

Statutory Instrument No. 84 of 2023

COPYRIGHT AND NEIGHBOURING RIGHTS ACT
(Cap. 68:02)

COPYRIGHT ARBITRATION PANEL RULES, 2023
(Published on 14th July, 2023)

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SCHEDULES

IN EXERCISE of the powers conferred on the Minister of Trade and Industry, by section 37 as read with section 33A of the Copyright and Neighbouring Rights Act, the following Rules are hereby made —

1. These Rules may be cited as the Copyright Arbitration Panel Rules, 2023. Citation
2. In these Rules, unless the context otherwise requires — Interpretation
 - "arbitration agreement" means an agreement by the parties in a contract or other agreement to submit all or some disputes that may arise between them for arbitration;
 - "claimant" means a party who institutes an arbitration proceeding;
 - "copyright dispute" means any dispute relating to the infringement of copyright and related rights or a breach of a contract or other agreement in relation to —
 - (a) protected works, including the distribution and collection of royalties;
 - (b) the determination of equitable remuneration for the use of sound recordings;
 - (c) the granting of licences for the adaptation of works, performances, sound recordings or any other purpose that may require licensing;
 - (d) the accreditation of importers and producers and the fixing of prices for the affixation of security devices; and
 - (e) the issuance of licences to copyright societies;
 - "costs", in relation to arbitration, means expenses incurred by the respective parties in connection with the arbitration proceedings; and
 - "Panel" means the Copyright Arbitration Panel appointed under section 33A of the Act.
3. (1) These Rules shall apply to all disputes which may arise under the Act. Application
 (2) Subject to subrule (1), these Rules shall be applicable in so far as they are not in conflict with the provisions of the Arbitration Act. (Cap. 06:0)
4. (1) These Rules shall be deemed to form part of the arbitration agreement, where the agreement specifically provides for arbitration in terms of the Act. Rules forming part of arbitration agreement
 (2) For purposes of this rule, an arbitration clause that forms part of a contract shall —
 - (a) be treated as an arbitration agreement independent of the other terms of the contract; and
 - (b) not be made invalid by the decision of the Panel that the contract is null and void.
5. Any notice or document required under these Rules shall be written, Documents written or printed
 printed, partly written or partly printed on A4 paper of good quality.

Service of documents	<p>6. (1) The serving of any document required upon any person shall be made by a person of full legal capacity who is able to understand and explain the nature and contents of the documents.</p> <p>(2) Service of any document required under these Rules shall be effected in any of the following ways —</p> <ul style="list-style-type: none"> (a) expedited postal or courier service; (b) facsimile; (c) email; (d) registered mail; or (e) delivery of a copy thereof to the said person personally: <p>Provided that —</p> <ul style="list-style-type: none"> (i) where such person is a minor or person under legal disability, service shall be effected upon the guardian, tutor, curator, or (ii) where such person refuses to accept delivery, service shall be effected by leaving the copy in full view of such person; (f) leaving the copy thereof at the place of residence or business of the said person, guardian, curator, tutor or the like with the person apparently in charge of the premises at the time of delivery, being a person not less than 16 years of age; or (g) in the case of a corporation or a company, by delivery of a copy to an authorised employee at corporation or a company registered office or at the principal place of business, or, if there is no such authorised employee willing to accept service, by affixing a copy thereof to the main door of such office or place of business, or in any manner prescribed by law and such service shall be deemed to have the same force and effect as if the copy thereof served upon such person, or left as aforesaid, as the case may be.
No service on weekends or holidays	<p>7. Any process, notice or document shall not be served on a public holiday or during a weekend.</p>
Address	<p>8. A party's last known residence or place of business shall constitute a valid address for purposes of any notice or document required to be served.</p>
Time limit	<p>9. For purposes of determining the date of commencement of a time limit, a notice or document shall be deemed to be received on the day it is delivered or, in the case of telecommunications on the day it was sent.</p>
Extension of time	<p>10. The Panel may, in its own discretion or at the request of one or both parties, grant a request for extension of time limit.</p>
Request for arbitration	<p>11. (1) A claimant shall, upon payment of a fee set out in Schedule 2, transmit to the Copyright Office and to the respondent a request for arbitration in Form A set out in Schedule 1.</p> <p>(2) A claimant shall make a request for arbitration where —</p> <ul style="list-style-type: none"> (a) there is an arbitration agreement between the parties; and (b) there is no agreement for arbitration between the parties but the aggrieved party submits an application for arbitration: <p>Provided that a request for arbitration made under subrule (2) (b) shall not contain a copy of the arbitration agreement.</p> <p>(3) A request for arbitration or urgent arbitration shall contain —</p> <ul style="list-style-type: none"> (a) a demand that the copyright dispute be referred for arbitration under these Rules; (b) the names, addresses, telephones, facsimiles, email or other communication reference of the parties and of the representative of the claimant if any;

- (c) a copy of the arbitration agreement and, if applicable, any separate clause of law clause;
- (d) proof of payment of applicable fees;
- (e) in the case of a request for urgent arbitration, grounds for urgency; and
- (f) a brief description of the nature of the circumstances of the dispute, including an indication of the rights and property involved and where applicable the nature of the technology involved.

