

**CONSULTATION DOCUMENT ON PROPOSED  
COPYRIGHT LEVY SYSTEM IN NAMIBIA AS  
PER THE DRAFT COPYRIGHT AND RELATED  
RIGHTS BILL**



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## ABOUT THE DOCUMENT

The purpose of this document is to provide clarity on Namibia's plan to implement and operationalise a Copyright Levy System. In an era where change is the only constant factor, the growth of technology, Internet of Things, digital devices, and artificial intelligence (AI) has significantly transformed the Intellectual Property landscape as it affecting the protection, commercialisation, and enforcement of Intellectual Property Rights (IPRs).

In this context, Namibia, like many other countries, reviewed its current Copyright and Neighbouring Rights Act (Act 6/1994). Spearheaded by the Business and Intellectual Property Authority (BIPA) under the auspices of the Ministry of Industrialization and Trade, the review began in 2019. The primary goal of the review is to update the Law and ensure a robust and resilience legal framework for the protection of copyright contents in a transformed digital environment.

Among the new provisions included in the Draft Copyright and Related Rights Bill is the introduction of a Copyright Levy, depicted in Sections 70 and 71 of the Draft Bill. To this end, this consultation document offers:

- An insight on the concept of Copyright Levy,
- The rationale of implementing a Copyright Levy system in Namibia
- Outlines the proposed methodology to implement and operationalisation Copyright Levy system in Namibia.

This consultation document is directed at stakeholders in the creative and cultural industries, including, musicians, authors, producers, filmmaker, visual artists, digital content creators and other relevant parties. Furthermore, is aimed at Policymakers and institutional stakeholders who may be involved in the effective implementation of the proposed Copyright Levey System, including:

- Namibian Society of Composers and Authors of Music (NASCAM)
- Namibia Revenue Agency (NamRA)
- Communication Regulatory of Namibia (CRAN)

The document provides an opportunity for all those likely to be affected by the Copyright Levy's implementation to give their views and comments, which will be considered in the proposed methodology for the copyright levy implementation.

This is the second series of consultations on the copyright levy. The first consultation took place on 10 November 2022. Stakeholders are encouraged to engage with the document and participate in the consultation process.

BIPA invite all stakeholders to participate in the consultation process. Feedback on the proposed methodology is essential to shaping the future of copyright protection in Namibia. Together, we can ensure that the copyright levy serves its purpose of compensating rights holders while adapting to the realities of the digital age.

**Link to the relevant legislations**

Draft Copyright Bill: <https://www.bipa.na/download/draft-copyright-and-related-rights-protection-bill-2024/>

***“EVERYBODY WINS”***

## EXECUTIVE SUMMARY

The Namibian Draft Copyright and Related Rights Bill proposed an introduction of a Copyright Levy as a modern approach to address the challenges posed by the unauthorised use of copyrighted content, which has grown significantly due to the proliferation of digital devices. This levy represents a forward-thinking solution to ensure that copyright holders are fairly compensated for the reproduction and distribution of their works in the digital age.

The copyright levy will be a fee charged on various storage devices such as cellphone, USB drives, computers, and other digital equipment that are imported into or manufactured in Namibia. Copyright levies have been successfully implemented in several countries across the world, including within the African continent, to protect the rights of content creators and promote cultural and creative industries.

The levy will be collected by the Namibia Revenue Agency (NamRA) at the point of entry of imported digital storage devices. The collected fee will be deposited into a Copyright Fund, which will be administered by BIPA. The primary objective of the Fund is to support the growth and sustainability of Namibia's creative industries. It will provide financial assistance for activities such as training for artists, creation of new works, and enforcement of copyright laws. Additionally, a portion of the levy will be distributed directly to copyright holders through established Collective Management Organizations (CMOs).

This proposal offers a win-win solution for all stakeholders in Namibia's digital environment. It ensures that rightsholders are compensated while fostering an ecosystem that supports the creative economy.

This consultation document aims to provide stakeholders with an in-depth understanding of the copyright levy and its implementation. It also invites feedback and comments from all affected parties, ensuring that their views are considered in the development of the final methodology for implementing and operationalisation of a copyright levy system in Namibia.

