

## CHAIRMAN'S REPORT

Dear fellow Members,

It is my privilege and honour to welcome you to MCSK's 31<sup>st</sup> Annual General Meeting, being held virtually on 15<sup>th</sup> November 2022.

I humbly request all of us to observe a minute of silence in remembrance of the following members of MCSK and comrades in the music industry who have taken their final bow from the creative scene between 16<sup>th</sup> July 2021 and 02<sup>nd</sup> November 2022.

	<b><u>NAME</u></b>	<b><u>PSEUDONYM</u></b>	<b><u>MBR. No</u></b>	<b><u>REGION</u></b>
1	LOISE WANJIKU NJENGA	LOISE NJENGA	6694	CENTRAL
2	KATANA KALUME MBUKO	BIN KALAMA	1961	COAST
3	TIMOTHY MUNYI NGOROI	WAGUCATHE	1489	EASTERN
4	SHADRACK MASAI KIUA		9002	EASTERN
5	JEREMIAH MWANGANGI MATULA	MAKASI	902	EASTERN
6	RICHARD MUKUU MATONYI	AMOS	2088	EASTERN
7	PHILIS GATAVI NGULI	PST PHILIS	10700	EASTERN
8	ALICE WAMBUI MBURU	ALICE WAMBUI	5547	NAIROBI
9	JAMES MAINA KIAMA		1878	NAIROBI
10	KAMAU GICHATHA		14070	NAIROBI
11	NANCY INDIAZI	KENDY	2989	NAIROBI
12	REGINA WANJIKU KAMAU		10894	NAIROBI
13	WILFRED ONGIGE NYABIRA	EGESIBI KIA GUSII	658	NAIROBI
14	SAMMY MUTUKU MWAKA	MUREFU	1376	NAIROBI
15	JOHN MUNIKO KARANJA		264	NAIROBI
16	JOSEPH GITHINJI KOIGI	PST JOSEPH KIOGI	3147	NAIROBI
17	ANTONY NGANGA	NGASHVILLE	3563	NAIROBI
18	MICHAEL ODINDO	ODISH KODESH / OPIYO BILONGO	2511	NYANZA
19	DICKSON NGODE OTULA		256	NYANZA
20	PAUL OBUNGA OULO		228	NYANZA
21	ZADOCK ORANGO NYACHIRO	ZADOCK NYACHIRO	2279	NYANZA
22	JANET MATEBA NOAH	JANET MATEBA	5964	RIFT VALLEY
23	JAMES MBOTE MIRITHU	JATEMI	1879	RIFT VALLEY
24	ISAACK KAMAU WANYOIKE	PST ISAACK K JUNIOR	10339	RIFT VALLEY
25	VIRGINIA WANJIKU NGANGA		5909	RIFT VALLEY
26	LUCY NYAWIRA KAMAU	LUCY NGUGI	15051	RIFT VALLEY
27	JOMO MASABA MULOSIA		355	WESTERN
28	MUSA AMBANI LIHANDA		50	WESTERN
29	FRED WANYONYI CHANGALWA	WANYONYI WA KHATUNDI	2581	WESTERN
30	TERESIA NJOKI NJUGUNA	TERRY	12445	WESTERN
31	ANTHONY ANDENYI SUSU		667	WESTERN

They shall be dearly missed and may God rest their souls in eternal peace.

Thank you all.

The ongoing challenges facing MCSK since the onset of COVID-19 have once again forced that I cannot be able to address members in person during the AGM.

I would like to first address the economic and then political environment that we have had to operate in during the period that ended on 30th June 2021 before presenting the performance of the Company.

### **Social, Economic, and Political Environment**

The effects of COVID-19 in 2020 have continued to significantly affect businesses in 2021. We find that hotels, restaurants, bars, salons, shops etc. that were closed due to COVID-19 pandemic have not yet resumed normal operations, and those that were closed have not been opened, while we have very few new businesses being opened. These businesses that have not been doing good business and that closed are the ones MCSK licenses to collect royalties. The net effect has seen the revenues of MCSK drop to critical levels.

