



cosbots

Copyright Society of Botswana

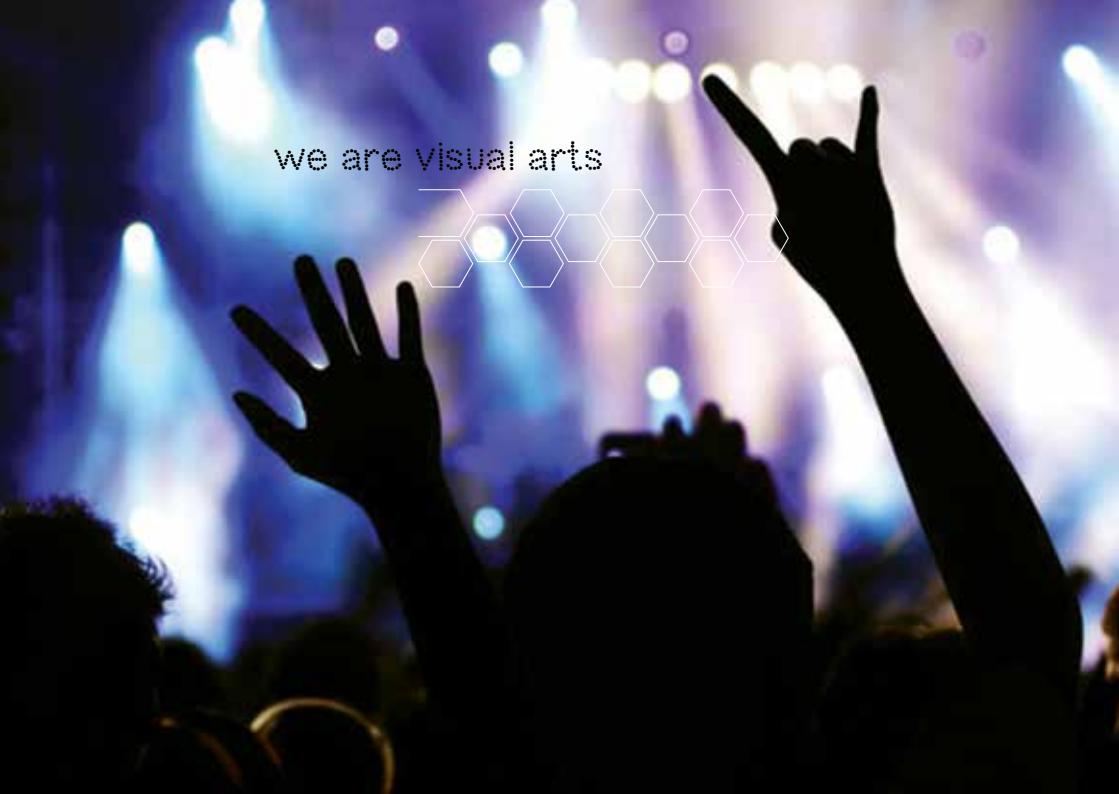


we are music



we are crafts





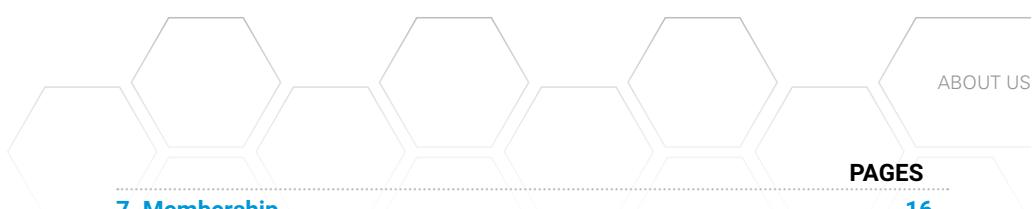
we are visual arts



we are literary arts



1. What is COSBOTS?	6
2. Intellectual Property	6
2.1 Copyright and Related/Neighbouring rights	
2.1.1 Distinction between Copyright and	
Related/Neighbouring rights	
2.2 Industrial Property	
2.3 Works protected by COSBOTS under copyright	
2.4 How is copyright obtained?	
3. Collective Management Organizations/CMOs'	8
3.1 Primary functions of CMOs'	
4. Who are rightful owners of copyright?	10
4.1 Initial Ownership	
4.2 Work made by employees	
4.3 Joint ownership/authorship	
4.4 Rights of copyright owners	
4.5 Owning a copy of work	
5. Assignments	12
5.1 Can copyright be transferred?.	
5.2 Termination of rights	
6. How COSBOTS operates	13
6.1 Governance	
6.2 Functions	
6.3 How does it work?	
6.4 Artists' rights	
6.5 Reprographic rights	



