

# Memorandum to the National Assembly: Reforming the Kenyan Music Industry

## Introduction

The Kenyan music industry, despite its immense potential, has been significantly hampered by a lack of effective policies and practices implemented by both the Kenya Copyright Board (KECOBO) and Collection Management Organizations (CMOs). This memorandum aims to address these issues and propose actionable recommendations for creating a mutually beneficial, transparent, and sustainable business environment between the government and music industry stakeholders.

## Key Issues and Recommendations

### 1. A Comprehensive Tax Policy for Music Revenue

The current fragmented tax structure creates complexity and inhibits growth, particularly in the rapidly evolving digital sector.

- **Implementation of a Clear Tax Framework:** Introduce a comprehensive, simplified tax policy that covers all aspects of music revenue, including streaming, digital sales, live shows, and merchandise sales.
- **International Best Practices:** Align the tax framework with international best practices to ensure fair treatment of music industry stakeholders and promote global competitiveness.
- **Simplified Tax Procedures:** Streamline tax procedures and ensure accessibility to tax education for artists and small music businesses to minimize administrative burdens.

### B Favorable Terms for Artists Using Government Facilities

Government-owned infrastructure should actively support and promote local artistic activity rather than imposing prohibitive costs.

- **Tax Breaks and Subsidies:** Offer significant tax breaks and financial subsidies (e.g., VAT exemptions) to artists and production companies who use government-built or run institutions for rehearsal and live shows.
- **Reduced Fees and Rates:** Provide reduced, standardized fees or rental rates for government-owned venues, equipment, and technical personnel (where applicable).
- **Administrative Support:** Offer streamlined administrative support and logistical assistance to artists organizing cultural events at government facilities, simplifying permits and compliance

### 2. Infrastructure Investment by Corporations

The lack of world-class, adequately equipped performance venues restricts the ability of artists to monetize their work and limits the growth of the live sector.

- **Investment Tax Credits:** Offer substantial investment tax credits to large corporations (e.g., EABL, Pernod Ricard, Safaricom) for building, equipping, and maintaining plug-and-play venues and rehearsal spaces across the country.
- **Public-Private Partnerships:** Encourage structured Public-Private Partnerships (PPPs) between the government and corporations to develop world-class music venues and supporting infrastructure.
- **Long-Term Partnerships:** Foster long-term, incentivized partnerships between corporations and the music industry to ensure sustainable investments and continuous support for local artists.

### 3. Establishment of the Kenyan Recording and Creative Arts Academy (KRCAA)

Professionalization across the entire music value chain is essential to elevate Kenyan artistry to the global stage.<sup>5</sup> The establishment of the KRCAA, formalized under the purview of the Kenya Copyright Board (KECOBO), will serve as the institutional anchor for the industry's development.<sup>5</sup> The academy is structured around three core pillars: Education, Welfare, and Recognition/Standardization.

- **Education and Artist Development Programs:** The KRCAA will provide world-class training and mentorship, focusing on nurturing talent with both a creative and a business mindset.<sup>5</sup> Modern artist development must encompass creative growth, brand building, audience cultivation, and strategic career planning
- **Welfare and Social Security for Creatives:** Creative labor is often characterized by irregular income, fluctuating employment status, and a lack of access to traditional employer-based benefits.<sup>54</sup> The Welfare pillar of the KRCAA aims to establish a sustainable social safety net, ensuring that artists enjoy long-term income security and access to healthcare
- **Recognition and Standardization:** Standardization is the bedrock of a professionalized industry. The KRCAA will take the lead in establishing official national charts, certification programs, and an audited awards system to regain consumer trust and provide global success metrics

### 4. Standardized Royalty Rates

The opacity and perceived unfairness in royalty calculation and distribution undermine artist trust and incentivization, necessitating a move toward a transparent, data-driven system.

- **Transparent Calculation:** Develop a transparent and fair royalty rate calculation methodology based on international best practices and verified music performance

analytics.

- **Regular Reviews:** Implement a schedule for regular, independent reviews of royalty rates to ensure they remain competitive and reflect dynamic market changes, especially in streaming tariffs.
- **Accountability of CMOs:** Hold Collection Management Organizations (CMOs) rigorously accountable for the fair, accurate, and timely distribution of royalties, with stringent penalties for non-compliance and reporting failures.

## 5. State Mandated Software Monitoring of Public Performance (Key Policy Insertion)

To ensure the accuracy and transparency necessary for standardized royalty rates, a compulsory technological framework for monitoring public music usage must be implemented.

- **Mandatory Digital Monitoring System:** Enact policy requiring the use of state-mandated or state-approved software monitoring systems to automatically track and report all music played publicly on licensed platforms and venues.
  - **Phase I Implementation:** Compulsory implementation on all **Radio Stations, Television Broadcasters, and licensed Public Entertainment Venues** (e.g., clubs, lounges, concert halls).
  - **Phase II Expansion:** Develop a plan to expand the hardware capability of monitoring and deployment to all commercial **Businesses** (e.g., retail stores, malls) and **Public Service Vehicles** (PSVs) upon the establishment of low-cost, reliable hardware monitoring solutions.
- **Data Integrity and Reporting:** The monitoring software must integrate with the National Rights Registry (NRR) and provide real-time, tamper-proof usage data to CMOs to facilitate scientific, verifiable, and equitable distribution of royalties based on actual consumption.

