

Remedies for Copyright Infringement

Copyright is a form of legal protection for original works reduced into a tangible form. In Kenya, works eligible for copyright include literary works, musical works, artistic works, audio-visual works, sound recordings and broadcasts. Copyright infringement includes doing an act protected by the copyright, making or importing a copy of the copyrighted work and circumventing measures meant to protect the copyrighted work, without a license from the owner of the copyright. What are the remedies available to a copyright owner whose copyright has been infringed?



1. Anton Piller Orders

This is whereby the Plaintiff (copyright owner) is allowed by the court to enter into the Defendant's premises to seize and keep records, data, documents and materials relating to his copyrighted works. For a Plaintiff to obtain Anton Piller Orders, he has to show that

- (i) He has a cause of action against the Defendant;
- (ii) The Defendant has in his possession documents, infringing copies or other things, which constitute evidence of great importance in substantiating the Plaintiff's case.
- (iii) There is the real and well-founded apprehension that the documents, infringing copies or other things may be hidden, destroyed or rendered inaccessible before discovery can be made in the usual way.

A case in point is when John Boniface Maina sued Safaricom Limited for infringement of the copyright over his popular *gikuyu* songs *muiritu wa kabete*, *tiga kumute*, *njeri*, *ndwara cece* among others. The said songs were being used as *skiza* tunes by the latter. Boniface had entered into an agreement authorizing Music Copyright Society of Kenya to collect mechanical royalties for all his music works. Music Copyright Society of Kenya in turn conferred/ assigned those rights to Interactive Media Services Limited and Liberty Afrika Technologies Ltd. Cellulant (Kenya) Limited was to distribute or provide added value services including logos, ringtones and pictures for *skiza*. The three companies were third parties to the

suit. Boniface filed an application seeking *Anton Piller* orders to enter the premises of the defendant and third parties to seize, collect and keep machines, data, documents or storage materials relating to his copyright rights in the music. The court in its ruling allowed him to enter into the Defendant's and third parties' premises in the company of an Inspector of the Copyright Board, and to seize and keep records, data, documents and materials relating to his musical works.

2. Damages, injunction and accounts

Just like any other civil case, the court can award damages to compensate the Plaintiff for losses he has incurred due to the infringement of his copyright. The court can also make injunctive orders restraining the Defendant from further infringement. In the John Boniface Maina case (above), the court granted him an injunction restraining Safaricom and the third parties from offering for sale, selling or storing of any data relating to the Plaintiff's musical works. The Court may also

order that the Plaintiff be allowed to take an account of how much the Defendant has benefited from infringement of the Plaintiff's copyright.

3. Delivery of Infringing copies

The court may order the Defendant to deliver to the Plaintiff any article in the Defendant's possession, which appears to the court to be an infringing copy, or any article used or intended to be used for making infringing copies.

4. Award of a reasonable royalty

The Court can also award to the Plaintiff an amount calculated on the basis of reasonable royalty which would have been payable by a licensee in respect of the work or type of work whose copyright has been infringed.

Email: mail@aip-advocates.com

Tel: +254 722367647

