

YOUR BUSINESS AND COPYRIGHT MANAGEMENT: CHALLENGES AND OPPORTUNITIES

NATIONAL WORKSHOP ON INTELLECTUAL PROPERTY (IP) FOR INNOVATIVE AND COMPETITIVE
SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

JUNE 17 2019

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OVERVIEW

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COPYRIGHT OVERVIEW



- Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works.
- Copyright Act Cap 130, Laws of Kenya
- Kenya Copyright Board – NHIF Building 5th Floor
- Works eligible for copyright under s22 Act -literary works; musical works; artistic works; audio-visual works; sound recordings; broadcasts.
- Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such.
- Eligibility – Originality and Fixation. The right exists the moment work is “fixed” - written down, recorded or otherwise reduced to material form. In broadcasts work has to be broadcast.
- Automatic protection on fixation –registration not prerequisite for protection as other IP rights

COPYRIGHT DURATION

TYPE OF WORK	DATE OF EXPIRATION
Literary, Musical or artistic work other than photographs	Life + 50 years
Audiovisual works and photographs	50 years from work made, first made available to public or first published
Sound recordings	50 years from recording
Broadcasts	50 years after broadcast
Anonymous literary, musical or artistic works	50 years from first published
Joint authorship	Life + 50 years of last author
Works vested in National Museums	Perpetuity
Works of Government and international bodies	50 years from first published

COPYRIGHT RELATED TREATIES



- 1886 Berne Convention for the Protection of Literary and Artistic Works
- 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- 1971 Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
- 1974 Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite
- 1994 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)
- 1996 WIPO Copyright Treaty (WCT)
- 1996 WIPO Performances and Phonograms Treaty (WPPT).
- 2012 Beijing Treaty on Audiovisual Performances
- 2013 Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled

TYPES OF RIGHTS UNDER COPYRIGHT

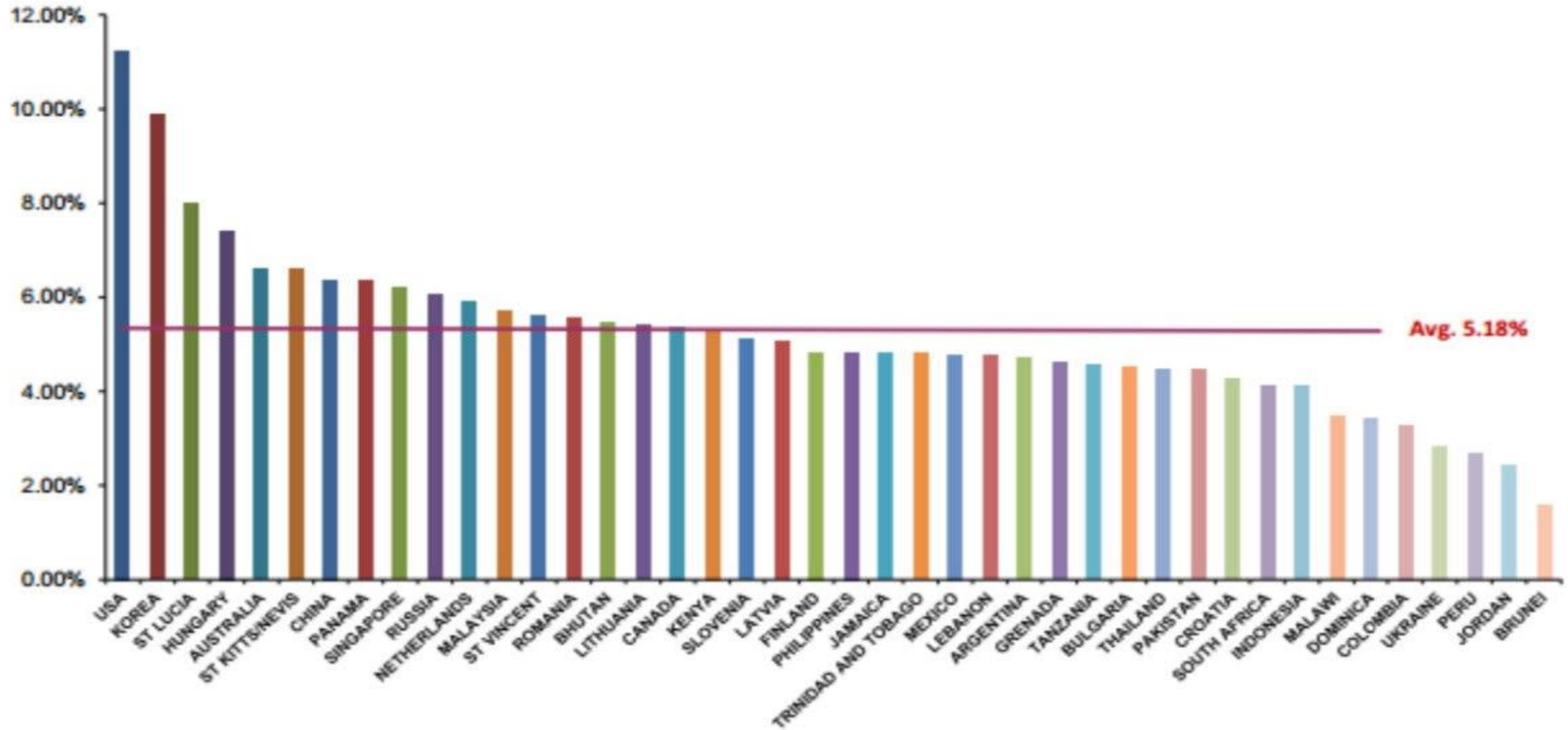
1. Moral Rights : non-transferable during life of author
 - i. *right to claim authorship of a work they've created (right of paternity);*
 - ii. *right to object to any distortion or modification of their work in a way that it may prejudice an author's honour or reputation (right of integrity).*
 - iii. *right to demand that the name or pseudonym be mentioned or communicated at each performance and on each use or a recording thereof (right of attribution)*
2. Economic Rights : transferable by license or assignment
 - i. *reproduction in various forms, such as printed publication or sound recording;*
 - ii. *public performance, such as in a play or musical work;*
 - iii. *communication to the public*
 - iv. *recording, for example, in the form of compact discs or DVDs;*
 - v. *broadcasting, by radio, cable or satellite;*
 - vi. *translation into other languages; and*
 - vii. *adaptation, such as a novel into a film screenplay.*

