



REGULATORS' HANDBOOK

FOR FILM PRACTITIONERS IN KENYA

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PREFACE

The ever-growing Kenyan film industry has a rich potential for cultural and economic impact. This has necessitated the development of a comprehensive regulators' handbook to streamline and enhance its operational framework. This provides a unified approach to regulatory compliance, ensuring that all aspects of the industry are governed under a coherent set of rules. A well-crafted handbook addresses several critical areas, ensuring the industry's growth is both sustainable and compliant with existing laws and regulations.

The Films and Stage Plays Act thoroughly integrated into the Handbook, outlines the framework for licensing, content regulation, and the operational standards expected of film production. Though the Films and Stage Plays Act is the foundational law governing the industry, the regulatory framework in the industry is regulated through various statutes.

The Handbook offers a detailed guidance on copyright laws, a crucial aspect for protecting the intellectual property of filmmakers. Given the increasing production of original content, clear instructions on copyright registration, infringement procedures, and the handling of royalties are essential to safeguard film practitioners' rights and incentivize innovation.

Further, the Handbook includes robust guidelines on taxation, outlining the obligations for film producers and distributors. This encompasses the distinctions of tax incentives and rebates available to the industry, as well as clear instructions on value-added tax (VAT) and corporate tax obligations, facilitating transparency and compliance.

Immigration laws also play a vital role, particularly for foreign talent and crew involved in film production. A dedicated section on visa requirements, work permits, and their related legal requirements will streamline and ensure engagement processes for international professionals and ensure that all foreign personnel adhere to Kenyan immigration laws.

Data protection is another crucial area, as the industry has continued to increasingly rely on digital platforms for distribution and marketing. The Handbook details how filmmakers can comply with the Data Protection Act, including how to handle personal data of actors, crew, and audiences, thus preventing data breaches and building trust with stakeholders.

Additionally, the legal framework concerning filming in game parks and sanctuaries is paramount, given Kenya's rich biodiversity and tourism sector. The Handbook provides clear procedures for obtaining permits, adhering to conservation guidelines, and minimizing environmental impact, thereby balancing creative pursuits with ecological responsibility.

The use of drones in filmmaking is another area with specific and stringent legal requirements, as drones offer unique perspectives but also pose potential risks to privacy and safety. Guidelines on drone operation, including required certifications, no-fly zones, and operational protocols, are captured in this Handbook to ensure that filmmakers can utilize this technology effectively while adhering to legal requirements.

By addressing these areas comprehensively, the Regulators Handbook not only promotes a well-regulated film industry in Kenya but also fosters an environment of creativity and economic growth, making the country a more attractive destination for filmmakers and investors alike.

It is our hope that this Handbook answers many of the frequently asked questions by our stakeholders in the film industry as well as creating a facilitative regulatory environment for ease of doing business.

We appreciate the Government agencies that worked closely with the Board to ensure the success of this Handbook. We also express our sincere appreciation to the Sports, Arts, and Social Development Fund for their significant contribution to the development of this Handbook.

Thank you.



CPA Paskal M. Opiyo
Ag. Chief Executive Officer
Kenya Film Classification Board



Definitions

“admitted” means admitted whether on payment or gratuitously;

“child” means an individual who has not attained the age of eighteen years;

“Distribution” means selling, supplying or letting for hire, offering or agreeing to sell, supply or let for hire or causing or permitting to be sold, supplied to or hired within Kenya;

“exhibit” means give or make, or cause or permit to be given or made, or take part or assist in the giving or making of any exhibition;

“Exhibition” means the display of a film to the public or a section of the public, whether or not a charge is made for admission;

“exhibition” means the projection of a film or other optical effect by means of a cinematograph or similar apparatus

“film” means a cinematographic film, recorded video cassette film, recorded video discs, any recorded audiovisual medium, and includes any commentary (wherever spoken and whether the person speaking appears in the film or not), and any music or other sound effect, associated with the film, and any part of a film;

“Film Agent” means a duly authorised representative of a foreign film practitioner or film enterprise registered by Kenya Film Classification Board;

“Film Distributor” means any person who sells, supplies, or lets for hire, offering or agreeing to sell, supply or let for hire or cause or permits film to be sold, supplied or hired within Kenya

“Film Enterprise” means a body corporate carrying on the business of film by whatever name

“Film Exhibitor” means, any person who displays a film in public or a section of the public, whether or not a charge is made for admission;

“Film Practitioner” means, any person who practices their trade in film including but not limited to producers, writers, directors, cinematographers, editors, actors, technical crew, film exhibitors, film marketers and distributors;

“Foreign Filmmaker” means a person, other than a Kenyan citizen, who carries on trade as a producer, proprietor, promoter, photographer or any other person engaged in the making of a film in Kenya.

“Local Filmmaker” means a person of Kenyan citizenship who carries on trade as a producer, proprietor, promoter, photographer or any other person engaged in the making of a film in Kenya.

“making of a film” means the acts of photographing, performing or otherwise taking part in or arranging any scenes or episodes for the purpose of the production of a film and includes the recording of a film on a video cassette, video disc or other audiovisual medium;

“poster” means any poster or other advertisement advertising a film or exhibition

“public exhibition” means an exhibition to which the public are admitted, whether on payment or gratuitously



CHAPTER 1

BACKGROUND

1.1 Introduction

The Kenya Film Classification Board (KFCB) has collaborated with other key agencies that play a role in the regulation of the film industry in the country to develop a Regulators Handbook. The Handbook consolidates simplified regulatory information for film practitioners who include filmmakers, exhibitors, distributors and film agents in Kenya. It specifically provides information on licenses, permits by the film industry regulatory agencies as well as their contacts.

This guide is designed to support and inform film practitioners obtain critical information in the industry, ensuring that film creation, distribution, possession, and exhibition meets regulatory standards.

1.2 Purpose of the Handbook

This Handbook outlines clear regulations and guidelines for the film industry, ensuring that film practitioners are informed of the legal and procedural requirements. It aims to encourage compliance with national and industry-specific laws, protect public interests, maintain content standards, safeguard intellectual property rights, and promote professionalism within the field.

1.3 Importance of Regulatory Compliance for Film Practitioners

Regulation is important as it ensures:

- i. That content conforms to cultures, national values and aspirations of the country;
- ii. Protection of children against exposure to inappropriate content;
- iii. Protection of personal data, enforcing compliance with data privacy laws;
- iv. Regulation of drone-use in film production for airspace safety;
- v. Facilitation of foreign filmmakers to obtain relevant permits and visas;
- vi. Protection of wildlife areas during filmmaking; and
- vii. Protection of intellectual property rights.
- viii. That the Government takes stock of the impact of the film industry on the economy;





CHAPTER 2

ROLE OF KEY REGULATORY BODIES



2.1 Kenya Film Classification Board

2.1.1 Mandate and Functions

The Films and Stage Plays Act Cap 222 of the Laws of Kenya establishes the Kenya Film Classification Board (KFCB) as a State Corporation. The KFCB is mandated to regulate the creation, broadcasting, possession, distribution and exhibition of films in the country which is executed by undertaking the following functions:

- i. Examining films for purposes of classification;
- ii. Imposing age restriction on viewership;
- iii. Registering and licensing film agents, local and international filmmakers, film distributors and exhibitors;
- iv. Giving consumer advice, having due regard to the protection of women and children against sexual exploitation or degradation; and
- v. Prescribing guidelines and procedures on film regulation in the country

The Act further provides for exemptions from the process of classification of educational documentaries which are approved by the then Kenya Institute of Education (now referred to as Kenya Institute of Curriculum Development) and Films restricted for use in the medical profession and all government agencies/ entities are exempted from the provisions of the Act.

