



*Communications for all in East Africa*

# **GUIDELINES FOR CONTENT SHARING, DIGITAL RIGHTS MANAGEMENT AND DIGITAL CONTENT MANAGEMENT**

**Prepared by EACO**

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## **Terms Definitions**

‘Ancillary online service’ means an online service provided by a broadcaster or under the control and responsibility of a broadcaster, and is provided simultaneously with or for a defined period of time after their broadcast.

‘Collecting society/management organization’ means any organization which manages or administers copyright or rights related to copyright as its mandate or as one of its main purposes

‘Content Sharing’ means strategic distribution of content between content owners, content producers or broadcasters

“Content Distribution” means the strategic dissemination of media content to audiences through various broadcasting and media platforms

‘Content Delivery Network (CDN)’ means geographically distributed and interconnected network servers and data centres, hosting media content for purposes of providing faster delivery of content.

‘Digital Broadcasting Services’ means any service that consists of the broadcast of television or sound broadcasting programmes to consumers using digital technology, either as a free to air service or subscription service

‘Direct injection’ means a technical process by which a broadcaster transmits its programme-carrying signals to a content aggregator/distributor, in such a way that the programme-carrying signals are not accessible to the public during that transmission.

‘Electronic rights management information’ means any information by right-holders which identifies the work or recording

‘Exclusive licence’ means a licence in writing signed by or on behalf of an owner or prospective owner of copyright or related rights, authorizing the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would be exercisable solely by the owner of copyright or related rights

‘Fixation’ means the recording of sounds or images, or of their representation from which they can be reproduced or communicated through a device

‘Free To Air services’ means broadcasting services broadcast without encryption and capable of being received by broadcasting apparatus without charges upon the consumer

‘Over The Top Services (OTTs)’ means media streaming services offered to directly to consumers through the internet

‘Owner of the copyright’ means the first owner, an assignee or an exclusive licensee, as the case may be, of the copyright

‘Rebroadcasting’ means simultaneous or subsequent broadcasting by one or more broadcasters of the broadcast programmes of another broadcaster;

‘Reproduction’ means the making of one or more copies of a work in any material form and includes any permanent or temporary storage of such work in electronic or any other form

‘Retransmission’ means the simultaneous, unaltered and uncut retransmission by a broadcaster, of transmitted television or radio programmes intended for reception by the public from another broadcaster

‘Rights Management Information’ means any information by rights holder which identifies the work or recording

‘Subscription Management’ means provision of support services to a subscription broadcasting service which support services may include, but not limited to, subscriber management support, subscription fee collection, call centre, sales and marketing and technical installation support

‘Subscription services’ means broadcasting services broadcast with encryption and capable of being receive by broadcasting apparatus with conditional access by the consumer.

## **1. Introduction**

The development of guidelines for content sharing, digital rights management and digital content management is aimed at addressing the challenges of content distribution in the era of digital broadcasting. After the transition to digital terrestrial broadcasting, broadcasters were suddenly required to avail their content to other players within the value chain since the DTT broadcasting model requires that signal distribution be centralised for optimum spectrum utilization. Furthermore, digital technologies and the Internet has transformed the access to television and radio programmes where users increasingly expect to have access to television and radio content (live stream and on-demand) through both traditional broadcasting channels and through online services. With increasing number of content creators due to the opportunities brought about by the growth in digital broadcasting, it has become necessary that guidelines for content sharing be developed in order to grow investment in the industry while protecting intellectual property. The growth of Over The Top services have also created the need for review of regulatory frameworks to address issues of content management and rights management.

Broadcasting service providers are increasingly offering ancillary online services in addition to their own broadcasts of television and radio programmes. Content aggregators also retransmit these programs on subscription basis simultaneously with the initial transmission of those broadcasts through various platforms such as cable, satellite, digital terrestrial, and mobile or closed-circuit IP-based networks, as well as the open internet. The content distributors obtain the broadcast signals from broadcast content providers through different ways such as direct injection. The demand for the content is from users originating from both within the member state and other member states within the EAC region.

In addition, digital content creators, both commercial and user-generated are for the most part outside the scope of specific regulations that apply to 'traditional' broadcasters and other content service providers. The nature and scope of regulatory issues brought about by the impact of digital content on broadcasting require that regulators review the current regulatory frameworks in order to ensure that they are flexible and future proof in view of the fast-changing technologies that impact how content is 'broadcast'.

In this regard, the EACO member states have developed harmonised guidelines that will be of great value within the broadcasting industry, more so where content is shared across the member countries. These guidelines will further inform the need for developing a harmonised framework for the region.

