



Copyright Protection in Kenya: A Simplified Guide for Creatives and Intellectual Property Practitioners

Cynthia Nzuki, Chebet Koros



Strathmore University

*Centre for Intellectual Property and
Information Technology Law*



TABLE OF CONTENTS

1	Introduction	4
2	What is Copyright?	4
	2.1. Classification of works eligible for Copyright protection	4
	2.2. Requirements for Copyright protection	5
3	How do I register for Copyright protection?	5
4	What rights are given by Copyright?	6
5	Who owns the rights awarded by Copyright?	7
6	How long does Copyright protection last?	8
7	What are Related Rights?	9
8	What is Copyright infringement?	9
	8.1. Copyright Exceptions	10
	8.2. Creative Commons Licence (CC)	10
9	Recommendations and best practices for publishing works online	11
10	Software and the Importance of Copyright Protection”	12
11	Why is Copyright important?	12
12	Conclusion	15
13	Annexures	15
	13.1. Definition of Terms	15
	13.2. Copyright Flow Chart	16
	13.3. Copyright Case Example	17
	13.4. Further Reading	18
	13.5. References and Useful Links	18

1. Introduction

What is copyright? Why does it matter? How is it protected? Is it important for creative businesses? This handbook seeks to answer these and other questions, and provide information about what copyright protection in Kenya is, and the rights involved. This handbook is meant to give information to creators of different artistic, musical, audio-visual, sound recordings, broadcasts, writing-related (literary) work, and intellectual property practitioners. It refers to the Copyright Act of Kenya and provides examples from case law, and other sources.

2. What is Copyright?

Copyright is a type of intellectual property right¹ granted to protect writing-related (literary) and artistic works. It provides authors, composers, dancers, singers, actors, and software designers among other creatives the exclusive right to control the use of their works. Examples of copyrightable works include books, music, paintings, sculptures, and films, among many others². Copyright protects the expression of the idea and not the idea itself.

In Kenya, Copyright protection is governed by the Copyright Act, No. 12 of 2001 (as amended in 2022), and the Copyright Regulations, 2020.

2.1. Classification of works eligible for Copyright protection

The following works can receive copyright protection.³

Work	Meaning/Definition/Examples
Literary works	Includes novels, stories and poetic works; plays, stage directions, film sceneries and broadcasting scripts; textbooks, written works, histories, biographies, essays and articles; encyclopedias and dictionaries; letters, reports and memoranda; lectures, addresses and sermons; charts and tables; computer programs; and, tables and compilations of data including tables and collections of data stored and included in a computer or a medium used along with a computer (like a flash drive or memory card).
Musical works	Works consist of music (and include the visual symbols used to represent music). Musical works also include works composed for musical accompaniment.
Artistic works	Include paintings, drawings, etchings, lithographs, woodcuts, engravings and prints; maps, plans and diagrams; works of sculpture; photographs ⁴ not made up of audio-visual works; works of architecture in the form of buildings or models; and works of artistic craftsmanship, pictorial woven tissues and articles of applied handicraft and industrial art.
Dramatic works	Any works intended to be performed dramatically.
Audio-visual works	Physical form of images, either accompanied by or without sound, from which a moving picture may by any means be reproduced and includes videotapes and videogames but does not include a broadcast.
Sound recordings	Attachment of the sounds of a performance or of other sounds, or of a representation of sounds (in any form, and does not include the attachment of sounds and images, like the soundtrack of an audio-visual work) for the purpose of listening to or hearing it.
Broadcasts	The transmission or sending out of sounds and/or images, by wire or wireless means, in such a manner as to cause such images or sounds to be received by the public. Also includes transmission by satellite. <i>NB. A broadcast cannot qualify for copyright until it has been broadcast.</i>

¹Other intellectual property rights include trademarks, patents, industrial designs, utility models, and trade secrets.

²Famous copyrighted works include: 'The Monalisa painting';

³Section 2 and Section 22 of the Copyright Act, 2001

⁴For more information on copyright protection of photographs, read: The Gift to the World: Reflections on the State of Photography Laws in Kenya. <https://cipit.strathmore.edu/protecting-the-gift-to-the-world-reflections-on-the-state-of-photography-laws-in-kenya/>

Notably, copyright protection extends to translations, adaptations, new versions, or arrangements of pre-existing works; albums, compilations, and collections of works, which **present an original character**.

Copyright in Websites⁵

Websites are a combination of different types of copyrightable works, which can be protected separately or as one original website. These works include:

Computer Software, HTML code, Databases, Videos, Graphics, Text, Music, Artwork, Photographs, and Articles on the website.

2.2. Requirements for Copyright protection

To qualify for copyright protection, the following three requirements must be met.⁶

- a. **Eligibility:** Works must fall under any of the classifications of works provided in 2.1 above, to be protected.
- b. **Originality:** Works must be original meaning that the author must have used enough effort and skill to create them. Copyright does not protect an idea itself but the expression of the idea in a physical form, for example in a book, song, computer program, etc
- c. **Affixation:** The work should be presented in any physical form provided the work can be identified, reproduced, or communicated through a device. Such devices can be paper, cardboard, computer, disc, etc

3. How do I register for Copyright protection?

Copyright protection is automatic once a work is attached to a physical format. Copyright does not require registration or other formalities. Therefore, a copyright owner can still exercise their rights and claim damages in the event of a violation without registration. A registration certificate, however, provides evidence as proof of ownership. It is often advisable for owners to register their works, as it speeds up the process of enforcement.