In the execution of its mandate KFCB is also guided by the Constitution of Kenya, Kenya Information and Communications Act, Cap 411A, the Penal Code, Cap 63, Sexual Offences Act, 2006, Children Act, 2022, Alcoholic Drinks Control Act, 2010, National Cohesion and Integration Act, 2008, Computer Misuse and Cyber-Crimes Act, 2018, Betting, Lotteries and Gaming Act, Cap 131 and Tobacco Control Act, 2007.

2.1.2 Registration of Local Filmmakers

The following are the guidelines for the registration of local filmmakers:

2.1.2.1 How to be Identified as a Local Filmmaker

A local filmmaker must register with KFCB and be issued with an annual Certificate of Registration.

2.1.2.2 Who Qualifies to Register as a Local Filmmaker

A locally registered or incorporated entity.

2.1.2.3 Requirements for Registration of a Local Filmmaker

1. Certificate of Business Registration or Incorporation;
2. CR12/CR13;
3. KRA PIN Certificate;
4. Company Profile; and
5. Copy of National ID Card/Valid Passport for company director(s) and staff.

2.1.2.4 How to Register as a Local Filmmaker

Visit <https://tms.kfcb.go.ke/>, create an account and complete the application process.

2.1.2.5 Registration Timeline

A Certificate of Registration for a Local Filmmaker is processed within one (1) working day upon receipt of a complete application.

2.1.2.6 Applicable Fees

Registration as a local filmmaker is free of charge.

Note: Applications may be submitted at any time but will only be processed during office hours - Monday to Friday, between 8:00 am and 5:00 pm.



2.1.3 Registration of Film Agents

2.1.3.1 Role of a Film Agent

Film Agents facilitate foreign filmmakers in the application of filming licences. They also ensure compliance with filming regulations and other Kenyan laws during the filming period

2.1.3.2 Who Qualifies to Register as a Film Agent

A locally registered or incorporated entity.

2.1.3.3 Requirements for Registration of a Film Agent

1. Certificate of Business Registration or Incorporation;
2. CR12/CR13;
3. Valid Tax Compliance Certificate;
4. Website (url);
5. Company Profile;
6. Copies of National ID Cards/Valid Passports for company directors and Technical Staff; and
7. Professional Certificate in filmmaking or other aspects of filmmaking

2.1.3.4 How to Register as a Film Agent

Visit <https://tms.kfcb.go.ke/>, create an account and complete the application process.

2.1.3.5 Registration Timeline

A Certificate of Registration for a Film Agent is processed within one (1) working day upon receipt of a complete application.

Note: Applications may be submitted at any time but will only be processed during office hours - Monday to Friday, between 8:00 am and 5:00 pm

2.1.3.6 Applicable Fees

The annual fee for registering as a Film Agent is Kshs. 12,000.

2.1.4 Filming in Kenya

The following are the guidelines for filming in Kenya:

2.1.4.1 What is Required to Film in Kenya

All filmmakers are required to obtain a Filming Licence from KFCB prior to filming. A filmmaker shall also be required to obtain clearance or consent from other public or private entities for filming.



2.1.4.2 Requirements for a Filming Licence

No.	Subject Material	Application Requirements
i.	Feature Film, Short film, TV Series, Web Series and Docuseries (per season)	<ol style="list-style-type: none"> 1. Detailed synopsis 2. Screenplay 3. Shooting schedule 4. Copy of National ID Card/Valid Passport for Producer, Director and Director of Photography.
ii.	Documentary, feature, corporate video, music video, testimonial, travelogue, infomercial	<ol style="list-style-type: none"> 1. A Synopsis, Screenplay, Treatment, Script Outline, Running Order or Storyboard 2. Shooting schedule 3. Copy of National ID Card/Valid Passport for Producer, Director and Director of Photography.
iii.	Advertisement/ Commercial	<ol style="list-style-type: none"> 1. Treatment 2. Shooting schedule 3. Copy of National ID Card/Valid Passport for Producer, Director and Director of Photography.

2.1.4.3 How to Apply for a Filming Licence

Visit <https://tms.kfcb.go.ke/>, create an account and complete the application process.

Note: Filmmakers planning to use drones for aerial filming must specify in their filming license application whether the drone will be used during the day, at night, or both to facilitate approvals from other government agencies like KCAA and KWS.

2.1.4.4 Licensing Timeline

No.	Subject Material	Timeline
i.	Feature Film, TV Series, Web Series and Docuseries (per season)	Two (2) working days
ii.	Short Film, Documentary, feature, corporate video, music video, testimonial, travelogue, infomercial, Advertisement/ Commercial	One (1) working day

Note: Applications may be submitted at any time but can only be processed during office hours - Monday to Friday, between 8:00 am and 5:00 am.

2.1.4.5 Applicable Fees

No.	Subject Material	Fees (Kshs.) per Title
i.	Documentaries, advertisement, short film	5,000
ii.	Feature film, TV Series, docuseries, web series	15,000 per season
iii.	Filming fees per day	1,000

Formulae for computing license fee

Cost of License = Subject Material + (No. of Filming Day (s) * 1,000)

For Instance: Company X wishes to produce a music video for an artist. The music video will be filmed over a period of three (3) working days. What is the cost license?

Cost of License = 5,000 + (3*1,000) = 8,000

2.1.5 Classification of Films and Film Posters

2.1.5.1 Classification of Films

Film classification is a process of reviewing a film to make a determination to either allow the film for public distribution and exhibition, restriction to people of certain ages or prohibit for public distribution and exhibition.

2.1.5.2 Why Submit Film for Classification

- To assess and determine the age-appropriateness of the film for the public prior to distribution or exhibition.
- To empower consumers, in particular parents and caregivers, to make informed viewing choices.
- To reach wider audiences through multiple platforms that require classified films

2.1.5.3 Film Classification Guidelines

This is the tool prescribed by KFCB to classify films. The Guidelines consist of six thematic areas with their classifiable elements as follows:

- Sex, obscenity and nudity;
- Crime, violence and imitable behaviour

- c) Occult and horror;
- d) Drugs, alcohol and other related harmful substances;
- e) Religion and community; and
- f) Propaganda for war, hate speech and incitement.

The Guidelines further prescribe the following considerations while making classification decisions:

- a. Overall theme of the film;
- b. The context in which thematic area and elements are presented in the film;
- c. The tone and the mood of film;
- d. The intensity of elements observed in the film;
- e. The frequency of elements in the film; and
- f. The impact of the film on the audience.

2.1.5.4 Film Classification Ratings

There are four classification ratings as follows:



GE (General Exhibition): Films in this category are suitable for general family viewing. The category is suitable for all ages as it contains no content considered harmful or disturbing even to children.



PG (Parental Guidance): Films in this category may contain scenes that may upset children under the age of 10. Parental Guidance is advised. This is an advisory category that warns parents that the content might confuse or upset children who consume it alone. While the content may be suitable for children, parents are advised to monitor the content.



16 (Unsuitable for persons under age of 16): Films in this category may contain scenes unsuitable for persons under the age of 16. It is a legally restrictive category and no person under the age of 16 years is allowed to consume. Themes may be adult and results are not necessarily positive.



18 (Adults Only): Films in this category may contain scenes suitable for adults only. It is a legally restrictive category and no person under the age of 18 years is allowed to consume. Themes may be adult and results are not necessarily positive.