## **SECTION A: INTRODUCTION AND BACKGROUND**

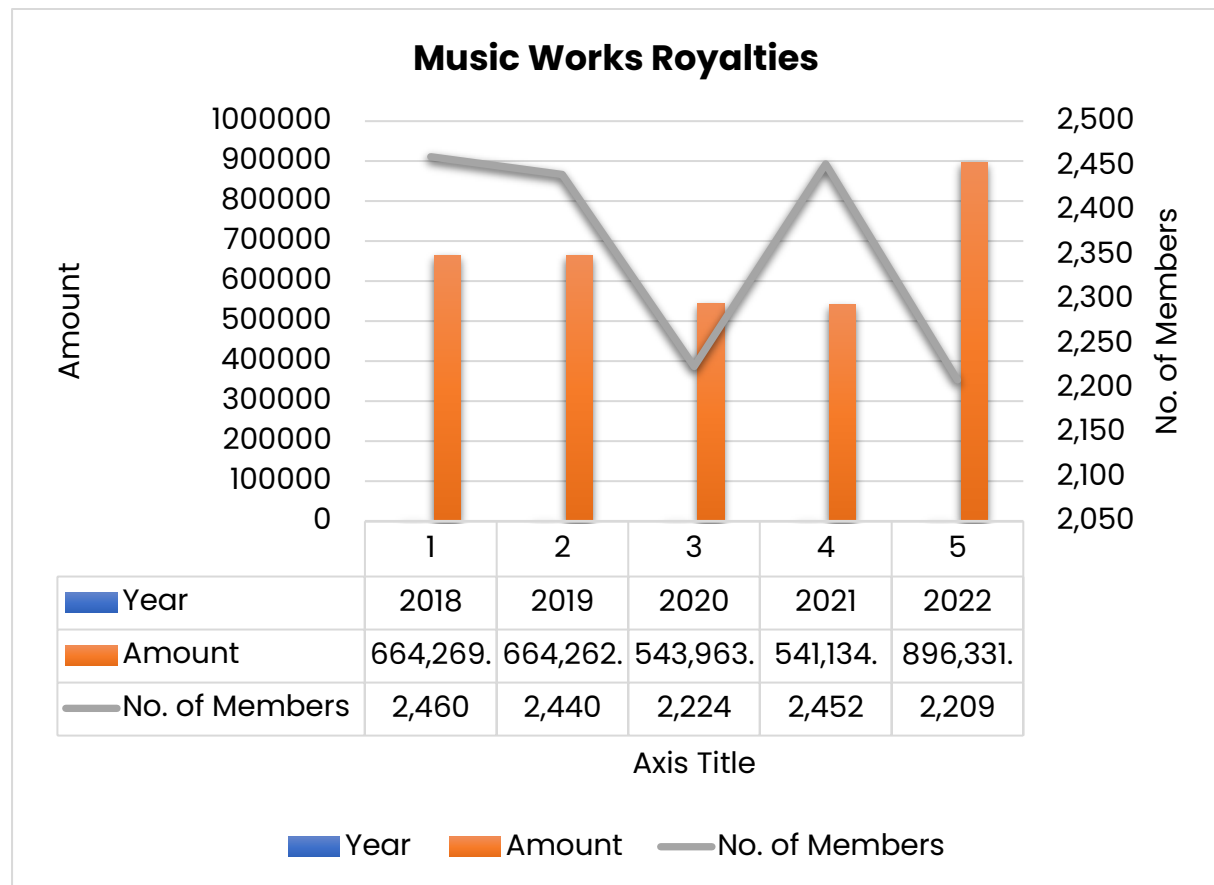
### **1. INTRODUCTION**

- 1.1** The world has evolved over the years and its dependency on intangible assets for industrial solutions, entertainment, education and growing the economy is on the rise. To this end, Intellectual Property law gained momentum as a catalyst to incentivise innovation, foster creativity, and propel economic growth. On the one hand, technological advancement creates opportunities and simplifies livelihoods, on the other hand, it also presents challenges that need to be addressed by creating a fit-for-purpose Intellectual Property ecosystem.
- 1.2** Given the continuous evolution of reproduction technologies, duplication and sharing of copyright content has become increasingly affordable and easy to do without the permission of copyright holders. It is a global challenge; hence countries are implementing copyright levies such as reprographic and private copying remuneration, under their respective copyright frameworks, as a compensatory system that balances the interests of users of copyright content with those of copyright holders.
- 1.3** The Ministry of Industrialisation and Trade has developed the draft Copyright and Related Rights Bill, in terms of which, Namibia introduces the reprographic and private copy remuneration system as fair compensation for unauthorised reproduction and distribution of copyright content. The copyright levies will be charged on all storage devices and equipment capable of making copies, that are manufactured or imported in Namibia.
- 1.4** This Document elaborates on the concept of these copyright levies in a Namibian context, the rationale behind the levies, and how Namibia envisages the implementation thereof. Moreover, the document serves as a discussion paper on the implementation of the copyright levies in Namibia during consultations with stakeholders.

### **2. BACKGROUND**

- 2.1** The copyright regime has become an important source of earned income for the creative industry especially for music creators, authors and publishers, as well as companies that invest in creative art.
- 2.2** According to the Namibian Society of Composers and Authors of Music (NASCAM), an amount of N\$ 9, 321, 914.95 (Nine Million Three Hundred and Twenty-One Thousand Nine Hundred and Fourteen Namibia dollars and Ninety-Five Cents) in royalties was collected over 12 years, between 2010 and 2022, and distributed to an estimated 26 - 562 (Twenty-Six Thousand Five Hundred and Sixty-Two) Namibian artists registered with NASCAM.

**2.3** This was possible through the effective licensing systems of content and does not include direct sales of CDs or music in other forms. Looking at these statistics, one could only imagine that more income could be generated if there were mechanisms in place to curb unauthorised reproduction and sharing of copyright content.



**Figure1: Amount collected in royalty by NASCAM since 2010-2022**

**2.4** Unfortunately, without a fit-for-purpose legal framework and with the growth in technologies such as MP3 players, Pen Drive, Cell phones and other related storage devices that enable consumers to store and reproduce an unprecedented number of copies for copyright-protected content without paying a cent; the creative industry will not thrive.

**2.5** According to the Namibia Statistics Agency (NSA), the country annually imports about 4 961 136 (Four Million Nine Hundred and Sixty-One Thousand One Hundred and Thirty-Six) storage devices. Given these numbers, one can only imagine the extent of unauthorised reproduction and distribution of copyright content that takes place daily.

- 2.6** Additionally, according to the NSA Demographic Survey 2016 Report about 1 171 307 (One Million One Hundred and Seventy-One Thousand Three Hundred and Seven) Namibians, which is 79.2% of the total population, owns a mobile phone.
- 2.7** With this number of devices entering the market each year; it means Namibians' capability to share and reproduce copyright content is enhanced which may harm the ability of artists and the creative industry as a whole, to commercialise their copyright content and deduce benefits to improve and change their livelihoods.
- 2.8** The harm inflicted on rightsholders by the high growth in technologies is real and is ongoing, depriving rightsholders of income as they remain uncompensated for the millions of unlicensed copies Namibians make. Every stream of income from copyrighted content is an essential source of income for many up-and-coming Namibian authors, publishers, artists and small music companies.
- 2.9** While the creative industry landscape, both local and international, has evolved; the legal structure, which governs ownership and use of copyright content, has not adapted accordingly.
- 2.10** The legal landscape of Copyright is limited in its response to the digital transformation which affects the reproduction and distribution of human creative content. While the creative sector in Namibia is a contributor to youth employment creation and income generation, the legal and institutional framework is not conducive to harnessing its potential.

## **2.11 INTELLECTUAL PROPERTY RIGHTS (IPRs) PROTECTION**

- 2.11.1** Intellectual Property Rights refer to the legal protections granted to individuals or entities for their intellectual creations. In this era of rapid technological advancement, intellectual property rights provide the incentive and protection necessary for innovators and creators to invest in ground-breaking technologies and ideas.
- 2.11.2** Intellectual Property Rights protection is like a shield for creative and innovative ideas, ensuring that the hard work and ingenuity of individuals and businesses are recognised and safeguarded. The main aim of intellectual property protection is to provide creators and inventors with exclusive rights to their creations, such as inventions, artistic works, and brand names. This helps in fostering a climate of innovation by giving people the confidence that their ideas will not be copied without permission.
- 2.11.3** Through granting of exclusive rights, it encourages inventors and creators to share their ideas with the world, knowing that they can benefit from their hard work. This, in turn, contributes to the economy by promoting innovation, attracting investments, and



creating a fair and competitive marketplace where original ideas are valued and protected.

2.11.4 Currently, Namibia regulates the protection of patent, copyright, industrial design, trademarks and utility models as IPRs

## **2.12 CURRENT STATE OF INTELLECTUAL PROPERTY PROTECTION IN NAMIBIA.**

- i. Namibia recognises Intellectual Property Rights as a form of property and consequently registers and grants the same. Namibia's commitment to IP is underscored by its robust legal and institutional frameworks.
- ii. The government's proactive stance is evident through the establishment of the Business and Intellectual Property Authority (BIPA) in 2016. BIPA is the government agency responsible for the administration and regulation of Intellectual Property matters in Namibia. BIPA operates within the provisions of Act 8/2016, enforcing the Industrial Property Act and the Copyright and Neighbouring Rights Act.
- iii. The Industrial Property Act, 2012 (Act No. 1 of 2012) is a comprehensive piece of legislation that governs IP in Namibia. Through this Act, Namibia protects inventions through patents, utility models, trademarks, and industrial designs.
- iv. Namibia's copyright law protects literary, artistic, and musical works, as well as related rights such as those of performers, producers of sound recordings, and broadcasters. The Copyright and Neighbouring Rights Act, 1994 (Act No. 6 of 1994) governs copyright in Namibia.

