

Copyright (Collecting Societies) Regulations, 1993

Nigeria

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Pursuant to the powers conferred on it under section 32B of the Copyright Act, the Nigerian Copyright Council hereby makes the following Regulations.

Short Title

1. These Regulations may be cited as the Copyright (Collecting Societies) Regulations 1993.

Interpretation

2. In these Regulations, unless the context otherwise requires, the following expressions have the meaning hereby assigned to them respectively, that is to say—

“Act” means the Copyright Act.

“Auditor” means a duly qualified auditor registered with the Institute of Chartered Accountants of Nigeria (ICAN).

“The Council” means the Nigerian Copyright Council established in accordance with Section 30 of the Copyright Act.

“Legal Practitioner” has the meaning assigned to it by the Legal Practitioners Act.

“Society” means a company duly approved to function as collecting society under these Regulations.

Fees

3. The fees to be paid in relation to any transaction under these Regulations shall be as prescribed from time to time by the Council.

Application for Approval

4.—(1) Subject to the conditions specified under section 32B of the Act, a company may apply in the prescribed form and upon payment of the prescribed fees, for approval to operate as a collecting society.

(2) An application to the Council for approval to operate as a collecting society shall be signed by 2 principal officers of the company or its authorised agent who for this purpose must be a legal practitioner.

(3) Every company applying for approval to operate as a collecting society shall furnish the Council with the following documents, viz.:

(a) a certificate of registration in respect of the company issued under the Companies and Allied Matters Act;

(b) the memorandum of association in respect of the company;

(c) the articles of association in respect of the company; and

(d) such other documents as may be required by the Council.

Address for Applications

5. All applications for approval to operate as a collecting society shall be made, addressed and sent to the Director, Nigerian Copyright Council, Lagos, Nigeria.

Grant of Approval

6.—(1) No company shall be granted approval to carry on the functions of a collecting society under the Act unless it satisfies the Council on the following matters, that is to say—

(a) the subscribers to the memorandum of association shall not be less than 10 persons with proven interests in the areas in which the company desires to operate as a collecting society;

(b) the organs of the company shall comprise of at least a General Assembly of all its members and a Management Board;

(c) the Chief Executive Officer of the company by whatever name called shall not be a member of the society;

(d) the Management Board of the company shall include one member of the Council;

(e) no person shall be qualified to be appointed as Chairman of the Management Board of the Society unless he is a member of the society; and

(f) the company shall have shown evidence of adequate and competent staff capable of running the affairs of the company as a collecting society.

7.—(1) Upon receipt of an application for licence to operate as a collecting society the Council shall satisfy itself that the applicant has complied with the requirements of these Regulations and the Act.

(2) Where the Council receives more than one application for a licence in respect of any class of copyright owners it shall, after due investigation, approve any one of them which, in its opinion, will more adequately protect the interests of that class of right owners.

8. The Council may, for the purpose of establishing that the interests of all persons in a particular class of right owners will be adequately protected, require the company to take such steps including advertisement in designated national newspapers circulating in Nigeria and provide such other evidence as the Council may consider necessary.

9. Upon the approval of a company to operate as a collecting society the Council shall issue the company a certificate of approval to function as a collecting society.

10. Subject to the provisions of these Regulations an approval shall be valid for 3 years and may be renewed from time to time in accordance with the procedure herein stipulated.

Report of Meetings

11. Every company approved under these Regulations to function as a collecting society shall cause a report containing the minutes and decisions taken at every meeting of the General Assembly and the Management Board to be entered in a special register kept for that purpose and a certified copy of such report shall be submitted to the Council within 3 months. The Council may call upon the secretary to the meeting or the Chief Executive of the Company, by whatever name called, to clarify any part of the reports.

Accounts and Annual Report

12.—(1) The society shall keep proper accounts consistent with ordinary commercial standard of its receipts, payment, credits and liabilities and the accounts shall as and when required by the Council be audited by an auditor appointed for that purpose.

(2) The society may withhold from the amount collected or received by it such deductions necessary to cover any expenditure incurred in the fulfilment of its functions and the amount so deductible shall be within the limits to be decided by the Management Board subject to a maximum limit of 30 percent of the total royalties and fees collected during the year in which the deductions are made.

Auditor's Report

13.—(1) The society shall, on or before the 1st day of July in each year prepare and present to the Council a report on its accounts during the period of twelve months beginning with the 1st January in the preceding year and such report shall include a copy of the accounts duly certified by an auditor, and at the same time with the report, the auditor shall prepare a report on the accounts.

(2) If the Council considers it necessary at any time, it may appoint an auditor to audit the accounts of the society and the cost of such auditing shall be borne by the society.

14. Where as a result of an examination of any account or audit of any account it appears to the Council:

(a) that any offence under any enactment has been committed by the society or by any person; or

(b) that a sum due to the society has not been collected, and that, in either case, it is expedient to do so by reason of the refusal or neglect of the members of the society or of the Board of Management to take legal proceedings, the Council may on behalf of the society and in its name institute:

(i) in the case of (a) above, criminal proceedings for that offence; or

(ii) in the case of (b) above, civil proceedings for the recovery of the said sum.

Settlement of Tariffs

15.—(1) Where there is a dispute between a society and the user, in relation to the tariffs payable such disputes shall be referred to the Council which may set up a Tariffs Arbitration Panel for the resolution of the dispute.

(2) The Panel shall consist of five persons at least two of whom shall be members of the Governing Board of the Council and one of whom shall be designated as the Chairman.

(3) A person shall not be appointed as a member of the Panel if he has any interest in any matter which is required to be determined by the Panel.

(4) The Council may make regulations providing for the procedure of the Panel and for the execution of the functions of the Panel.

(5) Subject to the right of appeal to the Federal High Court on points of law the decision of the Panel shall be final and binding on the parties before it.

Renewal

16.—(1) A society may at any time within six months before the expiration of its certificate of approval apply to the Director, Nigerian Copyright Council for the renewal of its approval.

(2) Upon satisfying itself on the conduct of the society the Council may issue a new certificate of approval for another period of 3 years on such terms as the Council may deem fit.

Withdrawal of Approval

17. The Council may withdraw any approval granted under these Regulations if in the opinion of the Council a society has ceased to function as a collecting society or it is otherwise in the interest of its members to do so and subject to such directions as may be stated in the notice of withdrawal, the company shall cease to function as a collecting society, from the date stipulated in the notice.

Dated this 16th day of August, 1993

Nigerian Copyright Commission