7. Membership

- 7.1 Benefits of COSBOTS membership**
- 7.2 Checklist/Requirements for registration**
- 7.3 Change of details**
- 7.4 Notification of copyrightable works (musical)**
- 7.5 Notification of copyrightable works (non - musical)**
- 7.6 Application for group membership**
- 7.7 Application for transfer of economic rights to COSBOTS and term**
- 7.8 Methods of termination**
- 7.9 Warranty of title of works assigned**
- 7.10 Transfer/Assignment of rights**

8. Obligations 22

- 8.1 COSBOTS obligations**
- 8.2 Members' Obligations**

9. Distribution of royalties 24

- 9.1 When do I get my royalties ?**

10. Licensing of users 25

- 10.1 License**
- 10.2 Users of copyright/protected works (music)**
- 10.3 Users of copyright/protected works (non - music)**
- 10.4 How licensing works**
- 10.5 COSBOTS tariffs**
- 10.6 Application for a copyright license (music)**

11. What happens to unlicensed/ non-adhering users 27

12. What action does COSBOTS take against broadcasters, 28

(television and radio stations) that do not play local content?

1. WHAT IS COSBOTS?

Copyright Society of Botswana is a Collective Management Organisation registered in 2008 as a company limited by guarantee. As the only collective management organization in Botswana, COSBOTS is regulated by the Copyright and Neighbouring rights Act CAP 68:02 and is mandated to license and collect royalties from users of copyright/protected works to distribute to right owners.

2. INTELLECTUAL PROPERTY/ IP

Intellectual Property refers to creations of the human mind. It is divided in to Copyright and Related/Neighbouring rights on one end and Industrial Property.

2.1. COPYRIGHT AND RELATED/NEIGHBOURING RIGHTS

Copyright is a form of Intellectual Property that deals with a set of rights given to creators or authors of original works. It is an exclusive right by virtue and subject to the provisions of the Act, to do and authorize other persons to do certain acts in relation to the protected work.

- a. **Copyright** protects original works
- b. **Related/Neighbouring rights** protect the performances, original recordings and broadcasts of works

Related rights (or neighbouring rights) are the rights of a creative work not connected with the works' actual author. The term related works is used in opposition to the term "authors' rights". Related rights were created for three categories of people who are not technically authors: **performing artists, producers of phonograms, and those involved in radio and television broadcasting.**

2.1.1 DISTINCTION BETWEEN COPYRIGHT AND RELATED/ NEIGHBOURING RIGHTS

Related/Neighbouring rights differ from copyright in that they belong to owners regarded as intermediaries in the performance, production, recording or diffusion of works. The link with copyright is due to the fact that the categories of neighbouring rights owners are auxiliaries in the intellectual creation process since they lend their assistance to authors in the communication of the latters' works to the public.

A musician performs a musical work written by a composer; an actor performs a role in a play written by a playwright; producers of phonograms (commonly known as the recording industry) record and produce songs and music written by authors and composers.

2.2 INDUSTRIAL PROPERTY

Industrial property takes a range of forms, including patents for inventions, industrial designs (aesthetic creations related to the appearance of industrial products), trademarks, service marks and geographical indications. The object of industrial property consists of signs conveying information, in particular to consumers, regarding products and services offered on the market. Protection is directed against unauthorized use of such signs that could mislead consumers, and against misleading practices in general.

2.3 WORKS PROTECTED BY COSBOTS UNDER COPYRIGHT

Copyright protects a varied range of works which may include;

- a. Musical works** - musical compositions & songs
- b. Sound Recordings** - in all kinds of formats (CDs, MP3 files, ring tones etc.)

