b)iv)3) and 4)** of Article 32 shall be deemed to have been re-nominated and shall be deemed to have been elected, or re-elected a Director at such Annual General Meeting without necessity of a formal vote being taken.
- (c) At the First (1st) Annual General Meeting after coming into effect of this amended Memorandum and Articles of Association, all current Regional Directors shall retire and seek fresh mandate from members in their respective Regions.**

51. Retiring **Regional** Director eligible for re-election

- (a) A retiring **Regional** Director shall be eligible for re-election **only once.**
- (b) **No Member** shall be eligible for election or re-election as a **Regional** Director at any General Meeting **subject to the Election Rules as shall be adopted by the Society in a General Meeting from time to time.**

52. Removal of a **Regional** Director

- (a) The members of a particular Region** may by Ordinary Resolution **in a General Meeting**, of which special notice has been given in accordance with Section 142 of the Companies Act, remove any elected **Regional** Director.
- (b) The Society may by Ordinary Resolution, of which notice has been given in accordance with Section 142 of the Companies Act, remove the**

Chairperson or Vice-Chairperson before the expiration of his/her period in office, notwithstanding anything in this Articles or any agreement between the Society and such person.

53. Filling vacancy caused by removal

The **Society** may by Ordinary Resolution, subject to Article 5**1** and subsisting election Rules, appoint any other qualified person in place of any **Regional** Director removed from office under Article 5**2**, but the person so appointed shall (always have the same qualifications as the **Regional** Director in whose place he is appointed) and shall be subject to retirement at the same time as his immediate predecessor in office would have been:

Provided that when such immediate predecessor in office was the **Chairperson** or Vice-**Chairperson** of the **Governing** Council, the period of office of the person so appointed shall be reckoned from the date of his own appointment.

54. Casual vacancy

The **Governing** Council may, in the event of any casual vacancy occurring among its elected members, fill such vacancy by appointing any eligible person but the person so appointed shall always have the same qualifications of the **Regional** Director in whose place he is appointed, and shall be subject to retirement at the **next** Annual General Meeting following his/**her** appointment under this Article.

PROCEEDINGS OF THE GOVERNING COUNCIL
AND COMMITTEES

55. Meetings and voting

(a)

- (i) The **Governing** Council may meet together for the dispatch of business, adjourn or otherwise regulate its meetings, as it thinks fit.
- (ii) Questions arising at any meeting shall be decided by a majority of votes
- (iii) In the case of an equality of votes the **Chairperson** of the meeting shall have a Second (**2nd**) or casting votes.

(b) All meetings of the **Governing Council** shall be summoned by the **Governing Council Chairperson** or in his absence the Vice- **Chairperson** or the Company Secretary **or subject to the Governing Council's manual and procedures, any member of the Governing Council**, in the absence of the **Chairperson, Vice- Chairperson and Company Secretary**.

(c) It shall not be necessary to give notice of any such meeting to any Director for the time being absent from Kenya.

56. Quorum

The quorum necessary for the transaction of the business of the **Governing** Council, or of any Committee of the Council may be fixed by the **Governing** Council and, unless so fixed, shall be **Six (6) for Council and Two (2) for Committees**.

57. Power to act even without quorum.

The continuing Directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of the **Governing** Council, the continuing Directors may act for the purpose of increasing the number of the Directors to that number or of summoning a General Meeting of the Society, but for no other purposes.

58. Chairperson

The **Chairperson** of the **Governing** Council shall preside at all meetings of the **Governing** Council, and if at any meeting of the **Governing** Council the **Chairperson** is not present within **Fifteen (15)** minutes after the time appointed for holding the same, the Vice- **Chairperson** shall be **Chairperson** of the meeting. If the Vice- **Chairperson** is not present, the Directors present may choose one of their numbers to be **Chairperson**.

