



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – SECOND SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, JULY 24, 2018

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker
4. **COMMUNICATION FROM THE CHAIR**

The Speaker conveyed the following Communication –

On Progress of Implementing the Paperless Solution for Members of Parliament

“Honourable Members,

You will recall, when I took oath of office upon my election as your Speaker on the 31st August, 2017, one of the undertakings that I made was to ensure a paperless House that embraces modern innovation in its processes. In this regard, during the short recess that commenced on Thursday 5th July 2018 and after procurement of equipments by the Parliamentary Service Commission, the Office of the Clerk of the National Assembly and the Parliamentary Joint Services commenced the process of installing the necessary equipments needed to actualize the Paperless Solution in the Chamber. This included installations of Tablets at the places designed for all Members and at the Table of the House.

Honourable Members, I now wish to report that tremendous progress has been realised, though we seemed to have underestimated the time it would take to install software and to mount the Tablets, since the work was going on in both Houses. A total of 350 Tablets have been delivered with 109 having been installed with customized applications for Members to receive Order Papers, Votes and Proceedings, Committee Schedules, the Constitution and Statutes, Bills, Acts of Parliament, Committee Reports among other key parliamentary documents.

Honourable Members, The contractor has undertaken to work overtime to ensure he installs 30 tablets every day after the rise of the House and hopes to complete the project by Thursday 16th August 2018. However, Members will only be allowed to use the Tablets once all of them are installed and training is done.

Honourable Members, This is a project that will not only enhance paperless operations within the Chamber but also reduce the cost of our operations and save the environment. I wish to therefore request for your patience as the Clerk and his team complete the exercise. Thereafter, a short user-training will be mounted as soon as the exercise is concluded, but I wish to assure the House that the gadgets will be user friendly. I am certain that you will embrace this slight technological interruption! I thank you!"

5. MESSAGES

The Speaker convey the following Message from H.E. the President -

On the Nomination of Persons for Appointment to the Position of Principal Secretaries, High Commissioners and Ambassadors

"Honourable Members,

Pursuant to the provisions of Standing Order No. 42, I wish to convey the following Message from His Excellency the President relating to his nomination of the following persons for appointment to the offices of Principal Secretary, High Commissioner and Ambassador-

a) Principal Secretaries

| S/No. | Name | State Department |
|--------------|----------------------|-------------------------|
| 1. | Dr. Francis O. Owino | Youth |
| 2. | Ms. Esther Koimet | Transport |

b) Ambassadors and High Commissioners

| S/No. | NAME OF NOMINEE | MISSION |
|-------|----------------------------------|-------------------|
| 1. | Ms. Sarah Serem | China |
| 2. | Lt. Gen. Samuel Thuita | Israel |
| 3. | Mr. Francis Ndegwa Muhoro | Malaysia |
| 4. | Mr. Manoah Esipisu | United Kingdom |
| 5. | Mr. Paddy Ahenda | Qatar |
| 6. | Amb. Peter Nicholas Oginga Ogego | Saudi Arabia |
| 7. | Mr. Johnson Kimani Ondieki | Turkey |
| 8. | Mr. Chris Karumba Mburu | Juba, South Sudan |
| 9. | Hon. Benjamin Langat | Namibia |

Honourable Members, His Excellency the President, having exercised his powers under Article 132 (2) (e) and 155(3) (b) of the Constitution, is now seeking the National Assembly's approval of the said persons for appointment to the respective offices. In this regard and in accordance with the provision of Standing Order 45 (1) which requires that upon receipt of notification of nomination for appointments, such nominations shall stand committed to the relevant Departmental Committees for consideration, the Departmental Committee on Labour and Social Welfare will consider the nominee for appointment as the Principal Secretary for Youth, while the Departmental Committee Transport, Public Works and Housing will consider the nominee proposed for appointment as the Principal Secretary for Transport. Further, the Departmental Committee on Defence and Foreign Relations shall consider the nominees proposed for appointment as High Commissioners and Ambassadors.

Honourable Members, section 8 of the Public Appointments (Parliamentary Approval) Act requires that a Committee shall consider a nomination and table a report for debate and decision in the House within fourteen (14) days from the date of notification. In this regard, and in accordance with the provisions of Article 259(5)(a) of the Constitution as read together with section 5 of the said Act, the seven (7) days' notification to the public shall start running on the day following the day when the notice is published in the dailies.

Honourable Members, it is advisable that the three Departmental Committees expeditiously proceed to notify the respective nominees and the public, commence the approval hearings after the seven day notification period, and table their Reports on or before Tuesday, 7th August, 2018 to enable the House to consider the matter within the statutory timelines. This Message, together with the Curriculum Vitae of the nominee therefore, stands committed to the said three Departmental Committees I have specified for consideration. I thank you!"

