



Regional Strategy On Private Copy Remuneration



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**Regional Strategy
on Private Copy Remuneration**

**ARIPO Secretariat
Harare, Zimbabwe
2025**

Regional Strategy on Private Copy Remuneration

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Executive Summary

The Lusaka Agreement establishing the African Regional Intellectual Property Organization (ARIPO) sets out one of the objectives of the Organization as “to promote the harmonization and development of the intellectual property laws, and matters related thereto, appropriate to the needs of its members and the region as a whole.” Following the approval by the Administrative Council at its 46th Session for ARIPO to develop a Regional Strategy on Private Copy Remuneration (PCR), ARIPO received support of member states and strategic partners such as IFFRO, CISAC, SCAPR, IFPI and WIPO in developing the Strategy. The PCR Regional Strategy was adopted by the 48th Session of the Administrative Council of ARIPO at Maseru, Lesotho in October 2024.

The PCR is an exception to the author’s exclusive right to authorise the reproduction of their works, which allows a person to copy a work (music, audio-visual, drama, literature or visual works) for a non-commercial purpose and their personal use. One may use devices such as CDs, DVDs, Smartphones, external hard disks, laptops, etc. The PCR Strategy has provided a situational analysis using the strengths, weaknesses, opportunities, and threats (SWOT) and political, economic, social, technological, environmental, and legal factors (PESTEL) analysis. In addition, it considers best practices on what needs to be considered to establish an effective PCR system in the Member States.

The successful implementation of the PCR system will require continued support from the respective government and engagement with the relevant stakeholders. Capacity-building programs for the relevant stakeholders, such as Collective Management Organisations (CMOs), customs officials/authorities, Copyright Offices (COs), and public entities, will be required to ensure they have the necessary skills and technical tools to undertake the administration and management of PCR, ensure

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the CMOs/COs can effectively collect and distribute the remunerations to rightsholders, and monitor stakeholders' compliance.

This may include putting in place necessary measures to ensure effective collection of PCR, such as enhancing cooperation between COs, CMOs, and Customs' authorities; introducing transparency obligations for those who are liable for payment of the PCR (usually, importers and manufacturers of equipment, devices and media used for making copies); monitoring of the effective payment of the PCR, updating of Copyright Laws and Regulations to better administer the PCR system and encompass digital copies and copies in the cloud within its scope among others.

Member States are encouraged to be proactive, creative, and innovative to ensure the PCR system, when established, is effectively implemented for the benefit of authors, producers, performers, and publishers. We hope the PCR Strategy will be a useful tool for authors, producers, publishers, and performers in ARIPO Member States and Africa in general. Finally, I thank the team, Member States, and Partners for all the input to enrich the PCR regional strategy.

Bemanya Twebaze

DIRECTOR GENERAL

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I. Introduction

During the 46th Session of the Administrative Council that was held in Maputo, Republic of Mozambique, the Council unanimously approved the development of a Regional Strategy for Private Copy Remuneration (PCR), also known as Private Copy Levy (PCL) or blank tape remuneration in some jurisdictions. In this regard, Botswana, Cabo Verde, Ghana, Malawi, and Kenya were constituted to assist the Secretariat in developing a Regional PCR Strategy. The other Member States and partners also contributed to its development. If effectively operated, the PCR system can provide substantial revenue for rightsholders. For example, in Malawi, the collections from PCR between 2021 and March 2024 were USD 8,755,516. In addition, in Cabo Verde, the total PCR revenue collected between 2022 and 2024 was USD 2,371,044.

II. Background and Context

The African Regional Intellectual Property Organization (ARIPO) was established in 1976 in Lusaka, Zambia. The Lusaka Agreement spells out the organization's mandate. ARIPO was created to pool the resources of its Member States for the promotion, development, and harmonization of Intellectual Property (IP) laws and policies. Its main objectives include promoting the development of appropriate IP laws, establishing common services and training schemes, and assisting members in technology acquisition and advancement.

The Organization currently comprises of 22 Member States¹, and membership is open to all African States that are members of the United Nations Economic Commission for Africa or the Africa Union (AU).

ARIPO's vision is to be Africa's leading intellectual property Organization that promotes socio-economic development.

¹ Botswana, Cabo Verde, Eswatini, The Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Seychelles, Sierra Leone, Somalia, Sudan, Uganda, Tanzania, Zambia, and Zimbabwe.

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The mission is to foster creativity and innovation for the socio-economic growth of its Member States through an effective IP system. The organization's core values are integrity, agility, diversity, engagement, client focus, and accountability.

ARIPO received the mandate on Copyright and Related Rights during the Eighth Session of the Council of Ministers held from 29th to 30th August 2002 in Mangochi, Malawi. Following this decision, the Administrative Council of ARIPO, at its 26th Session held in Windhoek, Republic of Namibia, from 25th to 29th November 2002, adopted strategies for implementing the Copyright and Related Rights mandate. Over the years, there has been an increase in the number of CMOs² and an improvement in the management and administration of rights holder's rights as well as the enforcement of those rights.

Copyright and Related Rights sectors have the potential to contribute to the socio-economic development of the Member States and Africa in general. Recent studies show creative industries contribute significantly to a country's Gross Domestic Product (GDP)³ and employment, e.g., Botswana, Kenya, Malawi and Tanzania creative industries contribute 3-5 % to the GDP of their national economies and 2.6-3.35 to employment. South Africa had 4% GDP and employment contribution, whilst the United States of America (USA) had 11% GDP and 8.51 % employment contribution⁴. However, there is a need for collaborative efforts to implement viable systems such as PCR for the benefit and economic empowerment of the rights holders. Therefore, the initiative to develop a Regional Strategy on PCR aligns with ARIPO's 2022 to 2026 Strategic Plan. The plan is more comprehensive and robust, and it is in tandem with the aspiration of the

² Thirty (30) CMOs across 19 Member States.

³ By 2030, Africa could account for up to 10% of global exports of creative goods, worth approximately \$200 billion, representing 4% of Africa's GDP, creating more than 20 million job opportunities. <https://www.theafricaceoforum.com/en/ressources/africas-creative-industries-unleashing-economic-growth>.

⁴ Source: World Intellectual Property Organization (WIPO).