Registration of copyright is carried out by the Kenya Copyright Board (KECOBO). Registration is online through the Kenya National Rights Registry Portal, nrr.copyright.go.ke. The process is summarized below. It requires an applicant to create either an individual or corporate account (or sign in to an existing account), and then proceed with the registration process. The following are the registration steps to take:

1. **Open the Kenya National Rights Registry Portal Page - nrr.copyright.go.ke**
2. **Create an Account or Sign in to your account**
 - a. Create an account if you do not have one – to create one, click on the ‘Create Account’ tab and create either an individual or corporate account, filling in the required information.
 - b. Sign In (if you already have an account)
3. **After signing in, select the ‘My Copyrights’ tab and proceed with registration by selecting the ‘Want to Register a New Copyright?’ tab, filling in any required information**

When registering, you may also be required to pay a fee; depending on the nature of the work being protected. Details of the fee rates are provided in the Second Schedule of the Copyright Regulations⁷, These fees may change from time to time.

⁵Creative Expression: An Introduction to Copyright and Related Rights for Small and Medium-sized Enterprises. WIPO publication No. 918, 30 https://www.wipo.int/edocs/pubdocs/en/sme/918/wipo_pub_918.pdf

⁶Section 22 (3) of the Copyright Act, 2001

⁷Copyright Regulations, 2020, Second Schedule, Fees page 22-23 <https://copyright.go.ke/sites/default/files/downloads/COPYRIGHT%20REGULATIONS%202020.%20%281%29.pdf>

4. What rights are given by Copyright?

Copyright gives the owner two rights: economic rights and moral rights.⁸

a. Economic rights

These rights allow the copyright holder to make money from their work(s). This benefit includes the right to:

- i. Reproduce work in different forms, e.g., print, digital, sound recordings etc.
- ii. Distribute copies of the work.
- iii. Publicly perform (sing, dance, act, etc. in front of people) the work.
- iv. Broadcast or, through other means, communicate work to the public.
- v. Translate work into other languages.
- vi. Adapt work, such as turning a novel into a movie.
- vii. Control the doing of any of the above.

These rights can be moved from the author/creator to another person. Such transfers are done through licensing and selling (assignment).

Economic rights have enabled or encouraged increased production in the Kenyan film and TV industry. This includes award-winning films such as 'Kati Kati', 'Supa Modo', 'Poacher', and 'Subira' among others. There is also an increased number of Kenyan films and TV series streaming on Netflix and Showmax, including 'County 49', '40 Sticks', 'Uradi', 'Just in time', 'Country Queen', 'Salem', 'Single Kiasi', 'Crime and Justice' among others.⁹

b. Moral rights

A human being (a natural person) who creates or is the author of a work holds this right. It allows an author to:

- i. Identify themselves as authors of their work; and
- ii. Refuse any changes to their work that would harm their reputation. This includes distortion, mutilation, modification, or derogatory action.

Unlike economic rights, these rights remain with the author during their lifetime. They cannot be transferred during the life of the author. The rights can only be transferred upon the death of the author, either through wills (testamentary disposition) or by operation of the law.¹⁰ After death, the moral right is transmitted to the estate of the author.

In summary, an author can transfer all their economic rights to a 3rd party but sue (raise a claim) when their moral rights are violated.

⁸Section 26, Section 28, Section 29 and Section 32 of the Copyright Act, 2001

⁹Showmax <https://www.showmax.com/>; Netflix <https://www.netflix.com>

¹⁰Operation of the law is a way in which someone gets certain rights (or sometimes responsibilities) automatically under the law without taking action, requiring cooperation from another person, or being the subject of a court order. (Legal Information Institute, Cornell Law School https://www.law.cornell.edu/wex/operation_of_law)

What rights are there when a song is played?¹¹

Broadcasting Right – if the song is played on radio or TV.

Public Performance Right – if the song is transmitted by a 3rd party in a public place such as an event.

Who owns these rights?

Music **Composers**, Lyrics **Authors**, **Publishers**

Performers – musicians/singers

Producers of sound recordings

Broadcasters own rights to the broadcast program, which contains the song.

5. Who owns the rights awarded by Copyright?

The owner of a copyright is the one who holds the legal title to a given work. The owner can be different from the author of a copyright. An author is the one who creates (that is, writes, paints, composes etc.) a work. As such, it is important to establish who the owner is because they hold the legal right to exercise and use the economic rights explained above. Owners can be either human beings (natural person) or a legal persons (like a company).