Restricted/Banned: Films in this category may contain materials that erode the moral fabric of society undermine national interest and/or stability or create disharmony among various racial and religious groups will not be allowed for commercial screening.

2.1.5.5 Posters that Are Classified

KFCB classifies posters that are related to films.

2.1.5.6 How Posters are Rated

Film posters are rated as either:

- a) Approved for public exhibition; or
- b) Not approved for public exhibition

2.1.5.7 How to Apply for Classification of a Film/Poster

- a) Visit <https://tms:kfcb.go.ke/>, create an account and complete the application process
- b) Submit the completed application form and the film or poster to fexamination@kfcb.go.ke.
- c) Pay the fees as determined.

2.1.5.8 Classification Timelines

A Certificate of Approval for a film title is processed within one (1) working day upon receipt of a complete application.

A title shall mean a full-length film, an episode in a series, a TV programme or a commercial/ advertisement.

Note: Applications may be submitted at any time but will only be processed during office hours - Monday to Friday, between 8:00 am and 5:00 pm.

2.1.5.9 Applicable Fees

The table below shows a schedule of classification fees

NO	Category	Fees (Kshs.)
1	Films	100 per minute
2	Posters and trailers	1000
3	Commercial	1000

2.1.5.10 Notification of Non-approval

Where KFCB declines to approve a film or a poster, it shall notify the applicant in writing with reasons as soon as is practicable.

2.1.5.11 Validity of a Certificate of Approval

A Certificate of Approval is valid for a period of five years from its date of issue.

2.1.6 Licensing of Film Distributors and Exhibitors in Kenya

Any person who sells, supplies, displays or lets for hire any film to the public is required to obtain an annual license from KFCB.

2.1.6.2 Categories of Film Distributors/ Exhibitors

Film distributors and exhibitors are categorized as follows:

Cinemas: Entities where films are shown to the public including virtual reality hubs.

Video Shows: Entities offering film exhibition services such as video game hubs, public service vehicle, video exhibition, bars, restaurants, public screening.

Film Libraries: Entities that maintain, hire or sell films for public or private viewing including film vendors and movie shops.

2.1.6.3 Requirements for a Film Exhibition/ Distribution Licence

To obtain a film distributor/ exhibitor license, KFCB licenses either individuals or companies.

The requirement for an individual film distributor/ exhibitor license:

1. National ID of the business operator/owner

The requirement for a company film distributor/ exhibitor license:

1. Certificate of Incorporation/Registration of Business
2. KRA Pin Certificate

2.1.6.4 How to Apply for a Film Exhibition/ Distribution Licence

Visit <https://tms.kfcb.go.ke/>, create an account and complete the application process, or visit the nearest KFCB office.

2.1.6.5 Applicable Licensing Fees

No.	Category of Business	Fees/Charges (Kshs.)
i.	Cinema Theatres/ Outdoor Screening/ Mobile Cinema	10,000 per screen
ii.	Virtual Reality	10,000
iii.	Video Shows/PSVs/ Video Game Console operators & Other Public Exhibitions (Bars, etc)	2,000
iv.	Film Vendors/Distributors (Movie shops)	3,000
v.	Classification Labels	10 per sticker (minimum 200 stickers)

2.1.6.6 Registration Timeline

A Film Distribution and Exhibition Licence is processed within one (1) working day upon receipt of a complete application.

Note: Applications may be submitted at any time but will be processed during office hours - Monday to Friday, between 8:00 am and 5:00 pm.

2.1.6.7 Films that are Prohibited from Distribution/ Exhibition

The following films must not be distributed or exhibited to the public:

- i. Unclassified films; and
- ii. Films restricted by KFCB

2.1.7 How to Appeal Decisions of KFCB

Anyone who is aggrieved by the decision of the KFCB can appeal to Cabinet Secretary as prescribed by Section 29 of Films and Stage Plays Act Cap 222.



2.2 Kenya Civil Aviation Authority

2.2.1 Mandate and functions

Kenya Civil Aviation Authority (KCAA) is established under the Civil Aviation (Amendment) Act, 2002 with the primary functions towards; Regulation and oversight of Aviation Safety & Security; Economic regulation of Air Services and development of Civil Aviation; Provision of Air Navigation Services, and Training of Aviation personnel.

2.2.1 Regulation of Unmanned Aircraft Systems (UAS) (Drones)

Unmanned Aircraft System (UAS) also known as “drone” is an aircraft and its associated systems which is operated remotely. The use of drones in the country is governed by the Civil Aviation (Unmanned Aircraft Systems) Regulations, 2020. The regulations provide guidelines and requirements for the registration and operation of drones for the different uses including filmmaking and aerial photography.

The use of drones in the Kenyan airspace requires that person/company must have the required registration by the Kenya Civil Aviation Authority or registered by any international authority recognised by the Kenya Civil Authority.

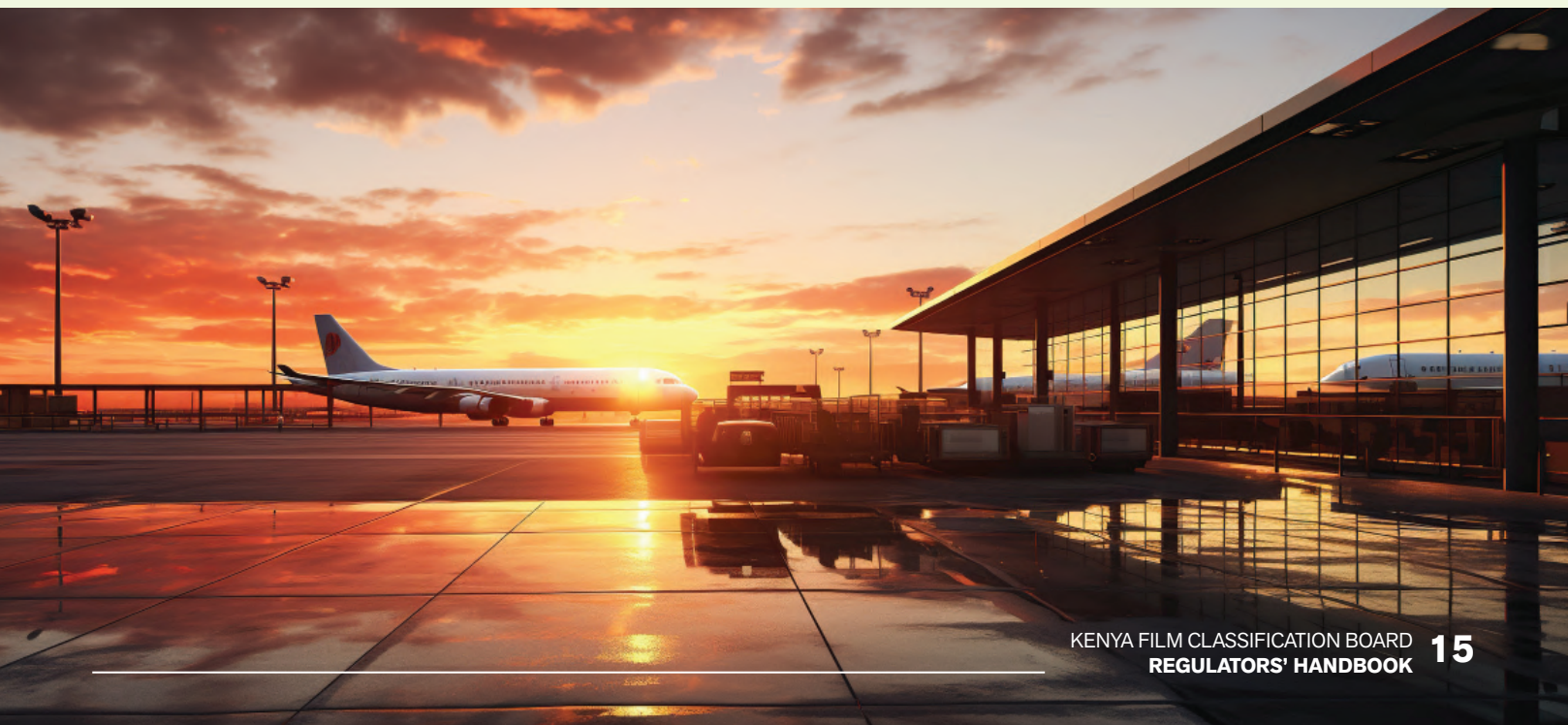
2.2.2 Importation, Registration and Operation of Drones in Kenya

Drones may be imported or purchased from an authorized local reseller.