6. PETITIONS

The following two (2) Petitions were presented by:

- a) The Speaker regarding enactment of the Admiralty Court Law on behalf of Mr. Derrick Otieno.

Petition referred to the Departmental Committee on Justice and Legal Affairs pursuant to Standing Order 227(2).

- b) The Member for Laikipia West, Hon. Patrick Mariru regarding parcels of land allocated to *Muhotetu Block 4* residents in Laikipia County.

Petition referred to the Departmental Committee on Lands pursuant to Standing Order 227(2).

7. PAPERS

The following Papers were laid on the Table –

- (i) Legal Notice No. 164 relating to the Excise Duty Act adjustment of the inflation rates and the Explanatory Memorandum.
- (ii) Annual Report and Financial Statements of the Office of the Controller of Budget for the financial year 2016/2017.
- (iii) The Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2017 and the certificates therein: -
 - (a) The Judiciary;
 - (b) Kenya Rural Roads Authority;
 - (c) National Museums of Kenya;
 - (d) Kenya Civil Aviation Authority;
 - (e) Kenya National Highways Authority;
 - (f) Kenya Industrial Property Institute;
 - (g) Occupational Safety and health Fund;
 - (h) Energy Regulatory Commission;
 - (i) Ewaso Ng'iro South River Basin Development Authority; and
 - (j) Public Complaints Committee

(The Leader of the Majority Party)

- (iv) Report of the Delegation to the 49th Session of the ACP Parliamentary Assembly & Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly held in ACP House & European Parliament in Brussels, Belgium from 20th to 22nd March 2018.

(Leader of Delegation – Hon. Katoo Ole Metito, MP)

- (v) Report of the Delegation to the 138th Assembly of the Inter-Parliamentary Union (IPU) and related Meetings held in Geneva, Switzerland from 22nd to 28th March 2018.

(Member of Delegation – Hon. William Kamket, MP)

8. NOTICES OF MOTION

The following Notices of Motion were given by –

- (i) Hon. Katoo Ole Metito - Leader of Delegation –

THAT, this House notes the Report of the 49th Session of the ACP Parliamentary Assembly and Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly held in ACP House and European Parliament Brussels, Belgium on March 20th - 22nd, 2018, laid on the Table of the House, today Tuesday 24th July, 2018.

- (ii) Hon. William Kamket - Member of Delegation –

THAT, this House notes the Report of the 138th Assembly of the Inter-Parliamentary Union (IPU) and related Meetings held in Geneva, Switzerland on 22nd to 28th March 2018, laid on the Table of the House, today Tuesday 24th July, 2018.

9. THE COUNTY GOVERNMENTS (AMENDMENT) (NO.2) BILL (SENATE BILL NO. 7 OF 2017)

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(1).

10. THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL (SENATE BILL NO. 8 OF 2017)

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(1).

11. THE ASSUMPTION OF OFFICE OF THE COUNTY GOVERNOR BILL (SENATE BILL NO. 1 OF 2018)

Order for First Reading read;

Bill read a First Time and referred to the relevant Departmental Committee pursuant to Standing Order 127(1).

12. COMMITTEE OF THE WHOLE HOUSE

Order for Committee Read;

IN THE COMMITTEE

The First Chairperson in the Chair

THE COPYRIGHT (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 33 OF 2017)

Clause 3 - amendment proposed –

THAT, clause 3 of the Bill be amended by deleting paragraph (b).

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of the amendment proposed;

Debate arising;

Question put and agreed to;

Clause 3 - as amended agreed to;

Clause 4 - agreed to.

Clause 5 - amendment proposed –

THAT, clause 5 of the Bill be amended—

- (a) in paragraph (a) by inserting the words “through a competitive process” immediately after the words “appointed by the Board” appearing in the proposed new subsection 11(1);
- (b) by deleting paragraph (b) and substituting therefor the following new paragraph—
“(b) by deleting subsection (2) and substituting therefor the following new subsection—

- “(2) A person shall qualify for appointment under this section if he or she—
 - (a) is as an advocate of the High Court of Kenya of not less than five years’ standing or has held judicial office in Kenya;
 - (b) has at least five years managerial experience; and
 - (c) has at least five years’ experience in matters relating to copyright and other related rights”

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of the amendment proposed;

Debate arising;

Question put and agreed to.

Clause 5 - as amended agreed to;

Clauses 6 and 7 - agreed to.

Clause 8 - amendment proposed –

THAT, the Bill be amended by deleting clause 8 and substituting therefor the following new clause—

Amendment of

section 22 of No.

12 of 2001.