Other than COVID-19 the political environment and the previous government in Kenya did not provide a conducive, and supportive environment for MCSK to collect royalties.

The previous government did everything possible both openly and behind closed doors to ensure that it frustrated MCSK in the collection of royalties so as to incite and frustrate MCSK members to be angry and disgruntled for lack of distribution of royalties, to enable them execute their evil plans to **STATE CAPTURE** the music industry.

This is very clear, starting from the way Kenya Copyright Board (KECOBO) has gone out its way to advise the government, major broadcasting and telecommunication companies and the public who use music not to take out a copyright license to make it difficult for MCSK to collect and distribute royalties, instead KECOBO would rather that they infringe on copyright, which is contrary to the government mandate. KECOBO has even gone to the extent of mining MCSK clients' data from the joint licensing system and used the information to call clients and instruct them not to pay royalties to MCSK.

Through KECOBO's insistence Inspector General of the National Police Service instructed the police service not to assist and support MCSK in enforcing compliance of the Copyright Act by users of music.

These actions of KECOBO have resulted in having very many cases and instances of blatant infringement of copyright in the last couple of years, if these actions are not contained and addressed very soon with the assistance and support of the current government, MCSK faces losses and damages to Intellectual Property that would be immeasurable and unrecoverable to the music industry in Kenya.

Further the actions of KECOBO have mainly been geared towards painting MCSK in bad light to

members, and other right holders both in Kenya and Internationally, with the sole purpose of KECOBO creating an environment to enable it take over the collection and distribution of royalties through the National Rights Registry (NRR) that they jointly own and manage with Liberty Afrika Technologies Limited.

KECOBO amended the Copyright Act to have the government involved in determining the amount of royalties payable only for the use music. This has resulted in the government publishing in the Kenya Gazette a very bad tariff that drastically reduced the amount payable as royalty for the use of copyrighted music. Because of this kind of interference by KECOBO, the current applicable tariffs are the lowest tariffs that have ever been used by MCSK to collect royalties in the last 10 years. This has made it very difficult for MCSK to optimally administer and manage the collection and distribution of royalties as expected by members.

Through proxies' attempts were made in the last parliament to introduce through a Miscellaneous (Amendment) Bill, omnibus bill, amendments to the Copyright Act, that would have essentially led to the eventual closing down the existence of MCSK and instead introduce a government agent to collect and distribute royalties through the NRR.

This effort was stopped at the early stages of the process of introducing the amendments to the Copyright Act, through extensive lobbying. Towards that good teamwork, that resulted in the withdrawal of the proposed amendments to the Copyright Act, I would like to commend all those who participated in this exercise, for the time and extra steps taken to ensure that the proposed amendment bill did not see the light of day in parliament.

It is very important that I bring all this matters to the attention of members because these actions by government operatives, cartels and KECOBO have been designed to paint MCSK in a bad light, to benefit a few individuals who want to reap where they have not sown in the music industry.

We have spent the better part of the last couple of years speaking up about what MCSK stands for to both our friends and our detractors.

That begs the question, what do musicians/members/right holders want and expect from the government?

Do you want the government to provide necessary support and assistance for effective compliance of the Copyright Act by users of music or do you want the government to take over the collection and distribution of royalties for the use of copyrighted music/Intellectual Property?

The new government has promised and given assurances that they will be do things differently from the previous government.

They are going to respect, protect and support Intellectual Property Rights as provided for in the Constitution of Kenya and the Copyright Act.

MCSK C.E.O. Dr. Mutua, has taken a very active lead role in engaging with officials of the new government in several consultative meetings to ensure that the position and situation of MCSK is properly articulated and understood from the start so that we do not run into the same problems that MCSK has faced in the last 10 years, through the misinformation, propaganda and misdirection carried out purposely by KECOBO.