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Organization as enshrined in Article III of the Lusaka Agreement of [1976].

Against this background, ARIPO has developed this Regional PCR Strategy to guide and encourage Member States to operationalise an effective PCR system. The PCR system will facilitate users' easy and lawful access to copyrighted works, compensate rights holders for the use of their works, and mitigate infringement.

III. Objectives of the Regional PCR Strategy

The strategy is expected to:

- (a) Guide in operationalising an effective PCR system in the ARIPO Member States.
- (b) Facilitate easy and lawful access to copyrighted works and compensate rights holders for the private use of their works.
- (c) Mitigate infringement.
- (d) Harmonise the administration of the PCR.
- (e) Assist in the diversification of royalty collections and enhance social and cultural development.

IV. The Goal of the Regional PCR Strategy

The Regional PCR Strategy seeks to aid ARIPO Member States with a practical, effective, and functional PCR system.

Private Copy Remuneration

Private copying rewards are crucial for rightsholders to be compensated for the effort they put into creating their works. A legal framework for private copying can stimulate creativity and innovation by providing greater security and respect for Copyright and Related Rights. Like other professionals, authors, producers, publishers, and performers

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should receive adequate compensation. This ensures continued creative pursuits, a return on investment for producers and publishers, and socio-economic development in member states and Africa in general.

For example, in Malawi, 10% of the PCR revenue is channelled to the copyright Fund, which supports various projects to develop the creative sector. Another example is Cabo Verde, where 20% of the PCR revenue is channelled to the Autonomous Fund of Culture and Creative Industries to promote and enhance culture and creative industries.

In Africa, several countries have functional PCR systems, including Algeria, Botswana, Burkina Faso, Cabo Verde, Cameroun, Ghana, Malawi, Morocco, and Tunisia⁵. However, Namibia, Seychelles, Sierra Leone, Sudan, Uganda, Zimbabwe, Mauritius, and Sao Tome & Principe need a remuneration system. Collection of PCR has also started in Côte d'Ivoire, Kenya, Madagascar, Nigeria and Tanzania. Liberia, Somalia, Eswatini, and Zambia are yet to implement a PCR system. Further, the West African Economic and Monetary Union (WAEMU)⁶ has adopted a directive to implement PCR in eight ECOWAS⁷ countries by September 2025, while positive developments are also happening in Europe through the European Union Directive.⁸

Therefore, the Regional Strategy for PCR aims to aid Member States in building an effective PCR system. This will contribute towards enhancing and ensuring the independence and dignity of creators and performers. It will further

⁵ In Tunisia revenues collected on relevant equipment and devices are referred to and transferred to the "Fund of Encouragement" (Fonds d'encouragement), rather than PCR.

⁶ The organization aims to promote economic integration among member states by enhancing their economies' competitiveness through an open market and a harmonized legal environment.

⁷ Benin, Burkina Faso, Ivory Coast, Guinea Bissau, Mali, Niger, Senegal, and Togo .

⁸ European Union (EU) 2001 Copyright Directive (Information Society Directive), Article 5.2.b.

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ensure adequate availability of resources to support their cultural production. Thus, there is a need for Member States to provide their creators and right holders with an effective system of Copyright and Related Rights that enables the protection and enforcement of their rights while balancing the interests of the right holders and the public.

V. Statement of the Problem

The advent of the internet and emerging technologies such as artificial intelligence have led to a surge in copyrighted works, causing a decline in physical copies and commercial downloads and resulting in a loss of profits for authors, performers, publishers, and producers. This negatively affects a nation's economy through tax evasion. Implementing a PCR system, which compensates rights holders for private copying, can help address financial deprivation at national and regional levels. However, most ARIPO Member States need more suitable legal frameworks, and the failure of some member states to domesticate international instruments on Copyright and Related Rights is hindering the implementation of PCR in the respective countries.

Given the above, Table 1 below describes the PCR system's Strengths, Weaknesses, Opportunities, and Threats (SWOT). It provides a general guide on how to build on existing PCR frameworks, address what is lacking, seize new opportunities, and minimise risks.

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Table 1: SWOT Analysis

Strength	Weakness
<ul style="list-style-type: none"> (i) Existence of legal frameworks (Copyright and Related Right Laws and Regulations). (ii) Existence of Copyright Offices. (iii) Existence of CMOs. (iv) CMOs being members of the International Federations e.g. (CISAC; IFRRO; IFPI; SCAPR; & FIAPF). (v) Existence of PCR System in some Member States. (vi) Existence of Regional frameworks (Lusaka Agreement 1976, Kampala Protocol 2021, and Bangui Agreement 1977). (vii) Vibrant Creative Industry. (viii) Member States are contracting parties to international treaties and conventions on Copyright and Related Rights. (ix) Political will. (x) Strong strategic partnerships. (xi) Available literature on PCR. 	<ul style="list-style-type: none"> (i) Non-operationalization of the legal frameworks (PCR). (ii) Inadequate legal framework on PCR. (iii) Non-existence of a remuneration system. (iv) Non-existence of collection and distribution mechanisms PCR. (v) High administrative cost of the PCR System. (vi) Delay in distributing revenue. (vii) Significant disparities to explain the grounds of PCR and its administration. (viii) Inadequate experts to deal with PCR. (ix) Inadequate awareness of PCR.
Opportunity	Threats
<ul style="list-style-type: none"> (i) Ensure a clear legal definition of PCR in all National legislations (unwaivability, applicability to all performers (music and audiovisual performers), producers and publishers. Collective management and distribution rules). (ii) Operationalization of the legal framework. (iii) Adapting the scope of PCR to the development of technology. (iv) More creativity in the creative industry sectors. (v) Common Market (movement of goods, services, and people). (vi) Increased awareness and interest at the government level for PCR as a way of strengthening the rightsholders' economy. (vii) Adoption of the WAEMU/UEMOA PCR Directive. 	<ul style="list-style-type: none"> (i) Inadequately remunerated right holders. (ii) Misallocation of PCR funds. (iii) Rapid development of technology. (iv) Loss of jobs (unemployment). (v) Decrease in revenue for right holders and government. (vi) Increase in infringement activities. (vii) Opposition and resistance from authorities and/or stakeholders in some countries. (viii) Resistance or no buy-in to the PCR system by some governments. (ix) Laws excluding some rightsholders as beneficiaries of the PCR. (x) Laws not instituting an unwaivable right, subject to collective management. (xi) Laws not specifying the share to be allocated to each category of rightsholders.