8. Section 22 of the principal Act is

amended in subsection (1) by—

- (a) inserting the words “or related rights” immediately after the word “copyright” in the opening statement;
- (b) inserting the following new paragraph immediately after paragraph (c).
“(ca) dramatic works”

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of the amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Clause 8 - as amended agreed to.

Clause 9 - agreed to.

Clause 10 - amendment proposed –

THAT, clause 10 of the Bill be amended in the proposed new section 26 by deleting subsection (1) and substituting therefor the following new subsection—

- (1) Copyright in a literary, musical, artistic, dramatic or audio-visual work shall be the exclusive right to control the doing in Kenya of any of the following acts—
- (a) the reproduction in any material form of the original work;
 - (b) the translation or adaptation of the work;
 - (c) the distribution to the public of the work by way of sale, rental, lease, hire, loan, importation or similar arrangement;
 - (d) the communication to the public of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original;
 - (e) the making available of the work of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original; and
 - (f) the broadcasting of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original.

Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of the amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Clause 10 - as amended agreed to.

Clause 11 - amendment proposed –

THAT, clause 11 of the Bill be amended—

- (a) In the proposed new section 26C(1) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) to make, import, distribute, lend or share accessible format copies by a beneficiary person or authorized entities or persons acting on behalf of a beneficiary person, including the circumvention of any technological protection measures that may be in place, subject to the terms and conditions set out under Regulations.”
- (b) In the proposed new section 26D by—
 - (i) inserting the word “of” immediately after the word “work” appearing in subsection (1);

(ii) deleting subsection (4) and substituting therefor the following new subsection—

“(4) The resale royalty shall be payable at the rate of five percent of the net sale price on the commercial resale of an artwork and the seller, the art market professional, the seller’s agent and the buyer shall be jointly and severally liable to pay the resale royalty.”

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of the amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Clause 11 - as amended agreed to.

Clause 12 - amendment proposed –

THAT, clause 12 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (b)—

“(ba) the making available of the sound recording in whole or in part either in its original form or in any form recognizably derived from the original.””

(b) by inserting the following new paragraph immediately after paragraph (a)—

“(aa) by deleting subsection (3) and substituting therefor the following new subsection:

“(3) The rights of an owner of a copyright in a sound recording are not infringed by the making of a single copy of the recording for the personal and private use of the person making the copy; and in respect of such use the owner of copyright in the sound recording shall have the right to receive fair

compensation consisting of a royalty levied on audio recording equipment or audio blank tape suitable for recording and other media intended for recording, payable at the point of first manufacture or entry in Kenya by the manufacturer or importer for commercial purposes of such equipment or media.

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Clause 12 - as amended agreed to.

Clauses 13 and 14 - agreed to;

Clause 15 - amendment proposed –

THAT, clause 15 of the Bill be amended in the proposed new section 30B by—

- (a) inserting the word “royalties” immediately after the word “collect” appearing in subsection (1);
- (b) inserting the word “the” immediately after the words “recordings and” appearing in subsection (3);
- (c) deleting subsection (4) and substituting therefor the following new subsection—
“(4) The Board shall determine and, by notice in the Gazette, publish the share of the private copying remuneration applicable to the respective rights holders.”

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Clause 15 - as amended agreed to;

Clause 16 - agreed to.

Clause 17 - amendment proposed –

THAT, clause 17 of the Bill be amended by inserting the following new paragraph immediately after paragraph (a)—

“(aa) in subsection (2) by deleting the words “competent authority” appearing immediately after the words “conditions as the” and substituting therefor the word “Board”;

(Chairperson of the Departmental Committee on Communication, Information and Innovation)

Question of amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Clause 17 - as amended agreed to;

Clause 18 - amendment proposed –

THAT, Clause 18 of the Bill be amended—

- (a) by deleting paragraph (a) and substituting therefor the following new paragraph—
“(a) by deleting subsection (1) and substituting therefor the following new subsection—
“(1) Copyright or related rights shall be infringed by a person who, without the license of the owner of the copyright or related rights—
 - (a) does, or causes to be done, an act the doing of which is controlled by the copyright or related rights; or
 - (b) imports, or causes to be imported, otherwise than for his private and domestic use, an article which he knows to be an infringing copy.”
- (b) by inserting the following new paragraphs immediately after paragraph (b)—
 - (c) in subsection (3) by deleting the word “technical” wherever it appears and substituting therefor the words “technological protection”;
 - (d) in subsection (9) by inserting the word “dramatic” immediately after the word “literary”;
 - (e) in subsection (11) by inserting the word “dramatic” immediately after the word “musical”;

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Clause 18 - as amended agreed to.

