GOVERNMENT NOTICE NO. 12

COPYRIGHT ACT

(CAP. 49:03)

COPYRIGHT (LICENSING OF REPROGRAPHIC REPRODUCTIONS IN COPY SHOPS) REGULATIONS, 2021

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IN EXERCISE of powers conferred by section 119 of the Copyright Act, I, DR. MICHAEL BIZWICK USI, Minister of Tourism, Culture and Wildlife, make the following Regulations—

Citation

1. These Regulations may be cited as the Copyright (Licensing of Reprographic Reproductions In Copy Shops) Regulations, 2021.

Interpretation

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

"author" means a person who creates a work other than an audio visual work;

"authorized person" means a member of the licensee and all persons acting under the authority of the licensee;

"authorized purposes" means all purposes within or in support of the mandate of a copy shop;

"copy" means any reproduction or making available to the public by

telecommunication in any material form whatever, including a digital copy, that is made by or as a consequence of any of the following activities—

(*a*) reproducing by a reprographic process, including reproduction by photocopying;

(*b*) scanning a paper copy to make a digital copy;

(*c*) printing a digital copy;

(*d*) transmission by electronic mail;

(*e*) transmission by facsimile;

(*f*) storage of a digital copy on a local storage device or medium;

(*g*) posting or uploading a digital copy to a secure network or storing a digital copy on a secure network;

(*h*) transmitting a digital copy from a secure network and storing it on a local storage device or medium;

(*i*) projecting an image using a computer or other device;

(*j*) displaying a digital copy on a computer or other device;

(*k*) posting a link or hyperlink to a digital copy; and.

(*l*) hand transcription or drawing (including tracing onto acetate or other media.

"copy shop" means a business premise where reprographic reproduction is taking place;

"copyright protected works" means literary, dramatic, musical and, or artistic works, derivative works and typographic arrangements of works and similar materials otherwise protected under the Act;

"digital copy" means any electronic file of a published work;

"licensee" means all copy shops operating as such, under the Cap. 46:01 Business Licensing Act or applicable Local Government By-Laws;

"licensor" means the Society;

"published work" means work which, with the consent of the author, has been made available to the public in tangible copies in a quantity sufficient to satisfy a reasonable demand for the work;

"repertoire" means published works published in or outside of Malawi by any author or publisher, estate of an author or publisher or other person with a copyright interest in the published works who, by assignment, grant of licence, by appointment as an agent, express or implied, reciprocal agreement or otherwise, has authorized Copyright Society of Malawi to collectively administer reprographic reproduction rights in the said published works; and

"year" means the financial year of the Government.

Application

3. These Regulations shall apply to all businesses that own or operate copy shops in Malawi.

Registration of copy shops

4.—(1) Any person who owns or operates a copy shop shall apply for registration with the Society and include the following information in the application using a prescribed form in the First Schedule hereto—

(*a*) name of copy shop;

(*b*) owner of copy shop;

(*c*) identification of photocopying machine;

(*d*) location of the machines;

(*e*) number of machines; and

(*f*) capacity of each machine.

(2) The Copyright Administrator shall, where satisfied with the application in subregulation (1), and upon the payment of a licence fee, issue a licence to the applicant.

(3) The licence issued pursuant to this regulation shall be valid for one year and be automatically renewed at the end of the year.

(4) The Licensor or licensee may by thirty days' written notice to the other party, notify the other party of an intention not to renew the licence.

Annual fees

5. All owners of copy shops shall pay an annual fee to the Society for reproduction of copyright protected works as prescribed in the Second Schedule hereto.

General conditions

6. Copies of a work shall—

(*a*) only be made from a published work that is lawfully obtained by the authorized person making the copies;

(*b*) not be made as a substitute for a published work that would ordinarily be purchased or commonly available;

(*c*) not be made or used in a manner that would infringe the moral rights of the author;

(*d*) not be used in advertising products or services; and

(*e*) be accurate reproductions of the original published work.

Extent of copying

7.—(1) A licensee, with authority given by the licensor and for authorized purposes only, may—

(*a*) copy up to fifteen per cent (15%) of the published work from a single book or similar publication provided that such limit may be excluded in respect of—

(i) an entire newspaper article or page;

(ii) an entire single short story, play, essay, article or poem from a published work that contains other published works;

(iii) an entire reproduction of an artistic work (including drawings, paintings, prints, photographs, reproduction of works of sculpture, architectural works of art and works of artistic craftsmanship), from a published work that contains other published works; or

(iv) one chapter, provided it is not more than twenty per cent (20%) of a book;

(*b*) copy up to thirty per cent (30%) for a publication that is no longer available commercially or directly from the publisher provided that an effort to contact the publisher has been made; and

(*c*) make a copy to replace any damaged or missing pages of a published work in the licensee's holdings.