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PESTEL Analysis

Member States are affected by the external environment when executing their mandates. The situation analysis identified the PESTEL factors that could provide opportunities to enhance the achievements of the PCR and those factors that could pose threats to the PCR system. The following is the PESTEL analysis:

Political Factors

Opportunities	Threats
<ul style="list-style-type: none">(i) Develop strategies to strengthen the involvement of the Government in PCR systems.(ii) Strengthen the engagement of various government offices, ministries, copyright office/ IP office on PCR.(iii) Develop strategies to support the roadmap on PCR.(iv) Strengthen bi-lateral and multi-lateral relationships with other Countries, COs/CMOs in the region on PCR(v) Review the performance and business cases of PCR systems to ensure that the legal framework and institutional structures deliver intended value to all stakeholders.(vi) Differentiate between taxes and remuneration (PCR) and clarify the beneficiaries (authors, producers, publishers and performers) of the PCR.(vii) Balancing the establishment of the PCR system with other government priorities.(viii) Establishment of a copyright fund.	<ul style="list-style-type: none">(i) The low participation of the Government in the PCR can lead to inadequate support for the adoption of the system.

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Economic Factors

Opportunities	Threats
<ul style="list-style-type: none">(i) Rightsholders' remuneration may increase.(ii) Production of more creative works and consumption of those works.(iii) Contribute to the growth of the creative industry and the national economy.(iv) Regular reconsideration of PCR tariffs including future-proof devices.(v) Reciprocal agreements (bilateral agreements)(vi) Amending copyright laws and regulations to include PCR provisions and institutional structures to be effective.	<ul style="list-style-type: none">(i) If PCR tariffs are too low this may affect the royalties collected and distributed. If PCR tariffs are too high this may affect the manufacturers or importers as they may be unable to pay.(ii) Repealing PCR provisions in copyright laws and regulations will deprive authors, producers, publishers, and performers.

Social Factors

Opportunities	Threats
<ul style="list-style-type: none">(i) It could improve the social status, and welfare of rights holders, and creators.(ii) A high percentage of youths in the African population is a potential market for PCR devices.(iii) Lobbying for the introduction of PCR systems where they do not exist to promote remuneration to authors, producers, publishers and performers.(iv) Engage the public, manufacturers, importers, authors, producers, publishers, and performers on PCR in the Member States.	<ul style="list-style-type: none">(i) Low PCR awareness in the Member States especially among the manufacturers, importers, customs officials, youths, and the government. This contributes to a lack of appreciation of the benefits of PCR.

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Technological Factors

Opportunities	Threats
<ul style="list-style-type: none">(i) Technological advancements e.g., the cloud, PCR systems that encompass digital copies and copies in the cloud within its scope.(ii) Member State's costs of investing in ICT physical infrastructure will be reduced.(iii) Remote working arrangements can facilitate flexible working and boost productivity.	<ul style="list-style-type: none">(i) Unexpected disruptions of ICT systems e.g. fire, system crash, etc.,(ii) Cloud may reduce the physical devices tariffed.

Legal Factors

Opportunities	Threats
<ul style="list-style-type: none">(i) Lobby Member States to include and implement PCR system(ii) Review relevant laws to ensure enhancement of PCR implementation.	<ul style="list-style-type: none">(i) Lack of PCR provision in-laws and modus operand is a threat to losing royalties for the authors, producers, publishers and performers.

VI. Situational Analysis and Positive Trend**Introduction**

Creative economies in Africa face challenges due to inadequate copyright legislation, poor enforcement, censorship, and bureaucracy. Policy reforms and PCR systems can be implemented to overcome these obstacles. Governments must recognise the importance of cultural capital as an income-generating resource. Legal implications and PCR systems could benefit creators, especially during the era of sustainable development and nation-building. The internet's borderless nature offers both opportunities and challenges but can be transformed into opportunities for creators and rights holders.

Status in Member States

The information provided below covers the legislative framework, tariff setting, collection and distribution process, administrative cost, and social and cultural deductions in Botswana, Cabo Verde, Ghana, Malawi, and Kenya:

BOTSWANA**Legislative framework**

Section 35G of the Botswana Copyright and Neighbouring Rights Act mandates remuneration on technical devices for reproducing copyrighted works. The Remuneration on Technical Devices Fund (LTDF) was established by the Ministry of Finance and Economic Development in 2008 and aimed at supporting the development of authors and publishers. The Act, through Section 35G (2), further provides that the remuneration shall be for the development of authors and publishers of works.

The Fund Order allocates funds for the development of authors, publishers, and copyright industries. It appoints the Permanent Secretary in the Ministry of Trade

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and Industry (MTI) as the Accounting Officer and the Levy on Technical Devices Funds Management Committee to administer the Fund through the Companies and Intellectual Property Authority as the Secretariat. The Committee developed Guidelines for Awarding Grants for Rights-Holder Development, which were approved in 2011. Subsequently, the guidelines were reviewed and replaced with the Handbook of Policies for Administration of the LTDF, referred to as 'The Handbook,' which was approved in 2017.

In addition, the objectives of the Fund are enumerated in Rule 4 of the Policy on Application for Grants and Monitoring Projects under the LTDF in the Handbook provides as follows:

- (a) Promote the creation and production of literary and artistic works.
- (b) Support enforcement of copyright and neighbouring rights.
- (c) Support information dissemination on any matter that promotes copyright industries.
- (d) Support initiatives that enhance the skills of rights holders.
- (e) Promote the production of quality literary and artistic works.
- (f) Promote the effectiveness of rights-holder organizations.
- (g) Promote collaborations within the creative industries, and
- (h) Support any other projects and programs that promote the development and growth of the copyright industries.

Tariff Setting

Tariffs are contained in the Copyright and Neighbouring Rights Act (amendment) Regulations 2022. This is an amendment of the fourth schedule to Cap 68:02. The tariffs are charged as a percentage of a product's cost. They run between 1% and 2%, depending on popularity,

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the product's value, and the magnitude at which the product can copy or store copyright works.