Clause 19 - amendment proposed -

THAT, clause 19 of the Bill be amended—

(a) in the proposed new section 35A(1)(c)(iii) by inserting the word “business” immediately after the words “forty eight”;

(b) in the proposed new section 35B by—

(i) inserting the following new subsection immediately after subsection (3)—

“(3A) 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.”

(ii) deleting subsection (4) and substituting therefor the following new subsection—

“(4) 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.

(iii) deleting the word “The” appearing in subsection (5) and substituting therefor the word “An”;

(iv) deleting subsection (6) and substituting therefor the following new subsection—

“(6) 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.”

(v) deleting the word “of” appearing immediately after the word “term” in subsection (7) and substituting therefor the words “not exceeding”;

(vi) deleting the word “The” appearing in subsection (8) and substituting therefor the word “A”;

(vii) by inserting the following new section immediately after the proposed new section 35C—

Application for injunction. **35D.**(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.

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Clause 19- as amended agreed to.

Clause 20- agreed to.

Clause 21- amendment proposed –

THAT, clause 21 of the Bill be amended—

- (a) by deleting paragraph (a) and substituting therefor the following new paragraph—
 - “(a) by deleting subsection (1) and substituting therefor the following new subsection—
 - (1) A person who, at a time when copyright or the right of a performer or producer subsists in a work, knowingly—
 - (a) makes for sale or hire an infringing copy;
 - (b) sells or lets for hire or by way of trade, exposes or offers for sale an infringing copy;
 - (c) distributes infringing copies;

- (d) possesses otherwise than for his private and domestic use, an infringing copy;
 - (e) imports into Kenya otherwise than for his or her private and domestic use an infringing copy;
 - (f) makes or has in his or her possession a contrivance used or intended to be used for the purpose of making an infringing copy;
 - (g) causes a broadcast to be rebroadcast or transmitted in a diffusion service, knowing that copyright subsists in the broadcast and that such rebroadcast or transmission constitutes an infringement of the copyright;
 - (h) causes a program carrying signals to be distributed by a distributor for whom they were not intended, knowing that copyright subsists in the signals and that such distribution constitutes an infringement of the copyright;
 - (i) circumvents a technological protection measure or manufactures or distributes devices designed for circumventing technological protection measures; or
 - (j) removes or alters rights management information or imports or distributes, or makes available to the public a copy of a work from which electronic rights management information has been removed or altered, commits an offence.”;
- (b) in paragraph (c) by deleting the proposed new subsection (4) and substituting therefor the following subsection—
- “(4)A person convicted of an offence under subsection (1) (a), (b, (c), (d) or (e) shall be liable to—
- (a) in the case of a first conviction, a fine of five times the market value of the legitimate work or one thousand shillings for each infringing copy whichever is higher or to imprisonment for a term not exceeding ten years, or to both; and
 - (b) in any other case to a fine of ten times the market value of the legitimate work or two thousand shillings for each infringing copy, whichever is higher or imprisonment for a tem not exceeding twenty years, or to both.”
- (c) in paragraph (d) by deleting the words “Any person guilty” appearing in the proposed new subsection (5) and substituting therefor the words “A person convicted”;
- (d) by deleting paragraph (e) and substituting therefor the following new paragraph—
- “(e) by deleting subsection (6).”
- (e) by inserting the following new paragraph immediately after paragraph (e)—
- “(ea) by deleting the words “Any person guilty” appearing in subsection (7) and substituting therefor the words “A person convicted”;

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Clause 21- as amended agreed to.

Clause 22- amendment proposed –

THAT, clause 22 of the Bill be amended in the proposed new section 38A—

(a) by deleting subsection (1) and substituting therefor the following new subsection:

“(1) Where a body corporate is convicted of an offence under this Act, every person who at the time the offence was committed was in charge of or was responsible to the body corporate for the conduct of its business and affairs is also deemed to have committed the offence and shall be liable to prosecution.”

(b) by deleting subsection (2) and substituting therefor the following new subsection:

“(2) Where it is proven that a body corporate committed an offence under this Act with the consent, connivance or willful lack of due diligence by a person in charge of or responsible to the body corporate for the conduct of its business and affairs, the person shall be guilty of the offence.”

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of amendment proposed;

Debate arising;

Question of the amendment put and agreed to:

Clause 22 - as amended agreed to.

Clause 23 - agreed to.