## **2. Scope**

The scope of these guidelines includes digital broadcasting services, both subscription and Free To Air distributed across the various platforms. The issues covered include content production, content sharing within the broadcasting value chains, content distribution and intellectual property issues.

Fig 1: Broadcasting Value Chain

Broadcasting Value Chain				
CONTENT PRODUCTION	CONTENT/CHANNEL ASSEMBLY	SUBSCRIPTION MANAGEMENT	DISTRIBUTION & DELIVERY	CONSUMER
Content producers	Broadcasters	Subscription Broadcasters	Subscription Broadcasters	TV Viewers
Broadcast in-house production	Content Aggregators	Online Streaming Services	Online Streaming Services	Radio listeners
User Generated Content	CDNs	OTTs service providers	OTTs service providers	Online audience

### 3. Objectives

These guidelines aim to:

- 3.1. guide the EACO member states in the development of a harmonised mechanism for the management of digital content within the broadcasting sector;
- 3.2. guide the EACO member states in the development of a harmonised mechanism for the sharing of digital content within the broadcasting sector;
- 3.3. provide a harmonised mechanism for digital rights management for content across the region; and
- 3.4. Provide guidelines for the retransmission within the region of broadcast content originating from any of the member states.

### 4. Existing legal framework and policies

The Berne Convention is an international agreement which sets out to harmonise the way copyright and related rights are regulated at an international level. The convention is administered by the World Intellectual Property Organisation (WIPO) and was first adopted in 1886 as an agreement to honour the rights of all authors who are nationals of countries that are party to the Convention. Article 5 of the convention contains the principle of national treatment for authors. According to this principle, foreign rights holders ought to receive the same treatment as national rights holders.

Article 11 and Article 13 of the Convention provide that it is a matter of national law-makers in the Berne member countries to determine and /or impose conditions under which exclusive rights under copyright and relate rights may be exercised.

Under the Berne Convention, a copyright comes into existence upon creation of a work. The owners of the copyright may be individual creators (natural persons), corporations (legal persons) or the ownership may be held jointly. Rights holders have

a legitimate expectation that they can authorize, usually against payment, the exploitation of the intellectual property they own. These include direct payment by users, payment through collective agreements which are managed by collective management societies, and payment by intermediaries, who resell to consumers.

By setting harmonised standards for the region, EACO member states shall reduce national discrepancies, and ensure the level of protection required to foster creativity and investment in creativity. Harmonised standards also promote cultural diversity and guarantee better access for consumers and business to digital content and services across the region.

Member states have established Copyrights Acts that dispense the mandate of administration and enforcement of copyright and related/neighbouring rights.

**Fig 2: Review of the Legal frameworks for copyrights and related rights for broadcasts in EACO member states**

Kenya	Tanzania	Uganda
<p>Under the Kenyan Copyright Act, 2001, copyright and related rights are defined as exclusive rights given to the creator of a creative work to reproduce the work. Copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea itself. The Act enumerates the works eligible for copyright in Kenya, which includes broadcasts.</p>	<p>The Copyrights and Neighbouring Rights Act, 1999 in the Republic of Tanzania protects lawful interest of performing artists, producers of phonograms and broadcasting organizations relating to their productions, by granting them relevant rights. Further, the law provides that protection of broadcasts where the headquarters of the organization is situated in the United Republic of Tanzania, or the broadcast was transmitted from a transmitter situated in the United Republic of Tanzania.</p>	<p>The Copyright and Neighbouring Rights Act, Act No. 19 of 2006 of Uganda defines neighbouring rights to include rights of performing artistes in their performances, rights of producers and music publishers and rights of broadcasting companies in their programmes and others. The Act proceeds to state the works that are eligible for copyright,</p>

		which includes broadcasts.
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**Copyrights in broadcasts shall be the exclusive rights for a broadcaster to control the following Acts:**