## **2.13 THE COPYRIGHT LANDSCAPE IN NAMIBIA**

- i. The current Copyright and Neighbouring Right Act, 1994 was enacted 28 years ago and did not anticipate the effect of technological changes in the operation and exchange of copyright content.
- ii. Given the ineffectiveness of the current copyright law, Namibia, since 2018, has embarked upon a journey to review the current copyright legal framework and has developed a draft Bill which serves as an enabling tool to address the current challenges in the creative economy.
- iii. The review of the existing Copyright legal and institutional framework was necessary to ensure:
  - that the law supports, promotes the generation and commercialisation of copyright content.
  - that the framework is responsive to, and conducive for both the industry and users of copyright content.
  - that the legal framework is inclusive to cover technological advancements.

- that the legal framework is aligned to regional and international instruments and best practices.
- Includes effective copyright exceptions and limitations available under international law.
- iv. The proposed Copyright law in Namibia is informed and influenced by culture, traditions, social values, and socio-economic conditions. Given the potential of the creative industry in job creation, entertainment and economic growth, the primary objectives of the proposed Copyright law include the following:
  - to provide authors and artists with effective means of commercialising their creativity.
  - to ensure that authors and artists receive appropriate rewards and fair attribution for their work.
  - to encourage the production and dissemination of artistic and literary works taking into consideration the interest of both creators and consumers.
  - to enable a functioning IP ecosystem that support the attainment of national development agendas.
  - to ensure the preservation and integrity of traditional cultural expressions.
  - to ensure that all Namibians have access to educational materials; and
  - to promote a vibrant and diverse culture.
- v. The proposed copyright law is intended to achieve an appropriate balance between incentivising the creation of new works and providing the public with efficient access to those works.
- vi. Moreover, the proposed law will allow authors and creators of creative content to effectively sell and enforce their rights, given the prevalence of digital platforms and storage solutions.
- vii. Another area of focus in the Proposed Law is the creation of a conducive environment for creators to derive livelihoods from their creative works, while addressing infringement facilitated by technological devices such as mobile phones, flash drives, and computers.
- viii. To address these concerns, the proposed Copyright and Related Rights Bill, after consultation with various stakeholders in the industry, aims to introduce the reprography and private copy levies which will facilitate the efficient and lawful access to copyright protected works, while remunerating the authors and creators.

## **SECTION B: PROBLEM STATEMENT**

### **3. PROBLEM STATEMENT**

- 3.1** Namibia imports 4 961 136 (Four Million Nine Hundred and Sixty-One Thousand One Hundred and Thirty-Six) storage devices, annually according to the Namibian Statistics Agency.
- 3.2** With this number of devices entering the market each year; it means Namibians' capability to share and reproduce copyright content is enhanced which may harm the ability of artists and the creative industry as a whole, to commercialise their copyright content and deduce benefits to improve and change their livelihoods.
- 3.3** Unfortunately, without a fit-for-purpose legal framework and with the growth in technologies such as MP3 players, Pen Drive, Cell phones and other related storage devices that enable consumers to store and reproduce an unprecedented number of copies for copyright-protected content without paying a cent; the creative industry will not thrive.
- 3.4** The harm inflicted on rightsholders by the high growth in technologies is real and is ongoing, depriving rightsholders of income as they remain uncompensated for the millions of unlicensed copies Namibians make. Every stream of income from copyrighted content is an essential source of income for many up-and-coming Namibian authors, publishers, artists and small music companies.
- 3.5** While the creative industry landscape, both local and international, has evolved; the legal structure, which governs ownership and use of copyright content, has not adapted accordingly.
- 3.6** The legal landscape of Copyright is limited in its response to the digital transformation which affects the reproduction and distribution of human creative content. While the creative sector in Namibia is a contributor to youth employment creation and income generation, the legal and institutional framework is not conducive to harnessing its potential. Authors and content owners have become unable to prevent or control unauthorised copying and distribution of their works and obtaining compensation for copying and distribution of copyright contents directly from users has thus become almost impossible.
- 3.7** Although copyright law grants exclusive rights to the creators or owners of copyrighted works, including the right to reproduce and distribute creative derivative works, many jurisdictions recognise exceptions or limitations to these rights to accommodate private use and any other use that serves the public interest. For Namibia, these exceptions are explained in Part 4 of the Draft Copyright Bill under the fair dealing doctrine.

- 3.8** The Draft Bill recognises “Copying for Private Use” as an exception; however, in order for private copying to remain legal, a number of conditions must be met such as that the copying is by the natural person; that the copy is not used for commercial purposes and that the copy is from a legal source where a primary source was authorised and economic benefit was earned by the copyright holder. Copying from an illegal source such as downloads and peer-to-peer networks is not allowed.
- 3.9** However, the proliferation of online platforms and digital technologies has made it easier for both legal and illegal copying of copyright protected works as individuals are now able to share copyrighted material without the permission of rightsholders. Peer-to-peer networks, streaming sites, and social media platforms present significant challenges for copyright holders in terms of monitoring and enforcing their rights.
- 3.10** Furthermore, the growing popularity of streaming services for music, video and other content has led to complex licensing arrangements and disputes between rightsholders, content creators, and streaming platforms. Negotiating fair compensation, ensuring proper attribution, and protection against unauthorised distribution are ongoing challenges in the digital streaming ecosystem.
- 3.11** Although copyright law grants exclusive rights to the creators or owners of copyrighted works, including the right to reproduce and distribute creative derivative works, many jurisdictions recognise exceptions or limitations to these rights to accommodate private use and any other use that serves the public interest. For Namibia, these exceptions are explained in Part 4 of the Draft Copyright Bill under the fair dealing doctrine.
- 3.12** The Draft Bill recognises “Copying for Private Use” as an exception; however, in order for private copying to remain legal, a number of conditions must be met such as that the copying is by the natural person; that the copy is not used for commercial purposes and that the copy is from a legal source where a primary source was authorised and economic benefit was earned by the copyright holder. Copying from an illegal source such as downloads and peer-to-peer networks is not allowed.
- 3.13** However, the proliferation of online platforms and digital technologies has made it easier for both legal and illegal copying of copyright protected works as individuals are now able to share copyrighted material without the permission of rightsholders. Peer-to-peer networks, streaming sites, and social media platforms present significant challenges for copyright holders in terms of monitoring and enforcing their rights.
- 3.14** Furthermore, the growing popularity of streaming services for music, video and other content has led to complex licensing arrangements and disputes between rightsholders, content creators, and streaming platforms. Negotiating fair compensation, ensuring proper

attribution, and protection against unauthorised distribution are ongoing challenges in the digital streaming ecosystem.