- c. **Artistic works** - drawings, paintings, photographs, comics, sculptures, architectural works and maps
- d. **Literary/Written works** - books, novels, magazines, newspaper articles, essays, plays, text books, web pages and advertisements
- e. **Dramatic and choreographic works** - plays, operas and dance
- f. **Audio-visual works** - cinema films/movies, TV programs, cartoons music videos and multimedia products (video games and DVDs)
- g. **Computer programs** - human (source code etc).

Copyright does not protect ideas or mere facts but the way in which ideas are expressed. This means the unique way in which an author chooses and arranges words, musical notes, colours, shapes etc. Such expressions that makes the authors' work original. A protected work does not have to be useful or valuable to warrant copyright protection.

2.4 HOW IS COPYRIGHT OBTAINED?

Copyright protection is automatic. The work is protected by copyright right from the moment the author draws a picture, writes a book, lyrics or a poem.

3. COLLECTIVE MANAGEMENT ORGANISATIONS/CMOs

Collective Management Organisations provide individuals and legal entities such as companies with the rights to be able to use content from the right owners of the original works. Obtaining a license in this way guarantees the user that they are using the content with permission. CMOs are therefore appointed by right holders to license for the use of their works on their behalf. They are a vital link between

owners of copyright works/ copyright holders and users of copyright works.

3.1 Primary Functions of CMOs globally are:

To license the use of the rights they manage;

To monitor usage and enforce conditions upon which the license has been granted;

To collect and distribute the royalties as a result of the licensed use.

In addition to the above responsibilities COSBOTS activities include but are not limited to;

1. Negotiation and granting licenses in written agreements with the owners of copyright for:
 - the adaptation of works, performances and sound recordings
 - the insertion of works, performances or sound recordings in other scopes
 - the use of works for publicity purposes.
2. Setting of rates/tariffs for royalties in accordance with acceptable international standards.
3. Representing owners of copyright in the various categories of works protected under the Copyright and Neighbouring Rights Act.
4. Putting in place rules and regulations, approved by the Copyright Office which contain such provisions as are necessary to ensure the protection of the interests of its members.

4. WHO ARE RIGHTFUL OWNERS OF COPYRIGHT?

Copyright is customarily owned by creators of the works. In the case of literary, dramatic or artistic works, the author or creator of the work is the first owner of copyright. In a situation where a work is produced by an employee during the course of their employment, copyright then is owned by the employer.

4.1 Initial Ownership

Ownership of copyright initially belongs to the author or authors of the work (Creator)

- In relation to a literary work, the author of the work
- In relation to a musical work, the composer
- In relation to an artistic work other than a photograph, the artist
- In relation to a photograph, the photographer
- In relation to sound recording or film, the person whom the arrangements necessary for making the recording or film are undertaken
- In the case of a broadcast, the person making the broadcast, or in case of broadcast which relays another broadcast by reception and immediate re-transmission, the person making the other broadcast
- In the case of cable programme, the person providing the cable programme service in which the programme is included
- In the case of typographical arrangement of a published edition, the publisher
- In the case of a literary, dramatic, musical or artistic work which is computer – generated, the person by whom the

arrangements necessary for the creation of the work are undertaken.

4.2 Work made by Employees

A work created by an employee within the scope of his or her employment belongs to the employer or hiring party. Similarly if the work created by an independent contractor and the independent contractor signs a written agreement declaring that the work shall be made for hire, the commissioning person/contractor owns the copyright. If the creator has sold the entire copyright, the procuring business or person becomes the copyright owner.

4.3 Joint Ownership/Authorship

Authors of a joint work jointly own the copyright in the created work. This work is created by two or more authors with the intention that their contributions be merged into inseparable parts of a unitary whole.

Can two or more authors provide contributions to a single work without being considered joint authors for copyright purposes?

Yes. If at the time of creation the authors did not intend their works to be part of an inseparable whole, the fact that their works are later put together does not create a joint work. In this case each author owns a copyright in only the material he or she added to the finished product.

Examples of joint works in Botswana include choirs, certain music groups and co-authors of a book, multimedia works or theatrical works.

4.4 Rights of Copyright Owners

- Reproduction right - the right to make copies of a protected work
- Distribution right - the right to sell or otherwise distribute copies to the public
- Right to create adaptations (called derivative works) - the right to prepare new works based on the protected work
- Performance and display rights - the rights to perform a protected work (such as stage play) or to display work in public.