The 2022 review of the regulations included emerging technologies like drones and combined devices. However, the tariff list is not sensitive to rapid technological advancements and should be reviewed regularly to accommodate these changes. Table 2 shows the list of goods and tariffs set.

Table 2: List of goods and tariffs for Botswana

No	Goods	% of the levy on cost price
1	Audio cassette	2
2	Video cassette	2
3	Compact disc (CD) (unrecorded)	1
4	Digital versatile Disc (DVD) (Unrecorded)	1
5	Smartphones	2
6	Other phones	1
7	Computer (Desktop)	1
8	CD writer	1
9	Multi-function machine (printer/ photocopier/fax/ scanner)	2
10	Facsimile	2
11	Photocopier	2
12	Printer	2
13	Scanner	2
14	Modulator	1
15	iPod	1
16	iPad	2

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No	Goods	% of the levy on cost price
17	MP3 player	1
18	Mp4 player	1
19	Flash disk	1
20	Camcorder	2
21	Digital camera	2
22	Photographic camera	2
23	Television camera	2
24	Television	2
25	Cinematographic camera	2
26	Cinematographic projector	2
27	Laptop	2
28	Tablet	2
29	Video recording or reproducing apparatus whether incorporating a video tuner	2
30	Sound recording or reproducing apparatus	2
31	Memory card or Smart card	2
32	External hard drive	2
33	Television decoder/ Set-top box	2
34	Drone	2
35	CCTV camera	2

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Collection Process

The Botswana Unified Revenue Service (BURS) collects the remuneration at the point of manufacture or entry. After deducting their 6%, BURS remits the remainder to MFED.

Distribution

The funds are distributed through open calls for funding. The Committee invites the public to submit proposals for projects that could potentially develop the creative industry. The projects are selected in accordance with the guidelines.

Administrative cost

The Customs Office (BURS) keeps 6% of the collections as administrative costs.

Social and Cultural Fund

The CMO in Botswana established the Social and Cultural Fund. However, the LTDF does not contribute to it or has not set up an independent one.

CABO VERDE

The Copyright Law in Cabo Verde, approved in 1990, and revised in 2009 and 2017, protects literary, artistic, and scientific works and the rights of authors, performers, producers, and broadcasting organisations. It promotes the IP rights of creators and copyright owners and establishes principles for authors' rights, including licensing and compensation. Further, an equitable compensation rate for private copying was created, which applies to importing devices capable of reproducing copyright works and Internet Service Providers (ISPs).

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Collection Process

The PCR is collected through a tax on the importation of devices that allow the fixation of works and through fees collected from the ISPs, which are charged to users for using the Internet.

Tariff

The importation of equipment and appliances is taxed based on the Cost, Insurance and Freight (CIF) value, with a fee of 5% for machines and devices for fixing and reproducing works. Internet access services are subject to a compensatory fee of 0.25% on each invoice to the consumer. Customs levies the clearing fee on importers and ISPs.

Distribution

The Compensation fees are transferred quarterly by collecting entities to the Autonomous Fund for Supporting Culture and Creative Industries, which is responsible for apportioning the revenue to the General Directorate of Budget Planning and Management of the Ministry of Culture and Creative Industries. Shown below are the share of collected PCR:

- (a) 20% for the Autonomous Fund to Support Culture and Creative Industries.
- (b) 50% for Authors and Related Rights Collective Management Societies.
- (c) 30% for financing the Cinema Law and the entity responsible for managing the cinematographic and audio-visual sector.

Notwithstanding, collecting societies must distribute these royalties to their rightsholders according to the distribution rules approved by their General Assemblies.

Social & Cultural Fund

The CMOs should allocate not less than 5% of total reve-

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nue collected via private copying and licensing to the social fund to carry out social activities, training, promotion of works, and incentives for cultural and artistic creation, among other actions.

Administrative cost

CMOs' operating costs must not exceed 35% of the collected royalties, save for exceptions provided by law.

GHANA

Section 27 of Ghana's Copyright Act, 2005 (Act 690) imposes a remuneration on devices capable of reproducing copyright works, both imported and manufactured in the country. It is an offence to import or manufacture devices without paying the remuneration. The amount levied is in two categories as prescribed in the Copyright (Amendment) Regulations, 2023 (L.I. 2469). The first category is 15% of the CIF value of items listed in a-j of regulation 7 and 5% of CIF value of items listed in k-n of regulation 7 of the Copyright (Amendment) Regulations, 2023 (L.I.2469).

The items are summarised in the table below:

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S/N	Item Description	Percentage of CIF Value to be Levied
A	Video and audio cassettes with integral storage like (i) MP3 or MP4 and any variation of MP3 and MP4 (ii) CD-R or CD-RW (iii) DVD-R or DVD-RW set-top boxes	15%
B	Pen drives and other data disks including SMART cards or SIM cards	15%
C	iPods	15%
D	Diskettes	15%
E	CD Copiers	15%
F	Memory cards including SD cards variations of SD cards and micro SD cards	15%
G	External hard drives	15%
H	Decoders or digital boxes	15%
I	Smartphones and tablets	15%
J	Smartwatches	15%
K	Photocopiers, scanners, printers and fax machines	5%
L	Smart televisions	5%
M	Digital cameras, video cameras, and camera drones	5%
N	Personal computers	5%

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Collection

The Customs, Excise and Preventive Service, now known as the Customs Division of the Ghana Revenue Authority, collect the remuneration. The collections are made into the fund established for rightsholders. Upon the request of the Copyright Administrator, the funds are transferred into the Copyright Office account for disbursement to rightsholders.