2.0.1.1 Importation of an Unmanned Aircraft System (Drone)

Anyone who intends to import a drone, must first seek approval from the Kenya Civil Aviation Authority. This authority is given in the form of an importation permit. The requirements for those importing drone(s) depend on whether they are individual or a body corporate.

- i. The first step is to create an account with the Kenya Civil Aviation Authority in the following link: KCAA RPAS Portal. Once the account is activated the applicant will proceed to lodge their application.



Requirements for Individuals:

- i. A Valid Tax Compliance Certificate from Kenya Revenue Authority (KRA);
- ii. KRA PIN;
- iii. ID or Passport; and
- iv. Valid police clearance, not older than 12 months.

Requirements for Companies:

- i. Certificate of Incorporation;
- ii. A Valid Tax Compliance Certificate from Kenya Revenue Authority (KRA);
- iii. KRA PIN;
- iv. CR12; and
- v. Valid police clearance of management personnel in the CR12, not older than 12 months.

Note: The process of creating an account entails a rigorous vetting process by the Government multi-agencies thus will take time before an approval has been granted by KCAA. The process takes a minimum of four (4) weeks due to vetting process.

- ii. Once an account is successfully created, the applicant proceeds with the application of the importation permit. It is important that at this point the applicant knows the technical specifications of the drone to be imported. The application portal contains different models to pick from.
- iii. The KCAA will grant an approval to import the drone once satisfied with the application and issues an import permit to the applicant.
- iv. Upon receipt of the import permit, the applicant proceeds to import the drone. Once complete, the applicant notifies the KCAA the expected date of arrival and the port of entry.
- v. Once the drone arrives into the country, KCAA verifies the imported items in accordance with the specifications provided in the application form. On verification and confirmation, the drone is released to customs for clearance. Once cleared with customs the applicant assumes custody of the drone.

2.0.1.2 Registration of an Unmanned Aircraft System (Drone)

Once the Unmanned Aircraft System is in custody of the applicant, they are required to register it with KCAA. This is done on the KCAA RPAS Portal using the existing account created during importation.

- a) Once logged in, the applicant lodges an application for the registration of the drone using its serial number.
- b) Upon successful application the KCAA grants an approval and issues a registration certificate for the drone.

Note: It is important to note that the assigned registration MUST be displayed on the drone.

2.0.1.3 Operation of an Unmanned Aircraft System (Drone)

Once the drone has been registered, there is one more step required before anyone can start using it. This is acquiring a daily operational authority to fly the drone for the intended use.

The Unmanned Aircraft Systems(drone) use is categorized into either Commercial or Private/Recreational. Each category has requirements that must be met when applying for the daily operational authority from the KCAA.

2.0.1.3.1 Commercial Drone Operation by Local Operators Kenyan Citizens/Residents)

The following are the requirements for commercial drone operation:

- i. A drone that is registered with the KCAA.
- ii. A valid Remote Pilot License (RPL) or certificate. This is for the trained personnel who will operate the drone. The KCAA website has a list of accredited entities for the purpose of training and certifying UAS pilots.
- i. Remote Aircraft-operator Certificate (ROC). An entity can apply for a Remote Aircraft operator Certificate or use an already registered entity listed on the KCAA website.
- ii. Third-party insurance for the drone
- iii. Letter of No Objection for the areas where the drone will operate. This is important especially for private areas however the general public in the area of operation needs to be informed of the activities.

- iv. Special authorization from KCAA is required to operate in restricted areas, including airports, government buildings and military zones.

2.0.1.3.2 Recreational/ Private Drone Operation by Local Operators (Kenyan Citizens/Residents)

The following are the requirements for recreational drone operation:

- iii. A drone that is registered with the KCAA.
- iv. A valid Remote Pilot License (RPL) or certificate. This is for the trained personnel who will operate the drone. The KCAA website has a list of accredited entities for the purpose of training and certifying UAS pilots.
- v. Third-party insurance for the drone
- vi. Letter of No Objection for the areas where the drone will operate.

- vii. Special authorization from KCAA is required to operate in restricted areas, including airports, government buildings and military zones.

2.0.1.3.3 Commercial/ Recreational Drone Operation by Foreign Operators (Tourists/ Foreigners)

- i. Foreigners must be facilitated by an approved ROC (Remote Operator Certificate) holder listed on the KCAA website. Facilitation charges are determined by the respective ROC holders.
- ii. The drone must be registered with KCAA or an international organization recognized by KCAA.
- iii. Third-party insurance for the drone.
- iv. Letter of No Objection for areas of jurisdiction.
- v. Application for Operation



2.0.1.4 Applicable Fees

UAS IMPORT & REGISTRATION	
Issuance of Import Permit	3,000
Registration	3,000
Certificate of Deregistration or Cancellation	2,000
Copy of the UAS Register	3,000
Change of ownership	2,500
Amendment of a certificate of registration	2,000
Issuance of temporary permit	20,000
Remote Air Operator Certificate (ROC)	
Initial issue	80,000
Renewal of ROC	50,000
Amendments of ROC	5,000
Addition of UAS to the ROC	2,000
Inclusion of new UAS Type	10,000
Approval of manuals	5,000
LICENSING	
Issue of RPL	4,000
Renewal of RPL	2,000
Instructor rating for RPL	3,000



2.3 Kenya Wildlife Service

2.3.1 Mandate and Functions

Kenya Wildlife Service (KWS) is a state corporation under the Ministry of Tourism and Wildlife established by an Act of Parliament, the Wildlife Conservation and Management Act, 2013 to conserve and manage Kenya's wildlife and to enforce related laws and regulations.

2.3.2 Authority for Filming and Photography in National Parks

Filming in National Parks and National Reserves is guided by the Films and Stage Plays Act, 222 and the Wildlife Conservation and Management Act, 2013. Therefore, to film in National Parks and National Reserves, filmmakers must obtain a Filming Licence from the KFCB and an Authority for Filming and Photography in National Parks from the KWS. Approval for Authority to Film or Photograph in National Parks MUST be granted prior to the actual photography.

2.3.3 Categories of Filming and Photography

2.3.3.1 Standard Filming Requests

Standard filming requests generally refer to typical, routine requests that adhere to common practices and procedures within a production environment. These requests are usually straightforward and align with usual filming operations.