4.5 Owning of a copy of work

Copyright law distinguishes the ownership of a copy of a protected work (a print or photograph, book, disc, diskette etc), the transfer of a copy of a work does not transfer any rights in the copyright. Thus, purchasing a book, (copy of literary work) does not give you a right to make copies of the book or sell those copies.

5. ASSIGNMENTS

A transfer of copyright ownership is known as an assignment. When a copyright is assigned, the assignee (individual or company to whom it is assigned) becomes the owner of the exclusive rights of copyright in the protected work.

5.1 Can Copyright be transferred?

Yes. The ownership of copyright may be transferred in whole or in part. In Botswana, artists transfer their rights to COSBOTS by applying for membership. This gives COSBOTS the authority

to negotiate tariffs, license, collect and distribute royalties on behalf of the members. Assignments are also common in many industries, for instance music composers often assign copyrights in their compositions to music publishers.

It is however crucial to note that an assignment is not valid unless it is done in writing and is assigned by the owner of the rights or the owners' authorized agent.

When a copyright owner wishes to commercially exploit the work covered by the copyright, the owner typically transfers one or more of these rights to the person or entity who will be responsible for getting the work to market such as book or software publisher. The owner may limit the transfer to a specific period of time or allow the right to be exercised only in a specific part of the country or require that the right be exercised only through a certain media such as books, audio tapes or magazines.

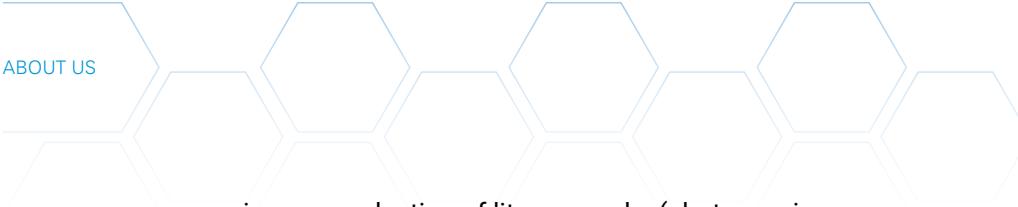
5.2 Termination of Rights

Creators or authors of the protected work can assign various parts of their copyrights for a limited period or for the life of copyright (50 years after death) and by geographic region. Depending upon terms and conditions of the agreement, any assignment/license may be terminated unless the work was made for hire.

6. HOW COSBOTS OPERATES

COSBOTS controls in Botswana,

- The right to diffuse or play both local and foreign music by business establishments.
- the right to use non-music protected works such as;



- i. reproduction of literary works (photocopying published editions)
- ii. public display such as paintings, sculptures, engravings and works of applied art by business establishments.

6.1 Governance

The society is governed by a board of directors who in liaison with members are the main decision making body. The day to day running of the Society is done by the staff employed by the company and lead by the Chief Executive Officer who reports to the Board of Directors.

6.2 Functions

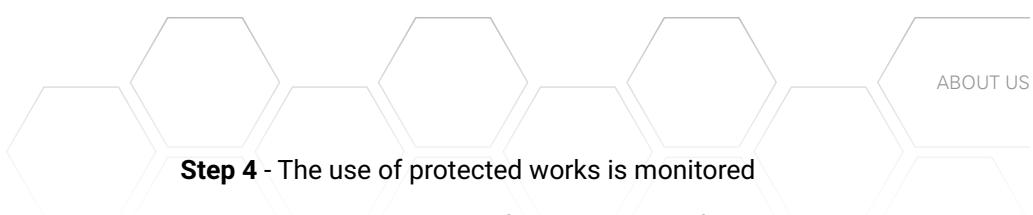
- **Documentation and Distribution** - Artists register their works and become members of COSBOTS for free.
- **Licensing** - Users of protected works are licensed according to how they use the copyrighted works based on the applicable tariff which is approved by Companies and Intellectual Property Authority, CIPA.

6.3 How does it Work

Step 1 - Artists, Publishers and Authors associations register and become members of COSBOTS

Step 2 - Owners of copyrighted works assign or transfer their rights to COSBOTS through written contracts

Step 3 - Owners notify works by providing COSBOTS with details of original works they have produced



Step 4 - The use of protected works is monitored

Step 5 - COSBOTS collects from the users of the copyrighted works on behalf of the members

Step 6 - COSBOTS matches the notified works to usage as obtained from the monitoring of usage of works

Step 7 - Royalties are then distributed to the registered members depending on the usage of their work.