Distribution

Proceeds from the remuneration are distributed in accordance with regulations 19(1) and 19(2) of the Copyright Regulations, 2010 (L.I 1962) as follows:

- (1) The Minister shall distribute the levies collected in furtherance of regulation 14 as follows:
 - (a) ten percent for cultural activities to be collectively administered by the collective administration societies.
 - (b) ten percent for the administrative purposes of collective societies.
 - (c) four percent to the Customs Excise and Preventive Service, and
 - (d) six percent to the Copyright Office.
- (2) The Minister shall distribute the remaining seventy percent equally among the various rights groups to be shared as follows:
 - (a) for holders of audio works rights,
 - (i) Twenty-eight percent to composers or publishers.
 - (ii) Twenty-one percent to producers; and
 - (iii) Twenty-one percent to performers.
 - (b) for holders of audiovisual works rights.
 - (i) Thirty-five percent to producers.
 - (ii) Twenty-one percent to performers, and
 - (iii) Fourteen percent of authors of audiovisual works,

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- (c) for holders of literary works rights.
 - (i) Forty-two percent to authors, including visual authors, and
 - (ii) Twenty-eight percent to publishers.

Administrative cost

The Customs Division of the Ghana Revenue Authority receives 4% of total collections for administrative costs, while the three CMOs, namely the Ghana Music Rights Organization (GHAMRO), the Audiovisual Rights Society of Ghana (ARSOG), and the Reproduction Rights Organization of Ghana (Copy Ghana). The societies receive PCR funds on behalf of rightsholders and are allowed to use up to 30% for administrative costs.

Social & Cultural Fund

Ten per cent (10%) of the total collections are set aside for cultural activities, which are collectively administered by the aforementioned collective administration societies. Through this arrangement, the CMOs in Ghana have put up a building complex from where they will jointly be operating in the future.

KENYA

The Copyright Act (No.12 of 2001) is the legislation on PCR in Kenya. Sections 28 (3)(6) and 30(6) of the Copyright Act and the Second Schedule, Part B of Copyright Regulations 2020 deal with blank tape remuneration.

Section 28 provides that:

Nature of copyright in sound recordings,

- (1) Subject to subsections (2) and (3), copyright in sound recordings shall be the exclusive right to control the doing in Kenya of any of the following acts in respect of the sound recording, namely—
 - (a) the direct or indirect reproduction in any manner or form or

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- (b) the distribution to the public of copies by way of sale, rental, lease, hire, loan, or any similar arrangements; the making available of the sound recording in whole or in part either in its original form or in any form recognizably derived from the original; or
 - (c) the importation into Kenya; or
 - (d) communication to the public or the broadcasting of the sound recording in whole or in part, either in its original form or in any form recognizably derived from the original.
- (2) The provisions of paragraphs (a), (f), (j), and (h) of section 26(1) shall apply *mutatis mutandis* to the copyright in a sound recording.
- (3) The rights of an owner of a copyright in a sound recording are not infringed by the making of a single copy of the recording for the personal and private use of the person making the copy, and in respect of such use, the owner of copyright in the sound recording shall have the right to receive fair compensation consisting of a royalty levied on audio recording equipment or audio blank tape suitable for recording and other media intended for recording, payable at the point of first manufacture or entry in Kenya by the manufacturer or importer for commercial purposes of such equipment or media.
- (4) Deleted by Act No. 20 of 2019, s. 17.
- (5) Deleted by Act No. 20 of 2019, s. 17.
- (6) Any person who, for commercial purposes, makes available any audio recording equipment to enable any other person to make single copies of any sound recording for his personal or private use without payment of the royalty levied under subsection (3) shall be guilty of an offence and shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding four years or to both.

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Section 30(6) provides that:

“The rights of an owner of a copyright in fixation of their performance are not infringed by the making of a single copy of the performance for the personal and private use of the person making the copy, and in respect of such use, the owner of a related right in the performance shall have the right to receive fair compensation consisting of a royalty levied on audiovisual recording equipment or audio-visual blank media suitable for recording and other media intended for recording, payable at the point of first manufacture or entry in Kenya by the manufacturer or importer for commercial purposes of such equipment or media.”

Section 30B (3) provides for how the amount levied is determined. The Section provides as follows;

“The level of the royalty payable shall be agreed between the collective management organization representative of performers and producers of sound recordings and the organization representative of manufacturers and importers of audio recording equipment, audio blank tape and media intended for recording or failing such agreement by the Board.”

The provision of the PCR in Kenya is to be fully operationalized. However, collections commenced on 15 September 2023 using the KenTrade System, which is a state agency established under the national treasury. In addition, there has been no distribution yet. In addition, Kenya is carrying out an overhaul of the Copyright Act to address the issues raised by stakeholders and to meet the ever-changing needs of the creative industry. It will also align the provisions dealing with PCR. Table 5 below is a list of items covered under the Copyright Regulation of 2020:

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Table 5: List of items covered under Kenya Copyright Regulation (2020)

S/NO.	Item description	Remuneration
1.	Audiocassette, audiocassette minidisc, audio-CD-R/RW	Sh. 5
2.	Video cassettes (VHS, Hi8, Mini DV, Vide08)	
3.	DVD-R, DVD+ RW, DVD+ R, DVD + RAM, DVC, mini-DVD, Blu-Ray disk, PC diskettes, DDS tapes, Trevan disc; CD-R, CD-RW	Sh. 10
4.	DVD writer external (PC), CD-ROM recorder external (PC); and another recording device for audio-CD RJRW whether integrated with a hard disc	3% of cost price net of taxes
5.	Television with HD recorder, DVD-HD recorder, Video-HD recorder (cameras), Digital recorders (MP3, I-pods, MP4, etc.	Sh. 100
6.	VHS recorders, digital receivers with HD (PVR), hard drive media players, Blu-Ray recorder external, digital camcorders, digital cameras with SD cards, digital recorders for IPTV and VOD services	5% of purchase price net of taxes
7.	Game consoles, media boxes, minidisc, compact flash memories, memory, stick, smart media memory cards, portable hard discs (external), ZIP drives, data, USB Flash disk	Sh. 200
8.	Audio recorders and video recorders	4% of cost price net of taxes
9.	Photocopy/printing	Sh. 20
10.	Personal Laptops/computers, mobile phones, smartwatches	1.5% of purchase price net Taxes
11.	Modulators, decoders/signal receivers, digital juke-boxes	3% of purchase price net of taxes
12.	Photocopying machine, printing plates, printers/printing machines	2% of purchase price net of taxes
13.	Computer external hard drives	Sh. 300

Section 30B(4) requires the Board to determine and, by notice in the *Gazette*, publish the share of the private copying remuneration applicable to the respective rights holders. On 3rd April 2024, the Board published the following share ratio through Legal Notice No. 88 of 3rd April 2024.