## **SECTION C: THE SOLUTION**

### **4. COPYRIGHT LEVIES**

- 4.1** Copyright levies were first introduced in 1965 to compensate creators for potential revenue lost due to private copying.
- 4.2** Copyright levies provide a mechanism for compensating creators for the reproduction of their work for personal use, such as making copies of music, movies, or books for personal use. Since it is challenging to monitor and control such private copying, levies offer a way to ensure that creators are compensated.
- 4.3** Such is the 21st century response to the advent of technological methods that facilitate the making of copies of copyright-protected works. With these modern technologies, users have gradually been able to easily make exact copies of every form of creative work, including the printed word, paintings, music, films, etc.

### **5. ABOUT COPYRIGHT LEVIES**

- 5.1** Payment for the unauthorised distribution and reproduction of creative content and is a mechanism designed for rightsholders to be remunerated when people make copies of their work.
- 5.2** Apply to specific types of blank media, recording devices as well as equipment capable of photocopying, scanning and other types of reproduction of copyrighted works, such as:
- i. **Blank CDs and DVDs:** Recordable and rewritable CDs and DVDs are often subject to private copy remuneration because they can be used to store and reproduce music, movies, software, and other copyrighted content.
  - ii. **USB Flash Drives:** USB flash drives or memory sticks are subject to private copy remuneration because they can store digital files, including copyrighted material, and are easily transferable between devices.
  - iii. **Memory Cards:** SD cards, microSD cards, and other types of memory cards used in digital cameras, smartphones, and other electronic devices may be subject to private copy remuneration due to their capacity to store copyrighted content.
  - iv. **External Hard Drives:** External hard drives and solid-state drives (SSDs) used for data storage and backup purposes may be subject to private copy remuneration because they have large storage capacities and can store substantial amounts of copyrighted material.

- v. Smartphones and Tablets: some countries implement private copy remuneration on smartphones, tablets, and other mobile devices due to their ability to store and access copyrighted content, such as music, videos, e-books, and apps.
- vi. MP3 Players and Portable Media Players: MP3 players, iPods, and other portable media players capable of storing and playing digital audio files may be subject to private copy remuneration.
- vii. Recording and Broadcasting Equipment: Certain types of recording and broadcasting equipment, such as audio and video recorders, digital cameras, and digital video recorders (DVRs), may be subject to private copy remuneration because they can be used to record copyrighted performances or broadcasts.
- viii. photocopiers, printers, scanners and multi-function devices which include the aforementioned equipment in one device.

**5.3** Further to this, copyright levies aim to strike a balance between protecting the rights of creators and enabling consumers to enjoy copyrighted material for personal use without facing legal repercussions. By allowing private copying while imposing levies on the necessary equipment, countries acknowledge the rights of consumers to access content while also ensuring creators receive compensation.

**5.4** According to the International Confederation of Societies of Authors and Composers (CISAC), 368 million euros were collected globally from the private copy levy in 2022.

## **6. MYTHS & FACTS ABOUT COPYRIGHT LEVIES**

### **6.1 Myth #1: No one is even copying music anymore.**

**6.1.1** A common myth about the private copy levy is that, because of the rise of streaming, consumers simply are not making private copies anymore. This could not be further from the truth. The reality is that users are still making millions of copies for listening offline; for example, when their data plans are maxed out, or there is no Wi-Fi available.

**6.1.2** Critics of copyright levies have made the argument that devices like phones and tablets are multi-functional, and not everyone uses them to store music.

**6.1.3** These discussions are not new; they just need to be amplified. CDs and audiocassettes have always been used for other purposes as well and it is the right time for Namibia to take this into account.

### **6.2 Myth #2: Copyright Levies would be harmful to consumers.**

**6.2.1** CMOs, publishers, authors and all relevant stakeholders, will be consulted on the implementation and impact of the levies; as well as the levies to be paid for each

category of devices. BIPA has been transparent in its operations and that the levy to be proposed would be fair having had regard to the implications on both rightsholders and consumers. The Minister of Industrialisation and Trade will be consulted to approve any levies to be implemented, after all the relevant stakeholders are consulted.

**6.2.2** The levies would be payable by manufacturers and importers of the equipment and devices, and in the case of smartphones and tablets, that cost is amortised over the life of consumers' multi-year contracts with intermediary companies that provide these devices in a bundle with other mobile network services. It is not certain that a levy on these devices would be passed on to consumers at all, and if it were, it would be barely noticeable.

**6.2.3** The proposed copyright levy regime will work for the benefit of all players in the system. As demonstrated by the graphic below, in a functioning copyright levy system, consumers, tech companies and copyright content creators and their business partners, will all benefit from the levy system.

**6.2.4** Tech companies' profits have grown from sales of music-enabled devices, and consumers make more and more copies on these devices without authorisation from rights-holders, but music creators and their business partners are not being compensated for these unlicensed copies.

## **7. APPLICATION OF COPYRIGHT LEVIES**

**7.1** Copyright levies on equipment or blank, recording media exist in many countries to compensate copyright holders for the effects of reproducing/copying works.

**7.2** The notion behind copyright levies is that consumers often make copies of copyright-protected material such as music, films, TV shows, or books.

**7.3** For example, a student may make copies of a book for study purposes, or a person may record a television show to watch it at another time than the original screening. Under strict application of copyright laws, these acts of reproduction would be an infringement.

**7.4** However, strict enforcement in these circumstances would be both too costly and too intrusive vis-à-vis rights of privacy and freedom of expression. Hence, legislators in many jurisdictions have introduced exceptions, which allow various forms of copying, provided a levy is paid.

**7.5** These levies aim to compensate copyright holders for harm caused by reduced sales or licensing opportunities as a result of private legal copying. Levies are collected by a collective management organisation (CMO) or a government agency and redistributed amongst copyright holders.

- 7.6** Copyright levies are implemented by governments through legislation or regulations. The laws specify which types of equipment, blank media or recording devices are subject to levies and the amount of the levy per unit.
- 7.7** Copyright levies are collected at various points in the distribution chain, such as at the point of importation, production, or sale of media or devices.
- 7.8** In the majority of jurisdictions, customs authorities often play a role in enforcing the collection of levies at borders or ports.
- 7.9** Once collected, the levies are distributed to rights holders. This distribution is typically managed by collective management organisations (CMOs), which represent groups of rights holders. The distribution of levies may be based on a range of factors, such as usage data, sales figures, or agreements between rights holders and CMOs.
- 7.10** The funds collected through copyright levies may support a variety of activities, including the creation of new works, income support for artists and creators, cultural initiatives, and educational programmes.
- 7.11** The levies are charged on certain products with the capability to record sound and moving images and those which are suitable for reproduction and dissemination of copyright protected works. These products include audio recorders, cameras, smartphones, photocopiers, scanning machines, and storage devices such as hard drives and USBs. However, the products and services subject to copyright levies vary by jurisdictions.
- 7.12** Copyright levies are intended to provide a fair and reasonable compensation mechanism for rights holders in situations where it is challenging to enforce copyright on a per-use basis.