6.4 Artists rights

- Intellectual Property Rights protection
- Copyrights
 - Economic rights
 - Moral rights
- Neighbouring / Related rights
 - Economic rights
 - Moral rights

6.5 REPROGRAPHIC RIGHTS

COSBOTS started the reprography section in 2016. Many reprographic rights organisations derive their mandates through authors and publishers associations which in turn hold mandates from their members. In this case the participating and publishers organizations become members of COSBOTS unlike with music where individual creators apply for membership.

7. MEMBERSHIP

Members of COSBOTS are all registered owners of copyright works. In reprography, membership is reserved for registered publishers and authors associations contrary to music where individual right owners apply directly for membership.

For admission as a member of COSBOTS:

1. The applicant must be:

- An individual who is a citizen or a resident in Botswana
- A legal entity which is incorporated under or in accordance with the laws of Botswana.

2. The copyright/ protected work to be registered must:

- Have been derived/recorded/produced for economic purposes
- Must be free from copyright being already assigned to another society.

3. There must be evidence of the work reduced to material form

An applicant shall be required to produce evidence of their works in tangible form

- I. Compact disc form and computer games
- II. Cassette
- III. Written form containing lyrics and notes
- IV. Digital compact disc format
- V. All other evidence relating to literary and artistic works such as books, films, photographs, paintings and drawings
- VI. Audio file format – storing digital audio data on a computer system.

4. In addition to evidence produced in material form in audio visual works;

- i. An author or publisher
- ii. A performer and producer must have a legally binding contract.

5. A publisher, composer, author, performer and producer;

- i. Shall all have legally binding contract signed by all parties and shall be submitted to COSBOTS.

6. In the case of derivative works such as;

- I. Works that have been arranged or translated (local or foreign) the applicant must have prior authorization signed by copyright owner being the composer, author or publisher.
- II. In the case of folklore described by the Copyright and Neighbouring Rights Act Cap 68:02 section 2, folklore means a group – oriented and tradition based creation of groups or persons reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means including;
 - Folk tales, folk poetry and folk riddles
 - Folk songs and instrumental folk music
 - Folk dances and folk plays
 - Productions of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, wood – work, metal ware, jewelry, handicrafts, costumes and indigenous textiles.

If the work is presumed to have been created by an identified author(s) and passed on from generation to generation as an element of traditional cultural heritage of Botswana, then prior written authorization shall be obtained from the author or his/her beneficiary/ies.

7. Membership shall be on individual basis

However should a choir, group or band apply for membership then they shall be required to meet the set rules and have to submit an agreement signed by all members of the choir, group or band.

8. All applicants shall be eligible for membership as provisional members pending approval to become full members by Board of Directors of COSBOTS.

7.1 Benefits for COSBOTS Membership

- a. Membership is free
- b. Members receive royalties through their life span and for 50 additional years after their death before the works are put into the public domain
- c. Members' beneficiary/ies are entitled to be paid royalties for a specified number of years after death of the principal member, or from date the work was made or first published
- d. Members receive royalties from both local and international users of their copyrighted works
- e. Members are guaranteed authorised usage for, and protection against exploitation of their works
- f. Members save time and money, therefore be empowered to focus on, and develop their careers

- g. COSBOTS sets tariffs and negotiates on behalf of members for royalty rates in accordance with international standards
- h. COSBOTS monitors usage of members' protected works
- i. Members are eligible to vote and participate in policy making for the industry
- j. Members shall gain appreciation and understanding of copyright issues and knowledge on intellectual property matters
- k. Members receive advice to enable them to make informed business decisions about their works and to negotiate favourable contractual agreements.

