



QUESTIONNAIRE

A. COPYRIGHT REGISTRATION AND RECORDATION

1. What is the name and legal status of the copyright registering/recording body in your country?
Kenya Copyright Board is a State Corporation established under section 3 of the Copyright Act of 2001
2. Please provide full contact details of the copyright registering/recording body, including location of its offices, with indication of the hours they open to public.
Kenya Copyright Board,
4th Floor NHIF Building
Ragati Road
P.O.Box 34670 – 00100
Nairobi
3. Does the copyright registering/recording body have a webpage and e-mail address? If so, please list them.
Email: copyright@ag.go.ke web page www.attorney-general.go.ke/copyright (though this will soon change).
4. Is the copyright registry interconnected to any other copyright data system?
Not at the moment
5. Please list relevant national legislation, including regulations, regarding copyright recordation/registration.
Copyright Act No 12 of 2001
Copyright Regulations 2004
6. What kind of copyright works can be registered/recorded? Is the registration/recordation process different for each type of copyrighted work? Please describe the differences, if any.
All works are registered. This is basically a notification system and the registration process is the same for all works.
7. Can the subject matter of related rights (e.g., performances, broadcasts, sound recordings) also be registered/recorded? If yes, is there a different registration/recordation process than for works protected by copyright?
The registration process is the same but the owners of the related rights have to indicate the owners of the underlying copyright works, whether or not these rights have been assigned or licensed to them and provide documentation of the assignments or licences.
8. Is there a possibility to record the transfer or licensing of copyright/related rights?
Yes there is a provision for the recording the transfer of rights.

9. Is there a possibility to record a security interest in the copyright or related right? If so, what are the legal requirements and effects of such recordation?

Yes

10. What is the legal effect of registration?

This is a voluntary registration system mainly to help in the creation of a database and the administration of the anti piracy security device.

11. Is copyright registration/recordation mandatory or voluntary in the following circumstances?

- (a) Recognition of creation? Voluntary
- (b) Transfer of rights? Voluntary
- (c) Initiation of judicial proceedings? Not a requirement
- (d) Other changes in title/ownership (such as leasing)? Voluntary

If your country has a mandatory registration/recordation system, please describe any legal consequences for non-compliance.

Not Applicable

12. Do courts in your country recognize copyright registrations affected by public authorities in other countries? If yes, is recognition automatic or is a local procedure required to validate or otherwise give effect to the foreign registration?

Yes it does

13. What are the requirements for registration?

- (a) What are the mandatory elements of the request for registration/recordation?
Complete the application form which has to be commissioned by an advocate of the High Court, two copies of the work and a registration fee of Ksh. 600 (about 8 Swiss Francs) The following particulars have to be given:
 - The title of the work
 - Name, address and nationality of the rights holder
 - the date of application for registration
 - contacts of the copyright holder
 - Notice of document affecting change of address or ownership or giving interest in it as security
- (b) Does the request need to be submitted in a specific form? Yes there are prescribed forms in the regulations. Can the request be submitted by the post? Yes. Can the request be submitted electronically? At the moment only via email.
- (c) Is there a deposit requirement, that is, must a copy of the work be submitted with the registration request? Yes If so, can it be submitted in digital form? Digital format is accepted.
- (d) Is there a registration/recordation fee? Yes. If so, how much is the registration/recordation fee? Kshs 600 (about 8 Swiss Francs).
- (e) What is the average time taken to complete the registration/recordation process? Five days.

14. Are foreigners allowed to register/record their creations? **Yes** Are people without legal residence in your country allowed to register/record their creations? **Under the Act, this is possible if the works are created in Kenya.** Is there a different registration/recording process for domestic as opposed to foreign works or objects of related rights? **No**
15. Are the files stored in digital form?
DVDS and CDs. The electronic database is in the process of being established.
16. What criteria are followed for classification of the registrations/recording (including chronology/name of right owner/name of work or related right/type of work or subject matter of related rights, etc)? **The works are classified as literary, artistic and musical works.** Is it possible to correct or update relevant information? **There are procedures for updating the information.**
17. Does the system have a search facility?
No.
18. Is it accessible by the public? Is the search facility available online?
Not applicable.
19. Is access granted to the work registered or its copies?
Only to employees of the Kenya Copyright Board.
20. Does the general public have access to other documents submitted or to any information regarding the work registered/recorded?
No.
21. Does your country have legislation dealing specifically with “orphan works”, i.e. works in respect of which the right owner can not be identified and/or located (e.g., a compulsory license or a limitation on liability)? **No but will be included in the current amendments.** Please briefly describe the main elements of that legislation. **Not applicable.**
22. Independently of whether your country has legislation on the subject, are there industry practices in your country aimed at identifying and/or locating the copyright owner of “orphan works”?
Yes there are. The industry players usually contact the Kenya Copyright Board or other government departments such as the department of culture as well as industry organizations such as collective management organizations to try and locate the owners of the orphan works.
23. Does the registering/recording body play a relevant role in the legislation or practice dealing with “orphan works”?
The Kenya Copyright Board has as one of its functions, the review and amendment of copyright legislation in Kenya.
24. Is there a system to identify and list recorded/registered works or objects of related rights in the public domain? Is that system automated? Is that information made available to the public?
Not at the moment.

25. If your country has a public registration/recording system, do private institutions or initiatives exist that provide additional mechanisms to access registered/recorded information from the public system?