Owners can be identified in the following ways.

a. First ownership of copyright - Authorship¹²

The author of the work first owns copyright. An author is a person who creates work in a tangible form (a form that can be touched). They are the creator of the work. For instance, the author of a photograph is the person who is responsible for the arrangement of the photograph; the author of a literary (written work), dramatic, musical, or artistic work is the person who first makes the work; a computer programmer is a person who controlled the making of the computer program.

b. Joint authorship

This is where more than one person is the author of the same piece of work. The two authors are both owners of the copyrighted work. It is a result of two or more authors working together, where each author's work is not capable of being separated from the contribution of the other author(s). It also occurs when two or more people make important contribution¹³ to the creation of a piece of work.

c. Second ownership of copyright - Transfer of ownership¹⁴

The owner of a copyright can be another person or company other than the author. The money-based (economic) rights given through copyright can be moved and fully used by another party, as allowed by the author. Ownership can be transferred (moved) in the following ways:

- i. Commissioning and Works Made under Employment
- ii. Licensing, Assignment, Testamentary Disposition (Wills), Operation of Law as Movable Property

¹¹KECOBO Guide To Music Industry In Kenya, 5 <https://copyright.go.ke/sites/default/files/downloads/Guide%20to%20Music%20Industry%20in%20Kenya%20-%20Print.pdf>

¹²Section 31 of the Copyright Act, 2001

¹³.[Martin v Kogan \[2017\] EWHC 2927](#) provides a test for joint authorship of a work, stating that:

1. A party will be joint owner of the copyright in a work only if he or she (or in the case of a company, its employees) collaborated in the creation of the work. The collaboration must be by way of a common design, i.e. co-operative acts by the authors, at the time the copyright work in issue was created, which led to its creation.
2. The contribution of each author must not be distinct from that of the other author or authors.
3. The contribution, assuming it is relevant to the assessment of joint authorship, must be sufficient. This depends on whether the contribution constitutes a substantial part of the whole of the work in issue.

¹⁴Section 31(1)(b), Section 31(3)(c) and Section 33 of the Copyright Act, 2001

i. Commissioned Work and Work made under Employment

A person who pays a commission for the creation of work to a person who is not an employee under a contract of service will acquire the copyright in the work. Where a work, that is not commissioned, is made during an author's employment under a contract of service, the copyright will be transferred to the employer. These conditions depend on any agreement between the parties excluding or limiting the transfer.

ii. Licensing, Assignment, Testamentary Disposition (Wills), Operation of Law as Movable Property

An assignment of copyright refers to the sale (legal transfer), of the above-listed economic rights in a copyrighted work. With an assignment, the author gives away all their rights to copyright to the buyer or assignee. A licence refers to a permit or approval given to use the economic rights in a copyrighted work. With a licence, the right to use, or control the use of the copyright in a work is returned to the author/creator at the end of the licence term.

These ways allow a copyright owner to transfer the control of all or part of their economic rights to another person. This may be for a specified period or for the entire duration of time their work is protected. In addition, an assignment or licence must be in writing and signed by or on behalf of the person transferring the copyright (transferor), clearly identifying the person receiving the copyright (transferee) and the acts the transferor has allowed.

For the operation of law as movable property, ownership is transferred automatically according to the existing law and legal rules. For example, copyright ownership can be transferred or given through a financial transaction when one company merges with another. However, if a company with copyright files for bankruptcy, the ownership of the copyright after the company has liquidated its assets is determined by the bankruptcy or insolvency law (i.e., the law will determine who rightfully owns the copyright).¹⁵

6. How long does Copyright protection last?

Once established copyright protection extends exclusively to the creator or right owner for a specific period, as highlighted below¹⁶:

Type of work	Duration of Copyright Protection (Kenya)
Literary (written), musical, dramatic, or artistic work (other than photographs)	The lifetime of the author, plus 50 years after the death of the author
Audio-visual works and photographs	50 years from the end of the year in which the work was either made, or first made available to the public, or first published (whichever date is the most recent).
Sound recordings	50 years after the end of the year in which the recording was made.
Broadcasts	50 years after the end of the year in which the broadcast took place.
Anonymous or pseudonymous literary, musical, dramatic, or artistic works	50 years from the end of the year in which the respective work was first published. (If the identity of the author becomes known, the term of protection of a copyright shall be calculated as above.)

¹⁵Megan Thompson, 'Operation of Law: Legal Definition & Examples', Lawrina 4 May, 2021; https://lawrina.com/blog/operation-of-law/#Operation_of_law_definition accessed 9 Feb 2022

¹⁶Section 23(2) of the Copyright Act, 2001

After the expiry of the period of protection, the works fall into the public domain meaning that anyone can use the works without seeking the permission or authority of the copyright owner. However, the author keeps their moral rights even after their work is in the public domain. This means that the owner can still control how the works are used e.g., by preventing the distortion of the work.

Examples

- The Kenyan film (an audio-visual work) 'The First Grader' was released in 2011, therefore its copyright will expire in 2061.¹⁷
- The Kenyan film 'Malooned', first published in 2007 will fall into the public domain in 2057 and become free to use.¹⁸

7. What are Related Rights?

These are rights, also known as neighbouring rights, that come from the use of copyrighted work. The purpose is to protect people and companies who contribute to bringing copyrighted work(s) to the public.

The following people are protected:

- Performers** – They receive protection for their creative contribution that is necessary to give life to works.
- Producers of sound recordings** – They receive protection because of the creative, financial, and organizational resources necessary to make sound recordings that are distributed to the public. This protection enables them to act against unauthorized uses. This includes the making and distribution of unauthorized copies (piracy), unauthorized broadcasting, and communication to the public of their sound recordings.
- Broadcasting organizations** – They receive protection because of their role in making works available to the public. This protection enables them to control the transmission and retransmission of their broadcasts.

Related rights offer these beneficiaries the same exclusivity copyright protection offers.