7.2 Checklist/Requirements for Registration

- a. A copy of the work being notified for registration purposes
- b. In case of publishers and producers, a certified copy of the certificate of incorporation or business name will be required
- c. Three (3) recent passport size photographs (within 3 months) and a certified copy of national identity card/ passport and copy of birth/death certificate which ever is applicable
- d. Copy of national identity card/passport/birth certificate for next of kin. If less than 16 years, he/she should be accompanied by a parent/guardian who has a national identity card or valid passport
- e. Copies of agreements, if any, giving joint copyright ownership eg. groups

- f. Names of group members and a nominated representative if it is a group/band or choir, accompanied by a letter signed by all members to that effect
- g. Death certificate from Civil and National Registration if applying on behalf of a deceased person
- h. Any other document that can assist to prove or support your claim to copyright ownership in the work
- i. Bank account details of the applicant/s as well as those of beneficiary/s

7.3 Change of Details – Form CR07

Members/Applicants can change their details by filling the COSBOTS change of details form CR07. The form can be accessed at the office or filled on our website www.cosbots.com. This includes;

Personal address

Applicant Details

Membership Category

Bank details

Next of kin details

Beneficiary details

Work details

Territory of assignment

7.4 Notification of Copyrightable Works (Musical) – Form CR05

The applicant has to fill COSBOTS form CR05 for notification of non - musical works. This is to declare that the applicant is an

original creator of the fine, applied or performing arts of the said works.

7.5 Notification of Copyrightable Works (Non -Musical)- Form CR06

The applicant has to fill COSBOTS form CR06 for notification of non- musical works. This is to declare that the applicant is an original creator of the fine, applied or performing arts of the said works.

7.6 Application For Group Membership – Form CR03

The applicants have to fill COSBOTS form CR03 to declare that the copyrightable works belongs to more than (1) member. The form will display information on all the group members, name of the group representative, groups' bank account details and stage name/pseudonym.

7.7 Application For Transfer Of Economic Rights To COSBOTS and Term

By signing this form, the applicant will transfer certain rights to COSBOTS. The term of this agreement shall be for the duration of the copyright of a member as provided for in the Copyright and Neighbouring Rights Act CAP 68:02 from the date that the agreement is signed by the member and COSBOTS. The agreement shall be extended annually unless terminated by either party.

7.8 Method of Termination

COSBOTS may terminate membership in accordance with its rules and regulations and its constitution by giving a member 30 days notice effective from the date of termination.

7.9 Warranty of Title Of Work(S) Assigned

The member warrants that he/she has the right and authority to assign economic rights to COSBOTS and that the works do not infringe the copyright in any other work. The applicant also indemnifies COSBOTS against any liabilities, claims, demands or legal fees or damages arising out of any third party claim against COSBOTS in respect of the economic rights assigned and subjects the works to whatever vetting / authentication process that the society deems fit prior to approval of membership.

7.10 Transfer /Assignment Of Rights

The applicant transfers/ assigns to COSBOTS economic rights which belong to the member on the date this agreement or which the member may acquire or own whilst he/she remains a COSBOTS member. The transfer shall last for so long as the member remains a COSBOTS member in accordance with the constitution, the COSBOTS membership rules and regulations, and as may be amended from time to time.

8. OBLIGATIONS

8.1 COSBOTS OBLIGATIONS

COSBOTS will endeavor to administer the economic rights in accordance with the laws of Botswana;

- a. Strive to ensure members derive maximum benefit whenever their works may be used commercially and for public consumption



- b. Distribute all royalties payable to a member in accordance with its distribution rules and the company constitution
- c. Negotiate licensing agreements on the members behalf for the best achievable terms, and license as many users of the economic rights as practicable and in the interest of the membership as a whole
- d. Collect all royalties that are payable to COSBOTS members in Botswana and through reciprocal agreements collect from other territories across the world for and on behalf of international artists
- e. Encourage the development of creative, artistic and economic endeavours
- f. Encourage reprographic artists -authors, publishers, photographers, visual artists, sculptors and poets to register their works with COSBOTS and to join and form respective associations.

8.2 Members' Obligations

- a. Members shall uphold the warranty provided and signify that they have full power to transfer the economic rights and that the works transferred to COSBOTS do not infringe the copyright in any other works.
- b. Members are bound by COSBOTS constitution, membership rules and regulations and any amendments thereto and indemnify COSBOTS from and against all proceedings, claims, demands, costs, expenses and damages arising directly or indirectly in respect of the rights which they have transferred to the society.

