

**DRAFT PROTOCOL ON VOLUNTARY REGISTRATION AND
NOTIFICATION OF COPYRIGHT AND RELATED RIGHTS**

Provisions of the Protocol		Page
Preamble		2
Section 1.	Interpretation	3
Section 2.	General	4
Section 3.	Designation of a Relevant Authority	5
Section 4.	Application for voluntary registration or notification of copyright or related rights (Primary Registration)	6
Section 5.	Transmission of applications to ARIPO	7
Section 6.	Withdrawal of the Application	7
Section 7.	The ARIPO database	7
Section 8.	Inclusion in the ARIPO database (Secondary Registration)	8
Section 9.	Access to the ARIPO database	8
Section 10.	Cancellation of Voluntary Registration at National and Regional levels	8
Section 11.	Appeal	9
Section 12.	Establishment of the Board of Appeal	9
Section 13.	Effect of Voluntary Registration and Notification at National and Regional Levels	10
Section 14.	Dispute Resolution	10
Section 15.	Technical Assistance	10
Section 16.	Regulations	10
Section 17.	Membership and entry into force	11
Section 18.	Denunciation of the protocol	11
Section 19.	Amendment to the Protocol	12
Section 20.	Signature of the Protocol	12

PREAMBLE

We, the Contracting States of this Protocol,

Having regard to the Agreement on the Creation of the African Regional Intellectual Property Organization (ARIPO), concluded in Lusaka, Zambia on December 9, 1976;

Desirous of furthering the objectives of ARIPO generally and in particular Article III(c) of the Lusaka Agreement which provides for the establishment of common organs or services as and when it may be necessary or desirable for the coordination, harmonization and development of the Intellectual Property activities affecting Member States of ARIPO;

Further having regard to Article III (i) of the Lusaka Agreement mandating ARIPO 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 its members and of the African region as a whole;

Acknowledging Article (5)(2) of the Berne Convention for the Protection of Literary and Artistic Works 1886, which provides that the enjoyment of copyright shall not be subject to any formalities;

Reaffirming the advantages of pooling resources in respect of Intellectual Property administration;

Recognizing that voluntary registration system offers right owners means of presumption to authorship or ownership of rights;

Taking cognizance of the fact that national registration systems often hold valuable information on creativity both from the legal and economic perspective, and provide statistics on authors, performers, right holders and their works, recordings and productions in countries;

Acknowledging that works in respect of copyright and related rights may be used in various transactions, which involve, but are not limited to licensing, merchandising, transfer of rights, assignments and negotiations for royalties payable or collateral;

Further acknowledging that Creative Industries contribute to the Gross Domestic Product (GDP) and employment in a Country and that there is a need to harness the Creative Industries and Intellectual Property as a whole

in order to achieve the United Nations Sustainable Development Goals (SDGs);

Realizing the need for cooperation among the Contracting States in order to ensure sustainable development of copyright and related rights through a coordinated and concerted approach;

Hereby establish this Protocol to be known as the Protocol on Voluntary Registration and Notification of Copyright and Related Rights within the framework of the African Regional Intellectual Property Organization (ARIPO) and agree as follows:

Section 1 Interpretation

For the purpose of this Protocol, the following definitions shall, unless the context otherwise requires, have the meaning assigned to them:

“Administrative Council” means the ARIPO Administrative Council set up in terms of Article VII of the Lusaka Agreement;

“ARIPO database” means the regional database where data on voluntary registration and notification of copyright and related rights under this Protocol is kept and maintained;

“Assignee” means a natural or legal person to whom rights and obligations over the copyright or related rights that have been transferred by the owner of the copyright or related rights under an assignment agreement;

“Contracting State” means any State that becomes party to this Protocol in accordance with Section 17;

“Duly authorized representative” means a natural or legal person who is appointed by the rights holder, assignee or licensee to represent him or her to register the application on copyright and related rights on his or her behalf;

“Licensee” means a natural or legal person who has been granted the rights to use the copyright or related rights by the owner of the copyright or related rights under a license agreement for a specified period agreed upon between the parties;