8. What is Copyright infringement?

Copyright infringement occurs when another party (3rd party) violates the rights awarded by copyright protection.¹⁹ This can be done through unauthorized or unpermitted use of a whole or substantial part of a copyrighted work.

Copyright gives an owner the exclusive right to control all uses of their work. If any person other than the owner (3rd party) wishes to use the work and exploit the economic rights awarded by copyright protection, they must obtain permission or authority from the owner before such use. This is mandatory. The law allows for a few instances where such permission or authority is not mandatory (see more details below). Other than these instances, a 3rd party must seek the owner's permission or authority, otherwise, such action becomes an infringement.

When this happens, an owner/right holder can sue the infringer. In such a case, an owner can seek various reliefs from a court, including:

- Damages** - compensation for the harm that occurs due to an infringement.
- Injunction** - a court order to restrain or prevent further use by the infringer.
- Destruction Order** – a court order for the destruction or other reasonable disposal of all infringing copies of a work.
- Declaration of Ownership** - a determination by a court as to who rightfully owns the infringed works.

¹⁷Copyright The Audiovisual Industry in Kenya, 7 <https://copyright.go.ke/sites/default/files/downloads/COPYRIGHT%20THE%20AUDIOVISUAL%20INDUSTRY%20IN%20KENYA%20FNL.pdf>

¹⁸ibid.

¹⁹Section 35 of the Copyright Act, 2001

- e. **Anton Piller Orders** - a court order that permits a copyright owner to enter the infringer's premises to seize and keep records, data, documents, and materials relating to their copyrighted works.

Notably, the wronged party is the one who has to prove that they are the owner of the infringed works and demonstrate what the infringing actions were.

Example:

John Katana of Them Mushrooms band received KShs. 2.4 million in damages for copyright infringement by Radio Citizen when they used his song 'Kazi ni Kazi', without permission, on a recurring radio programme.²⁰

8.1. Copyright Exceptions:

These are instances where the use of copyrighted work is not considered an infringement even where the permission of the owner has not been obtained. The exceptions are provided for under the Second Schedule of the Copyright (Amendment) Act, 2019, and include the right to control:

- a. Fair dealing acts for scientific research, private use, criticism or review, or reporting of current events.
- b. Doing the acts (listed above) by use of parody (funny imitations), pastiche (art that imitates previous work), or caricature (exaggerated pictures).
- c. The right to quote.
- d. Any use made of a work for a judicial proceeding or of any report of any judicial proceeding, etc.
- e. The reproduction and distribution of copies of an artistic work that is publicly displayed, including where such work is included in an audiovisual work or broadcast
- f. The accidental addition of a copyrighted work in an artistic or audiovisual work, sound recording, or broadcast.
- g. The public or broadcast reading of a reasonable part of a published literary work that acknowledges the author.

The above list of exceptions is based on the fair dealing principle, which allows one to use other people's copyright material if the use is 'fair'. Whether something is 'fair' will depend on the circumstances. Moreover, the Copyright Act provides specific exceptions for educational institutions, libraries and archives, and broadcasting institutions.²¹

8.2. Creative Commons Licence (CC)

Creative Commons Licence²² is a licence issued by a copyright owner permitting the public free use of their copyrighted work. This license however requires the user to credit the creator of the work. There are 6 types of CC licenses that vary in their level of permissiveness. This licence, therefore, allows the use of copyrighted work and is not an infringement of copyright.

The 6 types of CC licenses, according to the [Creative Commons website](#) include:

- **Attribution (CC BY)** – "This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. The license allows for commercial use".
- **Attribution Share Alike (CC BY-SA)** – "This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. The license allows for commercial use. If you remix, adapt, or build upon the material, you must license the modified material under identical terms."

²⁰John Katana Harrison v. Royal Media Services Ltd 6161 of 2009. Read more here: <https://cipit.strathmore.edu/victory-for-synchronisation-rights-in-kenya-john-katana-v-royal-media-services/>

²¹Read more here: <https://cipit.strathmore.edu/can-i-get-away-with-this-fair-use-and-fair-dealing-of-copyrighted-work/>

²²Creative Commons License: <https://creativecommons.org/about/ccllicenses/>

- **Attribution NonCommercial (CC BY-NC)** – “This license allows reusers to distribute, remix, adapt and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator.”
- **Attribution NonCommercial Share Alike (CC BY-NC-SA)** – “This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator. If you remix, adapt, or build upon the material, you must license the modified material under identical terms.”
- **Attribution NoDerivatives (CC BY-ND)** – “This license allows reusers to copy and distribute the material in any medium or format in unadapted form only, and only so long as attribution is given to the creator. The license allows for commercial use.”
- **Attribution NonCommercial NoDerivatives (CC BY-NC-ND)** – “This license allows reusers to copy and distribute the material in any medium or format in unadapted form only, for noncommercial purposes only, and only so long as attribution is given to the creator.”

In addition to these 6 types of CC licenses, there is The Creative Commons Public Domain Dedication, also known as CC Zero (CC0). CC Zero (CC0) “is a public dedication tool, which allows creators to give up their copyright and put their works into the worldwide public domain. CC0 allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, with no conditions.”²³

Moreover, there is the Copyleft license, often found on software packages, but can be used on any work. This “is the practice of offering users of a work the right to freely distribute and modify the original work, but only under the condition that the derivative works be licensed with the same rights.”²⁴ It is similar to the “Share Alike” stipulation of the CC licenses.