Handling of digital copies

8. A licensee shall not, with regard to a digital copy of published work—

(*a*) place that digital copy on any computer or computer network on the publicly accessible internet in such a way as to be made publicly available or accessible otherwise than by a secure network; and

(*b*) in the repertoire, share, email, or otherwise distribute to any persons other than an employee of the copy shop.

Reproduction of works for use by persons with disabilities

9. The reproduction of a published literary, artistic or musical work in a form specifically intended for visually impaired persons or persons with print disabilities who, due to the nature of their disability, are not able to access or enjoy the work in any of the forms, shall be permitted:

Provided that the reproduction and the making available of the copies is not made on a commercial basis and that the copies shall be made available only to such disabled people for which they are intended, and that the reproduction is not made from copies which are made for the same purpose.

Reporting and payments

10.—(1) A licensee shall pay, during each year, an annual fee to the licensor calculated against the number of copy machines being used at the copy shop as prescribed in the Second Schedule hereto—

(2) No later than thirty days before commencement of a new financial year of the licensee, the licensee shall provide to licensor the number of copy machines which shall assist in calculation of the annual fee payable.

(3) The licensor will invoice the licensee and such invoice shall be payable within thirty days of the issue date.

(4) Once payment has been made, the licensor shall issue a licence which the licensee shall display in a prominent and visible place within the copy shop.

(5) The licensor shall pay appropriate remuneration to persons or associations entitled thereto, out of the fees collected under these Regulations, in accordance with its procedures of distribution of royalties.

Interest

11. Any payment not received by the due date prescribed in regulation 10 shall bear interest from that date until the amount is received according to the average commercial bank lending rate.

Appeals

12. A licensee who is aggrieved with any licence condition set by the licensor, which are contrary to these Regulations, may, within fourteen days from the date the condition is set or the decision is made, appeal to the Society Board to review the decision, as the case may be.

13. Any person who contravenes these Regulations commits and offence and shall on conviction be liable to a fine of K5,000,000.00 and imprisonment for two years. Offences and penalties

14. The Society and the Police may seize any equipment or machinery used or used to aid the illegal reproduction of infringing copies contrary to the provisions of these regulations. Seizure of property used in infringement of copyright

15. Anything done by the licensor and the licensee before the commencement of these Regulations in respect of a reprographic rights licensing and which thing is capable of being done under these Regulations shall be deemed to have been validly done under these Regulations. Validity of acts

16. The Society shall pay appropriate remuneration to the person, persons or associations entitled thereto, out of the fees collected under these Regulations, in accordance with its procedures of distribution of royalties Distribution of funds

FIRST SCHEDULE (reg. 4)

APPLICATION FOR LICENCE FOR REPROGRAPHIC REPRODUCTIONS IN COPY SHOPS

I/We.....Proprietor(s)/Manager(s) of..... apply for a licence for Reprographic reproductions for works in which copyright subsists under the copyright Act in our copy shop.

Address.....

Location ..... Telephone No.....

District ..... Email.....

Number of Photocopying Machines per Premise	*Please tick where appropriate*
1. One	
2. Two	
3. More than two	

I/We.....the Proprietor/Manager of the above institution declare that the information given above is true to the best of my/our knowledge and belief.

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

.....

Applicant's signature

FOR OFFICIAL USE ONLY

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

Name of licensing officer.....

Date..... .....

Signature of licensing officer

Return to:
The Copyright Administrator
Copyright Society of Malawi
P.O. Box 30784
Lilongwe 3
Tel: 751 148 Email: cosoma@cosoma.mw

SECOND SCHEDULE (reg. 5)

RATES APPLICABLE TO COPY SHOPS

The rates prescribed hereto shall be applicable by copy shops—

No. of copy machines per copy shop per year	*Rate per Copy machine/Year*
	k *t*
1	50,000 00
2	75,000 00
3+	100,000 00

Made this 23rd of February, 2021.

DR. M. B. USI
Minister of Tourism, Culture and Wildlife

(FILE NO.MHQ/CUL/03/1)