GOVERNMENT NOTICE NO. 15

COPYRIGHT ACT

(CAP. 49:03)

COPYRIGHT (LICENSING OF REPROGRAPHIC REPRODUCTIONS IN EXAMINING INSTITUTIONS) REGULATIONS, 2021

ARRANGEMENT OF REGULATIONS

REGULATION

1. Citation
2. Interpretation
3. Application
4. Licensing
5. General conditions
6. Handling of digital copies
7. Conditions regarding persons with disabilities
8. Licence duration
9. Reporting and payments
10. Interest
11. Surveys
12. Adjustments
13. Appeals
14. Offences and penalties
15. Seizure of property used in infringement of copyright

SCHEDULE

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

Citation

1. These Regulations may be cited as Copyright (Licensing of Reprographic Reproductions in Examining Institutions), Regulations, 2021.

Interpretation

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

"academic year" means the period of the school calendar as directed by the Ministry of Education;

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

"authorized person" means—

(*a*) a student; or

(*b*) a staff member of an examining institution;

"authorized purposes" means all purposes within or in support of the mandate of the educational institution in relation to the permissions granted under these Regulations;

"copy" means to reproduce or make 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 dopy 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;

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

"course of study" means a course or unit of academic, continuing, professional, or vocational study administered or hosted by the educational institution;

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

"examining institution" means any body other than an educational institution administering public examinations in Malawi;

"Licensee" means any Ministry or examining institution licensed pursuant to these Regulations;

"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;

"secure network" means an electronic network, internet or cloud based storage service of the examining institution that is only accessible to employees of the institution and students writing examinations;

"staff member" means, in respect of examining institutions any member of staff of the institution;

"student" means a person engaged in a course of study;

"repertoire" means those 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 license, by appointment as an agent, express or implied, reciprocal agreement or otherwise, has authorized Society 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 public examining institutions in Malawi that reproduce copyright protected works in examination papers.

Licensing

4.—(1) An examination institution shall submit an application to the Society in the prescribed form in the Schedule hereto.

(2) The Copyright Administrator shall issue a licence if satisfied that the application submitted pursuant to subregulation (1) meets the prescribed requirements.

(3) The licensee and licensor shall sign an agreement which shall stipulate all the rights granted including all the other conditions of the licence relating to reprographic reproduction activities of the licensee throughout the year.

General conditions

5.—(1) Copies of a work shall—

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

(*b*) be made or reproduced as a substitute for a published work that would ordinarily be purchased or is commonly available;

(*c*) not be made, reproduced 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.

(2) An examining institution may make copies, with the authority of the authorized person, within or outside the institution.

Handling of digital copies

6. Digital copies of a published work in the repertoire shall not be—

(*a*) be placed on any computer or computer network on publicly accessible internet in such a way as to be made publicly available or accessible otherwise than by a secure network; or

(*b*) shared, emailed, or otherwise distributed to any persons other than a member of staff of the examining institution and students writing examinations, where applicable.

Conditions regarding persons with disabilities

7. 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.

Licence duration

8.—(1) A licence issued pursuant to these Regulations shall be valid for one year.

(2) The licensee shall be required to annually obtain a Copyright licence from the Society.

(3) The agreement made under regulation 4, shall automatically renew on a year to year basis unless terminated by either party upon thirty days written notice to the other party.

Reporting and payments

9.—(1) An examining institution shall pay, during each year, an annual royalty fee to the Society which shall be the sum of multiplying the number of exam copies per subject by K50.00.

(2) Examining institutions shall submit to the Society, within ten days after finalization of registration of examination candidates, information on the number of candidates registered for purposes of calculating advance payable fees by the examining institution.

(3) Once payment for fees in subregulation (2) has been made, the Society shall issue a licence to the examining institution which the licensee shall publicly display in a prominent and visible position at the institution.

(4) An examination institution shall submit to the Society, within thirty days after finalization of examinations, information on the number of exam papers reproduced per subject including the name of the author and the source from which the reproduction was made and accompanied by one copy of the examination paper for calculation of final payment of fees.

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

Interest

10. Any payment not received by the due date shall bear interest from the date on which the payment was due until the amount is received, according to the commercial bank lending rate.

Surveys

11.—(1) The Licensor, may at intervals and in consultation with the licensee, conduct a bibliographic and volume survey of the uses permitted under regulation 4.

(2) The Licensor shall give the licensee at least one month written notice of intention to conduct a survey.

(3) Upon request, the licensee shall participate in the survey and shall ensure that all authorized persons cooperate fully with the requirements of the survey.

(4) The Licensee shall grant the Licensor, on reasonable notice, right of access throughout the institutions premises, at any reasonable times, to administer the survey and such access may be subject to reasonable

arrangement for supervision as required by the institution to ensure the security of its premises, including its computer systems and networks, and to maintain the confidentiality of personal or other confidential data.

Adjustments

12. Any adjustments in the amount of licence fees payable including overpayments, as a result of the discovery of an error or otherwise, shall be applied to the next invoice issued by the licensor to the licensee.

Appeals

13. A licensee who is aggrieved with any condition endorsed by the Society may within fourteen days from the date the condition is endorsed or the decision is made, appeal to the Board of the Society to review the condition or decision, as the case may be.

Offences and penalties

14. Any person who contravenes these Regulations commits an offence and shall be liable to a fine of K5,000,000.00 and imprisonment for two years.

Seizure of property used in infringement of copyright

15. The Society and the Police including other security agents, may seize any equipment or machinery used or used to aid the illegal reproduction of infringing copies contrary to the provisions of these regulations.

SCHEDULE (reg. 4)

APPLICATION FOR LICENCE FOR REPROGRAPHIC REPRODUCTIONS IN EXAMINING INSTITUTIONS

I/We.....Manager(s) of ..... apply for Reprographic reproductions for copyright protected works in examination papers in our institution.

Address.....

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

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

Name of Examination Subject	*Total Number of Copies Reproduced*
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12	

Name of Examination Subject	*Total Number of Copies Reproduced.*
13.	
14.	
15.	

If more than 15 subjects, use separate sheet.

I/We..... the 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

Made this 23rd of February, 2021.

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

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