Clause 24 - amendment proposed –

THAT, clause 24 of the Bill be amended—

(a) in paragraph (d) by deleting the words “shorter period” appearing immediately after the words “for a” in the proposed new subsection (3A) and substituting therefor the words “period not exceeding six months”;

(b) by deleting paragraph (j) and substituting therefor the following new paragraph—

“(j) in subsection (9), by—

- (i) inserting the words “and two daily newspapers of national circulation” immediately after the word “Gazette”;
- (ii) deleting the words “collecting society” wherever they appear and substituting therefor the words “collective management organisation”;

(c) in paragraph (k) by—

(i) deleting the proposed new subsection (10) and substituting therefor the following new subsection—

“(10) Before deregistering a collective management organization, the Board shall, notify the organization in writing and invite it and any of its members to make written representations against deregistration within twenty one days from the date of the notice.”

(ii) inserting the word “If” immediately before the word “After” appearing in the proposed new subsection (11);

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Clause 24 - as amended agreed to.

Clause 25 - amendment proposed –

THAT, clause 25 of the Bill be amended—

(a) by deleting the proposed new section 46B and substituting therefor the following new section—

Qualification and tenure of Directors and Chairpersons of collective management organizations.

46B. (1) A member of a collective management organization shall be eligible for election as a director if he holds a post-secondary qualification recognized in Kenya.

(2) A director elected under this section shall serve for a term of three years and shall be eligible for re-election for one further term.

(3) A director elected as a chairperson of a collective management organization shall hold office for a term of three years and shall be eligible for re-election for one further term.

(4) A chief executive officer of a collective management organization shall hold office for a term of four years and shall be eligible for reappointment for one further term upon satisfactory performance as evaluated by the directors.

(b) by inserting the following new section immediately after the proposed new section 46C—

Submission and publication of information royalties.

46CA. (1) A collective management organization shall submit to the Board information on its total collection and distribution of royalties annually.

(2) The Board shall, by notice in the Gazette, publish information submitted under subsection (1).

(c) in the proposed new section 46D—

(i) by deleting subsection (1) and substituting therefor the following new subsection—

“(1) The Executive Director may authorize a person, in writing, to inspect the books of accounts and records of a collective management organization.”

(ii) by deleting the words “Any failure” appearing in subsection (3) and substituting therefor the words “A person who willfully fails”;

(iii) by deleting subsection (4) and substituting therefor the following new subsection—

“(4) The person authorized to inspect a collective management organization shall report to the Board on—

- (a) any breach or non-observance of the requirements of this Act or regulations;
- (b) any irregularity in the manner of conduct of the business of the organization;
- (c) any apparent mismanagement or lack of management skills in the organization; or
- (d) any other matter warranting remedial action or a forensic audit.”

(iv) by deleting subsection (6) and substituting therefor the following new subsection—

“(6) The powers conferred by subsection (1) may be exercised in the following circumstances—

- (a) where a petition for inspection has been made by not less than forty five percent of the membership specifying breach of instruments establishing the collective management organization, the regulations or the Act;
- (b) failure by a collective management organization to account for monies to at least twenty percent of its members;
- (c) failure by a collective management organization to offer an account of the exploitation of the copyright works assigned or licensed to it;
- (d) where a collective management organization has acted beyond its powers in administering the rights to which it is assigned or licensed;
- (e) where a collective management organization has altered its memorandum or other internal rules to exclude a section of its members in participating in its affairs or as to alter its core business;
- (f) where a collective management organization has persistently failed to adhere to its set administrative budget without a reasonable cause ; or
- (g) where a collective management organization has failed to comply with request for information or records from its members or the Board.”

(d) in the proposed new section 46E(1) by deleting the words “finds that an organisation conducts” appearing immediately after the word “report” in the opening statement and substituting therefor the words “that a collective management organization”;

(e) by deleting the proposed new section 46F;

(f) by deleting the proposed new section 46G and substituting therefor the following new section—

Record keeping
and attendance
of meetings by
Board
representatives.

46G. (1) The directors of a collective management organization shall cause minutes of all resolutions and proceedings of their meetings to be entered and updated in books kept for that purpose.

(2) The Board may, through a designated representative, attend and advise a meeting of the directors of a collective management organization where matters affecting member's interests are proposed for discussion.

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Clause 25 - as amended agreed to.

Clause 26 - agreed to.

Clause 27 - amendment proposed –

THAT the Bill be amended by deleting clause 27 and substituting therefor the following new clause —

Amendment **27.** The principal Act is amended by repealing section 48 of section and substituting therefor the following new section—
48 of No.
12 of 2001.

Appointment
and duties
of Copyright
Tribunal.

48. (1) There shall be a Copyright Tribunal appointed by the Chief Justice for the purpose of exercising jurisdiction under this Act where any matter requires to be determined by such Tribunal.

(2) The Copyright Tribunal shall consist of not less than three and not more than five persons, one of whom shall be an Advocate of not less than seven years standing or a person who has held judicial office in Kenya as Chairperson, appointed by the Chief Justice where any matters requires to be determined by the Tribunal.