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MALAWI

In 2016, Malawi enacted a new Copyright Act. Section 98 of the Act provides for the establishment of the Copyright Fund. The objective of the Fund is to support projects/ activities aimed at –

- (a) Developing capacity, quality, and diversity of the copyright industry.
- (b) Enhancing public education/ awareness on copyright matters.
- (c) Offering support for law enforcement initiatives.
- (d) Assisting in anti-piracy campaigns/activities.
- (e) Contributing towards conserving, protecting, and promoting Malawi culture within the copyright works.
- (f) Assisting in any other areas not mentioned above that develop the copyright industry.
- (g) Supporting activities that are meant to promote the sale and marketing of creative works within the local market and international market; and
- (h) Supporting activities that are meant to represent and promote Malawi's creative industries at international events.

The Copyright Fund is funded through levies, including a remuneration on PCR, which pertains to the import, manufacturing, or placement of digital storage devices. As stipulated in section 106 of the Copyright Act of Malawi, the Minister has the power to regulate all levies, including PCR.

The Copyright Society of Malawi (COSOMA) is the Implementing Agency for PCR remuneration in Malawi. The Ministry of Finance collects the remuneration, which is administered by the Copyright Office. The Revenue Authority collects the remuneration on an agency basis, with the Copyright Office distributing the remaining 95%. The fund is intended to benefit the creative sector and rights holders.

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Tariff Setting

The Minister of Finance and the Minister responsible for Copyright and Related Rights create regulations on remuneration rates. The 2018 "Copyright (Remuneration on Storage Devices) Regulations" provides a list of devices and rates, ranging from 5% to 10%, based on damage to the copyright industry. COSOMA, with the Minister's approval, may adjust the list of materials or remuneration payable on any material.

Table 6: List of devices under Malawi Copyright Remuneration on Storage Devices Regulations (2018)

No	Devices	% of the remuneration on the cost price
1.	Audio cassette	10%
2.	Video Cassette	10%
3.	Vinyl	10%
4.	Mini Disc	10%
5.	Hi-MD	10%
6.	Compact Disc	10%
7.	Digital Versatile Disc	10%
8.	I-Pod	10%
9.	Modulator	10%
10.	MP3 Player	10%
11.	Blu-Ray	10%
12.	Digital Jukebox	10%
13.	USB Flash Disc	10%
14.	SIM Card	10%
15.	SD Memory Card	10%

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No	Devices	% of the remuneration on the cost price
16.	CD/DVD Copier	5%
17.	Cell Phone	5%
18.	Personal Computer	5%
19.	CD Writer	5%
20.	Photocopier	5%
21.	Printer	5%
22.	Scanner	5%
23.	Camcorder	5%
24.	Digital Camera	5%
25.	Computer External Hard Drive	5%
26.	Radio/TV Sets enabling recording	5%
27.	Decoders/Signal receivers	5%
28.	Printing Plates	5%
29.	Analog audio recorders	5%
30.	Analog video recorders	5%

Collection process

COSOMA is the administrator of the remuneration, while the revenue authority is the collection agency for the remuneration. The remuneration is supposed to be paid by the manufacturers or importers of digital storage devices.

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Distribution

Distribution (Administrative cost plus remuneration to right holders as well as social and cultural funds)

- (a) 5% to the Malawi Revenue Authority
- (b) 5% to Malawi Government – Ministry of Finance
- (c) 20% to COSOMA for enforcement and Administration
- (d) 10% to Copyright Fund
- (e) 60% distribution to right holders by COSOMA as follows:
 - 30% to musical works
 - 15% to audio-visual works
 - 15% to literary works
- (f) The distribution to right holders is to be done in accordance with the distribution rules of COSOMA.

VII. Potential in Africa and Positive Trend

Africa is focusing on enhancing PCR, and the recent developments in the WAEMU region demonstrate the need for a functional PCR system. The Bangui Agreement in the OAPI region mandates a private copying exception and an effective system for remunerating authors, performers, and phonogram producers. This is driven by increased awareness of the economic potential of private copying in the region, leading to several countries exploring, improving or implementing private copying collections.

In 2017, Malawi implemented a coordinated PCR system, with legislative amendments boosting collections and distributions. Other countries, like Algeria, Botswana, Burkina Faso, Cabo Verde, Ghana, Kenya, Morocco and Tunisia, also have PCR systems. In 2021, PCR collections reached €10.6 million, accounting for 14.1% of the global collection from CISAC members in Africa⁹.

Therefore, the potential of PCR in Africa cannot be overemphasised, considering the widespread use of digital devices allowing copies, such as tablets and smartphones, in the region. According to the Private Copying Global study published in 2020 by CISAC, BIEM, and Stichting de Thuis-kopie, the revenue potential from smartphones ranges between 14 and 20 million Euros.

Recently, the regional community WAEMU put forward an important initiative to expand and harmonize the implementation of PCR. In 2019, WAEMU set up a steering group to draft a new regional private copying directive to implement PCR in the eight member states of WAEMU¹⁰. The directive was adopted in September 2023, and the WAEMU members have two years to include/transpose the provisions in their national laws.

⁹ Figures extracted from the CISAC GCR 2022.

¹⁰ Benin, Burkina Faso, Ivory Coast, Guinea Bissau, Mali, Niger, Senegal, and Togo.

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PCR in France – Legislative framework

The PCR system in France is considered one of the best in Europe. The 1957 law on literary and artistic property established the exception for private copying. In 1985, the "Lang Law" introduced a financial compensation system for Copyright and Related Rights holders. Private copying levies have been amended to adapt to technological developments. Since December 20, 2011, sources of illegal copies are no longer considered, and professional-use equipment is exempt from PCR. Consumers must be informed of the remuneration amount through a labelling system.

Tariffs' setting

Tariffs are set by a Private Copying Commission, consisting of 24 members representing rightsholders, manufacturers, importers, and consumers. A President represents the state and general interest, and decisions are discussed, voted on, and officially published.

The Private Copying Commission sets the rates per medium or device, applying a method based on usage studies carried out by market research institutes. These studies make it possible to determine precisely:

- (a) the volume of copied works.
- (b) the valuation of the damage per copy made based on objective elements.
- (c) consideration of contextual elements.