“Notification” means the right holder or their duly authorized representative, submits particulars of a copyright and related rights with a

Relevant Authority designated under this Protocol, for inclusion of such information in ARIPO database;

“Notification Certificate” means the certificate issued by ARIPO to the right holder or a duly authorized representative upon Secondary Registration;

“Primary Registration” means registration of copyright and related rights with a relevant authority designated under this Protocol;

“Receiving Office” means the relevant authority of a Contracting State within which ARIPO application has been filed;

“Registration Certificate” means the certificate issued to the right holder or his duly authorized representative by the relevant authority upon completion of the primary registration process;

“Relevant Authority” means an authority within a Contracting State designated by the Contracting State to facilitate the voluntary registration and notification of copyright and related rights process on its behalf and shall include ARIPO where a Contracting State has designated ARIPO to act as a relevant authority on its behalf and where ARIPO receives and processes an application for Primary Registration from a non-Member State or a non-Contracting State through a duly authorized agent;

“Secondary Registration” means inclusion of primary registration in the ARIPO database for copyright and related rights;

“Voluntary Registration” means the act of an applicant or a duly authorized representative submitting his/her application to the Relevant Authority for primary registration or Receiving Office for onward transmission to the Relevant Authority;

Section2

General

2.1. The African Regional Intellectual Property Organization (ARIPO) is hereby empowered to establish, manage and coordinate a system for voluntary registration and notification of copyright and related rights within the ARIPO framework.

- 2.2. Contracting States and ARIPO may uphold common principles including registration, notification and publication of copyright and related rights.
- 2.3. For purposes of facilitating voluntary registration and notification under this Protocol, ARIPO may *inter alia* perform the following functions;
- a) act as a relevant authority for Contracting States that do not have relevant authorities and have designated ARIPO to perform the primary registration function on their behalf;
 - b) act as a relevant authority for applications from non-Member States and non-Contracting States;
 - c) undertake secondary registration at Regional level following submission of relevant information on primary registration or following completion of primary registration where ARIPO acted as a Relevant Authority;
 - e) performing such other functions as are necessary for the furtherance of the objectives of this Protocol.

Section 3

Designation of a Relevant Authority

- 3.1. A Contracting State may, designate a body or entity within its territory to be known and function as a Relevant Authority.
- 3.2. The Relevant Authority shall be responsible for primary registration of copyright and related rights at the national level.
- 3.3. The Relevant Authority shall be responsible for collecting and maintaining all data on copyright and related rights at the national level and including it in the national database or register where applicable.
- 3.4. Where a Contracting State has not designated a Relevant Authority within its territory or borders, the Contracting State may designate ARIPO to act on its behalf for primary registration of copyright and related rights.
- 3.5. The national Relevant Authority may act as a Receiving office on behalf of ARIPO.
- 3.6. The Receiving Office pursuant to Sub-section 3.5 shall be responsible for receiving applications for voluntary registration and notification from applicants or their duly authorized representatives for onward

transmission to ARIPO for primary registration and secondary registration.

Section 4

Application for voluntary registration and notification of copyright and related rights

(Primary Registration)

- 4.1. A rights holder, assignee or licensee of copyright work and related rights or their duly authorized representative within a Contracting State which has designated a Relevant Authority, may apply to the Relevant Authority for voluntary registration and notification of their copyright and related rights.
- 4.2. A rights holder, assignee or licensee of copyright work and related rights or their duly authorized representative from a Contracting State which has not designated a Relevant Authority, may, if they are a national or resident of the Contracting State which has designated ARIPO as its Relevant Authority, apply directly to ARIPO or through a Receiving Office for the voluntary registration and notification of their copyright and related rights.
- 4.3. A rights holder from a Non-Contracting State or a Non-Member States or their duly authorized representative may apply to ARIPO for registration and notification of their copyright and related rights.
- 4.4. A rights holder can be a natural or legal person.
- 4.5. The Relevant Authority shall ensure that the application at national level complies with the requirements provided for under the respective national laws.
- 4.6. In a situation where ARIPO acts as a Relevant Authority, ARIPO shall ensure that the application complies with the requirements provided for in this Protocol.
- 4.7. If the applicant complies with the requirements, the copyright and related rights shall be duly registered, and the applicant be furnished with a registration certificate.
- 4.8. If the applicant fails to comply with the requirements prescribed, the Relevant Authority shall refuse the application.
- 4.9. Requirements for application at ARIPO will be provided in the Regulations.
- 4.10. (1) An application may be filed by an applicant who:

- (a) is a resident in any Contracting State; or
 - (b) is not a resident in a Contracting State.
- (2) An application filed by an applicant who is not resident in any of the Contracting States shall be filed only through a duly authorized representative with residence in any of the Contracting States.