With difficult economic times users of music were not ready and willing to comply with the Copyright law that requires them to take out a license from MCSK before using any music in MCSK controlled catalogue/repertoire.

a) Social cultural expenditures

Under MCSK's policy, we reimburse funeral expenses on demise of a member as well as medical expenses of up to KShs. 40,000 per annum per member and immediate dependents.

Currently due to financial constraints we disburse KShs. 20,000/= to a principal member and not next of kin but when things normalize, we shall revert to the earlier amount.

In view of the challenges occasioned by KECOBO deregistration of MCSK as a CMO 2017, COVID-19 pandemic in 2020-2021, lack of police support in enforcing compliance since 2019, and revocation of MCSK CMO license in 2020. The amount of royalties collected have not been enough for the company to effectively service all its statutory and contractual obligation, to members, government, and suppliers. As a result of this challenges our books of accounts have captured this and it reflects a dire situation on amounts owed as debts.

Having all this debt reflected on the books of accounts weighs heavily on the financial health and operations of the company. It is for that reason I that dutifully present before the AGM, the apex decision making organ of the company a proposal for members to waive/write off royalties owed as captured in the company's books of accounts, to start in a new clean slate with the new government to reduce and mitigate risks that shall be associated with having it still reflected there.

**Relationship with Regulator-Kenya Copyright Board (KECOBO) and status of Collective Management Organisation License of MCSK**

Since its inception in 2008, Kenya Copyright Board (KECOBO) has set its sole purpose/mandate/objective is to work deliberately towards methodically and patiently towards discrediting, disorganizing, disrupting, fragmenting, disabling, confusing, and frustrating MCSK in executing its mandate of administering, managing, and enforcing the exploitation of

copyrighted musical works in its controlled catalogue/repertoire so that members can be tired and give up on it. This has been witnessed with the over 30 amendments, including a total overhaul, to the Copyright Act by KECOBO just to specifically targeted to the music industry/MCSK.

Who in the music industry does not know the role that officers at KECOBO played in working and conspiring with **COPYRIGHT PIRATES** to kill the cassette, CD and DVD industry? Now that they have finished that source of royalties to musicians, they have turned their energies and resources to finish MCSK, the only structured avenue for and by musicians of receiving royalties.

It would be very important to get an explanation from KECOBO to the public and copyright owners, why legally, which is within its powers and mandate to do, it has done nothing to ensure that Telecom companies like Safaricom Limited and Premium Rate Service Providers (PRSPs) or Content Service Providers (CSPs) that use Communication to the Public and Mechanical Reproduction Rights in copyrighted music on the digital platform have authority/license of copyright owners and pay royalties as required of them in the Copyright Act? Considering that this and broadcasters are the biggest source of royalties internationally for copyright owners and the same should be the case in Kenya.

What has KECOBO done to make sure that private broadcasters, Kenya Broadcasting Corporation (KBC) and other government entities that use copyrighted musical works have authority/license from copyright owners and pay royalties before using the music as required of them in the Copyright Act?

For the last 21 years, the Copyright Act, has provided for the collection of Blank Tape (Private Copying) Levy. How much of this very critical source of revenue has KECOBO collected and distributed to copyright owner in line with best international practices in management and administration of Blank (Private Copying) Levy?

Finally, Authentication device/ banderol it would be important to note that the authentication devices supposed to protect exploitation of copyrighted material is still a mystery as to how it is administered and managed by KECOBO to ensure that all copyrighted works and not only music receives fair and equal protection.

We have worked tirelessly to ensure that MCSK and what we represent and stand for, becomes known to our customers, our own members, the wider music industry, the public and of course those in government that would care to listen at all levels.

It is through these efforts and much more that MCSK has been able to contain the onslaught of KECOBO and still be around to stand tall to be counted and to speak proudly and fight against infringement of Intellectual Property by unscrupulous operatives in government and the public.

