

SPECIAL ISSUE

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REPUBLIC OF KENYA

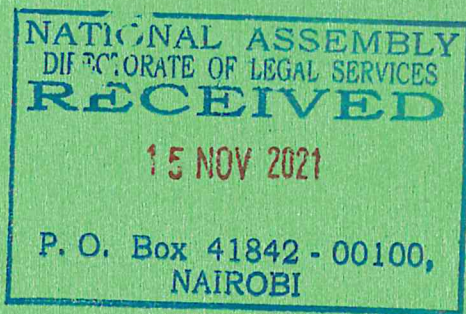
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2021

NAIROBI, 22nd October, 2021

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U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.

THE COPYRIGHT (AMENDMENT) BILL, 2021

A Bill

for

AN ACT of Parliament to amend the Copyright Act, and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. The Act may be cited as the Copyright (Amendment) Bill, 2021.

Short title.

2. The Copyright Act, 2001 (hereinafter referred to as the principal Act) is amended in section 2 by inserting the following definitions in the proper alphabetical sequence—

Interpretation

“Registry” means the National Rights Registry established under section 34A;

“ring back tune” means subscription music or a tone which it played by a telecommunication operator to the originator of a call;

“telecommunication operator” has the meaning assigned to it under the Kenya Information and Communications Act, 1998;

3. The principal Act is amended by inserting the following new section immediately after section 30B—

Insertion of new section 30C in Cap. 12 of 2001

Payment of ring back tune revenue

30 C. Without prejudice to section 30B, in the case of ring back tunes, the parties shall share the net revenue from the sale of ring back tunes, as follows—

- (a) the premium rate service provider at seven percent;
- (b) the telecommunication operator at sixteen percent;
- (c) the artist or copyright holder at fifty two percent.

4. The principal Act is amended by inserting the following new sections immediately after section 34—

Insertion of new sections in Cap. 12 of 2001

National rights
registry.

34A. (1) There is established a National Rights Registry which shall be an office within the Board.

(2) The staff of the Registry shall be staff of the Board.

Functions of the
Registry.

34B. The functions of the Registry shall be—

- (a) digital registration of right holders;
- (b) digital registration of copyright works.
- (c) authentication and authorization of consumers of copyright works;
- (d) media monitoring of registered copyright works;
- (e) tracking, monitoring and dissemination of data or logs related to access of registered copyright works;
- (f) any other functions as may be assigned by the Board.

Voluntary
registration on
the National
Rights Registry.

34C. (1) Without prejudice to the generality of section 34B, the Board shall cause to be developed and maintained an online portal for registration of copyright works to be known as the National Rights Registry.

(2) The author of copyright works or a holder of a copyright may register his or her works on the National Rights Registry.

(3) Subject to such conditions as may be prescribed by the Board and upon payment of the prescribed fees, any person may access the copyright works through the National Rights Registry.

5. The principal Act is amended by repealing section 35B.

Repeal of
section 35B of
No. 12 of 2001

6. The principal Act is amended by repealing section 35C.

Repeal of
section 35C of
No. 12 of 2001

7. The principal Act is amended by repealing section 35D.

Repeal of
section 35D of
No. 12 of 2001

8. The principal Act is amended in section 49 by inserting the following subsection immediately after subsection 2—

Amendment of
section 49 of
No. 12 of 2001

2A. The Cabinet Secretary may prescribe—

- (a) the fees for accessing the National Rights Registry;
- (b) the format for registrations of the respective copyright works;
- (c) the type of copyright works that are registrable with the National Rights Registry;
- (d) anything necessary for the performance of the functions of the National Rights Registry.

MEMORANDUM OF OBJECTS AND REASONS

The object of the Bill is to amend the Copyright Act, to provide for fair formula for sharing of revenue from ring back tunes between the artists/copyright holders and the telecommunications companies. The Bill provides that the artist should get a greater share of the revenue at fifty two percent. The Bill also proposed to repeal the provisions on takedown notices and requirements, the role of internet service providers and application for injunction. It is intended to remove the ambiguity in the role of internet service provider. Further, it is to align the Act as there are already legal remedies provided for.

Clause 1 of the Bill provides the short title.

Clause 2 sets out the definition of the terms Registry, ring back tune and telecommunication operator.

Clause 3 sets out the formula for sharing of revenue from ring back tunes between the telecommunication provider, the premium service rate provider and the copyright holder.

Clause 4 provides for establishment of the National Rights Registry and the functions of the registry. It also provides for voluntary registration.

Clause 5 provides for repeal of section 35B which relates to take down notices.