59. Committees

- a) The **Governing** Council may delegate any of its powers to Committees consisting of such Directors and/or, other persons they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on by the **Governing** Council.
- b) There shall be Seven (7) Regional Committees, which shall work under the guidance of the respective Regional Director(s);**
- c) Nairobi Regional Committee shall have Ten (10) members;**
- d) The remaining Six (6) Regional Committees shall each have Five (5) members;**
- e) The role of the Regional Committees shall be provided in the Rules and Regulations as shall be adopted by the Society in a General Meeting;**
- f) Regional Committee members shall serve for a term of Three (3) years only and the members shall be eligible for re-election for only one more term of Three (3) years;**
- g) Members of the Regional Committees shall be elected by Society members from the respective Regions in which Committee they want to sit;**
- h) Qualifications and election of Regional Committee members shall be stipulated in the Election Rules as shall be adopted by the Society from time to time in a General Meeting;**
- i) The initial Ad-Hoc Committee that participated in the drafting of the amendment of the Memorandum and Articles of Association hereof will be retained until end of November 2012 for transition and consultation in drafting of the revised rules and regulations and thereafter fresh elections of Regional Committee members shall be held.**
- j) There shall be a Budget Committee constituted as follows: -**
 - i) Two (2) members to represent Nairobi Region;**
 - ii) Six (6) members, each to represent the other regions;**
 - iii) One (1) member nominated by the elected Budget Committee members.**
- k) That any Regional Committee member who wishes to vie for a position in the Governing Council shall first resign as a member of the Regional Committee.**

60. Validation of Appointment of Directors.

All acts done by any meeting of the **Governing** Council, or of a Committee of the Council or by any person acting as a Director, shall, notwithstanding that it may afterwards be discovered that there was some defect in the appointment of any such Directors or persons acting as aforesaid, and that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

61. Resolution in writing

A resolution in writing, signed by all Directors for the time being entitled to receive notice of meeting of the **Governing** Council or of any Committee of the Council, shall be as valid and effectual as if it had been passed at such meeting duly convened and held

Company SECRETARY

62. Appointment of a Company Secretary

The **Company** Secretary shall be appointed by the **Governing** Council for such term, at such remuneration, and upon such conditions as it may think fit; and any such **Company** Secretary so appointed may be removed by the **Governing** Council.

63. Director acting as Company Secretary

A provision these Articles requiring or authorizing a thing to be done by or to a Director and the **Company** Secretary shall not be satisfied by its being done by or to the same person acting both as Director and as **Company Secretary** or in place of the **Company** Secretary.

REGIONAL BRANCHES

64. Formation of Regional Branches

- a) **The Governing council shall set up Regional branches of the Society, nationally distributed, as may be deemed necessary from time to time.**
- b) **The following are the initial Regional branches;**
 - i) **Coast;**
 - ii) **Eastern and North Eastern;**
 - iii) **Central;**
 - iv) **Rift Valley;**
 - v) **Western;**
 - vi) **Nyanza; and**
 - vii) **Nairobi.**
- c) **Role of the Regional Branches shall be to ensure that:-**
 - i) **The Society's services are easily and quickly accessible to members and clients in that particular region;**
 - ii) **There is reduced knowledge and information gaps between the Headquarters' and the members and clients in the respective Regions;**
 - iii) **There is improved Management and administration of members rights and the Society's mandate;**
 - iv) **There shall be at least two (2) consultative forums in a year, for members of that Region; to educate, sensitize and update them on copyright related matters/knowledge and any general information on the Society.**

THE SEAL

65. Method of affixing the seal

The seal of the Society shall not be affixed to any instrument except by the authority of a resolution of the **Governing** Council, or (if authorised by the **Governing** Council for that purpose) of any Committee of the Council and in the presence of at least Two **(2)** Directors and the **Company** Secretary or such other person as the **Governing** Council may appoint for the purpose; and such Two **(2)** Directors and **Company** Secretary or other person as aforesaid shall sign every instrument to which the Seal of the Society is so affixed in their presence.

ACCOUNTS

66. Accounts to be kept

The **Governing** Council shall cause proper books of accounts to be kept with respect to: -

- (i) all sums of money received and expended by the Society and the matters in respect of which the receipt and expenditure take place; and
- (ii) The assets and liabilities of the Society **and a register of the same shall be kept, which can be inspected by any member, upon making a written request to the Governing Council.**

67. Books of accounts

The books of accounts shall be kept at the registered office of the Society or at such place or places in Kenya as the **Governing** Council thinks fit, and shall be open to the inspection of the Directors.

68. Inspection of books of accounts

The **Governing** Council shall from time to time determine whether, and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Society or any of them shall be open to the inspection of Members not being Directors, and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Society, except as conferred by statute, or authorised by the **Governing** Council, or by the Society in a General Meeting.

69. Accounts, balance sheets and reports.

The **Governing** Council shall from time to time, in accordance with Sections 148, 150 and 157 of the Companies Act cause to be prepared, and to be laid before the Society in a General Meeting, such accounts, balance sheets and reports as are referred to in those Sections.