9. Recommendations and best practices for publishing works online

The internet has created opportunities to share and access copyrighted works easily. Works published online, on a web page or on social media platforms, are generally protected by copyrights and/or related rights. Therefore, when sharing your work online, consider the following:

- Using the symbol, ©, alongside your name and the year in which the work was created to communicate to users your rights in them.
- Include a ‘Terms of Use’ section on your website, detailing how your work may be used. It would also be helpful to provide contact information in case someone would like to reach out and ask for permission to use your work(s).
- Whenever you upload new, original material onto your website, be sure to print out a copy with the relevant date for your records, in the event you need to prove that you were the first person to upload the information online.
- To further protect your work(s) online from infringement, consider using Digital Rights Management (DRM) technologies.²⁵ These technologies safeguard against any unauthorized modification of a work. This approach includes the use of technologies that limit the copying and use of copyrighted works and Closed Source (proprietary software).

Content on social media is protected by copyright under the different classes of copyrightable works. Unauthorized sharing of pictures, songs or short clips on social media may contain serious copyright implications such as infringement through digital distribution. As such, it is essential to note that simple sharing of copyrightable materials on social media platforms such as WhatsApp and even through e-mails without the owner’s permission may amount to infringement regardless of the amount of works shared.²⁶

²³Creative Commons License: <https://creativecommons.org/about/ccllicenses/>

²⁴University of Pittsburgh, ‘Copyright and Intellectual Property Toolkit’, <https://pitt.libguides.com/copyright/licenses#:~:text=%E2%80%8BCopyleft%2C%20a%20play%20on,licensed%20with%20the%20same%20rights.>

²⁵Read more here: <https://digitalguardian.com/blog/what-digital-rights-management>

²⁶Read more here: <https://cipit.strathmore.edu/sharing-materials-online-what-are-you-sharing-any-impact/>

10. Software and the Importance of Copyright Protection

Software can be understood as the set of instructions, data, or programs used to operate computers. In Kenya, software and computer programmes receive protection through copyright. It is important to register and protect one's software under copyright for the following reasons:

- Copyright offers protection of the structure, organization, and sequence of software. Additionally, it is not just the code, but also the elements that are copyrightable.
- Copyright protection gives a person enforceable rights upon which remedies can be sort in case of infringement. A copyright owner is enabled to claim legal action against unauthorized acts such as software piracy.
- The owner of copyright in software receives rights that can be licensed out and/or sold to other parties in exchange of payment. Though copyright protection arises automatically, registration provides evidence of ownership.

11. Why is Copyright important?

IP rights protect and enhance the value of intangible assets. Copyright is therefore important to the owners and users of copyrighted work. It protects the owners of copyright so that they can control how and who uses their works. It gives the owners the exclusive right to permit 3rd parties to use, reproduce or adapt their copyrighted work for commercial gain.²⁷ By copyright compensating or rewarding the owner, it incentivizes them to keep creating new work. This cycle of creation, protection, authorisation for use, and generation of new work is fostered by Copyright.

The commercialisation of Copyright enables the owners of works in various industries to make a living.

11.1. The **music industry** is, arguably, the most famous creative industry in terms of copyright protection. In this industry, there are two main copyright owners, as mentioned earlier.

11.1.1. The **author** of music can commercialise their copyright and gain income through:

- a) public performance license fees paid at public locations, events, and shops.
- b) mechanical license fees in the sale of physical copies of music, downloads, ring tones, and ring-back tones.
- c) synchronization license fees where the music is used in audio-visual works.
- d) fees from the sale of physical, digital or downloaded sheet music.²⁸

11.1.2. The **performers** of music can commercialise their copyright and gain income through:

- a) live performance fees.
- b) public performance fees in recorded performances played on radio, TV, or in public.
- c) royalties from the sale of recordings of performances, either a physical copy or a digital recording.
- d) synchronization licence fees where the recording of the performance is synchronized with an audio-visual work.
- e) sponsorship and branding deals.

11.2. The **film industry** is also famous for copyright protection and rights. Film producers, script writers, directors, actors among other players within this industry may own copyright in parts of a film. These rights are often sold or licensed for a film to be made and availed to the public. Contracts are used to acquire and license these rights. These include contracts for screenplay rights, scriptwriter, producers, directors, talent, production, distribution, and others.²⁹

11.3. The creatives within the **advertising industry** such as agencies, producers, copywriters, graphic designers,

²⁷WIPO, 2017. How to Make a Living in the Creative Industries, 4 https://www.wipo.int/edocs/pubdocs/en/wipo_pub_cr_2017_1.pdf

²⁸David Stopps. How to make a living from music, 19-20 https://www.wipo.int/edocs/pubdocs/en/copyright/939/wipo_pub_939.pdf

²⁹Read more here: Rob H. Aft, From Script to Screen: Copyright for Audiovisual Industry Professionals

<file:///C:/Users/Owner/Downloads/wipo-pub-2022-en-from-script-to-screen.pdf>

photographers, CGI software developers, film crew, voice and modelling talent all have varying copyright in their work. Typically, these players will be hired or commissioned by an advertising agency to create content. In this circumstance, the advertising agency is deemed to own the copyright. However, if creative content is developed independent of any employment or commissioning, the author must transfer their copyright through contracts.³⁰