## **8. TYPES OF LEVIES**

<b>Type of Levies</b>	<b>Description</b>
1. Reprography Levy	This levy applies to photocopying, scanning, and other forms of physical reproduction of printed materials. It is used to compensate authors, publishers and other copyright holders for the copying of their works in libraries, educational institutions and offices.
2. Private Copying Levy	This levy applies to personal copying of copyrighted materials onto devices such as blank CDs, DVDs, USB drives, and other recording media. It is used for compensating creators for private copies made



	by individuals for personal use, rather than for commercial distribution.
3. Digital Copying Levy	This levy applies to the reproduction of copyrighted works in digital formats, including downloads, streaming, and digital storage on devices such as hard drives and cloud storage. Its purpose is to compensate copyright holders for the digital reproduction and use of their works.

## 9. LEVY SYSTEMS ADMINISTRATION OVERVIEW

### 9.1 IMPLEMENTATION MODALITIES

The implementation modalities of copyright levies can vary by country, as each jurisdictions have its own legal framework and regulatory structure for addressing copyright issues. However, an effective copyright levy system includes the following:

Implementation Modality	Description
Legislation and Regulation	The legislation or regulations specify the types of products and services that are subject to copyright levies.
Fund	Revenue streams for copyright funds come from various sources related to the use of copyright works, this includes Government or private grants, public performance royalties – live performances, public venues and events and festivals; broadcasting royalties, digital streaming and downloads; mechanical royalties – sales from physical CDs, vinyl records and DVDs, as well as education and institutional licensing – fees collected from schools and universities for using copyrighted materials in teaching, research and course materials, amongst others.
Fund Administrator	These funds are usually administrated by either copyright offices or collective management organisations. The administrator must ensure fair distribution to rightsholders, support various initiatives related to copyright and culture. The administrator is governed by legislation and a board or executive committee provides oversight.

Collective Management Organisations (CMOs)	These organisations are responsible for representing the interests of rights holders and negotiates with importers and manufacturers, as well as collects and distributes levies.
Tariff Setting	These rates are negotiated with various stakeholders including rightsholders, CMOs, consumer rights organisations, Government Offices, Agencies and Ministries (OMAs), as well as the general public. Tariffs are informed by the sale price of a device/equipment, their customs value, as well as their storage and reproduction capacity.
Licensing and Permissions	Manufacturers and importers of levy-applicable products may be required to obtain licenses or permissions from CMOs to produce and distribute these products. The licenses outline the terms and conditions for levy payments.
Monitoring and Reporting	Manufacturers and importers need to monitor and report the sales of levy-applicable products to CMOs. This information is essential for calculating the amount of levies owed.
Collection of Levies	CMOs collect levies from manufacturers and importers based on the agreed-upon rates and the volume of products sold.
Distribution to rights holders	CMOs distribute the levies to the appropriate rights holders according to an adopted methodology.
Compliance and Enforcement	Authorities may monitor compliance with levy regulations, and CMOs may engage in enforcement actions against parties that fail to comply.
Review and Adjustment	Copyright levy systems may be subject to periodic reviews and adjustments to ensure they remain effective and fair. Changes in technology, market conditions, and consumer behaviour may prompt updates to levy rates and regulations.

## 9.2 INSTITUTIONAL FRAMEWORK OF THE COPYRIGHT LEVY SYSTEM

- 9.2.1** The administration of the levy system entails the collection, management and oversight, as well as the distribution of such levies.
- 9.2.2** The institutional frameworks for the administration and management of a fund established from the collected levies, depends on factors such as legal frameworks, institutional capacities, industry dynamics, and policy objectives.

**9.2.3** Generally, the institutional framework for the Copyright Levy System is made of the following:

- (i) Revenue Agency (responsible for the collection of a levy at a port of entry),
- (ii) National Copyright Office (Responsible for the management and oversight of the levies, and the distribution of the levies amongst Collective Management Organisations)
- (iii) Collective Management Organisations (to manage and distribute the levy to the members)

Institutions	Tasks
Intellectual Property Offices	<p><b>i. Policy Development</b></p> <p>IP Offices are responsible for developing and proposing legislation related to copyright levies. This involves defining the legal framework, specifying eligible works, determining levy rates, and establishing the scope of products or services subject to levies.</p> <p><b>ii. Administration of the Copyright and Related Rights Fund</b></p> <p>IP Offices fund research and studies on copyright issues, support capacity-building initiatives for rights holders, CMOs, enforcement agencies, and legal professionals, distribute the funds to right holders, provide grants or subsidies for cultural and creative projects, including the production and distribution of creative works and support enforcement efforts against copyright infringement, including anti-piracy campaigns.</p> <p><b>iii. Regulatory Oversight</b></p> <p>IP Offices develop regulations that provide specific guidelines for the implementation of copyright levies. These regulations may address issues such as reporting requirements, dispute resolution mechanisms and auditing procedures.</p> <p><b>iv. Approval and authorisation of levy rates</b></p> <p>IP Office make recommendations and proposal for copyright levy to the Ministry responsible for approval.</p> <p><b>v. Mediation and adjudication</b></p>

	<p>IP Offices provide mechanisms for the mediation and adjudication of disputes related to copyright levies.</p> <p><b>vi. Educational Initiatives</b></p> <p>IP Offices may undertake initiatives to educate the public, businesses, and rightsholders about copyright levies. This includes disseminating information about the purpose of levies, how they are collected, and how the funds are distributed.</p>
Customs	<p><b>i. Verification of levy payments</b></p> <p>Customs officers verify whether the appropriate copyright levies have been paid on products subject to levies.</p> <p><b>ii. Collection of levies at the border</b></p> <p>Customs are responsible for collecting levies at the border when goods enter the country.</p> <p><b>iii. Enforcement of levy regulations</b></p> <p>Customs authorities enforce regulations related to copyright levies, ensuring that importers comply with legal requirements regarding levy payments.</p> <p><b>iv. Record keeping and reporting.</b></p> <p>Customs offices maintain records of imports and exports, including information related to copyright levies, which is essential for auditing purposes and ensuring that the appropriate parties receive their share of the levies.</p>
Collective Management Organisations	<p><b>i. Administration of Payments</b></p> <p>CMOs are responsible for distribution of copyright levies to their members as determined by the authority.</p> <p><b>ii. Distribution of Copyright and Related Rights Fund</b></p> <p>After collecting levies, CMOs distribute the monies from the Fund to the respective rights holders based on established distribution models. This distribution is proportionate to the actual use or popularity of the works.</p>

	<p><b>iii. Negotiation of levy rates</b></p> <p>CMOs participate in negotiations to establish levy rates for different categories of products or services. These negotiations involve discussions with industry stakeholders, government bodies and other relevant parties.</p>
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**9.2.4** In both Malawi and Morocco, the Copyright Offices are responsible for the administration and regulation of the private copy levy.