We look forward to you receiving true value of the music you have worked so hard and invested so much to create.

The future for the music industry and creative space looks very bright and promising with the new regime in government.

2020 was a very difficult year globally because of the COVID-19 pandemic but to add on top of that to make matter worse for MCSK, on 10<sup>th</sup> December 2020 KECOBO revoked MCSK's 2020 CMO license, roughly 2 weeks before it expired. This resulted into the following court cases as summarized in the table below:

	<b>CASE</b>	<b>PARICULARS &amp; STATUS</b>
1.	Francis Nzioki Kavuu Vs. KECOBO & MCSK: High Court of Kenya at Machakos: Petition No. E11 of 2020	Francis Nzioki Kavuu filed a Petition to challenge the constitutionality and legality of the actions of Kenya Copyright Board (KECOBO) to revoke/terminate the 2020 Collective Management Organisation License of Music Copyright Society of Kenya Limited (MCSK), deny MCSK access to funds in the joint bank account and considering its application for the 2021 CMO license vide a letter dated 10 <sup>th</sup> December 2020. - Awaiting Court directions.
2.	Music Copyright Society of Kenya Limited (MCSK)–Vs- Kenya Copyright Board (KECOBO) & Another. High Court of Kenya at Nairobi. Petition No. E435 of 2020.	Music Copyright Society of Kenya Limited (MCSK) has filed a Petition in the High Court of Kenya at Nairobi to question and challenge the constitutionality and legality of provisions of Section 46, 46a-g of the Copyright Act, Laws of Kenya that mandate Kenya Copyright Board to compel MCSK, a Right Holder, to operate as a Collective Management Organisation (CMO) so as to be able to administer and enforce the rights that it has been Exclusively Assigned by Right Holders. - The Court did not consider accordingly the case that MCSK presented before it, forcing us to go back to the Court of Appeal to be heard again on the grounds that we initially wanted the court to address and pronounce itself.
3.	Kenya Copyright Board (KECOBO) – Vs-Music Copyright Society of Kenya Limited (MCSK) & Others. High Court of Kenya at Nairobi: Petition No. E276 of 2021.	Kenya Copyright Board (KECOBO) filed the Petition seeking for declaration that when all the CMOs have lawfully been deregistered it contravenes the Constitution of Kenya and perpetuates the infringement of Intellectual Property. KECOBO be allowed either by itself or through an agent to collect and distribute royalties on behalf of all copyright holders pending the establishment of a new CMO which has the capacity to carry out the activities of collective management. An order directing MCSK-KAMP-PRISK to surrender to KECOBO details of their members and all assets of its members within seven (07) days and an order directing the newly created CMO to take over the operations of the royalties' distribution bank accounts and any other bank accounts including mobile money accounts operated by MCSK-KAMP-PRISK. - The Application was dismissed on 30 <sup>th</sup> September 2022.
4.	Music Copyright Society of Kenya Limited (MCSK) –Vs-The Inspector General of Police & The AG.	Music Copyright Society of Kenya Limited (MCSK) has filed a Petition in the High Court of Kenya at Nairobi following a directive by the Inspector General of Police withdrawing police support in enforcing compliance to the