11.4. In the **publishing industry**, copyright is the most relevant IP right. Publishing agreements, print, audio or digital, are therefore at the heart of commercialisation of publishers, authors, photographers, artwork designers and distributors.³¹

Copyright owners may manage and collect royalties for themselves; however, this would be tedious. Collective Management Organisations (CMOs) are private not-for-profit entities that are licensed to collect and distribute royalties for and among its members. According to Kenya's Copyright Act, the following CMOs have been licensed: MCSK (Music Copyright Society of Kenya) protects the economic rights of authors, composers, arrangers, and publishers of musical works; KAMP (Kenya Association of Music Producers) represents sound recording producers and administers their rights; PRISK (Performers Rights Society of Kenya) represents and administers the rights of actors and musicians.³²

12. Conclusion

As a creative, it is important to have the necessary knowledge and tools to protect your work(s), and in turn, economically benefit from them. A copyright owner should maximize their copyright, through protection, registration, use of contracts, enforcement, and monetization. We hope this handbook has provided sufficient knowledge and a better understanding of copyright.

³⁰Read more here: Managing Intellectual Property in the Advertising Industry https://www.wipo.int/edocs/pubdocs/en/copyright/1021/wipo_pub_1021.pdf

³¹Read more here: Managing Intellectual Property in the Book Publishing Industry https://www.wipo.int/edocs/pubdocs/en/copyright/868/wipo_pub_868.pdf.

³²Read more here: The Collective Management Organisations in Kenya's Creative Market <https://cipit.strathmore.edu/the-collective-management-organisations-in-kenyas-creative-market/>



Annexures

13. Annexures

13.1 Definition of Terms

Author - Refers to:

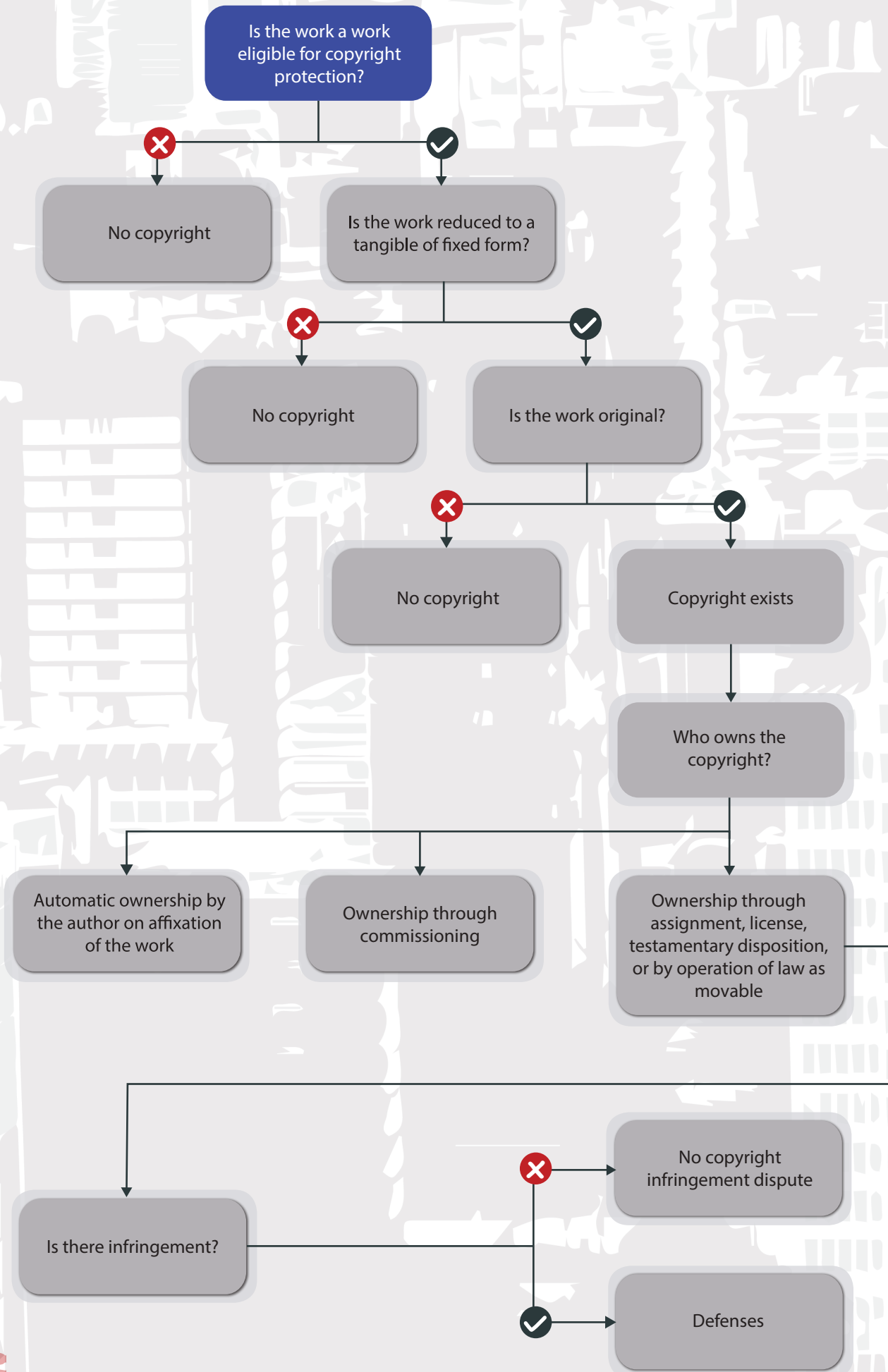
Type of Work	Who the Author is
Literary, Musical, Dramatic or Artistic works	The person who first makes or creates the work
Photograph	The person who is responsible for the composition of the photograph
Sound recording	The person who made the arrangements for the making of the sound recording
Audio-visual works	The person who made the arrangements for the making of the work
Broadcast	The first broadcaster
Published edition	The publisher of the edition
Literary, Dramatic, Musical or Artistic work or Computer Program which is computer generated	The person who undertook to make the arrangements necessary for the creation of the work
Computer Programmer	The person who exercised control over the making of the program