The method calculates the average volume of works copied from legal sources on various media over six months, extrapolating it to a two-year horizon. The duration of use is estimated to be at least three years. The reference values for private copying of works are applied to the volumes to determine the average remuneration per medium.

Collection process

In contrast to several countries, Copie France, an umbrella organization managed by its members, is responsible for

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collecting authors' and neighbouring rights. It is the sole entity in France collecting audiovisual private copying remuneration for all genres. In 2021, private copying fees amounted to €279 million, making the remuneration a crucial part of France's cultural life.

Distribution

The procedure to distribute private copying remuneration among the distinct categories of rightsholders is as follows: the total amount collected is first split between categories like audio, video, written works, and images. This first step, allocating collections to a category of copied works, is usually based on market research on the type of works copied on the various media and carriers.

The amounts allocated to these categories are then divided among the groups of rightsholders (authors, performers, and producers/publishers) within them:

- (a) Audio:
 - 50% to authors' organizations (SDRM, SACD, SCAM)
 - 25% to performers' organisations (ADAMI, SPEDIDAM)
 - 25% to phonogram producers' organizations (SCPA)
- (a) Video:
 - 1/3 to authors' organizations (SDRM, SACD, SCAM)
 - 1/3 to performers' organisations (ADAMI, SPEDIDAM)
 - 1/3 to video gram producers' organizations (PROCIREP)
- (a) Literary works
 - 50% of authors
 - 50% of publishers
- (a) Visual arts: SORIMAGE
 - 50% of authors
 - 50% of publishers

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The last step is to split the amounts between the organizations representing the same group of rightsholders, according to their contractual arrangements¹¹.

Social and cultural purposes

French Copyright Law mandates that CMOs must use 25% of private copying remuneration for cultural actions, including creation support, live performances, artistic education, and artist training. CMOs prepare transparency reports annually, which are sent to the Minister of Culture and the Commission for the Supervision of Copyright and Related Rights Management Organisations. The list of supported projects, beneficiaries, and paid amounts is publicly accessible on specific platforms, promoting the creative process. The 2016 law on freedom of creation, architecture, and heritage was improved by creating a digital database, listing aid and training actions financed by private copying remuneration¹².

VIII. Strategic Objectives, Monitoring and Evaluation Tool

The matrix below is a monitoring and evaluation tool. It highlights the strategic objectives, activities, indicators, timeframe, responsible entity, stakeholders, budget, action plan and the M&E status.

¹¹ In respect of literary works, the Author-Publisher split is 50-50, see Article L311-7 of the French Intellectual Property Code ([Titre Ier : Rémunération pour copie privée \(Articles L311-1 à L311-8\) - Légifrance \(legifrance.gouv.fr\)](#)). The distribution of PCR for Literary (or TI) works involves several organizations, see [Where does the money go? - Copie France](#): The book and journal publisher share are distributed via the two RROs CFC and SOFIA. For both text and images, the text authors share is distributed via, for instance, SCAM and SOFIA, and the image author shares via ADAGP, SOFIA and others.

¹² www.aidescreation.org .

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STRATEGIC OBJECTIVES, MONITORING, AND EVALUATION TOOLS FOR MEMBER STATES							
Strategic Objective	Activities	Indicators	Timeframe	Responsible Entity	Stakeholders (International, regional, national)	Resources (Budget)	Action Plan
Review and update the legislative framework	Implementation at the National Level:						
	<ul style="list-style-type: none"> Update existing Copyright and Related Rights laws to include Private Copy Remuneration (PCR) where there is none. 	<ul style="list-style-type: none"> Number of Member States that have revised their copyright legal frameworks to include the PCR system. 	2 years after the adoption of the Strategy	Member States & and strategic partners	<ul style="list-style-type: none"> Member States Government CMOs Copyright offices Creative Industry players, their Associations & beneficiaries General Public Strategic Partners Manufacturers Importers Businesses Custom Authorities 		
	<ul style="list-style-type: none"> Amend existing Laws and Regulations on PCR systems to be in line with technological development and adapt schemes that ensure adequate remuneration of rightsholders. 	<ul style="list-style-type: none"> Number of updated Copyright Laws and Regulations to better administer the PCR system. 	2 years after the adoption of the Strategy	Member States			
	Implementation at the Regional Level:						
	<ul style="list-style-type: none"> Develop and adopt a Regional PCR Strategy. 	<ul style="list-style-type: none"> Number of MS who implemented a PCR Strategy. 	2 years after the adoption of the Strategy	Member States (MS) & and strategic partners			

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STRATEGIC OBJECTIVES, MONITORING, AND EVALUATION TOOLS FOR MEMBER STATES							
Strategic Objective	Activities	Indicators	Timeframe	Responsible Entity	Stakeholders (International, regional, national)	Resources (Budget)	Action Plan
Capacity building for Stakeholders on the PCR system	<ul style="list-style-type: none"> Carry out capacity-building workshops for member states. Carry out capacity building for Customs officials. Carry out capacity building for Law enforcement officials. Carry out capacity building for CMOs 	<ul style="list-style-type: none"> Number of capacitation activities for copyright offices. Number of trainings for Customs officials. Number of trainings for law enforcement officials. Number of trainings undertaken by CMOs. 	Yearly	Member States (MS) & and strategic partners	<ul style="list-style-type: none"> Member States Government CMOs Copyright Offices Creative Industry players, their Associations & beneficiaries General Public Strategic Partners Manufacturers Importers Businesses Custom Authorities Enforcement agencies 		

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STRATEGIC OBJECTIVES, MONITORING, AND EVALUATION TOOLS FOR MEMBER STATES							
Strategic Objective	Activities	Indicators	Timeframe	Responsible Entity	Stakeholders (International, regional, national)	Resources (Budget)	Action Plan
Public education and awareness creation	<ul style="list-style-type: none"> Engage in rigorous public education and awareness campaigns 	<ul style="list-style-type: none"> Number of Awareness campaigns held. The number of stakeholders reached 	<ul style="list-style-type: none"> 2 years after the adoption of the Strategy 2 years after the adoption of the Strategy 	Member States (MS) & strategic partners	<ul style="list-style-type: none"> Member States Government Private institutions CMOs Copyright Offices Creative Industry players, their Associations & beneficiaries General Public Strategic Partners Manufacturers Importers Businesses Custom Authorities Enforcement agencies 		