2.3.3.1.1 Filming Guidelines for Standard Requests

- i. Applications for a filming/photography authority shall be made through the E-citizen portal or this link kws.ecitizen.go.ke/services/1/apply/7
- ii. All applicants for filming in Parks and Reserves shall produce a filming permit from the Kenya Film Classification Board.
- iii. Applications for filming shall be made through e citizen and shall be accompanied by a **synopsis**.
- iv. Processing of standard requests for filming/ photography applications will take **three** working days where all conditions have been met.
- v. The filming fees **do not** include camping & park entrance fees or any service provided by the park management.
- vi. All filming fees shall be **paid upfront** upon approval.
- vii. Upon approval, the Director General shall subject the film maker to any conditions deemed necessary for better management of the film.
- viii. All film producers shall **report to the respective Park Warden** before filming and abide by all Park regulations and rules.

- ix. Standard approved filming applications shall be subjected to filming fees as follows:

Service	Fee (Kshs)
1 - 5 crew member	8,000 per week or part thereof
6 - 10 crew member	12,000 per week or part thereof
11 and above crew member	20,000 per week or part thereof
eCitizen Access Fee	50

Where authorized filming is anticipated to have a significant negative impact on the environment, the applicant shall **pay 25% of the total chargeable fees** (park entry, camping, filming and charges for services provided by the Park management) as environment restoration fees.

2.3.3.2 Special Filming Requests

Special filming requests involve unique or non-standard requirements that necessitate additional planning, resources, or permissions. These requests often require more coordination and may involve factors outside of regular filming practices. Such requests may require the use of specialized equipment such as Unmanned aircraft Systems, Underwater unmanned systems or driving offroad.

2.3.3.2.1 Filming Guidelines for Special Requests

The general standard requirements stated above for filming/ photography in KWS-managed National Parks and National Reserves shall apply. In addition, where the special needs are associated with **a research**, requisite approvals under the applicable national legislation shall be submitted.

The following are specific additional requirements for Special Requests:

- a. Request for off-road driving to film or photograph

Filmmakers/ photographers wishing to drive off-road for filming or photography will **submit a separate letter of request** to the **Directorate of Wildlife & Community Service** with **clear justification(s)** for the request. Such requests shall be handled **off the eCitizen portal**. The letter is taken to the attention of **Deputy Director, Parks and Reserves** for consideration in consultation with the respective **Park Warden** and in view of prevailing Park conditions.

Whether driving off-road is **approved** or **denied**, the

applicant will be required to state if processing of the Authority to Film of Photograph can proceed or not.

If the go-ahead is given and if standard filming conditions have been met, the Authority to Film and Photograph is processed within **two days**. The filmmaker/photographer will pay to the Park Warden **20% of the total chargeable fees** (park entry, camping, filming and charges for services provided by the Park management).

Note: Filmmakers/photographers must acquire the Authorization for Off- Road Driving for Filming/ Photography and a Filming Authority issued by **KWS to film or photograph in the National Parks**.

- b. Use of Unmanned Aircraft Systems (drones) and Manned Aircraft Systems

The filmmaker/photographer on behalf of the applicant shall make the application through E-citizen system. The filmmaker/photographer shall be required to attach the following:

- Remote pilot's license
- Remote Aircraft Operator Certificate (ROC) from KCAA
- Unmanned Aircraft System (UAS) Certificate of Registration from KCAA (Reg no. and Model)
- A copy of the drone Insurance cover
- An undertaking by both the drone operator and the applicant to indemnify KWS from any eventualities that may arise out of their acts or omissions.

KWS will grant **"a letter of no objection"** to use an UAS for filming and photography in the specific Park, which the applicant or his agent uses to seek a daily operation authorization to use an UAS from Kenya Civil Aviation Authority (KCAA).

The filmmaker/photographer then **uploads the permit from KCAA** in the system to complete the process. KWS issues an "Authority to use an UAS" in the named Park giving terms and conditions which shall apply.

The filmmaker/photographer will **pay to KWS 30%** of the total chargeable fees (park entry, camping, filming and charges for services provided by the Park management).

c. Use Of Underwater Unmanned Systems (Drones) to Remote Cameras for Filming/Photography

The filmmaker/photographer shall make the application through E-Citizen system. For underwater drones the applicant should **elaborately** describe the specifications of the underwater drone, how they will be **installed**, how **disturbance** to animals and other Park users will be avoided and how underwater drone and remote cameras will be **removed**. The request shall be subjected to internal consultations both at the Headquarters and in the respective Park. Where an Environmental Impact Assessment (EIA) is found

necessary, the applicant shall be notified. He/ she will then upload the EIA report and license.

The authority to film or photograph in the specific Park will be issued within **two (2) working days** upon approval of the use of the underwater drone or remote camera and if standard conditions for filming and photographing in National Parks have been met.

The filmmaker/photographer will **pay to KWS 30%** of the total chargeable fees (park entry, camping, filming and charges for services provided by the Park management.



2.4 Directorate of Immigration Services

The Directorate of Immigration Services is a Directorate under the Ministry of Interior and Coordination of National Government. It is mandated by Section 27(1) of the Kenya Citizenship and Immigration Act 2011 to issue Passports and other travel documents, regulate the entry and exit from the country, and management of foreign nationals and registration of Kenyan Citizenship.

2.4.1 Work Permits

A work permit is a legal document issued by the Director General of Immigration that allows a foreigner to take up employment or investment in Kenya.

2.4.1.1 Classes of Work Permits

There are different classes of Work Permits as follows:

- i. A-Mining;
- ii. B-Agriculture and Animal Husbandry;
- iii. C-Prescribed Profession;
- iv. D-Employment;
- v. F-Manufacturing;
- vi. G-Business;
- vii. I-Missionaries and Charitable Activities; and
- viii. K-Residents.
- ix. M-Refugees

A Foreign film practitioner can apply for Work Permits under classes D and G.

2.4.1.2 Requirements for Work Permits

- i. Duly filled form 25, signed and stamped by the head of institution/ employer (done online);
- ii. Detailed cover letter from the employer addressed to the Director General of immigration services;



- iii. National passport valid for not less than six (6) months;
- iv. Two recent coloured passport size photos;
- v. Academic and professional certificates for class D (Employment)
- vi. USD 100,000 as proof of capital to be invested for class G (Investment)
- vii. CR 12- for class G;
- viii. Employer's Tax Compliance Certificate;
- ix. Employer's PIN;
- x. Current immigration status (if in the country);
- xi. Non-refundable Processing fee of Kshs. 20,000;
- xii. Clearance letter from the Kenya Film Classification Board (KFCB); and
- xiii. Kshs.1,000,000 payment upon approval of a work permit for two years.

Note: A Work Permit is valid for one or two years and is renewable upon expiry if the applicant meets the requirements.

For both the Kenya Work Permit payment should be done within thirty (30) working days upon issuance of approval notification. Failure to comply will result in invalidation of the work permit.

Both the employer and employee are required to provide their Tax Compliance Certificates during the renewal of the Work Permit.

2.4.2 Kenya Special Pass

This is a document issued to a foreigner entering the country temporarily to conduct any business, trade or profession.

2.4.2.1 Requirements for Kenya Special Pass

- i. Duly filled form 32, signed and stamped by the head of institution/ employer (Application and submission done online);
- ii. A detailed cover letter addressed to the Director General of Immigration Services;
- iii. A national passport valid for not less than six (6) months
- iv. Current Immigration Status (If already in the country);
- v. Certificate of Incorporation/compliance for the company; and
- vi. USD 200 per month upon approval of the special pass.

Note: A Kenya Special Pass is usually issued for a short duration not exceeding three (3) months and renewable only once for a further three months.

Payment for the Kenya Special Pass should be done within thirty (30) working days upon issuance of approval notification.