<p>a) the fixation of the whole or a substantial part of the broadcast;</p> <p>b) the rebroadcasting of the whole or a substantial part of the broadcast;</p> <p>c) the communication to the public of the whole or a substantial part of a television broadcast</p> <p>d) retransmission of the broadcast over any network</p> <p>e) decrypting in any way or form any encrypted broadcast; or</p> <p>f) any adaptation or modification or any unauthorised expropriation of the broadcast or pre-broadcast signal meant for reception by another broadcaster under specific provisions.</p>	<p>a) the rebroadcasting of its broadcast;</p> <p>b) the communication to the public of its broadcast;</p> <p>c) the fixation of its broadcast;</p> <p>d) the reproduction of a fixation of its broadcast.</p> <p>The rights under this section shall be protected from the moment when the broadcasting takes place until the end of the fiftieth calendar year following the year in which the broadcast takes place.</p>	<p>a) the broadcasting of its broadcast;</p> <p>b) the fixation of its broadcasts; or</p> <p>c) the reproduction of a fixation of its broadcasts except where—</p> <p>i. the fixation used to make the broadcast is made without authorisation; or</p> <p>ii. the broadcast is initially fixed in accordance with the provisions of the Copyright and Neighbouring Rights Act, but the reproduction is made for purposes other than those specified.</p> <p>The rights of a broadcasting company granted here shall be protected for fifty years</p>
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<p>Expiration of copyrights for broadcasts shall be fifty years after the end of the year in which the broadcast took place.</p>		<p>from the date the first broadcast takes place</p>
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**Exceptions/ limitations on the neighbouring rights and include the following:**

<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, or the reporting of current events subject to acknowledgement of the source;</p> <p>b) the broadcasting of a work or reproduction of a broadcast, if the broadcast is intended to be used for purposes of systematic instructional activities;</p>	<p>a) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;</p> <p>b) reproduction solely for scientific research;</p> <p>c) reproduction solely for the purpose of face-to-face teaching activities, except for performances and phonograms which have been published as teaching or instructional materials; cases where, under Part II of this Act a work can be used without the</p>	<p>a) private use;</p> <p>b) the reporting of current event, except that no more than short excerpts of a performance, sound recording or audio-visual performance fixation or broadcast are used;</p> <p>c) teaching science,</p> <p>d) quotations in the form of short excerpts of a performance, sound recording, audio-visual fixation or fixation or broadcast, which are</p>
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c) any use made of a work for the purpose of a judicial proceeding or of any report of any such proceeding.	authorization of the author or other owner of copyright. d) cases where, under Part II of this Act a work can be used without the authorization of the author or other owner of copyright.	compatible with fair use and are justified by the informative purpose of the quotations.
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The Existing legal frameworks also prescribe measures, remedies and sanctions against abuses and infringement of the respective rights.

Broadcast programmes provided by service providers incorporate a variety of content, such as audio visual, musical, literary or graphic works, protected under copyright or related rights in the individual member states. This means that clearing the rights for a multitude of rights holders can be a complex process to enable content sharing. Often the rights need to be cleared in a short time frame, in particular when preparing programmes such as news or current affairs programmes. In order to make their online services available across borders, broadcasting service providers need to have the required rights to content for all the relevant jurisdictions, which further increases the complexity of the clearance process. Harmonized guidelines will provide some level of clarity in this process.

## **5. Harmonised Guidelines for Digital Content Sharing**

### **5.1. Acquisition of broadcasting rights**

5.1.1. Member States shall provide an exclusive right for the rights holders to authorize the communication of copyright works to the public by broadcast media subject to the provisions set out in these guidelines.

5.1.2. Member States shall ensure that the authorization referred to 5.1.1. may be acquired only by agreement.

5.1.3. A member State may provide that a collective agreement between a collecting society/management organization and a broadcasting content provider with respect to a given category of works may be extended to rights holders of the

same category who are not represented by the collecting society/management organization.

## **5.2. Rights of broadcasting content providers**

5.2.1. Member States shall provide for broadcasting content providers the exclusive right to authorize or prohibit the fixation of their broadcasts. This right shall not apply where a content distributor merely retransmits the broadcasts of broadcasting content service providers.

5.2.2. Member States shall provide the exclusive right to authorize or prohibit the direct or indirect reproduction for broadcasting content providers, of fixations of their broadcasts.

5.2.3. The reproduction right referred to in paragraph 5.2.3 may be transferred, assigned or subject to the granting of contractual licences.

5.2.4. Member States shall provide for broadcasting content providers the exclusive right to authorize or prohibit the rebroadcasting of their broadcasts, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

5.2.5. Member States may provide for limitations to the rights referred to in 5.2 in respect of:

- i. private use;
- ii. use of short excerpts in connection with the reporting of current events;
- iii. fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;
- iv. use solely for the purposes of teaching or scientific research.

## **5.3. Collective administration of rights**

These guidelines shall be without prejudice to the regulation of the activities of collecting societies/management organizations established by the Member States.

#### **5.4. Retransmission of television and radio programmes**

- 5.4.1. Member states shall ensure that retransmission of programmes have to be authorised by the holders of the exclusive right of the broadcast to the public.
- 5.4.2. Member States shall ensure that rights holders may exercise their right to grant or refuse the authorisation for a retransmission, which may be through a collective management organisation.
- 5.4.3. Member States shall provide that, where broadcasting content service providers and the operators of retransmission services enter into negotiations regarding authorisation for retransmission, those negotiations are to be conducted in good faith.
- 5.4.4. Member States may provide that these guidelines apply to retransmissions where both the initial transmission and the retransmission take place within their territory.

