

TMT Article

KAMPALA PROTOCOL:

What you need to know about the
Protocol on the voluntary registration
of copyright and related rights

By Judith Kagere



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KAMPALA PROTOCOL: WHAT YOU NEED TO KNOW about the Protocol on the voluntary registration of copyright and related rights

The Protocol on voluntary registration of copyright and related rights is the fifth Protocol to be administered by ARIPO¹. It aims to ensure that creatives benefit from their works and are commercially incentivised- through copyright to create more and explore new markets.

The Protocol from its preamble was established with the same rationale as the Lusaka Agreement that established ARIPO; for the coordination, harmonization and development of the Intellectual Property activities affecting Member States of ARIPO. In addition, ARIPO seeks to promote in its members the development of copyright and related rights and to ensure that copyright and related rights contribute to the economic, social and cultural development of ARIPO members. The protocol has 16 articles and some of them are explained below.

As regards its scope the Protocol shall govern the contracting states in the voluntary registration and notification of copyright and related rights.

The objectives of this Protocol are to establish, manage, facilitate and coordinate a system for voluntary registration and notification of copyright and related rights, uphold common principles regarding voluntary registration and notification of copyright and related rights; provide copyright holders means of presumption to authorship or ownership of rights; and to ensure that creative industries contribute to the socio-economic development of countries. "Voluntary registration" under this Protocol means registration of copyright or related rights with a national competent authority or ARIPO under this Protocol.

Administration. For purposes of facilitating voluntary registration and notification, ARIPO shall receive and register the applications in the database, receive from a contracting state notification of copyright and related rights registered by the national competent authority within the contracting state; enter into the database information on copyright and related rights registered in contracting state or by ARIPO; and perform such other functions as are necessary for the furtherance of the objectives of the Protocol.

The ARIPO database. ARIPO shall, in exercising its functions establish, manage, update and maintain a database into which data on copyright and related rights registered or notified under this Protocol shall be entered and kept. The ARIPO database established shall be a database for reference and search by any person to whom access shall be granted by ARIPO upon fulfilling the necessary requirements prescribed under the regulations. A person who wishes to have access to the ARIPO database for copyright and related right shall make an application to ARIPO in a prescribed form upon payment of the prescribed fees.

¹ After the Harare Protocol on patents and industrial designs, Banjul Protocol on trademarks, Swakopmund Protocol on protection of traditional knowledge and expressions of folklore and Arusha Protocol for the protection of new varieties of plants, available at www.aripo.org

National competent authority. A contracting state shall notify ARIPO of a body or entity designated as its national competent authority responsible for undertaking the registration of copyright and related rights at the national level; or may designate ARIPO to undertake the function of registering copyright and related rights on its behalf. It shall also be responsible for receiving and maintaining data on copyright and related rights at the national level.

Application for voluntary registration and notification of copyright and related rights. The author or the owner of, or other person interested in the copyright or related rights in, any work or production may make an application in the prescribed form accompanied by the prescribed fee to the national competent authority or ARIPO for registration of particulars of the work or production in the database.

Registration of copyright and related rights

The national competent authority or ARIPO; may accept the application; or refuse the application where it does not comply with the requirements provided for in the Protocol and its regulations. Where an application is accepted, the copyright or related rights shall be registered and entered into the database. The registration of copyright and related rights shall be prima facie evidence of the particulars entered in the database and documents purporting to be copies of any entries therein. Extracts therefrom certified by ARIPO and sealed with the seal of ARIPO shall be admissible in evidence in all courts without further proof or production of the original.

Notification of registered copyright and related rights

A national competent authority of a contracting state shall, upon registration of a copyright or related right, notify ARIPO within the period as prescribed in the regulations. The notification shall be made in a prescribed form accompanied by a copy of the registration certificate or proof of registration issued by the national competent authority. The owner of the copyright or related rights shall pay the prescribed fee as specified under the regulations. ARIPO shall upon receipt of notification and fees enter the copyright or related rights into the ARIPO database.

Withdrawal of application

A person who has filed an application may, in the prescribed form at any time before registration, apply for the withdrawal of the application.