2.5 Kenya Revenue Authority

2.5.1 Mandate and Functions

The Kenya Revenue Authority is established under the Kenya Revenue Authority Act, Cap 469 and is mandated to collect revenue on behalf of the Government. The core functions of the Authority are to:

- i. Assess, collect and account for all revenues in accordance with the written laws and the specified provisions of the written laws;
- ii. Advise on matters relating to the administration of, and collection of revenue under the written laws or the specified provisions of the written laws; and
- iii. Perform such other functions in relation to revenue as directed.

2.5.2 Requirements to Qualify for Tax Incentives for Film Practitioners

2.5.2.1 Taxpayer Registration

2.5.2.1.1 Registration Requirements for Film Practitioners

Any person or entity intending to conduct any form of business in the country must obtain a Personal Identification Number (PIN). The term “personal” covers both individuals and legal entities. This process is undertaken online through the iTax system



The following documents are required for registration of resident filmmakers:

- i. National ID or Alien ID Card details (for individuals).
- ii. Business registration certificate details (for those in business).

Non-resident film practitioners in Kenya must provide:

- i. A letter of introduction from the employer;
- ii. Employer's PIN;
- iii. Original valid passport of the applicant;
- iv. Valid work permit or special pass for the applicant, with the employer's name on the permit;
- v. Confirmation of the work permit endorsement in the passport; and
- vi. KRA PIN application acknowledgment receipt.

2.5.2.2 Tax Obligations for Film Practitioners

When applying for a KRA PIN, film practitioners must select the appropriate tax obligations. The key obligations include:

2.5.2.2.1 Income Tax

- i. **Mandatory for Both Residents and Non-Residents:** Income tax is a direct tax imposed on income derived from various sources such as business, employment, rent, dividends, interests, and pensions.
- ii. **Individual Income Tax:** Charged annually on all income earned by a person, whether resident or non-resident, which accrues in or is derived from Kenya.
- iii. **Non-Residents:** Any payment made to non-resident individuals for employment or services rendered to a Kenyan employer or a permanent establishment in Kenya is subject to income tax at prevailing rates. Non-residents are not entitled to personal relief.
- iv. **Filing Requirements:** Every individual or business with a KRA PIN must file an income tax return every year, regardless of whether they earned income. Returns are submitted online via iTax.
- v. **Resident Film Practitioners should withhold 20% of income tax for Non-resident film practitioners and pay it to KRA.**

vi. Where a Non-resident film practitioner does not want to pay withholding tax of 20% through a Film Agent should appoint a tax representative in writing and the details shared with KRA.

vii. Payment of withholding tax is done online via iTax by generating a payment slip and presenting it at any of the appointed KRA banks to pay the tax due. After successfully remitting the deducted amount to KRA, a Withholding Certificate shall be sent to the email registered on iTax by the taxpayer.

2.5.2.2.2 Value Added Tax (VAT)

- i. VAT is imposed on the supply of taxable goods or services within Kenya and on the importation of such goods or services into the country.
- ii. VAT applies to those supplying taxable goods or services. Registration is mandatory for anyone supplying or expecting to supply goods/services worth Kshs 5 million or more annually. Voluntary registration is available for those below this threshold, subject to certain conditions.
- iii. The Kenya Revenue Authority (KRA) appoints agents to withhold and remit VAT on supplies made. These agents can be verified using the "Agent Checker" tool on the iTax portal.
- iv. VAT returns and payments are due on or before the 20th day of the following month. Returns must be submitted online via iTax [iTax Portal](#).

2.5.2.2.3 Pay As You Earn (PAYE)

- i. PAYE is a tax collection system where employers are required to deduct tax from their employees' income and remit it to the Kenya Revenue Authority (KRA).
- ii. **Employer Obligations:** Employers must:
 - Deduct tax from employee emoluments at the prevailing individual income tax rates.
 - Remit the deducted tax to KRA on or before the 9th day of the following month.

2.5.2.3 Tax Incentives

Tax incentives are essential for stimulating economic activity and enhancing access to vital resources. These incentives are outlined in various schedules across different tax legislations and may be subject to changes. Therefore, for detailed guidance and to ensure compliance, it is highly recommended that film practitioners consult with the Kenya Film Classification Board, Kenya Film Commission, Kenya Revenue Authority, or other relevant authorities.

For film practitioners, leveraging these incentives can lead to significant reductions in production costs and improve the feasibility of projects.

2.5.2.3.1 Income Tax

The following tax incentives apply to film practitioners:

- i. **Expenditure Deductions:** Section 15(1) of the Income Tax Act, Cap. 470 provides for deductions of all expenses that are wholly and exclusively incurred in the production of income. This means that costs directly related to film production can be deducted when calculating the total income for the year as long as the requisite proof is available.
- ii. **Investment Allowances:** Section 15(2) of the Income Tax Act provides for benefits from investment allowances which may include filming equipment. The Second Schedule of the Income Tax Act provides that investors are eligible for a 100% deduction on capital expenditure for purchasing filming equipment. This allowance is claimed at a rate of 25% per year, which significantly reduces the cost of investment in equipment and other assets, offering substantial financial benefits for film projects.
- iii. **Exemption from withholding tax:** Section 35(1)(a) of the Income Tax Act provides that withholding tax does not apply to payments made by filming agents and producers who are approved by the Kenya Film Commission. This exemption covers:
 - **Payments for Appearances or Performances:** This includes payments made to actors and crew members for their participation in public or private performances intended to entertain, instruct, engage in sports, or otherwise captivate an audience.

- **Payments for Support and Facilitation:** This applies to payments made for supporting, assisting, or arranging the aforementioned appearances or performances.

2.5.2.3.2 Value Added Tax Act (VAT), Cap 476

The VAT Act Cap 476 provides for the following exemptions applicable to film practitioners

- i. **Exemption on Goods:** Paragraph 54, Part I of the First Schedule, exempts VAT on goods imported and/or purchased locally for use by local film practitioners. This exemption is granted upon recommendation by the Kenya Film Commission (KFC) and requires approval by the Cabinet Secretary to the National Treasury.
- ii. **Exemption on Services:** Paragraph 21, Part II of the First Schedule, exempts VAT on services imported or procured locally for use by local film practitioners. Similar to the goods exemption, this requires a recommendation from the KFC and approval from the Cabinet Secretary for the National Treasury.

2.5.2.4 Importing and Exporting Film Equipment and Other Goods

2.5.2.5 Customs “Import Duties”

Customs “import duties” means any customs duties and other charges of equivalent effect levied on imported goods.

To import goods into Kenya, one is required to enlist the services of a licensed Customs Clearing Agent for the purpose of transacting business relating to the declaration or clearance of any goods or baggage other than accompanied non-manifested personal baggage of a person travelling by air, land or sea.

The process of clearing accompanied baggage of a person travelling by air, and sea (including temporary importation) is subject to the procedures guiding the clearance provided by Customs.

Permanent Importation: Filming equipment being permanently imported into Kenya is subject to full Customs duty.

Temporary Importation: Filming and photography equipment may be allowed temporarily without an Import Declaration Form but requires a security bond and an undertaking to export within twelve months.

2.5.2.6 Requirements for importing Filming Equipment Temporarily

- i. A filming license from the Kenya Film Classification Board.
- ii. Payment of a non-refundable fee of 1% of the total value or Kshs. 30,050, whichever is lower.
- iii. Deposit cash or a security equivalent to the duty owed on the goods.
- iv. An application to the Commissioner for temporary importation permission, agreeing to export the equipment within twelve months, which can be extended by application to the Cabinet Secretary for National Treasury.
- v. Accompanied baggage shall be subject to the procedures guiding the clearance of the equipment.