Commissioning - Commissioning work refers to the act of formally instructing another to produce or do something or complete a piece of work or task for you.

Public Domain – Works with no exclusive intellectual property rights or any other rights applying to them.

Computer Programs – A set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result.

13.2 Copyright Flow Chart



13.3 Copyright Case Example³³

Makena is a famous author, known for her children's books. Over the past few months, she had been working on a new book titled "I can fly as high as I want to" and she recently completed her first draft. Upon finishing the draft, she sent emails to six of her closest friends with the draft book as an attached PDF file. In the email she stated "Hi friend, please review the attached draft for my new book and let me know what you think by the end of the month. I plan to publish it next month and will incorporate your suggestions for improvement. Peace out." The next morning, Makena was horrified to wake up and find hundreds of emails commenting on her book. The draft PDF book had been published on Cheptoo's, one of the six friends, website.

Copyright Issues arising

i. Is there Copyright in the work?

For copyright to be established, the subject matter should be a work eligible for copyright protection, original and reduced to a tangible form. Under the Copyright Act, a book is a work eligible for copyright protection as a literary work. Makena wrote a book which was expressed in a tangible soft copy form. She combined skill and labour in putting the book together, therefore meeting the originality requirement. Makena's book was shared as a tangible PDF document showing that it could be perceived, reproduced, or communicated through a device.

Therefore, there is copyright in Makena's book. Additionally, copyright protection is automatic thus the book draft attained copyright protection immediately Makena completed the document. Nevertheless, registration is important as a copyright certificate is legal proof of copyright ownership in a work. Makena can register for copyright over this draft of her book

ii. Who owns the Copyright in the book?

The principle of 'first owner is the author' applies here. This principle holds that copyright initially vests in the author of the work, and the author can transfer this right to a second copyright owner. An author is the person who creates original work that is in a tangible form. Makena, as the author of the original book, owns the copyright to the book.

iii. Was there Copyright infringement?

Copyright awards two types of rights, moral and economic. Copyright infringement occurs when a copyright owner's rights are violated by another party (3rd party). This can occur through unauthorized or unpermitted use of a whole or substantial part of a copyrighted work.

In this example, there is copyright infringement. This occurred when Makena's friend, Cheptoo, published her book on her website without Makena's permission. Cheptoo violated Makena's economic right to distribute, reproduce, and publicly communicate her book

iv. What can Makena do now that her work was shared without her knowledge and consent?

As Makena's rights have been infringed upon, she has the right to sue Cheptoo. However, Makena can first look for an amicable solution by demanding that Cheptoo takes down her book from the website. If Cheptoo refuses or Makena would like compensation for the infringement, Makena can file a civil case in court to seek the following reliefs:

- a. **Damages** which is compensation for the harm caused by Cheptoo's infringing actions.
- b. **Injunction** - to restrain or prevent further use of the book by Cheptoo.
- c. **Destruction Order** - a court may order the destruction or other reasonable disposal of all infringing copies of the book
- d. **Declaration of Ownership** - a determination by a court that Makena owns the book.
- e. **Anton Piller Orders** - may be issued by the court where Makena is permitted to enter Cheptoo's premises to seize and keep records, data, documents, and other materials relating to the book.

³³This is a hypothetical example to illustrate how copyright protection works and its importance.

13.4 Further Reading

1. CIPIT Blogs - <https://cipit.strathmore.edu/blog/>
2. 'Ni nini maana ya Mali ya Akili na Haki Miliki?' - <https://cipit.strathmore.edu/ni-nini-maana-ya-mali-ya-akili-na-haki-miliki/>
3. 'Usanii na Sanaa: Jinsi Ya Kulinda Sanaa Yako' - <https://cipit.strathmore.edu/usanii-na-sanaa-jinsi-ya-kulinda-sanaa-yako/>
4. Copyright Law Videos
<https://cipit.strathmore.edu/ip-resources/#1592825138588-65c6d10a-565832>
5. Understanding Copyright and Related Rights, WIPO Publication - https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf
6. The History of DRM & Copy Protection in Computer Games <https://www.youtube.com/watch?v=HjEbpMgiL7U>
7. Copyright Contract Manual
<https://copyright.go.ke/sites/default/files/downloads/copyright%20contract%20manual%20-%20web%20downloads%20edited%20copy.pdf>
8. Copyright in Streaming
<https://copyright.go.ke/sites/default/files/downloads/COPYRIGHT%20IN%20STREAMING%20FAQ.pdf>
9. Rutenberg, Isaac; Ouma, Marisella & Munyi, Peter. 'Kenya'. In International Encyclopaedia of Laws: Intellectual Property, edited by Hendrik Vanhees. Alphen aan den Rijn, NL: Kluwer Law International, 2019.

