

Annex 3

PROPOSED AMENDMENTS TO PROVIDE WEB BLOCKING MEASURES IN CASES OF COPYRIGHT INFRINGEMENTS ONLINE IN KENYA, 2016

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SECTION	PROVISION
Section 2, Copyright Act	<p>Internet Service Provider (ISP)</p> <p>Any person providing information services, systems, or access software provider that provides or enables computer access by multiple users to a computer server including connections for, the transmission or routing of data</p> <p>Information system</p> <p>Information system is a system for generating, sending, receiving, storing, displaying or otherwise processing data and includes internet</p> <p>Information system services includes the provision of connections, the operation of facilities for information systems, the provision of access to information systems, the transmission or routing of data between or among points specified by a user and the processing and storage of data, at the individual request of the recipient of the service</p>
Section 35A(1), Copyright Act	<p>INTERNET SERVICE PROVIDER NOT LIABLE AS MERE CONDUIT</p> <p>I. An Internet Service Provider shall not be liable for infringement for providing access to or transmitting content, routing or storage of content in ordinary course of business as long as it;</p> <p>a. Does not initiate transmission,</p> <p>b. Does not select the addressee</p> <p>c. Performs the functions in an automatic ,technical manner without selection of the material ;and</p> <p>d. Does not modify the material contained in the transmission</p> <p>e. Does not in any way promote the content or material being transmitted</p> <p>II. The acts of transmission, routing, and of the provision of access referred to above include automatic, intermediate and transient storage of the content</p>
Section 35A(2), Copyright Act	<p>INTERNET SERVICE PROVIDER NOT LIABLE FOR CACHE COPIES</p> <p>An Internet Service Provider shall not be liable for infringement for the automatic, intermediate and temporary storage of that content, where the purpose of the storing such content is to make onward transmission of the data more efficient to other recipients of the service upon their request as long as the Internet Service Provider;</p>

	<ul style="list-style-type: none"> a. Does not modify the material b. Complies with conditions on access to the material; c. Complies with rules regarding the updating the cache in conformity with generally accepted standards within the service sector d. Does not interfere with the lawful use of technology to obtain information on the use of the material e. Removes or disables access once it receives a takedown notice as provided in section 35A(5) or where the original material has been deleted or access disabled on orders of a competent court or otherwise on obtaining knowledge of unlawful nature of the cached material.
<p>Section 35A(3), Copyright Act</p>	<p>INTERNET SERVICE PROVIDER NOT LIABLE FOR MATERIAL STORAGE</p> <ul style="list-style-type: none"> I. Internet Service Provider shall not be liable for damages arising from material stored at the request of the recipient of the services, as long as it; <ul style="list-style-type: none"> a. Does not have actual knowledge that the content or activity related to the material is infringing the rights of a third party; b. Is not aware of the facts or circumstances of the allegedly infringing activity unless the infringing nature of the material is apparent; c. Upon the receipt of a takedown notice acts expeditiously to remove or to disable access to the allegedly infringing content in the manner provided under section 35A(5) II. The exemption shall not apply if the recipient of the service is acting under the authority or control of the Internet Service Provider.
<p>Section 35A(4), Copyright Act</p>	<p>LIABILITY FOR PROVISION OF INFORMATION LOCATION TOOLS</p> <p>An Internet Service Provider shall not be liable for damages incurred by a person if the service provider refers or links users to a webpage containing infringing material or facilitates infringing activity ,by using information location tools including a directory, index ,reference, pointer or hyperlink where the ISP ;</p> <ul style="list-style-type: none"> a. Does not have actual knowledge that the material is infringing the rights of that person; b. Is not aware of the facts or circumstances from which the allegedly infringing activity or infringing nature of the material is not apparent; c. Removes or disables access to, the reference or link to the content or the infringing activity expeditiously after being informed that the content or the activity infringes rights of a person

<p>Section 35A(5)</p>	<p>TAKE DOWN NOTICE AND COUNTER NOTICE</p> <ol style="list-style-type: none"> I. Take down notice is a communication by a person whose rights are infringed by content to which access is being offered by an internet service provider and addressed to such internet service provider(s). A counter notice is a written communication from an accused entity in line and in response to a takedown notice II. A takedown notice shall <ol style="list-style-type: none"> a. Be in writing and addressed by complainant or his agent to the Internet Service Provider; b. Must contain the full names and telephone, physical and email address of the complainant; c. Be signed by the complainant or his authorized agent; d. Describe in specific detail the copyright work subject to the alleged infringement or sought to be removed; e. Identify the rights being infringed; f. Set out the content sought to be removed plus details of where the content is contained; g. Attaches a statement declaring and attesting to validity of claim, good faith and any efforts to have entities responsible for making the content available to remove the content; h. Such a takedown notice shall be deemed delivered on the next business day following physical delivery at its registered offices or two days following the day its sent by registered post; i. Copied to Kenya Copyright Board. III. An Internet Service Provider must disable access to the material expeditiously unless it receives a counter notice from the entity accused of violating the law by making available the content containing the same information as set out for a takedown notice and responds to allegations in the a takedown notice. IV. The Internet Service Provider which fails to take down or disable access when it receives a takedown notice shall be fully liable for any loss or damages resulting from non-compliance. V. Any person falsely or maliciously lodges a takedown notice or a counter notice under this section commits an offence and shall on conviction be liable to a jail term of 5 years or to a fine of Kshs. 500, 000 or both. In addition, the party responsible for the misrepresentation will be liable for any damages incurred as a result. VI. An Internet Service Provider shall not be liable for wrongful takedown in response to a valid take down notice.
<p>Section 35A(6), Copyright Act</p>	<p>ROLE OF INTERNET SERVICE PROVIDER</p> <ol style="list-style-type: none"> I. There is no general obligation on the Internet Service Provider to; <ol style="list-style-type: none"> a. monitor the material transmitted stored or linked; or b. Actively seek facts or circumstances indicative of infringing activity

	<ul style="list-style-type: none">II. An Internet Service Provider shall be required to provide information to investigative agencies regarding identity of the recipients of their services alleged to be engaging in infringement of contentIII. An injunction can issued against an Internet Service Provider to block access to content subject of infringement where it refuses or neglects to disable access as requested in a takedown notice
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Prepared and Approved for publication on 26th January 2016 by

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For: Kenya Copyright Board