Clause 6 of the Bill provides for repeal of section 35C which relates the role of the internet service provider taking down content, which is alleged to be infringement of copyright.

Clause 7 provides for repeal of section 35D which relate to the application for an injunction where there is copyright infringement.

Clause 8 of the Bill provides for powers of the Cabinet Secretary to prescribe fees and the formats for registration of copyright works.

Statement on delegation of legislative powers and limitation of fundamental rights and freedoms.

The Bill does not delegate legislative powers to the Cabinet Secretary. It does not limit fundamental rights and freedoms.

Statement that the Bill does not concern county governments.

The Bill does not affect the functions of the county governments and is therefore not a Bill concerning counties for the purposes of the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 6th October, 2021

GLADYS WANGA,
Member of Parliament.

Section 35B of the Act it is proposed to amend-**35B. Takedown notice**

(1) A person whose rights have been infringed by content to which access is being offered by an Internet Service Provider may request, by way of a takedown notice, that Internet Service Provider removes the infringing content.

(2) A takedown notice issued under subsection (1) shall—

(a) be in writing and addressed by complainant or his agent to the Internet Service Provider or their designated agent;

(b) contain the full names and telephone, physical and email address of the complainant;

(c) be signed by the complainant or his authorized agent;

(d) describe in specific detail the copyright work subject to the alleged infringement sought to be removed;

(e) identify the rights being infringed;

(f) set out the content sought to be removed with details of where the content is contained;

(g) attach an affidavit or any other declaration attesting to claim of ownership, validity of the rights, good faith and setting out any efforts to have entities responsible for making the content available to remove the content;

(h) be copied to the Board, Communication Authority and the recognised umbrella association of service providers.

(3) A takedown notice shall be deemed delivered on the next business day following physical delivery at its registered offices or two days following the day it is sent by registered post or immediately it is sent by electronic communication to a designated address of the Internet Service Provider or its designated agent.

(4) An Internet Service Provider shall, upon receipt of a valid takedown notice, notify the person responsible for making available the alleged infringing content and provide them with a copy of the notice as soon as is practicable.

(5) An Internet Service Provider shall disable access to the material within forty eight business hours unless it receives a counter notice fulfilling the requirements set out for a takedown notice and contesting the contents of the takedown notice.

(6) An Internet Service Provider which fails to take down or disable access when it receives a takedown notice shall be fully liable for any loss or damages resulting from non-compliance to a takedown notice without a valid justification.

(7) An Internet Service Provider which contravenes the provisions of subsection (4) commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years, or to both.

(8) Any person who falsely or maliciously lodges a takedown notice or a counter notice under this section commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years, or to both.

(9) A person responsible for such misrepresentation under subsection (7) shall, in addition to the penalty provided under that subsection, be liable for any damages resulting from such false or malicious misrepresentation.

(10) An Internet Service Provider shall not be liable for wrongful takedown in response to a valid takedown notice.

Section 35C of the Act it is proposed to amend—

35C. Role of Internet Service Provider;

(1) An Internet Service Provider may be required—

(a) to provide information to investigative agencies regarding identity of the subscribers of their services suspected to be engaging in infringement of content on orders of the court upon application by the copyright owner whose rights have been subject of a takedown notice;

(b) to designate an agent or electronic or other address for receiving such notices under its terms and conditions of service section.

(2) Notwithstanding the provisions of subsection (1), there shall be no general obligation on the Internet Service Provider to—

(a) monitor the material transmitted, stored or linked; or

(b) actively seek facts or circumstances indicative of infringing activity within its services.

Section 35D of the Act it is proposed to amend-

35D. Application for injunction

(1) A person may apply to the High Court for the grant of interim relief where he or she has reasonable grounds to believe that his or her copyright is being or may be infringed by a person situated in or outside Kenya.

(2) The High Court may, upon application under subsection (1), grant an order requiring—

- (a) a person enabling or facilitating the infringement of copyright, or whose service is used by another person to infringe copyright, to cease such enabling or facilitating activity or disable that person's access to its service for the infringing purpose;
- (b) a person hosting or making available an online location, service or facility situated in or outside Kenya which is used to infringe copyright or which enables or facilitates the infringement of copyright, to disable access to such online location, service or facility as replaced, amended or moved from time to time; or
- (c) an internet service provider to prevent or impede the use of its service to access an online location, service or facility situated in or outside Kenya that is used to infringe copyright as replaced, amended or moved from time to time. actively seek facts or circumstances indicative of infringing activity within its services.