GOVERNMENT NOTICE NO. 1

COPYRIGHT ACT, 2016

(NO 26 OF 2016)

COPYRIGHT (LEVY ON STORAGE DEVICES) REGULATIONS, 2018

ARRANGMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Levy on devices
4. Payment of levy
5. Collection of levy
6. Registration of importers and manufacturers
7. Distribution of levy
8. Exemption from levy payment
9. Refund of a levy
10. Record keeping
11. Confiscation and sealing of premises
12. Offences and penalty

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

IN EXERCISE of powers conferred by section 102(4) of the Copyright Act, 2016, I, GOODALL EDWARD GONDWE, Minister of Finance, Economic Planning and Development, make the following Regulations—

Citation

1. These Regulations may be cited as the Copyright (Levy on Storage Devices) Regulations, 2018.

Interpretation

2. In these regulations, unless the context otherwise requires—

"device" means a device for digital storage of copyright material;

"Fund" means the Copyright Fund established under section 98 of the Act;

"levy" means the levy imposed on devices pursuant to section 102 of the Act and regulation 3;

"Minister" means Minister responsible for Finance; and

"Society" means the Copyright Society of Malawi established under section 4 of the Act.

Levy on devices

3.—(1) Pursuant to section 102, the Minister shall impose a levy on devices listed in the First Schedule hereto.

(2) The Minister may, on recommendation of the Society, vary the list of copy devices in the First Schedule or the levy payable on such devices.

Payment of levy

4. The levy payable under these Regulations shall be paid by—

(*a*) a manufacturer of storage device material in the case of materials manufactured or produced or assembled in Malawi; and

(*b*) an importer of storage devices at the point of entry into Malawi.

Collection of levy

5. The levy shall be collected by the authority responsible for collection of levies and deposited into the Fund.

Registration of importers and manufacturers

6.—(1) The Society shall develop and implement a system of voluntary registration of importers or manufactures of digital storage devices and equipment used for reproduction including merchant which assembles devices in Malawi.

(2) The application form for registration shall be in the form in the Second Schedule hereto.

(3) Only registered importers or manufacturer shall be entitled to a refund in accordance with section 102(2) of the Act.

Distribution of levy

7.—(1) The Society shall pay appropriate remuneration due to an author or an association entitled thereto out of the levy collected under these regulations.

(2) The remuneration shall be distributed in accordance with procedures for distribution of royalties or other remuneration set by the Society as follows —

(*a*) 10% for administration distributed as follows—

(i) 5% to the revenue collection authority; and

(ii) 5% to the Malawi Government through Ministry of Finance;

(*b*) the remaining 90% shall be distributed as follows—

(i) 20% for the Society's enforcement activities and administration;

(ii) 10% to the Fund;

(iii) 30% for musical works;

(iv) 15% for audiovisual works; and

(v) 15% for literary works.

(3) The Society shall further distribute the remuneration for musical, audiovisual and literary works in accordance with the Distribution Rules of the Society.

Exemption from levy payment

8.—(1) The following shall not be subject to the levy—

(*a*) materials manufactured in Malawi for purposes of export; and

(*b*) institutions that represent persons with disability as may be approved by the Minister.

(2) A manufacturer or importer of devices that fall under subparagraph (1), shall apply to the Minister for exemption from levy payment to export or import such devices or materials to manufacture the devices.

Refund of a levy

9.—(1) A manufacturer or importer of a device to which a levy is applied shall be entitled to a refund where evidence is presented to show that the placing of the device on the market is for commercial purposes and not for consumers, in accordance with section 102(2) of the Act.

(2) The application for a refund shall be made in the form in the Third Schedule hereto.

(3) The Society shall make the refund where the evidence presented under subparagraph (1) is in accordance with section 102(2) of the Act.

Record keeping

10.—(1) All persons engaged in the manufacturing, assembling or importation of any material for which a levy has been prescribed in the First Schedule hereto shall keep records and make periodic returns as may be required by the Society.

(2) The records referred to in subparagraph (1) shall be made available for inspection by inspectors of the Society or any authorized person.

(3) All persons engaged in the manufacture, assembling or importation of any material for which a levy has been prescribed shall grant access to the inspectors to carry out inspection of their premises.

Confiscation and sealing of premises

11.—(1) Where no exemption has been granted, the Society, authority responsible for collection of levies or Police may confiscate any consignment of material for which levy is prescribed, but has not been paid by the manufacturer or importer, and where it determines necessary, seal up any premises used for the purpose of manufacturing or assembling such materials, or any premises used for the storage of such materials imported into the country pending payment of the prescribed levy.

Offences and Penalty

12. Any person who contravenes these regulations commits an offence and shall be liable on conviction to a fine of K5,000,000 or imprisonment for two years.

FIRST SCHEDULE

Device	*% of the levy on cost price*
1. Audio Cassette	10%
2. Video Cassette	10%
3. Vinyl	10%
4. Mini Disc	10%
5. Hi-MD	10%
6. Compact Disc (CD)	10%
7. Digital Versatile Disc . .	10%

Device	*% of the levy on cost price*
8. I-Pod	10%
9. Modulator	10%
10. MP3 Player	10%
11. Blu-Ray	10%
12. Digital Jukebox	10%
13. USB Flash Disc	10%
14. SIM Card	10%
15. SD Memory Card	10%
16. CD/DVD Copier	5%
17. Cellphone	5%
18. Personal Computer	5%
19. CD Writer	5%
20. Photocopier	5%
21. Printer	5%
22. Scanner	5%
23. Camcorder	5%
24. Digital Camera	5%
25. Computer external hard drive	5%
26. Radio/TV Sets enabling recording	5%
27. Decoders/signal receivers	5%
28. Printing plates	5%
29. Analogue audio recorders	5%
30. Analogue video recorders	5%

The percentage in the Schedule above shall apply in the case of:

(*a*) imported, manufactured, to the totality of cost, insurance and freight (CIF)

(*b*) materials manufactured, produced or assembled in the country

SECOND SCHEDULE

APPLICATION FORM FOR REGISTRATION

Ref. No.....

Name of Importer/Manufacturer.....

Company Registration number.....

Business name .....

Postal Address .....

Physical Address .....

.....

Contact Telephone number ..... Mobile number.....

Email address.....

Type of storage device imported/manufactured.....

Estimated quantities imported/manufactured annually.....

Declared at.....on.....day of..... 20...

.....

Applicant's signature

THIRD SCHEDULE

APPROVAL FOR A REFUND OR EXEMPTION

Name of Importer/Manufacturer.....

Company Registration number.....

Business name .....

Postal Address .....

Physical Address .....

.....

Contact Telephone number ..... Mobile number.....

Email address.....

Type of storage device imported/manufactured.....

Number of storage devices imported/ manufactured.....

Purpose for which the storage device is to be imported/manufactured.....

.....

I/We declare on my/our honour that the information given above is true to the best of my/our knowledge and belief and that any misinformation provided by me/us renders my/our application null and void.

Declared at.....on.....day of..... 20....

.....

Applicant's signature

Application approved: Yes.....No.....

Reason .....

Approval is hereby given to .....

of.....

(address).....

for a refund of MWK.....

.....

Copyright Administrator
(*Signature and Stamp Seal*)

Made this 22nd day of January, 2018.

GOODALL E GONDWE
Minister of Finance, Economic Planning and Development

(FILE REF. NO.HQ/CUL/MIN)