

A Short guide to

Copyright Law

in Tanzania





A Short guide to Copyright Law in Tanzania



Lexglobe LLP owns copyright in this guidebook. This guidebook provides a summary only of the subject matter covered, without the assumption of duty of care by Lexglobe LLP. The summary is not intended to be nor should it be relied on as a substitute for legal or other professional advice.

CONTENTS

TOPIC	PAGE
Introduction	1
Meaning of copyright and why it is necessary to be protected	2
Application of the copyright law	3
Existence, ownership and infringement of copyright	4
Registration of copyright	7
Exploiting copyright	8

Introduction

The purpose of this guide is to help you understand the overview of copyright law in Tanzania. Copyright protection in Tanzania is governed by the Copyright and Neighboring Rights Act, 1999.

This guide explains the following aspects:

- Meaning of copyright and why it is necessary to be protected
- Application of the copyright law
- Existence, ownership and infringement of copyright
- Registration of copyright
- Exploiting copyright

This guide summarizes the main features of copyright law in Tanzania. It should not be relied upon as a substitute for obtaining specific advice before determining a course of action. If you would like more information, please contact the following individual who is our partner in charge in intellectual property services:

Ngassa Dindi

Tel: 255 22 260 0164

Fax: 255 22 260 0166

Email: international@lexglobelaw.com

URL: www.lexglobelaw.com

Meaning of copyright and why it is necessary to be protected

Copyright is a property right which vests in the authors of original literary, dramatic, musical and artistic works. Copyright also vests in authors of sound recordings, films, broadcasts, cable programmes and typographical arrangements of published editions. Several copyrights can exist in one work. For example, a song can be split into three (3) separate copyright works:

- copyright in the music itself (a 'musical work');
- copyright in the lyrics (a 'literary work'); and
- copyright in the sound recording of the music (a 'sound recording').

The copyright law in Tanzania protects 'neighboring rights' as well. Neighboring rights are secondary rights of copyright that the performers are entitled. Performers are defined under the Tanzanian copyright law to include singers, musicians, dancers, producers of sound recording (for example cassette recordings and compact discs) in their recordings, broadcasting entities in their radio and television programs, etc.

Copyright and neighboring rights are essential to human creativity. Copyright protection gives the creators incentives in the form of recognition of their efforts and providing them with fair economic rewards. Through copyright protection, creators are assured that their works can be disseminated without fear of unauthorized copying or piracy. This in turn increases access to and enhances the enjoyment of, among other things, knowledge and entertainment all over the world.

Application of the copyright law

Generally, copyright protection is available to works, unpublished works, audio visual works, architecture works, performance, phonograms, broadcasts and expression of folklore carried out in Tanzania. The Copyright and Neighboring Rights Act, 1999 contains rules on availability of copyright protection for published works, unpublished works, audio visual works, architecture works, performance, phonograms, broadcasts and expression of folklore. Furthermore, the Copyright and Neighboring Rights Act, 1999 contains specific rules on situations whereby copyright protection is available to:

- situations whereby the publication, production, performance, broadcasting, etc was not carried out in Tanzania.
- situations whereby the publication, production, performance, broadcasting, etc was not carried out by a Tanzanian national.
- unpublished works and works first published in a foreign country by authors of foreign nationality.
- expressions of foreign folklore.

As a general rule, copyright protection is available to works of authors who are nationals of, or have their habitual residence in Tanzania. Works first published in Tanzania may also qualify for copyright protection irrespective of the nationality or residence of their authors. Works first published abroad but thereafter published in Tanzania may also qualify for copyright protection under certain conditions.

We will be in a position to advise you properly on the availability of copyright protection when you inform us the facts of the particular circumstances.

Existence, Ownership and Infringement

When you are faced with a possible copyright infringement in Tanzania, there are six steps to follow before making conclusion on occurrence of copyright infringement. These steps stem from the provisions of the Copyright and Neighboring Rights Act, 1999, and are as follows:

(a) Does copyright subsist in the work?

The first step is to consider whether the copyright subsist in the work. The Copyright and Neighboring Rights Act, 1999 sets out various matters to which copyright protection does not extend.

Generally, the work in which copyright subsist must be 'original'. Whether or not a certain work meets the requirement of originality is a matter of fact. The main test is whether the author has used his own skill and effort to create the work. It is possible for two identical pieces of work to meet the requirement of originality provided each author arrived at the end result by an independent process. Where there are two identical pieces of work, one work can be categorized as 'underlying work' and the other one can be categorized as a 'derivative work'. Derivative works stem from and contain underlying works and yet attract their own copyright. The distinction between 'underlying' and 'derivative' works helps to identify the different layers of copyright that co-exist in a work.

We will be able to advise you whether the copyright subsist under the Copyright and Neighboring Rights Act, 1999 when you inform us the nature of the work.

(b) Who is the owner of the copyright?

The second step is to establish the owner of the copyright. In the first place, it is generally important to establish the 'author' of a copyright work. The author of a copyright work is, generally, a person who created it. There are rules in the Copyright and Neighboring Rights Act, 1999 which sets out legal positions in cases involving joint authorship, anonymous works and pseudonymous literary work.

Under the Copyright and Neighboring Rights Act, 1999, the author of the copyright work may not necessarily own the copyright. The author who created the work is, however, regarded as the first owner of the copyright except for works made by an employee in the course of his employment and in the circumstances where the ownership of copyright vests in the Government. The ownership of copyright can move from one owner to another through licensing, assignment and declaration by courts on the rightful owner of copyright.