70. Copies of balance sheet and report

A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Society in a General Meeting, together with a copy of the Auditor's report, shall be sent to all Members not less than twenty-one days before the date of the meeting: -

Provided that this Article shall not require a copy of these documents to be sent to any person of whose address the Society is not aware.

AUDIT

71. Auditors to be appointed

Auditors shall be appointed, and their duties regulated, in accordance with Section 159 to 162 of The Companies Act.

NOTICES

72. Method of giving notices

A notice may be given by the Society to any Member either personally or by sending it by post to him to his registered address, or (if he has no registered address within Kenya) to the address (if any) within Kenya supplied by him to the Society, for the giving of notices to him. **Notices shall also be sent through electronic or other media as may be deemed effective and convenient.**

73. Service by post

Where a notice to a Member is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of seventy-two hours after the letter containing the same is posted and in any other case at the time at which the letter would be delivered in the ordinary course of post.

74. Notice of General Meeting

Notice of every General Meeting shall be given in some manner hereinbefore authorised to (i) every Member, except those who (having no registered address within Kenya) have not supplied to the Society an address within Kenya for the giving of notices to them, and (ii) the Auditors for the time being in the Society. No other persons shall be entitled to receive notices of General Meetings.

INDEMNITY

75. Directors and officers entitled to indemnity

The Directors, General Manager, Auditors, Secretary and other officers for the time being of the Society, and the trustees (if any) for the time being acting in relation to any of the affairs of the Society, and every one of them, their heirs, executors and administrators, shall be indemnified and secured harmless out of the assets and property of the Society from and against all actions, costs, charges, losses, damages and expenses which they or any of them, their or any of their heirs executors or administrators, shall or may incur or sustain by or by reason of any act done, concurred in or omitted in or about the execution of their duty, or supposed duty in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own willful neglect or default respectively, and none of them shall be answerable for the acts, receipts, neglects or defaults of the other or others of them, or for joining in any receipt for the sake of conformity or for any bankers or other persons with whom any monies or effects belonging to the Society shall or may be lodged or deposited for safe custody or for insufficiency or deficiency of any security upon which any monies of or belonging to the Society shall be placed out or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto, unless the same shall happen by or through their own willful neglect or default respectively.

RULES AND REGULATIONS

76. The Governing Council in consultation with the Regional Committees may make such Rules and Regulations as it deems necessary for the attainment of the objects of the Society subject to the same being adopted by the Society in a General Meeting and all the members of the Society will be bound thereby.

WINDING UP

77. Procedure of winding up

In the event of and upon the winding up of the Society whether voluntary or otherwise, at any time, the assets of the Society (other than the performing or other right vested in or controlled by the Society pursuant to these Articles and any sums distributable in accordance with the Rules) shall, in so far as they are available for the purpose, be apportioned among the persons who are Members at the date of such winding up in the proportions in which such Members received distributions from the Society in respect of the year ending on 31st day of December immediately prior to such winding up; and the rights (if any) vested in the Society by any Member, or controlled by the Society by virtue of his membership, shall revert to such Member or his personal representatives.

ARBITRATION

78. Where differences arise between the Society on the one hand and any of the members, their executors, administrators or assigns on the one hand touching the true intent or construction, or the incidents or consequences of these Articles, or the statutes, or touching anything then or thereafter done, executed, omitted, or suffered in pursuance of these Articles, or of the statutes, or touching any breach, or alleged breach of these Articles, or any claim on account of any such breach or alleged breach, or otherwise relating to the premises, or to these Articles or to any statutes affecting the society, or to any of the affairs of the society, every such difference shall be referred to the decision of an arbitrator, to be appointed by the parties in difference, or if they cannot agree upon a single arbitrator to the decision of two arbitrators, of whom one shall be appointed by each of the parties in difference.

SPECIAL RESOLUTION

The Special Resolution passed at the Extra Ordinary General Meeting held on the5th..... day ofJuly, 2012.

“That the regulations contained in the printed document submitted to this meeting and for the purpose of identification subscribed by the Chairperson thereof be approved and adopted as the Article of Association of the company in Substitution for and to the exclusion of all the existing Memorandum and Articles of Association thereof”.

Dated this.....

Signed by:

Director:

Secretary:

ANNEX I; ELECTION RULES FOR GOVERNING COUNCIL MEMBERS.

