

GOVERNMENT NOTICE NO. 14

COPYRIGHT ACT

(CAP. 49:03)

COPYRIGHT (LICENSING OF REPROGRAPHIC REPRODUCTIONS IN
BUSINESSES) REGULATIONS, 2021

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SCHEDULE

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

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

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

Interpretation

“authorized person” means staff member of the licensee and all persons acting under the authority of the licensee;

“authorized purposes” means all purposes within or in support of the mandate of a business authorized under a licence issued pursuant to these Regulations;

“business” means any business enterprise duly registered under the Laws of Malawi;

“copy” means to reproduce or make available to the public by telecommunication in any material form whatever, including a digital copy, that is made by or as a consequence of any of the following activities—

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

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

(c) printing a digital copy;

(d) transmission by electronic mail;

(e) transmission by facsimile;

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

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

(h) transmitting a digital 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;

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

“digital copy” means any electronic file of a published work;

“licensee” means all businesses licensed to operate as such under the Business Licensing Act;

“Licensor” means the Society;

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

“year” means the financial year of the Government.

3. These Regulations shall apply to all businesses that reproduce copyright protected works, operating in Malawi. Application

4.—(1) A person who intends to reproduce a copyright protected work shall submit to the Society, an application form prescribed in the Schedule hereto. Licensing

(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.

5.—(1) An authorized person may make and distribute copies of copyright protected works in the repertoire, for— Right to reproduce copyright work

(a) any not – for - profit purposes of conducting business within the mandate of the licensee; and

(b) the purpose of the delivery of a company and the company’s related programs and services, including professional, research, archival, communication and administrative activities of the licensee.

(2) The right granted in subregulation (1) shall be valid only for the purposes in respect of which it has been issued and for the period, and with respect to the premises specified in a licence.

(3) A business may copy copyright protected works with the authority of the authorized person, within or outside the business premises.

6.—(1) A person, where authority is given by the licensor and for authorized purposes only, may— Extent of copying

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

(i) an entire newspaper article or page;

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

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

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

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

(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; and

	(d) make a copy to replace any damaged or missing pages of a published work in the licensee's possession.
General conditions	7. Copies of a work shall— (a) only be made from a published work that is lawfully obtained by the authorized person making the copies; (b) not be made as a substitute for a published work that would ordinarily be purchased or commonly available; (c) not be made or used in a manner that would infringe the moral rights of the author; (d) not be used in advertising products or services; and (e) be accurate reproductions of the original published work.
Handling of digital copies	8. A person shall not, with regard to a digital copy of published work,— (a) place the digital copy on any computer or computer network on the publicly accessible internet in such a way as to be made publicly available or accessible otherwise than by a secure network; or (b) in the repertoire, share, email, or otherwise distribute to any persons other than an employee of the institution.
Reproduction of works for use by persons with disabilities	9. An authorized person may reproduce 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: 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.
Duration of a licence	10.—(1) A licence issued under these Regulations shall be valid for a period of one year and be automatically renewed at the end of the year unless not renewed. (2) The Licensor or licensee may by thirty days written notice to the other party notify the other party of an intention not to renew a licence.
Reporting and payments	11.—(1) A licensee shall pay an annual royalty fee to the licensor calculated by multiplying the royalty rate of K5,000.00 by number of its staff members but subject to a minimum annual fee of K200,000.00. (2) No later than thirty days before commencement of a new financial year of the licensee, the licensee shall provide to licensor the number of its staff members which shall assist in calculation of the annual fee payable. (3) The Licensor shall invoice the licensee and such invoice shall be payable within thirty days of the issue date. (4) Once payment has been made, the licensor shall issue a licence which the licensee shall display in a prominent and visible place within the premises from which the licensee operates.

(6) 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.

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

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. Surveys

(2) The Society shall give a licensee a notice of at least one month before conducting the survey in subregulation (1).

(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 give the Society after being given notice, access to its premises to conduct the survey at reasonable times.

(5) The access granted in subregulation (3) may be subject to reasonable arrangement for supervision as required by the licensee to ensure the security of its premises, including its computer systems and networks, and to maintain the confidentiality of personal or other confidential data.

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 licensor to the licensee. Adjustments to licence fees

15. A licensee who is aggrieved with any licence condition set by the licensor may, within fourteen days from the date the condition is set or the decision is made, appeal to the Board to review the decision, as the case may be. Appeals

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

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

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

SCHEDULE

(reg. 4(1))

APPLICATION FOR LICENCE FOR REPROGRAPHIC REPRODUCTIONS IN
BUSINESSES

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

Address

Location Telephone No.....

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

<i>Employees</i>	<i>Total number of Employees</i>
1. Full time	
2. Contract	
3. Part time/Temporary	

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

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

.....
Applicant's signature

FOR OFFICIAL USE ONLY

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

Name of licensing officer

Date.....

.....
Signature of licensing officer

Return to:

The Copyright Administrator

Copyright Society of Malawi

P.O. Box 30784

Lilongwe 3

Tel: 751 148 Email: cosoma@cosoma.mw

Made this 23rd of February, 2021.

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

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