This title is available on www.kluwerlawonline.com

13.5 References and Useful Links

1. Copyright Act, No. 12 of 2001 (Amended in 2019)
2. Copyright (Amendment) Act, 2022
3. Copyright Regulations, 2020
4. World Intellectual Property Organization (WIPO) Website - Copyrights
5. KECOBO Website
6. Kenya National Rights Registry Portal
7. *John Boniface Maina V Safaricom Limited [2013] eklr* <http://kenyalaw.org/caselaw/cases/view/88606>
8. *Albert Gacheru Kiarie T/A Wamaitu Productions v Simon Muiruri Kirehu T/A One Stop Nduti Music Store [2008] eklr* <http://kenyalaw.org/caselaw/cases/view/51251>
9. *Faulu Kenya Deposit Taking Microfinance Limited V Safaricom Limited [2012] eklr* <http://kenyalaw.org/caselaw/cases/view/85943>

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DISCLAIMER

All content on this handbook is intended for information only, it is not legal advice and should not be construed as such.

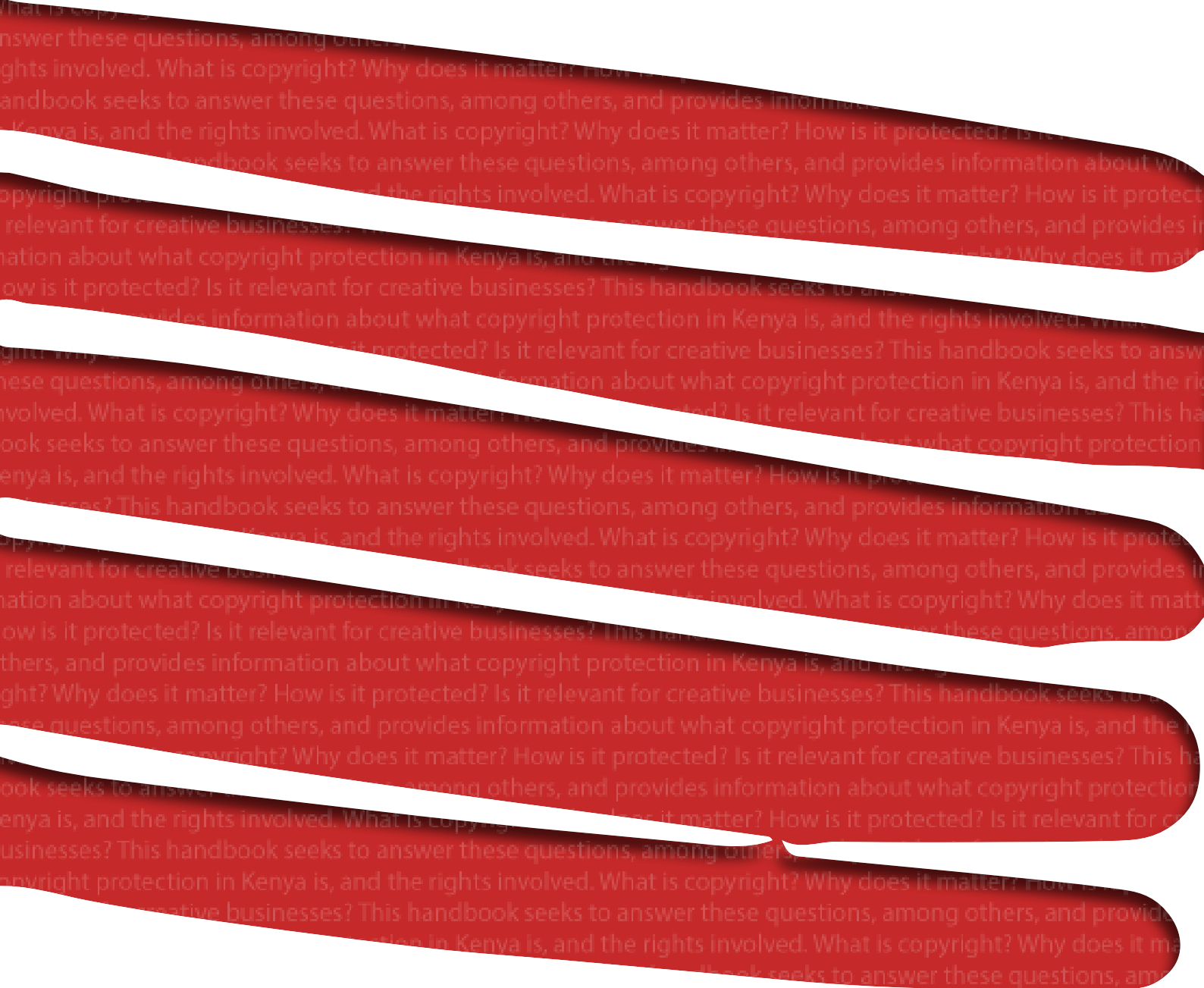
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