## Conclusion

By addressing these critical issues and implementing the recommended technological and regulatory reforms, the Kenyan government can create a more supportive and conducive environment for the music industry. This holistic approach will not only benefit musicians and music businesses through fair compensation and infrastructure but will also contribute significantly to the country's cultural vibrancy and economic development.

## Recommendations for Further Action:

- **Form a Working Group:** Establish an urgent, high-level working group comprising key government officials, industry representatives (including artists, producers, promoters and managers), and legal/technological experts to swiftly develop and implement the

proposed reforms.

- **Engage with International Organizations:** Seek technical assistance, funding, and expertise from international bodies like the World Intellectual Property Organization (WIPO), UNESCO, and the International Federation of Phonographic Industry (IFPI) to adopt global best practices for digital rights management and monitoring.
- **Conduct Regular Reviews:** Implement a system for regular review and evaluation of the enacted reforms, including bi-annual performance audits of CMOs and the digital monitoring system, to ensure their effectiveness and allow for necessary adjustments based on market evolution.

By taking these decisive steps, the Kenyan government can position the country as a regional leader in the music industry, fostering creativity, innovation, and sustainable economic growth for its artists.

## 1. The Copyright Act (No. 12 of 2001, as amended)

This is the primary legislation governing points 3, 4, and 5 of the memorandum (KRCAA, Royalty Rates, CMO Accountability, and Digital Monitoring).

Recommendation Area	Necessary Amendment to Copyright Act
<b>4. Standardized Royalty Rates &amp; 4. CMO Accountability</b>	Amend <b>Section 46</b> (Licensing of CMOs) and the <b>Copyright (Collective Management) Regulations, 2020</b> . Amendments must explicitly mandate transparent distribution policies, caps on administrative costs (currently set at 30% in the regulations), and clear penalties for failure to distribute royalties based on verified usage data.
<b>5. State Mandated Software Monitoring</b>	Amend <b>Section 34C</b> (National Rights Registry) or add a new dedicated section. The amendment must: Mandate

	<p><b>compulsory integration</b> of state-approved digital monitoring software by all licensed music users (radio, TV, public venues, etc.) Empower the Kenya Copyright Board (KECOBO) to enforce this mandate and link compliance directly to the issuance and renewal of broadcasting and public performance licenses. Define the minimum technical standards and data fidelity required for the monitoring software to ensure real-time, tamper-proof usage reporting.</p>
<p><b>3. KRCAA Establishment</b></p>	<p>Amend the Act to formalize the establishment of the <b>KRCAA</b> (or a similar body) under the purview of KECOBO, outlining its mandate for industry training, education, and professional capacity building.</p>

**2. The Income Tax Act (Cap. 470, as amended)**

This Act governs the taxation and incentives proposed in the memorandum (Points 1, 2, and 6).

Recommendation Area	Necessary Amendment to Income Tax Act
<p><b>1. A Comprehensive Tax Policy for Music Revenue</b></p>	<p>Amend <b>Section 35</b> (Deduction of tax from certain income) and related sections to explicitly define the tax treatment of digital music revenues (streaming royalties, non-fungible tokens, etc.) to ensure a clear, simplified framework separate from general business income.</p>
<p><b>2. Infrastructure Investment by</b></p>	<p>Amend the <b>Second Schedule</b> (Investment</p>

<p><b>Corporations</b></p>	<p>Allowance) to introduce a new category of <b>Investment Tax Credit</b> specifically for expenditure incurred by corporations (like EABL, Safaricom) on the <i>construction, refurbishment, and equipping of public-access, modern arts and music venues</i>. This incentivizes capital expenditure on creative economy infrastructure.</p>
<p><b>1. B Favorable Terms for Artists Using Government Facilities</b></p>	<p>Amend <b>Section 13</b> (Certain income exempt from tax) or relevant schedules to introduce targeted <b>tax breaks and subsidies</b> for event revenue generated at government-built or run cultural institutions (e.g., exempting certain income or offering reduced corporate/excise tax rates on tickets).</p>

**3. The Value Added Tax (VAT) Act (No. 35 of 2013, as amended)**

This Act is relevant for providing subsidies and tax breaks on event costs (Point 6).

<p><b>Recommendation Area</b></p>	<p><b>Necessary Amendment to VAT Act</b></p>
<p><b>1. B Favorable Terms for Artists Using Government Facilities</b></p>	<p>Amend the <b>First Schedule</b> (Exempt supplies) or the <b>Second Schedule</b> (Zero-rated supplies) to temporarily <b>zero-rate or exempt</b> VAT on specific goods and services related to cultural events held at government facilities, such as venue rental or specialized sound/lighting equipment hire.</p>

# Summary of Acts to be Addressed

Act	Purpose	Primary Recommendations Affected
<b>The Copyright Act</b>	Royalties, CMO Regulation, Digital Rights Management, Monitoring Mandate.	3, 4, 5
<b>The Income Tax Act</b>	Corporate Tax Incentives, Comprehensive Revenue Taxation.	1, 2
<b>The VAT Act</b>	Event Cost Relief and Subsidies on Goods/Services.	1 B

These specific amendments would provide the necessary legal backing for the technical, fiscal, and regulatory reforms proposed in your memorandum.