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STRATEGIC OBJECTIVES, MONITORING, AND EVALUATION TOOLS FOR MEMBER STATES							
Strategic Objective	Activities	Indicators	Timeframe	Responsible Entity	Stakeholders (International, regional, national)	Resources (Budget)	Action Plan
Enhance PCR collection, monitoring, and distribution	<ul style="list-style-type: none"> • Adopt rules and policies for the distribution of PCR. • Collect for PCR. • Distribute collections from PCR. • Monitor and review the PCR system in place. 	<ul style="list-style-type: none"> • Amount of collections made in a year. • The Amount is distributed to rightsholders. • Level of the effectiveness of the PCR system. • Carry out a performance review of the Strategy 	<ul style="list-style-type: none"> • 2 years from the adoption of the Strategy • 2 years after the adoption of the Strategy • Mid-term 	Member States (MS) & and strategic partners	<ul style="list-style-type: none"> • Member States • Government • CMOs • Copyright Offices • Rightsholders • Custom Authorities • Enforcement agencies 		

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IX. Risks and Contingencies

The risks below are drawn from the SWOT analysis in Table 1.

Risk Factor	Areas of Uncertainty	Mitigation	Level of Impact of Risk
Execution	<ul style="list-style-type: none"> (i) MS capabilities. (ii) Culture of MS in engaging on Copyright issues. (iii) Processes required to set up an effective PCR system. (iv) Buy-in from Government/ Leadership. (v) Availability of funds (Budget) (vi) Trade implications on PCR-related goods vis-à-vis others. 	<ul style="list-style-type: none"> ● Engage stakeholders and strategic partners to assist with training and capacity-building. ● Carry out robust capacity-building initiatives and public awareness campaigns. ● Solicit funding from strategic partners, and pooling resources from different MS e.g., technical expertise, etc. ● Member States to monitor regional economic and political trends to identify potential risks and adjust their operations accordingly. This could involve monitoring exchange rates, commodity prices, regulatory changes, or political developments in key markets. 	High
Technical Feasibility	<ul style="list-style-type: none"> (i) Technical knowledge in the development of a strategy (ii) Monitoring and evaluation. (iii) Correctness of objectives, measures, and initiatives. (iv) Delivery timeliness. 	<ul style="list-style-type: none"> ● Engage Strategic Partners to assist. ● Develop an implementation plan. ● Set achievable targets (not soft) and performance metrics. ● Carry out performance reviews 	Medium
External Factors	<ul style="list-style-type: none"> (i) Political landscape. (ii) Laws and regulations 	<ul style="list-style-type: none"> ● Advocate for the PCR System 	Medium

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X. Monitoring and Evaluation

The Regional PCR Strategy is for ten (10) years. The strategy will be monitored by the Member States, who will provide feedback to ARIPO on the status of its implementation, whether the objectives are being achieved, and identify obstacles and how to mitigate them. The evaluation will be carried out every two and a half years, followed by a review in the 5th year coinciding with the second evaluation and a review in the Tenth year.

XI. Conclusion

The PCR strategy provides a clear direction for Member States to operationalize an effective PCR system, considering each country's unique priorities. It emphasises strengthening the legal and institutional framework, raising awareness, and capacity building among stakeholders. ARIPO Member States need to adopt and implement the Regional PCR Strategy and develop other tailored strategies to ensure its successful implementation. Proactive development of these strategies is encouraged for the successful implementation of PCR systems.

The PCR strategy has been successful in African countries, including ARIPO Member States. It facilitates easy access to copyrighted works, compensates rights holders, promotes royalty diversification, enhances social and cultural development, and mitigates infringement. The Regional PCR Strategy aims to guide the establishment and implementation of an effective PCR system in member states and Africa in general. This will accelerate socio-economic and cultural growth by compensating rightsholders and allocating funds for cultural development.

XII. Recommendations

It is recommended that based on ARIPO Member States sovereignty, the Member States approve this Regional Strategy for Private Copy Remuneration and recommend to:

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- (a) Review and update the legislative framework for PCR to be effectively implemented, e.g.,
 - (i) Provide an inexhaustible futuristic list of equipment and media capable of reproducing copyright works, and tariffs subject to periodic regular review of this list.
 - (ii) Provide the implementation of mechanisms that allow CMOs (or the body responsible for the collection of the PCR) to request justifications to audit the debtors of the PCR.
 - (iii) Provide the quantum in percentage or otherwise of what should be levied on the equipment/media, e.g., not less than 5% and not more than 15% of the CIF value of an item categorised as capable of copying copyrighted works.
 - (iv) Provide the mechanisms for collection, stating which national authority/body is responsible for the collection, the account into which the collections should be deposited, and all relevant accounting measures.
 - (v) Provide distribution procedures stating beneficiaries and their entitlements. The general international standard is that the revenue for neighbouring rights shall at least be split 50/50 between producers and performers, but there are other schemes.
 - (vi) Provide reporting frequency and detail of collection and distribution reports.
 - (vii) Provide specific provisions for setting part of the proceeds aside for cultural development that will benefit rightsholders.
 - (viii) Provide specific provisions on CMOs' administrative costs for PCR and social and cultural funds. For example, not more than 20% of the collections are for administrative costs and not more than 10% are for social and cultural funds.

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- (b) Undertake capacity building for Stakeholders on Private Copy Remuneration (PCR).
- (c) Increase public education and awareness creation.
- (d) Enhance PCR collection, monitoring, and distribution to rightsholders, ensuring actual distribution of the collected revenues to rightsholders and not allocating the whole amount to cultural initiatives alone.
- (e) Safeguarding a fair balance of rights and interests between various categories of rights holders and users of copyrighted material.
- (f) Ensure that authors, producers, publishers and performers are properly remunerated from PCR for the widespread copying of their works for personal use.
- (g) Government support to establish the PCR system.
- (h) Consider a comparative analysis of PCR systems with countries like Malawi, Cabo Verde, Algeria, France, and the WAEMU region.



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