**9.2.5** In Morocco, the Bureau Marocain du Droit d'Auteur et Droits Voisins (BMDAV) notifies importers, manufacturers, and distributors of eligible products about their obligation to pay copyright levies, and monitors compliance with levy regulations and takes enforcement actions against non-compliant entities.

**9.2.6** Further to this, the BMDA coordinates the collection of copyright levies from importers, manufacturers, or distributors of blank media, recording devices, and other eligible products. It ensures that levy payments are collected efficiently and accurately. Once levies are collected, the BMDA oversees the distribution of proceeds to rights holders. The Office works with collective management organizations (CMOs) to ensure fair and transparent distribution of levy revenues.

**9.2.7** In Malawi, the Copyright Society of Malawi (COSOMA), handles the administration of copyright and related rights for authors, musicians, and other creators. This includes the registration of works and the issuance of licenses. Further to this, the organisation collects royalties from users of copyrighted works (such as broadcasters, public performance venues, and businesses) and distributes these royalties to the rights holders.

**9.2.8** COSOMA also works to protect the rights of copyright holders by addressing and taking action against copyright infringement. This includes legal action and working with enforcement agencies.

## **10. PROS AND CONS ON ADMINISTRATION OF THE FUND BY COPYRIGHT OFFICE AND CMOS**

Since the introduction of copyright levies, two models for administering such levy funds have been put in practice: administration by IP Copyright Offices and administration by CMOs. The pros and cons of both models are discussed below.

### **10.1 MANAGEMENT BY COPYRIGHT OFFICE**

Pros	Cons
National IP Offices typically have expertise in intellectual property laws, regulations, and practices. This expertise can enable them to effectively manage a copyright fund, ensuring that funds are allocated in accordance with copyright laws and best practices.	Government agencies, including IP Offices, may be subject to bureaucratic processes and decision-making structures that can slow down fund administration and decision-making.
Having the IP Office manage the copyright fund can provide a centralised and coordinated approach to fund administration. This can streamline processes, enhance efficiency, and reduce duplication of efforts compared to having multiple entities involved in fund management.	This could hinder agility and responsiveness in addressing emerging challenges or opportunities within the copyright ecosystem.
The administration of a copyright fund by the IP Office can be closely aligned with national IP strategies and objectives. This alignment can ensure that the fund's activities are consistent with broader national goals related to intellectual property protection, innovation, and creativity.	IP Offices may lack direct connection with industry stakeholders, such as creators, publishers, or content distributors, which could lead to a disconnect between fund administration and the needs of copyright stakeholders.
National IP Offices are typically subject to government oversight and accountability mechanisms, which can help ensure transparency and accountability in the administration of the copyright fund. This can foster trust among stakeholders and the public regarding the management of fund resources.	Government agencies, including IP Offices, may be constrained by government regulations, budgetary restrictions, and political considerations, limiting their flexibility in managing copyright funds. This could impede their ability to respond quickly to changing market dynamics or stakeholder needs.

## 10.2 MANAGEMENT BY CMOs

Pros	Cons
CMOs have data concerning the right holders. As such, they can ensure that the administration of the copyright fund is aligned with the interests and needs of the creative community.	Generally, they represent a limited number of copyright holders.

CMOs are often more agile and responsive compared to government agencies, allowing them to adapt quickly to changing market dynamics, emerging trends, and stakeholder needs within the copyright ecosystem. This flexibility enables them to effectively address evolving challenges and opportunities.	CMOs may have limited resources, including funding, staff, and infrastructure, which could impact their capacity to effectively administer a copyright fund. Resource constraints may lead to delays, inefficiencies, and shortcomings in fund management and service delivery.
CMOs are well-positioned to develop innovative solutions and services to support the creative community and maximize the impact of the copyright fund. They can leverage their expertise, networks, and resources to implement initiatives that promote creativity, diversity, and cultural expression	CMOs may operate with limited government oversight compared to national IP offices or regulatory agencies. This could pose challenges in terms of accountability, governance, and compliance with legal and regulatory requirements governing fund administration.

### 10.3 CONCLUSION

Considering the pros and cons of both models, particularly the high likelihood that CMOs may not represent all copyright holders eligible for the Copyright Levy Fund, it is not advisable to rely solely on this model. This approach could undermine the entire purpose of the proposed copyright levies mechanism. The Fund may be better managed with a clear segregation of duties and oversight when administered by the Copyright Office.

### 10.4 SETTING TARRIFS

Tariffs are determined in each country by:

- i. National law or Regulation
- ii. Negotiation between interested parties
- iii. Arbitration tribunals or courts
- iv. A combination of all three, depending on the type of equipment or media.

In Namibia, CMOs may, after consultations with their members and users determine the applicable rates for levies as per Section 73 of the draft Copyright & Related Rights Bill.

## **SECTION D: NAMIBIA'S PROPOSAL**

### **11. THE CREATIVE INDUSTRY IN NAMIBIA**

- 12.1** The copyright regime has become an important source of earned income for the creative industry especially for music creators, authors and publishers, as well as companies that invest in creative art.
- 12.2** According to the Namibian Society of Composers and Authors of Music (NASCAM), an amount of N\$ 9, 321, 914.95 (Nine Million Three Hundred and Twenty-One Thousand Nine Hundred and Fourteen Namibia dollars and Ninety-Five Cents) in royalties was collected over 12 years, between 2010 and 2022, and distributed to an estimated 26 562 (Twenty-Six Thousand Five Hundred and Sixty-Two) Namibian artists registered with NASCAM.
- 12.3** This was made possible through the effective licensing systems of content and does not include direct sales of CDs or music in other forms. Looking at these statistics, one could only imagine that more income could be generated if there were mechanisms in place to curb unauthorised reproduction and sharing of copyright content.

### **12. PROPOSAL**

#### **13.1 LEGAL FRAMEWORK**

The Namibian Draft Copyright and Related Rights Bill endeavours among others to introduce a copyright levy; in particular:

- 13.1.1** Section 70 of the draft Copyright and Related Rights Bill provides for the placement of levies on storage devices such as internal hard drives of computers and other specialised computer equipment, as well as compact disks and memory sticks.
- 13.1.2** Further to this, Section 71 of the draft Bill further provides for the placement of levies on services in the form of reprographic reproduction, and photocopiers or electronic copiers.
- 13.1.3** The levy to be collected kept in Copyright levy fund to be established and maintained by BIPA as a custodian of intellectual Property Rights regulations. The foundation of housing the Copyright Fund under BIPA is because there are no collective management organisations in the country that represent all the rights within copyright law.
- 13.1.4** The levies will be used to establish the Copyright Fund in accordance with Section 67 of the draft Copyright & Related Rights Bill.