Section 5

Transmission of applications to ARIPO

- 5.1. A Relevant Authority within a Contracting State, shall, within 1 month of registration of copyright and related rights, transmit the details of the application to ARIPO for secondary registration.
- 5.2. The application transmitted pursuant to Sub-section 5.1 shall be accompanied by a copy of the registration certificate issued by the Relevant Authority.
- 5.3. In the case where a Relevant Authority acted as a Receiving Office, the Receiving Office shall transmit an application for registration and notification of copyright and related rights to ARIPO within 2 weeks of its receipt.
- 5.4. ARIPO shall duly register the application transmitted pursuant to Sub-section 5.3 if it fulfils all requirements for registration and furnish the applicant with a registration certificate.

Section 6

Withdrawal of the Application

- 6.1. Any person who has applied for voluntary registration and notification of copyright and related rights under this Protocol may withdraw their application at any time during the application stage, before registration.
- 6.2. The withdrawal referred to under this Section, shall be in accordance with the withdrawal procedures and regulations of the Relevant Authority where the application was made.
- 6.3. If the application for voluntary registration and notification is made directly to ARIPO, the withdrawal procedures will be provided in the Regulations.

Section 7

The ARIPO database

- 7.1. ARIPO shall, in exercising its functions under Section 2 establish, manage, update and maintain a database into which data on copyright

and related rights registered under this Protocol shall be entered and kept.

- 7.2. The ARIPO database established pursuant to Sub-section 7.1, shall be a centralized regional database for reference and search by any natural or legal persons to whom access shall be granted by ARIPO upon fulfilling the necessary requirements that will be provided in the Regulations.

Section 8

Inclusion in the ARIPO database (Secondary Registration)

- 8.1. The ARIPO Office pursuant to Sub-section 5.1 shall within 1 month of receipt include the transmitted information into the ARIPO database as secondary registration.
- 8.2. Where ARIPO acted as the Relevant Authority, the ARIPO Office shall include the registered copyright and related rights in the ARIPO database within 1 month of the primary registration as secondary registration.
- 8.3. ARIPO may, after inclusion of copyright and related rights in the ARIPO database for copyright and related rights, issue a notification certificate as confirmation of the inclusion, upon request by the applicant or their duly authorized representative.

Section 9

Access to the ARIPO database

- 9.1. The ARIPO database for copyright and related rights may be accessible upon fulfilment of the necessary requirements pursuant to Sub-section 7.2 and payment of a prescribed fee to be provided in the Regulations.
- 9.2. ARIPO may integrate its ARIPO database with other Intellectual Property databases for purposes of access to information and information sharing in furtherance of the objectives of this Protocol.

Section 10

Cancellation of Voluntary Registration at National and Regional levels

- 10.1. Cancellation of registration at national level shall be governed by the respective national laws of each Contracting States.

- 10.2. Cancellation of registration at regional level shall be governed by this Protocol.
- 10.3. Procedures for cancellation pursuant to Sub-section 10.2 shall be provided in the Regulations.

Section 11

Appeal

- 11.1. An applicant whose application is refused pursuant to Section 4.8, may, if dissatisfied with the refusal, appeal against the decision to the Board of Appeal established in terms of Section 12.
- 11.2. Procedures for appeal at ARIPO shall be provided in the Regulations.