2.5.2.7 Exporting Filming Equipment Temporarily

A film practitioner leaving the country temporarily with filming equipment intended to be brought back is required to declare the equipment on departure. Such equipment include, but not limited to:

- Cameras, drones and other accessories for filming.
- Items exported for repair or alterations.
- Toolboxes for repair work abroad.
- Musical instruments.

NOTE: Temporary export documents must be retained as proof of origin for the equipment upon return.

2.5.2.8 Importing Drones

Drones are restricted items and require authorization from relevant government institutions through the provision of necessary licenses and permits before Customs processing and release. Obtain an Unmanned Aircraft System (UAS) import permit from the Kenya Civil Aviation Authority (KCAA) before purchase and importation.





2.6 Kenya Copyright Board

2.6.1 Mandate and Functions

The Kenya Copyright Board (KECOBO) is a State Corporation established under the Copyright Act, No. 12 of 2001. To execute its mandate, KECOBO performs the following functions:

- i. Direct, co-ordinate and oversee the implementation of laws and international treaties and conventions to which Kenya is a party and which relate to copyright and ensure the observance thereof;
- ii. License and supervise the activities of Collective Management Organizations (CMO);
- iii. Develop promotion and training programs on copyright and related rights, to which end it may co-ordinate its work with national, regional or international organizations concerned with the same subject matter;
- iv. Organize the legislation on copyright and related rights and propose other arrangements that will ensure its constant improvement and continuing effectiveness;
- v. Enlighten and inform the public on matters relating to copyright and related rights; and
- vi. Maintain an effective data bank on authors and their works; and administer and enforce all matters of

copyright and related rights in Kenya and to deal with additional matters connected with its functions under this Act.

KECOBO also offers the following services:

- i. Mediation services at the request of parties in a dispute. The request is made in writing and both parties must agree to subject themselves to mediation;
- ii. Legal advice on Copyright and related rights including licensing, assignment and other contractual transactions by copyright holder.

2.6.2 Intellectual Property

Intellectual property includes intellectual creations such as inventions, literary and creative compositions, designs, and names, symbols, and images used in trade. There are two subsets of intellectual property, namely Industrial Property and Copyright.

2.6.2.1 Industrial Design

Industrial Design protects inventions, designs, and trademarks that are used in industry or commerce. It covers innovations used for industrial purposes or commercial purpose. The primary types of Industrial Design in Kenya are as follows:

- i. **Patents:** These provide protection for innovations that offer a new approach to a problem or a new technical solution that goes beyond simple solutions.



- ii. **Utility Models:** These are comparable to patents; however, they are intended for inventions that might not satisfy the criteria associated with patent protection. Though the innovative step needed is typically less than for a patent, they offer protection for novel technical inventions that need an inventive step. Any configuration or element of an appliance, tool, electrical and electronic circuitry, instrument, or handcraft mechanism may be protected as a utility model in Kenya.
- iii. **Trademark:** This is a recognizable sign, design, word, phrase, symbol, or combination of these that identifies and sets one entity apart from another as the source of goods or services.
- iv. **Industrial Design:** These protect the decorative or aesthetic or artistic features of a product, and includes the arrangement of lines, colors, shapes, patterns, and other three-dimensional forms.
Industrial Property are administered by Kenya Industrial Property Institute.

2.6.2.2 Copyright

This is a type of intellectual property protection, that gives authors of original works the exclusive authority to use and manage how their works are distributed, reproduced, and adapted. It offers legal protection against unlawful use and is applicable to creative expressions such as, literary, artistic, musical, sound recordings and audiovisual works.

2.6.3 Copyright Legislation in Kenya

The laws that govern Copyright in Kenya are:

- i. **Constitution 2010:** Art. 11(2) obligates the state to promote the intellectual property rights of the people of Kenya. Art. 40(1) Grants every citizen the right to own property of any description including Copyright. Art 40(5) obligates the state to support, promote and protect the IP rights of its citizens.
- ii. **Copyright Act No. 12 of 2001 Laws of Kenya:** - Main legislation making provision for the protection of copyright in literary, musical, artistic works, audio-visual works, sound recordings, broadcasts and for connected purposes.
- iii. **International and Regional Treaties, Conventions and Protocols relating to copyright that Kenya is a party to:** - Kenya is bound by several treaties, conventions and Protocols relating to copyright including the Berne Convention for the Protection of

Literary and Artistic Works, which is the main international treaty on copyright.

2.6.4 Works Eligible for Copyright

The following works are eligible for copyright:

- i. literary works including computer programs;
- ii. musical works;
- iii. artistic works;
- iv. dramatic works;
- v. audio-visual works;
- vi. sound recordings; and
- vii. broadcasts.

2.6.5 Rights Under Copyright

The following are the rights under copyright:

2.6.5.1 Economic Rights

Economic rights entail the following:

- i. **Reproduction rights:** This is the right to make copies of the work;
- ii. **Distribution rights:** This is the right to distribute copies of the work to the public by way of sale, rental, lease, or lending;
- iii. **Public performance right:** This is the right to perform the work publicly;
- iv. **Public display right:** This is the right to display the work publicly;
- v. **Right to create a derivative work:** This is the right to create derivative work based on the original work, such as turning a book into a movie, making a sequel, or adapting a song into a remix;
- vi. **Right to communication to the public:** This is the right to make the work available to the public via radio, television, or online platforms like streaming services.

2.6.5.2 Moral rights

The following are the moral rights that can be derived from copyright:

- i. **Right to attribution/paternity:** This is the right to be recognized and identified as the author or creator of the work;
- ii. **Right to integrity:** This is the right to object to any distortion, mutilation, or other modifications that could harm the Author's reputation or honor; and
- iii. **Right to object to false attribution:** This is the right to object to the work being falsely attributed to someone else or having one's name attached to a work they did not create.

2.6.6 Copyright Registration

One of the primary copyright principles under the Berne Convention for the Protection of Literary and Artistic Works, is automatic protection upon fixation and no registration formality is required. Copyright registration is, however, important especially in proving ownership when it comes to enforcement of the right holder's rights, in litigation and in contract negotiation. KECOBO offers a voluntary registration system under nrr.copyright.go.ke. All works eligible for copyright qualify for registration.

2.6.7 Copyright Registration Process

Visit nrr.copyright.go.ke create an account and complete the registration process.

A certificate of Copyright Registration will be processed within 72 working hours from submission of the completed application.

2.6.8 Copyright Registration Fees

The following are copyright registration fees as provided for under the Second Schedule of the Copyright Regulations 2020:

No.	Service	Cost (Natural Persons)	Cost (Corporate entities)
i.	Copyright Registration per work	Kshs. 100	Kshs. 500
ii.	Application to amend name or address of the Copyright Holder	Kshs. 100	Kshs. 300
ii.	Application for change of ownership of a registered copyright work	Kshs. 100	Kshs. 100

2.6.9 Takedown Procedure

This is a formal process used to remove or disable access to infringing copyrighted content that has been illegally posted or distributed online without the consent of the right holder. The take down process under the Copyright Act is as follows:

- i. The person whose rights have been infringed takes steps to request the person who uploaded the work to remove the work;
- ii. If the person who uploaded the infringing work does not remove it, the person whose rights have been infringed issues a takedown notice which must meet the following conditions:
 - It must be in writing and addressed by complainant or his agent to the Internet Service Provider or their designated agent;
 - It must contain the full names and telephone, physical and email address of the complainant;
 - It must be signed by the complainant or his authorized agent;
 - It must describe in specific detail the copyright work subject to the alleged infringement or sought to be removed;
 - It must identify the rights being infringed;
 - It must set out the content sought to be removed with details of where the content is contained;
 - An affidavit or any other declaration attesting to claim of ownership, validity of the rights, good faith and setting out any efforts to have entities responsible for making the content available to remove the content must be attached
 - Must be copied to the Board, Communication Authority and the recognized umbrella association of service providers.
- iii. Upon receipt of the take down process, the internet service provider notifies the person responsible for making available the alleged infringing content and provide them with a copy of the notice as soon as is practicable.
- iv. The internet service provider disables access to the material within forty-eight business hours unless it receives a counter notice fulfilling the requirements set out for a takedown notice and contesting the contents of the takedown notice.
- v. If the internet service provider fails to take down the infringing content the person whose work is being infringed may apply to the High Court for the grant of interim injunctive relief.