**13.1.5** BIPA with the approval of the Ministry of Industrialisation & Trade, must make rules for the management and administration of the Copyright & Related Rights Fund.

**13.1.6** Further to this, the draft Bill states that the Fund must be used for the promotion of copyright and related rights activities and production in Namibia. These activities include the creation of works, training of artists, publishers and performers, provision of grants, enforcement of copyright and related rights law, promotion and preservation of works which depict the cultural identities of Namibia, and public education on copyright issues.

**13.1.7** The devices on which levies will be placed in terms of the draft Copyright Bill, are computers, compact disks, memory sticks, photocopiers, electronic copiers, as well as services such as reprographic reproduction.

## **13.2 INSTITUTIONAL FRAMEWORK**

The Institutional framework for the administration of the copyright levies in Namibia will comprise of Ministry of Industrialisation and Trade, Ministry of Finance, BIPA, NAMRA, and CMOs.

<b>RESPONSIBLE ENTITY</b>	<b>FUNCTIONS</b>	<b>FRAMEWORK</b>
BIPA	make rules for the management and administration of the Fund	Section 67 of the Draft Copyright Bill
Ministry of Industrialisation & Trade	Approve the rules for the management and administration of the Fund	Section 67 of the Draft Copyright Bill
Copy shops, manufacturers and importers of storage devices	Payment of levies	Sections 70 and 71 of the Draft Copyright Bill
Collective Management Organisations (CMOs)	Distribution of levies to Rightsholders	Section 76 (8) (b) of the Draft Copyright Bill
Namibia Revenue Agency (NamRA)	Responsible for collecting copyright levies at the points of entry.	

## **13.3 UTILISATION OF LEVIES IN NAMIBIA**

**13.3.1** The copyright levies collected in Namibia, will be a revenue stream for the Copyright and Related Rights Fund, established under Section 67 of the draft Bill. The Fund will also be financed through an annual grant from the State.

**13.3.2** The fund will be vested in BIPA and will be managed and administrated by the same.

**13.3.3** Further to this, the draft Bill states that the Fund must be used for the promotion of Copyright and Related Rights activities and production in Namibia.

**13.3.4** These activities include the creation of works, training of artists, publishers and performers, provision of grants, enforcement of copyright and related rights law, promotion and preservation of works which depict the cultural identities of Namibia, and public education on copyright issues.

**13.3.5** The Fund will be used for both developmental purposes as well for royalty distribution to recognised collective management organisations for further distribution to rights holders.

**13.3.6** BIPA, with the approval of the Minister of Industrialisation & Trade, must make rules for the management and administration of the Fund.

**13.3.7** The levies will be paid by manufacturers and importers of the storage devices as well as by copy shops.

#### **13.4 RATIONALE OF A COPYRIGHT LEVEY SYSTEM**

**13.4.1** Beginning with the invention of audio cassettes, national legislators faced two dilemmas: first, whether to comprehensively protect the author's rights or to limit them by allowing private copying and second, how to compensate the right holder.

**13.4.2** Given the practical difficulties in identifying private users and charging them to compensate the right holder, and after numerous engagements with the creative industry, BIPA as an agent of the Namibian Government, thought it prudent to introduce these levies to compensate creators for their works as recording devices and other equipment makes it easier for copyright-protected works to be reproduced without limit and any sacrifice in quality. In addition, the Internet allows users to make digital copies accessible to others all over the world, resulting in huge losses for the creative industry.

#### **13.5 BENEFITS OF COPYRIGHT LEVIES FOR NAMIBIA**

**13.5.1** Besides compensating creators through royalties, the levies will be used to create more Namibian music, poetry, films and art; the training of authors, performers, producers and publishers, and improve their living or working conditions and the enforcement of Copyright and Related Rights law.

**13.5.2** Remuneration from copyright levies is a very important source of income for creators. It represents on average 5% of authors' revenues. In a very uncertain environment

for creators, it is a reliable source of remuneration which is often invaluable during unpaid time spent developing projects.

- 13.5.3** Copyright levy remuneration operates in the virtuous economy of copyright which generates income distributed directly to authors. This remuneration helps authors achieve financial independence, stimulating their creativity and artistic freedom whilst allowing them to focus entirely on their art.
- 13.5.4** The private copying system also allows consumers to copy their music and audio-visual works from one device to another for personal use as much as they like without seeking the authorisation of the right holder.
- 13.5.5** It derives from the idea that it would be impractical for consumers to seek right holders' authorisation each time they want to make a copy for private use. The private copying system is a balance between the freedom to copy and right holders' fair compensation for lost income opportunities, e.g. via the agreements they could have concluded if there were no exception.
- 13.5.6** Furthermore, copyright holders can earn revenue through licensing agreements that allow others to reproduce their works. Reprographic services often involve licensing fees or royalty payments, providing a source of income for creators.
- 13.5.7** Users can also benefit from reproduced educational materials as such material can support teaching and learning, ensuring that students and educators have access to essential resources.

## **13.6 RELEVANT STAKEHOLDERS**

Effective implementation of the levies system requires the contribution and cooperation of various stakeholders, namely: NAMRA, NASCAM, CRAN, consumer protection groups, businesses, publishing houses, copyright holders, and the Namibian Police. Some of the potential stakeholders for consultation are:

- (i) Namibian Arts Association (NAA)
- (ii) Namibia Media Trust
- (iii) National Arts Council
- (iv) Namibia Film Commission

### **13.6.1 Namibia Revenue Agency (NamRA)**

- 13.6.1.1** The Namibia Revenue Agency (NamRA) will be responsible for collecting copyright levies from manufacturers, importers, distributors or retailers of blank media and electronic devices subject to levies, at the points of entry. NamRA

will be required to establish procedures for reporting and remitting levy payments and handle the administrative aspects concerning levy collection.

13.6.1.2 NamRA will enforce compliance with copyright levy regulations by conducting audits, investigations, and enforcement against entities that fail to comply with levy obligations.

13.6.1.3 Further to these duties, the Revenue Agency will be required to transfer the funds to BIPA, for further distribution to CMOs.

### **13.6.2 Collective Management Organisations (CMOs)**

13.6.2.1 Collective Management Organisations (CMOs) will distribute the funds to the rightsholders who they represent. CMOs, together with BIPA, will negotiate agreements with different stakeholders to establish the terms and conditions for the implementation and collection of copyright levies.

13.6.2.2 CMOs will also be responsible for advocacy and policy development efforts to promote the interests of rights holders and advance the effectiveness, fairness, and efficiency of copyright levy systems.

### **13.6.3 Namibian Police Force**

13.6.3.1 The Namibian Police will be responsible for enforcing compliance.

13.6.3.2 The Namibian Police may conduct investigations into allegations of maladministration of funds or non-compliance with levy obligations.