Election of the members of The Governing Council under Article 32 (b) (i) shall take place in the following manner:

- a) Not less than Eight (8) weeks before each Annual General Meeting, the Governing Council shall cause to be issued to all members entitled to vote a Notice;
 - i) Inviting nominations and specifying the number of vacancies to be filled;
 - ii) Specifying the relevant qualifications,
 - iii) Indicating the latest date and time by which nominations must be received at the registered office of the Society.
- b) Official nomination papers shall be obtained from the registered office(s) of the Society.
- c) Nomination papers for election to the Governing Council should be signed by the nominee indicating his/her willingness to vie for a specific advertised vacancy.
- d) Only Society members with more than four (4) years standing in the Society may be nominated for election to the Governing Council.
- e) A nominee must be supported by Ten (10) members who shall include one who proposes and another who seconds, all of whom should have been members eligible to vote in a poll in the Society.
- f) Duly completed nomination papers must reach the registered Office of the Society not later than 12 noon on the Friday of the Sixth (6th) week before the date of the Annual General meeting {or as may otherwise be stipulated for by the Governing Council}.
- g) All nomination papers shall be in a sealed envelope marked "NOMINATION" and should be deposited in the "Nominations Box" provided for that purpose at the registered offices of the Society.
- h) Nominated Candidates or their proposers may forward nomination papers in a sealed envelope clearly marked "NOMINATION" by registered mail or courier to the Company Secretary at the Registered Office of the Society at least Seven (7) days before the closing date for nominations.
Candidates are advised to send a notification of the tracking number to the returning officer.
- i) Such nomination papers should be accompanied by brief write up on the nominee in a format to be determined by the Governing Council.
- j) The Nominations Box will be sealed by the Company Secretary in the presence of the internal Auditor at 12 noon on the Friday of the Sixth (6th) week before the Annual General meeting.
- k) At 3pm the Friday of the Sixth (6th) week before the Annual General Meeting the Nominations Box will be opened by the Company Secretary in the presence of the General Manager, the internal Auditor, the nominated candidates or any of their representatives.
- l) On opening, the Company Secretary shall list all the nominations received indicating the names of;
 - (i) the persons nominated;
 - (ii) the Ten (10) members supporting the nominations.

- m) Thereafter the list of nominated candidates shall be examined, verified and otherwise scrutinized to ensure validity of membership, professional integrity, conduct and suitability for election to the Governing Council by a Nominations Committee made up of the Company Secretary, Internal auditor, the General Manager, the Officer in charge of Documentation and Distribution and/or either a representative of the Registrar of Companies or a representative of an independent body that would have been authorised to conduct the elections.
- n) After evaluating and examining the list of nominated candidates, the Nomination Committee will forward to the Governing Council a verified list indicating the qualified nominees, those disqualified and the reasons thereof, and any considered unsuitable or otherwise unfit for the election to the Governing Council.
- o) After receiving the list of the validly nominated candidates:-
- i) If the number of candidate(s) nominated does not exceed the number of vacancies to be filled, those candidates so nominated shall at the Annual General Meeting be declared to be elected.
 - ii) If the number of candidates so nominated exceeds the number of vacancies to be filled, the Governing Council shall engage either an independent electoral body or the Registrar of Companies as the Returning Officer for the Elections and the body so engaged, in conjunction with the Company Secretary shall cause a ballot paper with the names of validly nominated candidates to be issued to all members eligible to vote in the respective region.
 - iii) The Ballot paper shall be issued to those Members entitled to vote and present personally at the voting centre at the date determined by the Governing Council but not later than Seven (7) days before the Annual General Meeting.
 - iv) On closure of voting, the Returning officer shall cause the votes cast to be counted, verified and scrutinised as appropriate. He shall then compile a report to be read at the Annual General Meeting.
 - v) In case of a tie, the Returning Officer shall subject the top Two (2) candidates to a run off Three (3) days after the election.
 - vi) The Returning Officer's report in the election and the results thereon shall be read by the Company Secretary and confirmed at the Annual General Meeting.
 - vii) At the Annual General Meeting, the candidate(s) receiving the most votes on any such ballot shall be declared to be elected and the result of such ballot shall be conclusively deemed to be the decision of the Annual General Meeting.
 - x) The elected members of the Council shall commence their terms of office immediately after the confirmation of the report of the Returning Officer at the Annual General Meeting.
 - xi) The members of the new Governing Council shall take an Oath of Office administered by a Commissioner for Oaths in the presence of the Company Secretary not later than Seven (7) days after the Annual General Meeting.