Other institutions in the public sector such as the collective management organizations and industry associations

26. Please provide statistics on following registrations/recordations:

The Board only started the registration of works in January 2007

- (a) Number per statistical period (last five years)
- (b) Number per nationality (last five years)
- (c) Number of inquiries/requests for information filed per statistical period (last five years).
- (d) Number of recordation/registrations whose subject matter has entered the public domain. Global figure/Figure per statistical period (last five years)

Not applicable

B. LEGAL DEPOSIT

27. Does your country have a legal deposit system/s in place?
Yes but this is different from the copyright registration system and is administered by the Registrar of Books and Magazines.
28. Please list relevant national legislation regulating the legal deposit.
Books and Magazines Act (Revised in 1989)
29. Is the legal deposit mandatory or voluntary in your Country? It is mandatory for books, newspapers, magazines, maps and periodicals only. If mandatory, what are the legal consequences in case of non compliance? The Act creates a criminal offence and non compliance will attract a penalty of a fine not exceeding ten thousand Kenya shillings or to a term not exceeding one year in prison. The court may in addition to or instead of imposing the penalty order the person to deposit the books, magazines etc before a certain dates.
30. What are the functions performed by your National legal deposit system (e.g. preservation of cultural heritage; collection of statistical information, etc)?
Collection of statistical material.
31. Is there any connection or interaction among legal deposit and copyright protection?
No.
32. Does your national legislation have any provision in regard to making copies or adapting formats of deposited works for preservation purposes? If so, please clarify under which terms and conditions.
No
33. What is the object of legal deposit? Please list all types or categories of material subject to legal deposit (e.g. Print Material, such as books, serials, government publication; Non-Print Material, such as music and audiovisual works, broadcast material).

- Books, Magazines, Periodicals, maps and newspapers.
34. Does legal deposit apply upon production/printing of content or after its distribution? **It applies upon printing or publication.** Does legal deposit apply to material printed in your country but distributed abroad? **It applies to all books, magazines, periodicals, printed material and illustration printed and or published in Kenya.**
35. Is there any type or category of material exempted from legal deposit for policy reasons?
- All books, magazines, periodical, newspapers etc printed or published by or on behalf of the government are excluded. This exclusion covers all books and newspapers published –
- (a) by or on behalf of any employer for distribution solely amongst members of his staff;
- (b) by or on behalf of any school registered by the Director of Education under the Education Act, for distribution solely amongst pupils of that school, whether past or present, the parents of such pupils, the governors and staff and persons associated with the school's activities as benefactors, and the libraries of other schools so registered;
- (c) by or on behalf of any society exempted from registration under the Societies Act, for distribution solely amongst members of that society;
- (d) by or on behalf of any Commonwealth commission or foreign consulate
- In addition, the following persons shall be exempt from the provision: All printers and publishers of newspapers published by or on behalf of -
- (a) any employer for distribution solely amongst members of his staff;
- (b) any school registered by the Director of Education under the Education Act, for distribution solely amongst pupils of that school, whether past or present, the parents of such pupils, the governors and staff and persons associated with the school's activities as benefactors, and the libraries of other schools so registered;
- (c) any society exempted from registration under the Societies Act, for distribution solely amongst members of that society;
- (d) any Commonwealth commission or foreign consulate;
- (e) East African Academy;
- (f) the African Medical and Research Foundation;
- (g) the Kenya Museum Society;
- (h) the Archdiocese of Nairobi.
2. The following organizations in respect of the publications named -
- (a) the Kenya Scouts Association: "Kenya Scouts Association Newsletter";
- (b) Murang'a County Council: "Murang'a Umuthi".
36. Is there any specific regulation in regard to material published in electronic format? If so, does the regulation distinguish between on-line and off-line material? Please clarify relevant differences. **Not in the Act or its implementing regulations and rules.**
37. How many copies does the depositor have to deposit? Are there special conditions for limited or *de luxe* editions? **The have to deposit at least three copies.**
38. Who is/are the subject/subjects responsible for delivering the legal deposit? **The publisher is responsible for making the deposits.**

39. What are the time requirements for legal deposit?
Within 14 days of the publication.
40. Is there a payment or compensation involved in legal deposit? If so, Please indicate its amount.
Yes. The following fees shall be payable to the Registrar - KSh.
(a) For inspection of any entries in a register kept by the Registrar relating to any one book or newspaper... 100
(b) For a certified copy of or extract from any entry in a register per folio of 72 words minimum fee per copy or extract KSh. 50
(c) For inspection of any one book or newspaper delivered to the registrar in accordance with the provisions of this Act 100
(d) For filing an initial or annual return in respect of a newspaper 400
(e) For filing a return of change of particulars of a newspaper 200
(f) For filing a return in respect of a book 200
(g) For filing a bond by a printer or publisher 1,000
41. What is/are the entity/entities responsible for acting as legal depository?
The office responsible is the Registrar of Books and Magazines, Department of the Registrar General, State Law Office.
42. Does the general public have access to legally deposited materials? If so, please explain under which terms and conditions.
Yes. One copy is to be deposited with the Kenya National Library Service which is a public library and the works can be accessed from there. Another copy is to be deposited with the National Archives where the public can also have access.
43. Do/does the depository/depositories provide publicly available search facilities? If so, are they accessible on-line?
Yes but the system is still manual and not available online.
44. Is legal deposit linked to any number or code? Is there any relation with the International Standard Books Number (ISBN) with the International Standard Serial Number (ISSN) and other such codes? This is done at the Kenya National Library Service.
45. Please provide statistics on the number of deposits per year for the following items (last five years); a) print material; Statistics currently not available. b) musical works; Not applicable (c) audiovisual works. Not applicable