CAN SMES BENEFIT FROM COPYRIGHT?

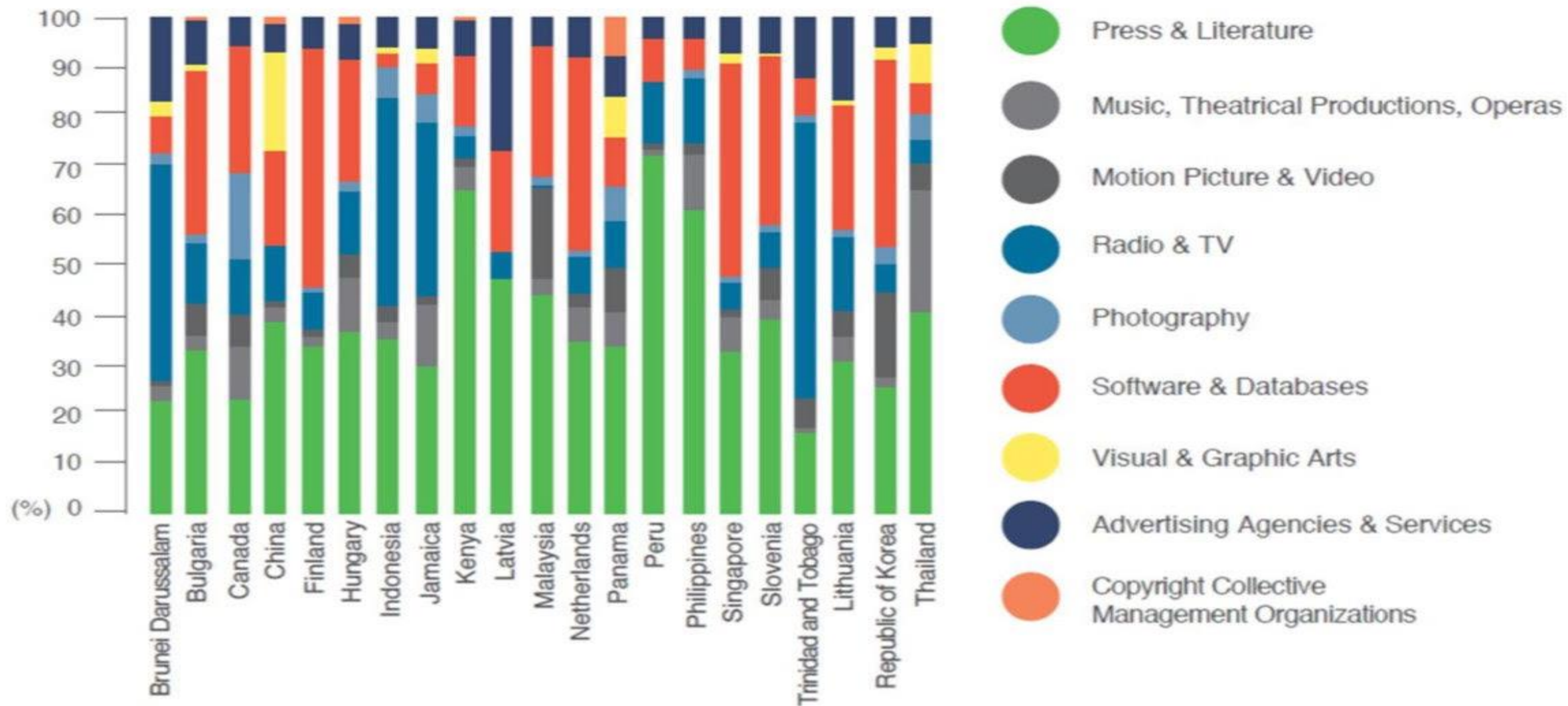
- Is your enterprise involved in the creation, recording, publication, dissemination, distribution or retailing of artistic, musical or literary works?
- Does your company have a website, a brochure, a corporate video, or does it advertise on newspapers or TV?
- Is your SME using music, pictures, or software products owned by others in any of its publications, brochures, databases or websites?
- Does your company own the rights to any computer software?