ANNEX II: ELECTION RULES FOR REGIONAL COMMITTEE MEMBERS.

Election of the members of The Regional Committees under Article 59 shall take place in the following manner:

- a) Not less than Eight (8) weeks before each Annual General Meeting the Governing Council shall cause to be issued to all members entitled to vote a notice;
 - i) Inviting nominations and specifying the number of vacancies to be filled;
 - ii) Specifying the skills, experiences and competencies (qualifications) deemed relevant and necessary to rejuvenate and renew the Regional Committees.
 - iii) Indicating the latest date and time by which nominations must be received at the registered offices of the Society in the respective Regions.
- b) Official nomination papers shall be obtained by interested members from the respective regional offices.
- c) Nomination papers for election to the Regional Committees should be signed by the nominee indicating his/her willingness to vie for a specific Regional Committee seat, as per the Notice advertising the vacancies.
- d) Only Society members of more than Three (3) years may be nominated for election to a Regional Committee.
- e) A nominee must be proposed and seconded by, members of that Region, eligible to vote in a poll in the Society.
- f) Duly completed nomination papers must reach the registered Office of the Society not later than 12 noon on the Friday of the Sixth (6th) week before the date of the Annual General meeting, or as may be stipulated by the Governing Council in the Notice advertising the vacancies.
- g) All nomination papers shall be in a sealed envelope marked "NOMINATION" and should be deposited in the "Nominations Box" provided for that purpose at the registered offices of the Society.
- h) Such nomination papers should be accompanied by brief write up on the nominee in a format to be determined by the Governing Council.
- i) The Nominations Box will be sealed by the Regional Manager in the presence of the branch accountant and/or any officer from the Registrar of Companies or from relevant independent body, at 12 noon on the Friday of the Sixth (6th) week before the Annual General meeting.
- j) At 3pm the Friday of the Sixth (6th) week before the Annual General Meeting the Nominations Box will be opened by the Branch Manager in the presence of Branch Accountant and the nominated candidates or any of their representatives.
- k) On opening, the Regional Manager shall list all the nominations received indicating the names of;
 - (i) the persons nominated;
 - (ii) the members who Proposed and Seconded supporting the nominations.
- l) Thereafter the list of nominated candidates shall be sent to the Company Secretary to be examined, verified and otherwise scrutinized to ensure validity of membership, professional integrity, conduct and suitability for election to the Regional Committee, by a Nominations Committee made up of the Company Secretary, Internal auditor, the General Manager, the

Officer in charge of Documentation and Distribution and/or either a representative of the Registrar of Companies or a representative of the independent body that would have been authorised to conduct the elections.

- n) After evaluating and examining the list of nominated candidates, the Nomination Committee will forward to the Governing Council a verified list indicating the qualified nominees, those disqualified and the reasons thereof, and any considered unsuitable or otherwise unfit for the election to the Regional Committees.
- o) After receiving the list of the validly nominated candidates:-
- i) If the number of candidate(s) nominated does not exceed the number of vacancies to be filled, those candidates so nominated shall at the Annual General Meeting be declared to be elected.
 - ii) If the number of candidates so nominated exceeds the number of vacancies to be filled, the Governing Council shall engage either an independent electoral body or the Registrar of Companies as the Returning Officer for the Elections and the body so engaged shall cause a ballot paper with the names of validly nominated candidates to be issued to all members eligible to vote.
 - iii) The Ballot paper shall be issued to those Members entitled to vote and present personally at the voting centre at the date determined by the Governing Council but not later than Seven (7) days before the Annual General Meeting.
 - iv) On closure of voting, the Returning officer shall cause the votes cast to be counted, verified and scrutinised as appropriate. He shall then compile a report to be read at the Annual General Meeting.
 - v) In case of a tie, the Returning Officer shall subject the top Two (2) candidates to a run off Three (3) days after the election.
 - vi) The Returning Officer's report in the election and the results thereon shall be read by the Company Secretary and confirmed at the Annual General Meeting.
 - vii) At the Annual General Meeting the candidates (up to the number of vacancies to be filled) receiving the most votes on any such ballot shall be declared to be elected and the result of such ballot shall be conclusively deemed to be the decision of the Annual General Meeting.
 - x) The elected members of the Committee shall commence their term of office after the confirmation of the report of the Returning Officer at the Annual General Meeting.
 - xi) The Regional Committee shall thereafter and in conjunction with their Regional Director set up a calendar of activities of their respective region and pursuant to the Society's national calendar.