GOVERNMENT NOTICE NO. 17

COPYRIGHT ACT

(CAP. 49:03)

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

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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 Educational Institutions), Regulations, 2021.

Interpretation

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

"academic year" means the twelve month period of the school calendar as directed by the Minister responsible for education;

"authorized person" means—

(*a*) a student; or

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

"authorized purposes" means all purposes within or in support of the mandate of an education institution related to a licence issued under these Regulations;

"copy" means to reproduce or make available to the public by telecommunication in any material form whatever, including a digital copy as a result of sequence 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;

"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;

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

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

"education institution" means an institution located in Malawi that provides secondary, post-secondary, continuing, professional or vocational education or training including open, distant learning, universities and colleges;

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

"Licensee" means any Ministry, school board, public or private educational, examining institution or other entity licensed pursuant to these Regulations;

"licensor" means the Society;

"private educational institution" means an institution providing education that is not a public education Institution;

"public education institution" means any institution providing education which is operated under the authority of the Government or its agents including being fully or partially funded by the Government;

"school board" means a school board of an education institution operating under the authority of the Minister responsible for education;

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

"staff member" means—

(*a*) in respect of educational institutions a teacher, tutor or lecturer, an associate or full professor, an instructor or any other person in an essential comparable to those listed above; and

(*b*) in respect of examining institutions means any member of staff of the institution;

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

"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 licence, by appointment as an agent, express or implied, reciprocal agreement or otherwise, has authorized the Society to collectively administer reprographic reproduction rights in the said published works.

Application

3. These Regulations shall apply to—

(*a*) licensees under these Regulations; and

(*b*) all persons acting under the authority of the licensees in subregulation (*a*) to make and distribute copies of copyright protected works in the repertoire, for any not - for - profit purposes and in line with the mandate of the institution including—

(i) educational which includes teaching, learning, testing and examination activities;

(ii) production of teacher implementation documents, correspondence and distance learning courses and similar activities; and

(iii) making of copies of published works for inclusion in tests or examinations or in distance education materials.

Licensing

4.—(1) A person who intends to reproduce copyright protected works shall submit to the Society, an application form prescribed 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.

Duration of right

5. The right granted under these Regulations shall be valid only for the purposes in respect of which it has been issued and for the period specified thereon.

Extent of copying

6. An authorized person, may for authorized purposes only—

(*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; and

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

(*b*) make a copy to be used to project, display or interact with an image for presentation; and

(*c*) 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.

General conditions

7.—(1) 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 published work that would ordinarily be purchased or is 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.

(2) Copying with the authority of the authorized person, may be done within or outside the institution premises.

Handling of digital copies

8. Digital copies of published works in the repertoire shall not be—

(*a*) placed on any computer or computer network on a 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 an employee of the Ministry or staff of the education institution.

Conditions regarding 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.

Licence duration

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

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

Reporting and payments

11.—(1) An education institution shall pay, during each academic year, an annual royalty fee to Society calculated as follows—

(*a*) secondary or vocational education or training including open and distant learning calculated by the sum of multiplying the number of students at the education institution by K250.00 and number of staff members by K410.00 but subject to a minimum annual fee of K40,000.00; and

(*b*) post–secondary institutions, continuing professional development institutions including vocational education institutions, universities and colleges by the sum of multiplying the number of students at the educational institution by K300.00 and number of staff members by K520.00 but subject to a minimum annual fee of K300,000.00.

(2) No later than sixty days after opening of the first term of the academic year, an education institution shall provide the Society with information on enrolment figures of the educational institution and number of members of staff which shall assist in calculation of the payable annual fee.

(3) Once payment has been made, the Society shall, within thirty days, issue a licence to the education institution which the institution will have to display in a prominent and visible position within the institution.

(4) The licensor 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

Interest

12. Any payment not received by the due date shall bear interest from that date until the amount is received according to the commercial bank lending interest rate.

Surveys

13.—(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 a licensee a notice of at least one month to the licensee before conducting the 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 access to 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

14. 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 Society to a licensee.

Appeals

15. 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 to review the condition or decision, as the case may be.

Offences and penalties

16. 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 year

Seizure of property used in infringement of copyright

17. The Society and the Police including 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.

Validity of acts

18. Anything done by the Society and licensees 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 or pursuant to these Regulations.

Transition period

19. All licencees or persons who intend to reproduce published works under these Regulations shall comply with the requirements of these Regulations within six months from the effective date of these Regulations.

SCHEDULE (reg.4)

APPLICATION FOR LICENCE FOR REPROGRAPHIC REPRODUCTIONS IN EDUCATIONAL INSTITUTIONS

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

Address.....

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

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

Establishment *Total number of students per academic year*

1. Secondary School
2. Highschool
3. Vocational Training Centre
4. College
5. University

Please tick where appropriate

I/We..... the Proprietor/Headteacher/Principal 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)