Impact on GDP of Copyright-Based Industries



Creative DNAs



SMEs AND COPYRIGHT

SME as a Copyright Owner

Protect your own works or creations and make sure you make best use of your right and get fair economic rewards from any use made of your creations.



SME as a Copyright User

Legitimately use or exploit the works or creations of others with the authorization of the author or right holder on fair and reasonable terms

I. SME AS A COPYRIGHT USER

- For some enterprises, the use or exploitation of copyrighted works, sound recordings, broadcasts or performances may be a **central part of their daily business** activities. This may be the case for radio stations, publishing houses, libraries, shops or nightclubs. Others **occasional tool** used for enhancing corporate publications, websites and other marketing devices. Others **confined to the use of their computer software**. Qs:
 1. **Do I need a license?** every commercial use or exploitation of these rights requires a license or an assignment of the rights from the right-owner : collective management organization (CMO) or by the author or producer directly and negotiate a license agreement before you use or exploit the product.
 2. **Is there a CMO?** Rather than dealing directly with each individual author or right holder, CMOs offer users a centralized source where rates and terms of use can be negotiated, and where authorizations can be easily and quickly obtained. KAMP-PRISK-MCSK one stop shop in Kenya
 3. **Can you freely use works published on the Internet?** Any works protected by copyright or related rights, ranging from musical compositions, to multimedia products, newspaper articles and audiovisual productions which have not been put out on public domain are protected.

II. SME AS A COPYRIGHT OWNER

- Directly involved in copyright industries: creating, publishing, recording, distributing or selling works protected by copyright or related rights need to exercise, license and enforce their rights. Indirectly still, corporate publications, brochures, websites, TV or newspaper advertisements, marketing videos are all likely to be protected under copyright. Qs:
 1. **Is there a copyright depositary?** Voluntary registration KECOBO
 2. **Who owns the rights?** Different rights different ownership; original creator or author of the work, commissioner, employer, producer. Transfer of rights via license or assignment
 3. **What are my rights?** Moral rights, exclusive rights vs equitable remuneration rights, duration of rights
 4. **How do I obtain international protection for my works?** If the country of which you are a national or a resident has ratified the international conventions in the field of copyright and related rights administered by WIPO, such as the Berne Convention, or WTO TRIPS Agreement, or if you have published your work for the first time or at least simultaneously in one of the above countries
 5. **How should I license my works?** CMO or directly
 6. **How should I enforce my rights?** Part IV of Act. Criminal vs Civil case. Relief by way of damages, injunction, delivery up, accounts

CHALLENGES

- Lack of sufficient awareness of responsibilities under copyright laws – technological advancements particularly when it comes to sharing digital content.
- Copyright risk management – as a result of low copyright awareness with fast and easy ways to access and share information e.g. fair dealing not applicable to businesses
- Difficulties in obtaining the necessary permissions for employees to share content legally
- Infringement - Piracy especially digital piracy through illegal music-selling platforms.
- Lack of laws that govern usage of copyright online
- Users taking advantage of systems to exploit copyright owners
- Easy access of content means less controls which also means loss of revenue due to piracy.
- Enforcement- Copyright Office's inability to handle complaints on especially in digital space due to lack of capacity and guiding law.

OPPORTUNITIES

- Sensitization, information and education -Opportunities in training of rightsholders on digital use of works and copyright in the digital age; in-house training or external experts
- Efficient licensing mechanisms – individual or collective
- New business models - CMS/DRM systems are platforms for real time monitoring of usage of works; provide opportunities for rightsholders to supervise usage of their works; enhances transparency and accountability.
- With increasing competition in the digital space, the copyright owners and users have a greater chance of benefitting from the most cutting-edge innovative ideas on diversification of digital revenue sources and digital uses respectively.
- The growth of fast internet across Africa has improved access to works on digital platforms thus improving copyright business.

ABOUT KAMP

- Collective Management Organisation: Joint Copyright License KAMP-PRISK-MCSK
- The Kenya Association of Music Producers (KAMP) was incorporated in 2003 and licensed in 2008 by the Kenya Copyright Board (KECOBO) to represent the rights and interests of producers of sound recordings through collection of license fees and distribution of royalties in accordance with the Copyright Act of 2001, Laws of Kenya.
- Mission: To administer copyright and related rights fairly and efficiently, on behalf of producers of sound recordings through collecting remuneration from users of sound recordings and distributing royalties to the rights holders.



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THANK YOU

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