### **13.6.4 Communications Regulatory Authority of Namibia (CRAN)**

13.6.4.1 CRAN promotes competition in the communications sector by fostering a level playing field, preventing anti-competitive practices, and encouraging market entry and innovation. It monitors market dynamics, conducts market studies, and implements regulatory measures to promote effective competition and investment in communications infrastructure and services.

13.6.4.2 CRAN's mandate may be impacted by the increase in the cost price of devices such as cell phones and laptops.

13.6.4.3 Copyright levies placed on communication devices or services could affect consumer prices. CRAN may need to consider the impact of levies on the affordability and accessibility of communication services, particularly for low-income consumers or less-privileged sections of society.

## **13.7 RISKS IN IMPLEMENTATION OF LEVIES**

<b>Risks</b>	<b>Description</b>	<b>Mitigation Interventions</b>
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1. Public Resistance	Levies, especially new taxes, may face resistance from the public, businesses, or specific interest groups.	BIPA will device an inclusive stakeholder engagement and communication strategy which involves all stakeholders. The implementation of the strategy will involve the use of the creators and consumers alike. Concerns from the public will be addressed transparently through consultations and public education.
2. Effect on price	Levies can have economic repercussions, affecting businesses, consumers, and overall economic growth.	Conduct a thorough cost and benefit assessment on consumers and creators alike.
3. Administrative Capacity	Tax authorities may lack the necessary resources, technology, and expertise to efficiently administer and collect levies.	Invest in administrative capacity building, upgrade technology infrastructure, and provide training for tax officials. Collaboration with international organisations and sharing best practices can enhance administrative capabilities.
5. Cross-border Challenges	Cross-border transactions can complicate levy implementation.	Collaborate with other jurisdictions to address cross-border challenges, share information, and develop international standards for tax cooperation. Treaties and agreements can be established to prevent double taxation and encourage fair practices.

## SECTION E: CONCLUSION

### 13. CONCLUSION

**14.1** For years now, consumers and technology companies have been enjoying the benefits of making unlicensed copies of music on devices while rightsholders go unpaid for this valuable use of their intellectual property.

**14.2** Copyright levies provide a mechanism for creators and copyright holders to be compensated for the use of their intellectual property. In an era where digital reproduction and distribution are prevalent, ensuring fair compensation becomes challenging, and levies help to address this.

**14.3** The effective and successful implementation of copyright levies requires the cooperation and active participation of various stakeholders in the intellectual property

ecosystem who all have a role to play in shaping policies, ensuring compliance, and facilitating a fair distribution of levies.

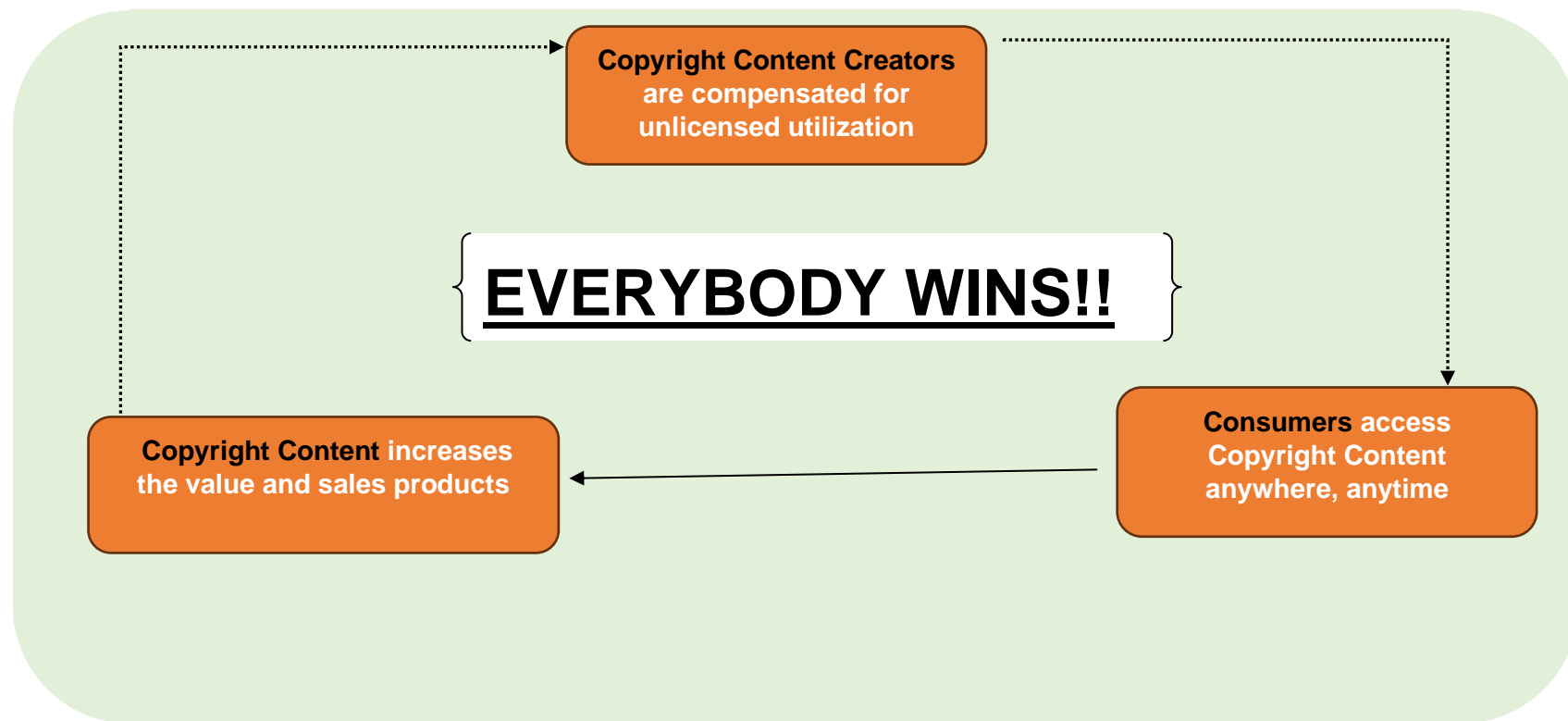
**14.4** Namibia's proposed copyright levies regime is a proven tool to facilitate compensation of rightsholders for reproduction of their works that cannot otherwise be licensed or prevented.

**14.5** However, only a technologically neutral private copying regime can ensure that rightsholders are compensated regardless of how technology changes. This simple update to the Copyright Act will allow the regime to live up to its original promise for creators and their partners in the recorded music industry.

**END**

## EVERYBODY WINS

Rightsholders are paid a small royalty fee ('levy') whenever a business manufactures or imports a product that can be used to reproduce or store copies of copyright content and consumers can access these works anytime, anywhere and these works increase the value and sales of tech companies' products.



END