#### **5.5. Transmission of programmes through direct injection**

- 5.5.1. This guideline applies where a broadcasting service provider transmits its signals to a signal distributor by direct injection. Where the signal distributor transmits the signals to the public without the broadcasting service provider itself simultaneously transmitting those signals directly to the public, the broadcasting service providers and the signal distributor shall both be required to obtain authorisation from rights holders. Member States may provide for arrangements for obtaining authorisation from rights holders.
- 5.5.2. Member States may provide for the rights holders to grant or refuse the authorisation to signal distributors for a transmission of programmes.
- 5.6. Member States shall ensure that it is possible to call upon the assistance of one or more mediators where no agreement is concluded between the operator of a retransmission service and the broadcasting service providers regarding authorisation for retransmission of broadcasts.

## **5.7. Exclusive Rights**

5.7.1. Member states may provide for a broadcasting contract between rights holders and broadcasters to be entered into, either on exclusive or non-exclusive basis and may specify—

- i. the exclusive or non-exclusive nature of the right transferred;
- ii. the period for which the right is transferred or the number of times the work shall be broadcast;
- iii. the language in which the work is to be broadcast;
- iv. the territory in which the work is to be broadcast; and
- v. the amount of the rights holder's remuneration and mode of payment

5.7.2. Member states may provide for the subletting of works acquired under exclusive rights under 5.7. to other parties or broadcasters under reasonable mutually agreed terms.

5.7.3. Member states shall ensure that broadcasters are granted exclusive rights to authorize or prohibit the following acts:

- i. simultaneous or deferred rebroadcasting of their broadcasts, whether these are transmitted via satellite or by any other means;
- ii. simultaneous and deferred retransmission of their broadcasts in cable systems;
- iii. the making available to the public of their broadcasts, by any means, including interactive transmissions;
- iv. the fixation of their broadcasts on any media, existing or future, including the making of photographs from television signals;
- v. the transmission to the public of programs, transmitted by cable;
- vi. the decoding of encrypted signals; and
- vii. the importation and distribution of fixations or copies of fixations of broadcasts, made without authorization.

5.7.4. Member states shall provide that contractual agreements either under exclusive or non-exclusive basis are in place between broadcasters and other entities wishing to carry out any of the acts under 5.7.3.

## **6. Requirements for Digital Rights Management and Digital Content Management**

Digital Rights Management for digital content involves digitizing “rights management information” which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public (users). Managing rights to digital content requires identification, clarity of description and usage rules that are precise and can be relied on to provide unambiguous instructions to protect content.

6.1. Member states shall ensure that rights management for digital content are in place through any of the following mechanisms:

6.1.2. Requiring the use of watermarks where graphic files can be placed on assets, which enable creators or copyright holders to track unauthorized usage. The watermark stays connected to a file when the digital content is copied, manipulated, or transformed into another format.

6.1.3. Usage of Metadata where digital assets have metadata that enables their copyright and licensing information to be captured and monitored. This is critical to tracking licensing details of stock audio files and videos to prevent unauthorized usage.

6.1.4. Usage of embedded codes where content owners use embedded embed codes that control how and where their media is published online. This is useful if the license of an image changes or expires because it enables the license to be changed or updated wherever the related embedded code has been posted online.

6.1.5. Use of License agreements where organizations can protect their content by requiring users to read and agree to their end-user license agreement. The agreement is agreed the first time a user accesses or downloads content, which helps rights holders protect their content.

6.2. Member states shall ensure that once content has been identified and described, the rights owners create the rules under which content can be accessed by users. Such rules will enable rights owners to commercially distribute their content while ensuring protection from illegal distribution.

- 6.3. Member states shall require that these rules be machine readable—that is, the licenses must be readable by computers and other microprocessor-based devices and secure such that any tampering can be detected.
- 6.4. Member states shall encourage the use of Digital Rights Management technology that may come in the form software and hardware solutions, that enable content creators to prevent piracy and unauthorized use whether deliberate or unintended.
7. Copyright and related rights under these guidelines shall be infringed by a person who removes or alters any electronic rights management information; or distributes, imports, broadcasts or makes available to the public, protected works, records or copies from which electronic rights management information has been removed or has been altered without the authority of the right holder.
8. These guidelines shall be reviewed as guided and agreed upon by the EACO member states in light of the changes of in the sector.