(3) No person shall be appointed under this section, nor shall any person so appointed act as a member of the Copyright Tribunal, if he, his partner, his employer body (whether statutory or not) of which he is a member has a pecuniary interest in any matter which requires to be determined by the Tribunal

(4) Subject to subsection (5), the Copyright Tribunal shall have jurisdiction to hear and determine—

- (a) a dispute over registration of copyright; and
- (b) an appeal against—

- (i) imposition of unreasonable terms or conditions by the Board for the grant of a certificate of registration;
- (ii) unreasonable refusal by a collective management organization to grant a licence in respect of a copyright work; or
- (iii) Imposition of unreasonable terms or conditions by a collective management organization for the grant of a licence in respect of a copyright work;

(5) Before determining a matter referred to it under this section, the Copyright Tribunal shall, in accordance with such procedure as may be prescribed, give both parties an opportunity to present their respective cases, either in person or through representatives, both orally and in writing.

(6) The Copyright Tribunal may order the grant of a certificate of registration or the grant of a license in respect of a copyright work subject to the payment of the applicable fees.

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of amendment proposed;

Debate arising;

Question of the amendment put and agreed to;

Clause 27 - as amended agreed to.

Clause 28 - amendment proposed –

THAT, the Bill be amended by deleting clause 28 and substituting therefor the following new clause—

Amendment of section 49 of No. 12 of 2001. **28.** The principal Act is amended by repealing section 49 and substituting therefor the following new section—

Regulations. **49.** (1) The Cabinet Secretary may make regulations generally for the better carrying into effect of the provisions of this Act, including the extension of its application.

(2) Without prejudice to the generality of

subsection (1) the regulations made under this section may—

(a) prescribe—

- (i) the audit of collective management organizations;
- (ii) the annual and special general meetings of collective management organizations;
- (iii) guidelines on the gender representation and participation of persons with disability and other marginalized groups on the boards of collective management organizations;
- (iv) the procedure of handling complaints made to the Board;
- (v) ratios of distributable income to administrative costs including deductions applicable to collective management organizations;
- (vi) the manner of approval of distribution rules;
- (vii) the manner of approval of cash reserves;
- (viii) the manner of approval of membership to a collective management organization;
- (ix) a system for the identification of copyright works and monitoring of payment, collection and distribution of royalties; and
- (x) anything required by this Act to be prescribed;

(b) extend the application of this Act in respect of any or all of the works referred to in section 22 (1)—

- (i) to individuals or bodies corporate who are citizens of, domiciled or resident in or incorporated under the laws of Kenya or a country which is a party to a treaty to which Kenya is also a party and which provides for the protection of copyright and related rights in works to which the application of this Act extends;
- (ii) to works, other than sound recordings, first published in Kenya or a country which is a party to a treaty to which Kenya is also a party and which provides for the protection of copyright and related rights in works to which the application of this Act extends; or

- (iii) to sound recordings made or published in Kenya or a country which is a party to a treaty to which Kenya is also a party and which provides for the protection of copyright and related rights in works to which the application of this Act extends; and
- (c) restrict the right to control the translation or the reproduction of a work up to the extent permitted by any Copyright Convention for the time being in force in Kenya:

Provided that the work belongs to or is first published or first made in or first made available to the public by individuals or bodies corporate who are citizens of, domiciled or resident in or incorporated under laws of a country which is a party to a treaty, convention or international agreement which Kenya is a party to and which provides for the protection of copyright and related rights as Kenya.

(3) For the purposes of Article 94(6) of the Constitution—

- (a) the purpose and objective of delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect of the provisions of this Act and to enable the Board to discharge its functions more effectively;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and to fulfil the objectives specified under this section;

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2013*

- (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of amendment proposed,

Debate arising;

Question of the amendment put and agreed to;

Clause 28 - as amended agreed to.

Clause 29 - agreed to.

NEW CLAUSES

New Clause 7A –

THAT, the Bill be amended by inserting the following new clause immediately after clause 7—

Repeal and replacement of section 21 of No. 12 of 2001.

7A. The principal Act is amended by repealing Section 21 and substituting therefor the following new section—

Appeals.

21. (1) A person aggrieved by the decision of the Board under this Act may, within sixty days from the date of the decision, appeal to the Copyright Tribunal.

(2) The Board shall provide written comments on any matter over which an appeal has been submitted to the Copyright Tribunal under this section upon request from the Copyright Tribunal.

(3) The Copyright Tribunal shall issue a decision on the appeal within thirty days from the date of an appeal.