Cancellation of registration

A national competent authority or ARIPO shall cancel the registration of a copyright or related right in the following circumstances: where the initial registration was erroneously made; where the initial registration was fraudulently procured; by an order of a court or any other competent authority, or pursuant to the law of the contracting state.

A cancellation may be initiated by: a national competent authority or ARIPO; a copyright or related rights holder; or a person aggrieved by the registration of a

copyright or related right in the prescribed form. ARIPO shall within a prescribed period, notify a relevant national competent authority of the cancellation and where cancellation is made at the national level, the national competent authority shall notify ARIPO of the cancellation.

Removal from ARIPO database

ARIPO shall remove a copyright or related right from the ARIPO database where a cancellation has been made or there is a clear and obvious error made by the entry into the ARIPO database.

Change in ownership or variation of particulars

A person shall apply for change in ownership of a copyright or related right to a national competent authority or ARIPO as the case may be. The owner of a registered copyright or related rights shall as soon as practicable apply for the registration of any variations to particulars through the national competent authority or ARIPO as the case may be. This application may be accepted or rejected. Where an application is accepted by ARIPO it shall be entered into the ARIPO database and ARIPO shall notify the national competent authority.

Dispute Resolution

Any dispute or claim arising out of this Protocol may be resolved through direct negotiations between or among the Parties in dispute. Where negotiations fail, the Parties shall submit the dispute to the dispute settlement forum as provided for in the regulations. Where a dispute arises between applicants and third parties on the application or interpretation of this Protocol, ARIPO, in consultation with contracting states, shall provide for dispute resolution mechanisms applicable to such a dispute.

Appeals

An Appeal shall be made to the Board established in terms of Article 16 by a person whose application for registration of copyright or related rights is rejected by ARIPO; registration of copyright or related rights has been cancelled by ARIPO; or registration of copyright or related rights has been removed from the ARIPO database. Any appeal against decisions made by a national competent authority shall be governed by the laws of the relevant contracting state.

Establishment of the Board of Appeal

The Protocol establishes a Board of Appeal consisting of five (5) members, with relevant knowledge and skills, two (2) of whom shall be copyright and related rights experts. The members of the Board shall be appointed by the Administrative Council of ARIPO– for a period of three (3) years renewable for another term; from the Contracting States to this Protocol; and on such other terms and conditions as the Administrative Council may determine. The functions of the Board are to deal with any matter for appeal set out in article 16 paragraph 1; deal with any matter from an applicant who is dissatisfied with any aspect of the process of voluntary registration and notification of copyright or related rights under this Protocol; review any administrative decisions of ARIPO in relation to the implementation of the provisions of this Protocol at its

own instance or brought to its attention by a third party, decide on any other matter related or incidental to the exercise of the Board's powers.

Technical Assistance

ARIPO may provide technical assistance to contracting states to either put in place or enhance efficient registration systems at the national competent authority.

Regulations

The Administrative Council shall make regulations for the implementation of this Protocol and may amend them as necessary. The regulations shall inter alia: - stipulate any administrative requirements or any details necessary for the implementation of the provisions of this Protocol; prescribe fees being charged under this Protocol;

Membership and entry into force

Any State which is a member of ARIPO or any State to which membership of ARIPO is open, may become party to this Protocol by a signature followed by the deposit of an instrument of ratification; or deposit of an instrument of accession. Instruments of ratification or accession shall be deposited with the Director General of ARIPO. This Protocol shall come into force three (3) months after five (5) States have deposited their instruments of ratification or accession. Any State which is not party to this Protocol upon its entry into force shall become bound by this Protocol three (3) months after the date on which such a State deposits its instrument of ratification or accession. Any State which ratifies or accedes to this Protocol shall, by the instrument of ratification or accession, be deemed to have indicated its acceptance to be bound by the provisions of the Lusaka Agreement on the creation of the African Regional Intellectual Property Organization (ARIPO) and such State shall become a member of ARIPO on the date on which it deposits its instrument of ratification or accession to this Protocol.

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