	<p>Petition No. E376 of 2021. High Court of Kenya at Nairobi.</p>	<p>Copyright Act.</p> <p>MCSK is praying for a declaration that the decision by the IG to withdraw the police enforcement/support towards MCSK in the enforcement of IP and the failure on the part of the state to enforce rights of MCSK members is in contravention of the constitution and the Copyright Act.</p> <p>MCSK sort a declaration that it is entitled to the services, assistance, and support of the officers of the National Police Service in the enforcement of Intellectual Property, and Order be issued directing the IG to come up with a framework within a prescribed period governing the systematic way the services, assistance, and support of the officers of National Police Service shall be rendered to MCSK in the enforcement of IP rights.</p> <ul style="list-style-type: none"> <li>- The Court directed that the new Inspector General of the National Police Service be given time to settle in office and MCSK engages him on coming up with a framework of providing support and assistance in the enforcing of compliance to the Copyright Act.</li> <li>- Matter to be mentioned in December 2022 to update court on progress of coming up with the framework of working with the National Police Service.</li> </ul>
5.	<p>Music Copyright Society of Kenya Limited (MCSK) -Vs- Safaricom Limited &amp; Others. Civil Case No. E260 of 2022(OS) High Court of Kenya at Nairobi.</p>	<p>Music Copyright Society of Kenya Limited (MCSK) has a filed an Originating Summons in the High Court of Kenya at Nairobi, In the Commercial and Tax Division, this case relates to exploitation of rights in copyrighted music in MCSK controlled catalogue/repertoire through exclusive Deeds of Assignment and Reciprocal Agreements, as Ring Back Tones on the digital platform by Safaricom Ltd, Airtel (K) Ltd, Telkom (K) Ltd, Huawei Technologies (K) Ltd and Expedia Management Ltd, Liberty Afrika Ltd, Cellulant Limited, Mtech Ltd.</p> <p>MCSK is praying for Orders restraining Safaricom, Airtel, Telkom, and Huawei from interfering with MCSK's legal mandate of managing, administering, and enforcing the collection and distribution of royalties for the exploitation of performing and reproduction rights in copyrighted musical works exclusively assigned to it by right holders/members.</p> <p>A declaration that the actions by Safaricom, Airtel, Telkom, Huawei and the PRSPs purporting to collect and/or distribute royalties in respect of exploitation of performing and reproduction rights exclusively assigned and reciprocated to MCSK is illegal, null, and void.</p> <p>A declaration that the actions by Safaricom, Airtel, Telkom, Huawei and the PRSPs purporting to re-assign copyright and exploit performing and reproduction rights in copyrighted musical works in MCSK controlled catalogue/repertoire to third parties is unlawful.</p> <p>A declaration the royalties due from Safaricom, Airtel, Telkom, and Huawei for the exploitation of performing and reproduction Rights in copyrighted musical works in MCSK controlled repertoire should be remitted to MCSK for distribution to its resident and non-resident members.</p> <ul style="list-style-type: none"> <li>- Safaricom Ltd has raised a Preliminary Objection to the case on the grounds that the subject matter cannot be raised as an Originating Summon (OS). It is being mentioned in December 2022 for directions.</li> </ul>

We are optimistic that all these court cases will eventually be ruled in favour of right

holders/members to enjoy the full benefits of the right to protection and ownership of Intellectual Property.

Fellow members, kindly take advantage of Arbitration of Disputes through MCSK offices as provided for in Article 78 of MCSK Memorandum and Articles of Association. This is supposed to help resolve/arbitrate disputes either between members or between members and the Company amicably.

This method of solving problems will not only resolve matters quickly and amicably but it shall also remove this window of opportunity that KECOBO exploits to create animosity and division between members and the Company in KECOBOs own interest and benefit.

Further, this avenue of resolving problems saves on litigation/legal costs that may be used productively in creating more works.

Kindly, moving forward, in case we have issues among ourselves let us first us go for arbitration as provided for in MCSK Articles of Association.

It is very important to caution and strongly warn the members who have been used by KECOBO and other detractors of the industry to maliciously malign and attempt to scuttle activities and smooth operation of MCSK, that their acts and utterances are subject to a disciplinary action in line with the provisions of Article 78 of MCSK Articles of Association.

## **Membership**

The membership of MCSK currently stands at 15,362.

In the preceding year since the last AGM 168 new members joined MCSK.

MCSK currently has a very big problem with some roughly 3,144 members, who have refused to update, correct, and provide MCSK Documentation and Distribution Department with the correct details of mobile phone number, KRA PIN (I-Tax), National Identification (ID), and email address.