Chairperson, Departmental Committee on Communication, Information and Innovation)

Motion made and Question proposed;

THAT, the New Clause 7A be now read a Second time;

Debate arising;

Question put and agreed to;

Motion made and Question proposed;

THAT, the New Clause 7A be part of the Bill;

Question put and agreed to.

New Clause 9A -

THAT, the Bill be amended by inserting the following new clauses immediately after clause 9—

Amendment of section 23 of No. 12 of 2001.

9A. Section 23 of the principal Act is amended—

(a) in subsection (2) by inserting the word “dramatic” immediately after the word “musical”;

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Motion made and Question proposed;

THAT, the New Clause 9A be now read a Second time;

Debate arising;

Question put and agreed to;

Motion made and Question proposed;

THAT, the New Clause 9A be part of the Bill;

Question put and agreed to.

New Clauses 9B and 9C –

THAT, the Bill be amended by inserting the following new clauses immediately after clause 9—

Amendment
of section
24 of No.
12 of 2001.

Amendment
of section
25 of No.
12 of 2001.

9B. Section 24(1)(a) of the principal Act is amended by inserting the word “dramatic” immediately after the word “musical”.

9C. Section 25(2) of the principal Act is amended by inserting the word “dramatic” immediately after the word “musical”.

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Motion made and Question proposed;

THAT, the New Clauses 9B and 9C be now read a Second time;

Debate arising;

Question put and agreed to;

Motion made and Question proposed;

THAT, the New Clauses 9B and 9C be part of the Bill;

Question put and agreed to.

New Clause 11A –

THAT, the Bill be amended by inserting the following new clause immediately after clause 11—

Amendment
of section
27 of No.
12 of 2001.

11A. Section 27 of the principal Act is amended—

- (a) in subsection (1) by inserting the word “dramatic” immediately after the word “musical”;

(b) in subsection (2) by deleting the words “competent authority” appearing immediately after the words “determined by the” and substituting therefor the words “Copyright Tribunal”.

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Motion made and Question proposed;

Motion made and Question proposed;

THAT, the New Clause 11A be now read a Second time;

Debate arising;

Question put and agreed to;

Motion made and Question proposed;

THAT, the New Clause 11A be part of the Bill;

Question put and agreed to.

New Clause 20A –

THAT, the Bill be amended by inserting the following new clause immediately after clause 20—

Amendment
of section
37 of No.
12 of 2001.

20A. Section 37(1) of the principal Act is amended by deleting the words “competent authority” wherever they appear and substituting therefor the words “Copyright Tribunal”.

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Motion made and Question proposed;

THAT, the New Clause 20A be now read a Second time;

Debate arising;

Question put and agreed to;

Motion made and Question proposed;

THAT, the New Clause 20A be part of the Bill;

Question put and agreed to.

Clause 2 - amendment proposed –

THAT, clause 2 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—
“(a) in the definition of author by—

- (i) inserting the word “dramatic” immediately after the word “musical” appearing in paragraph (a);
- (ii) deleting the word “film” appearing in paragraph (d) and substituting therefor the word “work”;
- (iii) deleting the word “working” appearing in paragraph (h) and substituting therefor the word “making”;

- (b) in paragraph (e) by deleting the word “folklore” and substituting therefor the word “folklore”;
- (c) in paragraph (f)(ii) by inserting the words “which constitutes an infringement of any rights protected by this Act” immediately after the words “a work or live performance” appearing in the proposed paragraph (aa);
- (d) in paragraph (g) by deleting the proposed new definition of “musical work” and substituting therefor the following new definition—

“musical work” means a work consisting of music, irrespective of musical quality, and includes a graphical notation of such work and works composed for musical accompaniment”

- (e) by deleting paragraph (j) and substituting therefor the following new paragraph—
 - (j) by deleting the definition of “school” and substituting therefor the following new definition—
- (f) In paragraph (k) in the proposed new definition of “work” by inserting the word “dramatic” immediately after the word “artistic”;
- (g) by deleting paragraph (l) and substituting therefor the following new paragraph—

- (l) by deleting the definition of “technical measure” and substituting therefor the following new definition—

“technological protection measure” means any device, product or component incorporated into a work that effectively prevents or inhibits the infringement of any copyright or related right”;

- (h) by inserting the following new paragraphs immediately after paragraph (l)—
 - (m) by inserting the following new definitions in their proper alphabetical sequence—

“accessible format copy” means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including permitting the person to have access as feasibly and comfortably as a person without visual impairment or other print disability;

“art market professional” includes an auctioneer, owner or operator of a gallery, museum, an art dealer or any other person involved in the business of dealing in artworks;

“artwork” means an original work of visual art created by an artist or artists, or produced under their authority;

“authorized entity” means an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis and includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations;