Section 12

Establishment of the Board of Appeal

- 12.1. There is hereby established a Board of Appeal (hereinafter referred to as “the Board”).
- 12.2. The Board shall consist of five members who are technically experienced in Copyright and Related Rights matters.
- 12.3. The members of the Board shall be appointed by the Administrative Council of the Organization—
 - (a) for a period of 2 years renewable once for another term of 2 years;
 - (b) from the Contracting States of this Protocol; and
 - (c) on such other terms and conditions as the Administrative Council may determine.
- 12.4. The functions of the Board are—
 - (a) to consider and decide on any appeal lodged by the applicant in terms of Section 10 and 11 of this Protocol;
 - (b) to review any final administrative decision of the Office in relation to the implementation of the provisions of this Protocol;
 - (c) to decide on any other matter related to or incidental to the exercise of the Board’s powers.
- 12.5. Three members of the Board shall form a quorum.
- 12.6. Decisions of the Board shall be final.
- 12.7. The Board shall have power to make and adopt its own rules of procedure.

Section 13
Effect of Voluntary Registration and Notification at National and Regional Levels

- 13.1. Registration under this Protocol, inclusion in the ARIPO Regional database and the certificate of registration or notification issued following the registration and notification process, shall, in the absence of anything to the contrary, be taken as “presumption of ownership” of the copyright and related rights by the person who appears in the register.
- 13.2. The Registration or Notification certificate issued by ARIPO shall have the same effect as if it were issued by a Contracting State and shall be recognized by all Contracting States.
- 13.3. The information in the ARIPO database may, upon request, be used by the Contracting States in research, linking right holders with foreign direct investors, enforcement and any other issues related to the promotion and protection of copyright and related rights.

Section 14
Dispute Resolution

- 14.1. ARIPO, in consultation with Contracting States, may provide for dispute resolution mechanisms applicable to a dispute under this Protocol.
- 14.2. The dispute resolution mechanisms will be provided in the Regulations.

Section 15
Technical Assistance

ARIPO may provide technical assistance to Contracting States in need of such assistance to either put in place or enhance efficient registration systems at the Relevant Authority of the Contracting State and integrate the systems that will facilitate provision of information into the ARIPO database.

Section 16
Regulations

- 16.1. The Administrative Council shall make Regulations for the implementation of this Protocol and may amend them, as necessary.

- 16.2. Without derogating from the generality of Sub-section 16.1, the Regulations shall *inter alia*:-
- a) stipulate any administrative requirements or any details necessary for the implementation of the provisions of this Protocol and any relevant international treaties;
 - b) prescribe fees to be charged by the ARIPO Office and proceeds of the fees to be used in furtherance of copyright and related rights;
 - c) provide the schedule of forms to be used in the registration and notification process.

Section 17

Membership and entry into force

- 17.1. 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
 - b) deposit of an instrument of accession.
- 17.2. Instruments of ratification or accession shall be deposited with the Director General of ARIPO.
- 17.3. This Protocol shall come into force 3 months after 5 States have deposited their instruments of ratification or accession.
- 17.4. Any State which is not party to this Protocol upon its entry into force shall become bound by this Protocol 3 months after the date on which such a State deposits its instrument of ratification or accession.
- 17.5. 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 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.

Section 18

Denunciation of the Protocol

- 18.1. Any Contracting State may denounce this Protocol by notification addressed to the Director General of ARIPO.

18.2. Denunciation shall take effect 6 months after receipt of the said notification by the Director General of ARIPO and shall not affect any application filed prior to the expiration of the 6 months period or registration or notification of copyright and related rights effected upon such an application.

Section 19

Amendment to the Protocol

- 19.1. This Protocol may be amended at the instance of any Contracting State or by the Director General during the sessions of the Administrative Council of ARIPO.
- 19.2. Adoption of the amendments of any provision of this Protocol shall require a majority of two – thirds of the votes of all Contracting States.

Section 20

Signature of the Protocol

- 20.1. The Protocol shall be signed in a single copy and shall be deposited with the Director General of ARIPO.
- 20.2. The Director General of ARIPO shall transmit certified copies of this Protocol to the Contracting States, other Member States of ARIPO and the States to which membership of ARIPO is open in accordance with Article IV of the Agreement on the creation of the African Regional Intellectual Property Organization (ARIPO).