

Kenya
Copyright Act, 2001 (Chapter 130) (Revised Edition 2014)

EIFL recommendations for Marrakesh-compliant amendments

Section 26 Nature of copyright in literary, musical or artistic works and audio-visual works	Explanation	Proposed amendments
<p>Section 26(1) Exclusive rights</p> <p>Copyright in a literary, musical or artistic work or audio-visual work shall be the exclusive right to control the doing in Kenya of any of the following acts, namely the reproduction in any material form of the original work or its translation or adaptation, the distribution to the public of the work by way of sale, rental, lease, hire, loan, importation or similar arrangement, and the communication to the public and the broadcasting of the whole work or a substantial part thereof, either in its original form or in any form recognisably derived from the original....</p> <p>Section 26(1) Exceptions and limitations</p> <p>[C]opyright in any such work shall not include the right to control—</p> <p>(a) the doing of any of those acts by way of fair dealing for the purposes of scientific research, private use, criticism or review,</p>	<p>The Marrakesh Treaty is self-executing pursuant to Article 2(6) of the Constitution of Kenya, which provides that “any treaty or convention ratified by Kenya shall form part of the Law of Kenya under this Constitution.”</p> <p>Moreover, the fair dealing exception in Article 26 of the Copyright Act for private use and the public library exception for reproductions in the public interest arguably would allow family members and libraries to create accessible format copies for print disabled persons.</p> <p>But to avoid any confusion, particularly for organizations other than public libraries that provide services to the print disabled, e.g., educational institutions, a specific exception for the creation and distribution of accessible format copies would be helpful. The proposed exception (Article 26(1)(l)) would reach people with hearing disabilities as well as print disabilities.</p> <p>Importantly, such an exception should apply regardless of the commercial availability of a copy in an accessible format.</p>	<p>[C]opyright in any such work shall not include the right to control—</p> <p><u>New Section 26(1)(l) (letter l)</u></p> <p><u>the creation and distribution, including by import and export, of an accessible format copy of a work for blind, visually impaired or otherwise disabled persons.</u></p>

<p>or the reporting of current events subject to acknowledgement of the source;</p> <p>(h) the reproduction of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centres and scientific institutions as may be prescribed, where the reproduction is in the public interest and no revenue is derived therefrom....</p>		
<p>Section 35(3) Infringement</p> <p>Copyright and related rights shall be infringed by a person who— (a) circumvents any effective technical measure designed to protect works; or (b) manufactures or distributes devices which are primarily designed or produced for the purpose of circumventing technical measures designed to protect works protected under this Act.</p>	<p>Because section 35(3) prohibits the circumvention of technical measures, an exception should be adopted that allows the circumvention for the purpose of making an accessible format copy.</p> <p>To be sure, such an exception might be implied by virtue of the self-executing nature of the Marrakesh Treaty, and the treaty’s requirement in Article 7 that legal protection concerning technological measures “not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty.”</p> <p>Nonetheless, a specific exception should be enacted to avoid doubt and confusion.</p>	<p><u>New Section 35(3)(5)</u></p> <p><u>Paragraphs 1 and 2 shall not apply to devices designed or used to circumvent a technical measure for the purpose of creating an accessible format copy for the blind, visually impaired or otherwise disabled person.</u></p>

For a compilation of known implementing legislation for countries that have ratified or acceded to the Marrakesh Treaty, see www.arl.org/publications-resources/4347-marrakesh#.WYTqhXA8BIH