“beneficiary person” means a person who—

- (a) is blind;

- (b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or
- (c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading, regardless of any other disabilities;

“buyer” means a person to whom ownership is transferred in an artwork under commercial resale;

“commercial resale” means the subsequent re-transfer of ownership in artwork from one person to another for monetary consideration with the involvement of an art market professional;

“Copyright Tribunal” means the tribunal established under section 48 of the Act;

“exclusive licence” means a licence in writing signed by or on behalf of an owner or prospective owner of copyright or related rights, authorizing the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which by virtue of this Act would apart from the licence be exercisable exclusively by the owner of copyright or related rights;

“information system” means a system for generating, sending, receiving, storing, displaying or otherwise processing data and includes internet;

“information system services” includes the provision of connections, the operation of facilities for information systems, the provision of access to information systems, the transmission or routing of data between or among points specified by a user and the processing and storage of data, at the individual request of the recipient of the service;

“Internet Service Provider” means a person providing information system services or access software that provides or enables computer access by multiple users to a computer server including connections for, the transmission or routing of data;

“collective management organisation” means an organisation approved and authorized by the Board which has as its main object, or one of its main objects, the negotiating for the collection and distribution of royalties and the granting of licenses in respect of the use of copyright works or related rights;

“owner of the copyright” means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright;

“performance” means the representation of a work by such action as dancing, playing, reciting, singing, declaiming or projecting to listeners by any means whatsoever;

“performer” means an actor, singer, declaimer, musician or other person who performs a literary, musical or dramatic work or a work of folklore and includes the conductor of the performance of any such work;

“public display” means the showing of original or a copy of a work—

- (a) directly;
- (b) by means of a film, slide, television image or otherwise on screen;
- (c) by means of any other device or process;
- (d) in the case of an audio-visual work, showing of individual images consequentially at a place or places where persons outside the normal circle of a family and its closest social acquaintances are or can be present irrespective of whether they are or can be present at the same place and time or at different places or times, where the work can be displayed without communication to the public;

“publication” means a work or a sound recording, copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies:

Provided that, in the case of a work, the making available to the public took place with the consent of the author or other owner of copyright, and in the case of a sound recording, with the consent of the producer of the sound recording or his successor in title;

“public performance” means—

- (a) in the case of work other than an audio-visual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;
- (b) in case of an audio-visual work, the showing of images in sequence and the making of accompanying sound audible; and
- (c) in the case of a sound recording, making the recorded sounds audible at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places or times, and where the performance can be perceived without the need for communication to the public;

“record” means any device in which sounds or the representations of sounds are embodied which are capable of reproduction there from with or without the aid of another instrument;

“related rights” mean rights neighboring on copyright, including those subsisting under sections 27(2), 28, 29 and 30 of this Act;

“resale royalty right” means the right of artist or group of artists or successors to receive resale royalty on commercial resale of an artwork;

“seller” means the person who transfers ownership of the artwork under commercial resale; and

“specialized formats” means Braille, audio, or digital text or any other media which is exclusively for use by visually impaired or other persons with disabilities, and with respect to print instructional materials, includes large print formats when such materials are distributed exclusively for use by visually impaired or other persons with disabilities.

(n) by deleting the definition of “competent authority””

(Chairperson, Departmental Committee on Communication, Information and Innovation)

Question of the amendment proposed;

Debate arising;

Question put and agreed to:

Clause 2 - as amended agreed to.

Title - agreed to.

Clause 1 - agreed to.

Bill to be reported with amendments.

13. HOUSE RESUMED – The Third Chairperson in the Chair

Motion made and question proposed;

THAT, the House do agree with the Committee in the said Report;

(The First Chairperson of Committees)

Question deferred.

14. THE LAND VALUE INDEX LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 3 OF 2018)

Motion having been made and question having been proposed;

THAT, the Land Value Index Laws (Amendment) Bill (National Assembly Bill No. 3 of 2018) be now read a second time

(The Leader of the Majority Party)

Debate interrupted on Wednesday, July 04, 2018 resumed;

Rising on a point of order under Standing Order 35, the Member for Likoni Constituency (Hon. Mboko Khamisi, MP) objected that the House did not quorate;

Upon ascertaining her claim, the Speaker ordered that the Bell be rung for ten minutes in line with the Standing Orders;

Upon expiry of the ten minutes, and with the House unable to quorate, the Speaker adjourned the sitting of the House without question put pursuant to Standing Order 35.

15. HOUSE ROSE - at twenty six minutes past Six O'clock.

M E M O R A N D U M

The Speaker will take the Chair tomorrow
Wednesday, July 25, 2018 at 9.30 a.m

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