2.7 Office of the Data Protection Commissioner

2.7.1 Mandate and Functions

The mandate of the Office of the Data Protection Commissioner (ODPC) is derived from the Data Protection Act, 2019 to:

- Regulate the processing of personal data;
- Ensure that the processing of personal data of a data subject is guided by the principles set out in section 25 of the Act;
- Protect the privacy of individuals;
- Establish the legal and institutional mechanism to protect personal data; and
- Provide data subjects with rights and remedies to protect their personal data from processing that is not in accordance with the Act

2.7.2 Understanding Data Protection

Data Subject means an identified or identifiable natural person who is the subject of personal data.

Data Controller means a natural or legal person, public authority, agency or other body which, alone or jointly with

others, determines the purpose and means of processing of personal data.

Data Processor means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller.

Data Handler refers to a Data controller or processor.

Personal Data means any information relating to an identified or identifiable natural person e.g. Name, Address, Images.

2.7.3 Principles of Data Protection

2.7.3.1 Lawfulness, Fairness and Transparency

- To process data 'lawfully', you must meet at least one lawful basis. Data processing must also not breach any other laws. – consent, public interest, legitimate interest, performance of a contract, compliance with a legal obligation and for historical statistical, journalistic and scientific research.
- To process data 'fairly', it must not be unduly detrimental, unexpected, or misleading to data subjects.
- To process data 'transparently', you must be clear, open, and honest with your data subjects about how you will use their data.
- The filmmakers should always inform the data subjects of the purpose of collecting information and whether it will be shared with third parties.



2.7.3.2 Data Minimization

All filmmakers must ensure that the information collected is not excessive, given the purpose of collection.

2.7.3.3 Purpose Limitation

Data must not be processed in a manner that conflicts with its original intended purpose.

2.7.3.4 Storage Limitation

Data relating to data subjects must be anonymized once it has served the purpose.

2.7.3.5 Accuracy

The data handlers should also ensure that information held about the data subjects is up to date.

2.7.3.6 Integrity and Confidentiality

Entities collecting or processing data have a responsibility to ensure that reasonable steps have been taken to implement security safeguards. This includes ascertaining the integrity of all employees authorized to access an individual's personal information.

2.7.3.7 Accountability

Entities collecting and/or processing data must ensure that their practices are compliant with the other principles

2.7.3.8 Lawful Basis of Processing Personal Data

A film practitioner shall not process personal data unless there is a specific lawful basis applies as outlined in the Data Protection Act, 2019. The lawful basis are as follows:

- i. **Consent:** A data controller must obtain express, unequivocal, free, specific and informed consent from the data subject whose meaning is defined in the Data Protection Act, 2019. The consent should be:
 - a. **Specific:** The data subject must be informed about the specific purpose for which their data will be processed.
 - b. **Informed:** The data subject must be provided with sufficient information to make an informed decision about whether or not to give consent. This includes information about the types of personal data that will be processed, how the data will be used, who will have access to the data, and how long the data will be retained.
 - c. **Freely given:** The data subject must be given a genuine choice about whether to give consent or not. Consent cannot be coerced or forced, and there must be no negative consequences for the data subject if they refuse to give consent.

Film practitioners are required to prove that they have consent from every identifiable individual in the films or photographs they share.

- ii. **Performance of a Contract:** In instances where a data handler relies on this as a basis for the processing of personal data, such as name, address, and phone number, the data handler should not process more personal data than is necessary to fulfill its contractual obligations to the individual, and must not use the personal data for any other purposes that are not related to the performance of the contract. The individual must also be notified of the processing and the purpose of the same.

- iii. **Compliance with Legal Obligations:** To rely on legal obligation as a lawful basis for processing personal information, a data handler must demonstrate that the processing is necessary for compliance with a legal obligation to which they are subject. For instance, The Film and Stage Plays Act, Cap 222 provides the institutional, legal, and regulatory framework for the registration and regulation of the film industry.

- iv. **Legitimate Interest pursued by Data Controller or Data Processor:** A data handler's reliance on a legitimate interest in processing the data should **not outweigh** the rights and freedoms of the data subjects, at large. This means that the data handler must have a genuine and legitimate interest in the processing and that the data subject's rights and freedoms are not **disproportionately** affected by the processing.

- v. **Public interest:** Public interest can be a lawful basis for the processing of personal data if the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Act. For instance, the Data Handler may be required to collect data for public accountability, policy-making and public safety.

- vi. **Historical, statistical, journalistic, literature and art or scientific research:** A Data Handler may rely on this lawful basis to conduct educational, historical and scientific research

2.7.4 Obligations of the Film Practitioners to Comply with the Data Protection Act

Film practitioners handling personal data must undertake the following:

- i. Register with the Data Commissioner as a data controller or processor.
- ii. Safeguard the rights and freedoms of their data subjects.
- iii. Comply with the Act as they create their content/films for public/ online consumption.
- iv. Adhere to the fundamental rights and freedoms of the data subjects.

2.7.5 Registration Requirements for Film Practitioners as Data Controllers or Processors

- i. Certificate of incorporation
- ii. Audited financial accounts
- iii. Dully filled and signed declaration form of the number of employees
- iv. Categories of data processed (e.g. Name, Images, ID, Location, etc)
- v. Safeguards put in place
- vi. At least five risks associated with collecting and processing personal data

2.7.5.1 Registration Process as Data Controllers or Processors

Visit <https://dataportal.odpc.go.ke/Account/Login> to create an account and complete the registration process



2.7.5.2 Applicable Fees for Registration as Data Controllers or Processors

Category	Description	Registration fee in Kshs. per Data Controller/ Processor) (payable Once)	Renewal fee in Kshs. per Data Controller/Processor) (after every 2 years)
Micro and Small Data Controllers / Processors	A data controller/ processor with between 1 and 50 employees and an annual turnover/ revenue of a maximum of Kshs 5 Million	4,000	2,000
Medium Data Controllers / Processors	A data controller/ processor with between 51 and 99 employees and an annual turnover/ revenue of between Kshs 5,000,001 and maximum of Kshs 50,000,000	16,000	9,000
Large Data Controllers / Processors	Data controller/processor with more than 99 employees and an annual turnover/ revenue of more than Kshs 50 Million	40,000	25,000
Public entities	Data controller/processor offering government functions (Regardless of number of employees or revenue/turnover)	4,000	2,000
Charities and Religious entities	Data controller or Data processor offering charity or religious functions (Regardless of revenue/turnover)	4,000	2,000

2.7.6 Handling of Personal Data in Film Production

Data Localization: Data localization means that data collected on a country's residents to be retained and/or processed in that country.

Foreign film practitioners should adhere to the requirements of data localisation and data transfers outside the country as outlined in the Act.



CHAPTER 3

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