- c. Members shall provide any documents required by COSBOTS in enforcing the economic rights assigned.
- d. Members shall insert in each relevant application contracts the member makes with third party/s a clause reserving the economic rights to COSBOTS.
- e. The member shall refrain from licensing any of the economic rights and from otherwise dealing with economic rights that have been transferred to COSBOTS and avoid doing anything which is likely to prejudice COSBOTS ability to meet its obligations to other members.
- f. The member shall provide COSBOTS with all copies of their works whose economic rights have been assigned to COSBOTS.
- g. The member agrees to assist by providing information and documents to COSBOTS and its officers during investigations regarding cases of infringement of Copyright and Neighbouring Rights Act in order to assist COSBOTS in enforcing the economic rights that have been assigned to it.

9. DISTRIBUTION OF ROYALTIES

- Royalties shall only be distributable upon completion of the authentication process and approval of full membership by the societys' Board of Directors.

9.1 When do I get my royalties?

Distribution of royalties is normally the last stage after licensing



for use and collection of royalties from users. It is COSBOTS responsibility to ensure that royalties are collected from licensed users and distributed at least on an annual basis.

10. LICENSING OF USERS

Licensing is a mechanism used by right-holders to authorize others to use rights owners protected works under agreed terms and conditions.

10.1 License

A license with respect to copyright, issued by COSBOTS serves as permission, authorization or consent given by owner of copyright works to another person to exercise the rights belonging to the copyright owner. The owner of the copyright is known as the licensor, while the beneficiary is the licensee. In this instance COSBOTS acts on behalf of the copyright owner.

The license is a contract that runs annually, or per event and due to the many ways in which musical or non-musical works are performed/displayed, the fees payable under COSBOTS license or the type of license can vary according to the applicable tariff.

10.2 Users of Copyright/protected works – Music

These are business entities, organizations or individuals who use copyright or protected works in their business operations.

10.3 Users Of Copyright/ Protected Works – Non – Music

(Literary, Visual Arts)

Sale of Artistic works;

Craft shops, any business entity or individual that displays artistic works for the purpose of sale, shall provide COSBOTS with a list of works for sale and the authors therefore.

Public Display/ Exhibitors works;

Business entities, organizations or individuals who exhibit or display artistic works to the public for a fee shall inform COSBOTS of their intention at least 2 (two) weeks prior to the exhibition and provide a list of artistic works to be exhibited.

10.4 How licensing works

1. COSBOTS licence comes as an obligation on the licensee to submit regular, detailed returns (log sheets) of the works used on the licensed premises to ease the process of royalty collection and subsequent distribution.
2. COSBOTS gives out the log sheet form when issuing the license.
3. Users are obliged to submit the log sheets within the agreed time frame.

10.5 COSBOTS TARIFFS

Tariffs for use of copyright works can be obtained from the website www.cosbots.com



10.6 Application For A Copyright Works License (Music)

Every business that uses music or non-music copyrighted works as contemplated by the Copyright and Neighbouring Rights Act 68:02 must apply for a license.

Application forms for different types of entities can be obtained either from the office or website **www.cosbots.com**

The information provided by the user in these forms enables COSBOTS to calculate appropriate royalties payable by the user and provides for the invoice to be issued. Royalties together with applicable taxes are paid by the user to the society.

11. WHAT HAPPENS TO UNLICENSED / NON – ADHERING USERS?

According to Copyright and Neighbouring Rights Act Section 31;

1. Any person who contravenes the provisions of this Act so as to infringe a right protected under this Act for profit shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding P20, 000 or to imprisonment for a term not exceeding 10 (ten) years or both.
2. Any person convicted of a second or subsequent offence shall be fined a minimum of P30, 000 or a maximum of P5, 000.000 or be imprisoned for a term not exceeding ten years or both.

12. WHAT ACTION DOES COSBOTS TAKE AGAINST BROADCASTERS, (TELEVISION AND RADIO STATIONS) THAT DO NOT PLAY LOCAL CONTENT?

Botswana Communications Regulatory Authority (BOCRA) is mandated to license and regulate broadcasters. Broadcasters licenses specify a certain percentage of local content to be complied with. COSBOTS therefore does not have any authority to supervise broadcasters or control the content played on their frequency bandwidth.

ABOUT US



we are dance



we are theatre





we are visual arts



we are music



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