It is important to note that all the members in this list cannot benefit from MCSK whenever there is a distribution and/ or participate in MCSK activities.

In line with Provision of MCSK Distribution Rules all unidentified/ utilized royalties within 3 years shall be ploughed back into the administration and management of the Company, therefore time is of essence to ensure that this anomaly in members records is sorted out.

If you are a member but do not receive royalties and any communication from MCSK, kindly contact the nearest MCSK office across the country and ask for assistance.



We are in the final stages of testing MCSK membership Registration and Vetting APP that has been developed so that membership registration is done online. This App is going to improve the quality of database and records MCSK holds of right holders, reduce the time it takes to approve and issue membership numbers to new applicants and make it easy to verify originality (reduce cases of infringement and duplicity) of works submitted during registration and updating works. This shall be possible because the App will allocate all the works MCSK uploads onto the database a fingerprint that would be a unique identifier for every song in MCSK controlled catalogue.

With time the App shall be upgraded and utilized to monitor use of music in public places, broadcast and digital platform so as to generate logs sheets for purposes of distributing royalties collected.

### **Elections**

Article 50(a) of Our Memorandum and Articles of Association provides that ***“each Regional Director elected under Article 32(b)i&ii) shall retire at the Third (3<sup>rd</sup>) Annual General Meeting following that on which he/she was last elected but shall be eligible for re-election for one (1) more term only”.***

In the 30<sup>th</sup> AGM, held on 15<sup>th</sup> July 2021, because of COVID-19 pandemic the term of the Directors was extended by one more year from the date of that AGM.

In view of the above mentioned and in line with the provisions of MCSK Election Rules for Governing Council (Directors) and Election Rules for Regional/Budget Committee members, the next elections of the members of the Governing Council (Directors) under Article 32(b)i&ii) and that of the Regional Committee under Article 59, shall take place not less than eight (8) weeks before the next Annual/Special General Meeting in 2023.

### **Our Management**

Please allow me to take this opportunity to introduce and welcome once more MCSK's new Chief Executive Officer, Dr. Ezekiel Mutua, MBS.

Dr. Mutua joins MCSK at a very vital stage of its journey, for him to share and impact it with his vast knowledge, skills, and experience in corporate governance, and to improve on the stature, structures, and working relationship of MCSK with all the critical stakeholders in the music industry and the government at large.

MCSK has invested in qualified personnel with a view of professionally managing all aspects of the Company for the overall benefit of members.

The Board would therefore like to thank the management and its team of dedicated staff for their continued endurance during the tough season that Company is going through.

In the period that has seen the MCSK facing very difficult/tough times it has been forced to lay off some members of staff and send others home on unpaid leave. Currently the staff still working with MCSK are working on commission but we hope that beginning next year everything would have normalized and they shall be recalled back to work.

#### **Amendment to MCSK Memorandum and Articles of Association**

The process of adopting proposal from members on amendments to MCSK Memorandum and Articles of Association is in the final stages and we hope that funds allowing the amended Memorandum and Articles of Association shall be presented to members in a Special General Meeting in 2023.

#### **Closing Remarks**

Thank you, all our members, for your tremendous support and trust as we confront the challenges before us. On behalf of the Board of Directors and all the members allow me to thank the Management and staff, led by the very able CEO, in working tirelessly and passionately in ensuring that MCSK grows bigger and better despite all the handles/ challenges on its way.

To MCSK membership let us find our collective voice to speak as one whenever it comes to matters touching on MCSK.

May our Good Lord bless you all in all your creativity, as we continue to enrich our national heritage and values.

Thank you.

**LAZARUS MUOKI MULI**

CHAIRMAN GOVERNING COUNCIL,  
MUSIC COPYRIGHT SOCIETY OF KENYA LIMITED (MCSK).

15<sup>TH</sup> NOVEMBER 2022.