

PRESS STATEMENT

31ST AUGUST 2021

THE COLLECTIVE MANAGEMENT ORGANIZATIONS (KAMP-PRISK-MCSK) STATEMENT ON QUASHING OF KECOBO'S REVOCATION NOTICE BY THE HIGH COURT

1. SETTING ASIDE OF KECOBO'S DECISION

- a. Kenya Association of Music Producers, Performers Rights Society of Kenya and Music Copyright Society of Kenya applaud Hon. Justice Weldon Korir for safeguarding the Constitutional rights of copyright holders.

As you are all aware our operating licenses were revoked by Kenya Copyright Board on 23rd August 2021. Displeased with this decision, we filed an urgent application before the High Court Constitutional and Human Rights Division at Milimani. The matter was certified urgent and the honorable Justice Korir quashed and set aside KECOBO's decision pending the hearing of this case. The Court's decision clears the way for the three collective Management Organizations to continue executing their royalty collecting mandate within the Joint Copyright and Related Rights licensing framework.

- b. Pursuant to the court orders, Hon. Justice Korir also ordered the Respondents to render an account to the court on the collections by 3rd of November 2021. Justice Hon. Weldon Korir noted that the owners of copyright works were going to suffer during the three (3) months envisaged by the regulator before issuance of a new license to another CMO. The regulator made this decision without a fall back plan, indeed, when put to task, KECOBO failed to state clearly who will be collecting royalties during the period.
- c. KECOBO had initially moved to Court on 14th July 2021 with several prayers to Court among them: an order barring three CMOs from operating, accessing or otherwise interfering with their bank accounts; and order directing KECOBO to collect and distribute royalties to the copyright holders on its own or through an agent. The Court however declined to grant orders sought on 27th July 2021. The case was later heard on 18th August 2021 where CMOs were allowed to continue with their operations until 3rd November 2021 when the matter is scheduled for hearing. Soon after the regulator went ahead to deregister CMOs contrary to court orders.
- d. Since revocation of our licenses, we have lost a lot of revenue. The action by regulator has created a vacuum where users of music works exploit these works without clear directions of an

alternative collecting mechanism. This is both irregular and uncalled for given that music is an intellectual property and cannot be exploited FOR FREE.

2. CROSS CUTTING ISSUES

The regulator has continued to exert unwarranted pressure and has refused to heed to our call for a constructive engagement in order to find a lasting solution to challenges affecting this sector. Allow me give a snapshot of issues that we feel have caused dwindling of our collections:

- a. **Effects of COVID-19:** It is instructive to note that the sector has borne the blunt of vagaries of COVID-19. This has affected our primary clients in hospitality and transport sectors causing unprecedented low collections that currently stands below 50% compared to previous years' revenue collections. However, the regulator has continued to apply similar compliance yardstick notwithstanding our obligations on fixed and other operational costs.
- b. **Lack of Enforcement Support:** The Kenyan copyright sector losses hundreds of millions of shillings due to weak enforcement mechanisms. This matter has been aggravated by a directive issued by the Inspector General of Police instructing Police officers to stop supporting the Collective Management Organizations (CMOs) in enforcing compliance to the Copyright Act. In Kenya, where compliance and respect of intellectual property is low, copyright owners require the help of National Police Service for the Public to comply with their obligations as provided for under **Articles 11 and 40(5) of the Constitution**, Copyright Act, copyright regulations and other related laws.

Since the withdrawal of Kenya Police Service support in our copyright enforcement activities in October 2019, many users of recorded music have deliberately refused to comply with the copyright law; hence affecting our revenue collections. The powers of enforcing the Copyright Law are vested in the Police Service as per Section 42 of the Copyright Act Chapter 130, laws of Kenya, which states as follows:

“Any police officer may arrest, without a warrant, any person whom he suspects upon reasonable grounds of having committed any offence under this Act and any officer of the Board who at the time is wearing a visible badge of office and authorized thereto in writing by the Board, may arrest, without warrant, any person who, in his presence, commits any such offence and may detain such person until he can be delivered into the custody of a police officer to be dealt with according to law.....”

It is our belief that as part of your core mandate, the Kenya Police Service is a key stakeholder in ensuring that intellectual property rights are respected and that copyright law is complied with by all business entities that commercially exploit recorded music in Kenya.



- c. **Low tariffs:** KECOBO pushed KAMP-PRISK-MCSK to reduce the applicable tariff that had been in use since 2013 instead of increasing it to factor for inflation adjustments over the years.
- d. **Blank Tape Levy:** Private Copying Remuneration (Blank Tape levy) is a source of royalties that is supposed to cushion KAMP-PRISK-MCSK at times like this and it has been provided for in the Copyright Act for the last 20 years but KECOBO has frustrated attempt to start levying this levy.

FOR & ON BEHALF OF THE BOARD OF DIRECTORS,

CHAIRMAN, KAMP

CHAIRMAN PRISK

CHAIRMAN, MCSK