We will be in a good position to advise you on the ownership of the copyright when you inform us the facts of the particular situation.

(c) Is the work still within the copyright protection period?

Under the Copyright and Neighboring Rights Act, 1999, the duration of copyright protection is the life of the author and fifty years after his death. In case of the joint authorship, the duration of copyright protection is the life of the last surviving author and fifty years after his death. For a work published anonymously or under pseudonym, duration of copyright protection is, subject to certain exceptions, fifty years from the date on which the work was either made, first made available to the public or first published, whichever date is the latest. Audio-visual works are protected for fifty years from the date on which the work was either made available to the public or first published, whichever date is the latest. Applied artwork is protected for twenty-five years from the date of making the work.

We will be in a position to advise you whether the work is still within the copyright protection period when you inform us the facts of the particular situation.

(d) Has there been an infringement of copyright?

The Copyright and Neighboring Rights Act, 1999 sets out in detail economic and moral rights that the copyright owner has the exclusive right to do in relation to a work. These rights are subject to certain exceptions. The economic rights include reproduction of the work, distribution of the work, rental of the original or copy of an audio-visual work, public exhibition of the work, translation of the work, adaptations of the work, public performance of the work, importation of copies of the work, etc. Moral rights include right to object and to seek relief in connection with distribution, modification of the work, etc.

The act of infringement is considered to happen if, among other things, a person performs one of the economic and moral rights to which the copyright owner is exclusively entitled in relation to the work without the copyright owner's permission. We will be in a position to advise you on the existence of infringement of copyright when you inform us the facts of the particular situation.

(e) Are there any possible defences?

As pointed above, the economic and moral rights that the copyright owner has the exclusive right to do in relation to a work are subject to certain exceptions. The Copyright and Neighboring Rights Act, 1999 sets out the 'permitted acts'. The permitted acts include but not limited to production, translation, adaptation, arrangement or other transformation of the work for personal and private use.

The Copyright and Neighboring Rights Act, 1999 contains detailed rules on permitted acts, particularly the circumstances under which a certain act may qualify to be a 'permitted act'. We will be in a position to advise you on appropriate defenses when you provide us with the facts of the specific circumstances.

(f) **What remedies are available?**

The Copyright and Neighboring Rights Act, 1999 provides for remedies to persons whose rights are in imminent danger of being infringed or have been infringed. These remedies include damages, account for profit, interlocutory injunction, delivery up of infringing articles, destruction of infringing articles. The provisions of the Civil Procedure Code, 1966 and Criminal Procedure Act, 1985 on search and seizure apply to copyright infringement. Furthermore, the Copyright and Neighboring Rights Act, 1999 sets out several offences relating to making or dealing with infringed articles.

Registration of copyright

The Copyright and Neighboring Rights Act, 1999 establishes an organization known as Copyright Society of Tanzania. One of the functions of this organization is to maintain registers of works, productions and association of authors, performers, translators, producers of sound recordings, broadcasters and publishers. The head of the Copyright Society of Tanzania is the Copyright Administrator. The Copyright Administrator is the Chief Executive Officer of the Society and is responsible for administration and management of the Society, including the supervision of other staff of the Society. One of the powers of the Copyright Administrator is to receive and register copyrights. Apart from registering new applications, the Copyright Administrator receives and registers copyright licenses and assignments.

For new application for registration of a copyright, the applicant is required to provide address of service within Tanzania in a prescribed form. The address of service in a prescribed form always accompanies the application for registration of copyright. On receiving the application for registration of copyright, the Copyright Administrator conducts search on the registered works with a view to ascertaining the existence of the same work in the register. After conducting search, the Copyright Administrator may accept or reject the application. If the Copyright Administrator rejects the application, s/he will inform the applicant. The applicant has a right to respond to the objection by the Copyright Administrator within a period of one month from the date of receiving the rejection notice. If the Copyright Administrator accepts the application, he will issue the certificate of registration.

We are in a good position to give you a workable professional advice on how best to register your copyright at reasonable charges.

Exploiting copyright

Under the Copyright and Neighboring Rights Act, 1999 a copyright owner can exploit his rights either directly (i.e. selling copies of the work himself), or indirectly (i.e. giving other the right to exploit his work). Indirect exploitation can be achieved by the copyright owner through assigning his copyright to a third party, or licensing his copyright to a third party. The Copyright and Neighboring Rights Act, 1999 sets out detailed rules on assignment and licensing of a copyright.

Generally, assignment must be in writing and it may be in whole or in part. Depending on the terms of assignment, the act of assignment generally transfers the title in the work such that even the assignor can subsequently be restrained from doing an act that infringes the rights of the assignee as the new owner of the copyright. Licensing confers contractual right on the licensee and it does not pass any title in the work. The copyright may be licensed on exclusive or non-exclusive basis. The Copyright Administrator can register assignment and licensing of a copyright.

Contact us

If you have any queries or would like to seek further information, please contact following person who is our partner in charge in intellectual property services:

Ngassa Dindi

Tel: 255 22 260 0164

Fax: 255 22 260 0166

Email: international@lexglobelaw.com

URL: www.lexglobelaw.com



Ngassa Dindi
Tel: 255 22 260 0164
Fax: 255 22 260 0166
Email: international@lexglobelaw.com
URL: www.lexglobelaw.com