(4) The Copyright Office shall within five days of receipt of a request for arbitration do a preliminary assessment of the request for arbitration and advise claimant on whether or not the request for arbitration qualify.

(5) Where the request for arbitration does not qualify, the claimant shall be entitled to a refund of 50 per cent of the fee payable under subrule (1).

(6) A statement of claim in Form B set out in Schedule 1 shall contain --

- (a) a comprehensive statement of facts and legal arguments supporting the claim;
- (b) legal remedies sought; and
- (c) documentary evidence upon which the claimant seeks to rely.

12. (1) A party may, upon payment of a fee set out in Schedule 2, make a request to the Panel for urgent arbitration in Form A set out in Schedule 1.

Request
for urgent
arbitration

(2) The applicant shall outline the circumstances which renders the matter urgent by giving valid reasons why he or she could not be afforded substantial redress at a normal hearing.

(3) The Panel shall within five days of receipt of a request for urgent arbitration do a preliminary assessment of the request for urgent arbitration and advise claimant on whether or not the request for urgent arbitration is granted or denied.

(4) Where the request for urgent arbitration made under subrule (1) is granted by the Panel, the Panel shall conclude the arbitration proceedings within 60 days after the delivery of the statement of defence under rule 16(1).

13. The Copyright Office shall notify all the parties to the proceeding of the receipt of the request for arbitration.

Respondent to
the request
of receipt of
request for
arbitration

14. (1) The parties may --

Representation

- (a) appear in person; or
- (b) be represented by any person of his or her choice, irrespective of professional qualification.

(2) A party to the arbitration shall notify the Panel and the other party of the details of the representatives under subrule (1) including --

- (a) names;
- (b) addresses;
- (c) telephone;
- (d) facsimile; or
- (e) email.

(3) A party to the arbitration shall ensure that his or her representative has sufficient time available to enable the arbitration to proceed expeditiously.

(4) A party to the arbitration who changes representation shall --

- (a) give notice to the Panel and all other affected parties of such change; and
- (b) include particulars referred to in subrule (2).

Consent to arbitration and notification	<p>15. Notwithstanding rule 11(2)(b), where there is no agreement between the parties, the respondent shall within five working days from the date of receipt of the request for arbitration and statement of claim from claimant, transmit a consent to arbitrate to the Copyright Office in Form C set out in Schedule 1.</p>
Statement of defence	<p>16. (1) The respondent shall within 30 days from the date of filing of consent to arbitration, transmit to the Copyright Office and to the claimant the statement of defence in Form D set out in Schedule 1 which shall be a response to the statement of claim.</p> <p>(2) A statement of defence shall be a response to the particulars of the statement of claim and shall be accompanied by documentary evidence upon which the respondent seeks to rely on.</p> <p>(3) The Panel shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.</p> <p>(4) The respondent shall make a counter claim or set-off in the statement of defence, or in exceptional circumstances, at a later stage in the arbitral proceedings if so determined by the Panel.</p> <p>(5) The claimant shall file a reply to the particulars of claims in Form E set out in Schedule 1, within 20 days from the date on which the claimant receives such counter-claim or set-off, in the event that a counter-claim or set-off is made.</p> <p>(6) The provisions of this rule shall apply with necessary changes to such a reply.</p>
Commencement of arbitration	<p>17. The Copyright Office shall advise the parties of the date of commencement of the arbitration which date shall be after --</p> <ol style="list-style-type: none"> (a) the respondent files a statement of defence; (b) the parties file all the necessary supporting documents; and (c) preliminary issues are addressed.
Further written statements	<p>18. The Panel may, in its discretion, allow or require further written statements.</p>
Amendment of claim or defence	<p>19. A party may, with consent of the other party, amend or supplement its claim, counter-claim, defence or set-off during the course of the arbitral proceedings, unless the Panel considers it inappropriate to allow such amendment having regard to its nature or the delay it may cause and the provisions relating to fair hearing.</p>
Interim measures	<p>20. (1) The Panel may, at the request of a party, issue a provisional order or other interim measures it deems appropriate.</p> <p>(2) Interim measures may include --</p> <ol style="list-style-type: none"> (a) an injunction; (b) a preservation order for goods which are subject of the dispute; or (c) an order for sale of perishable goods. <p>(3) An order or interim measures under this rule may take the form of an interim award.</p>
Preparatory conference	<p>21. (1) The Panel may, following submission of the statement of defence, conduct a preparatory conference with the parties to organise and schedule subsequent proceedings.</p> <p>(2) A preparatory conference may be conducted through a meeting --</p> <ol style="list-style-type: none"> (a) in person; (b) by video conference; (c) by telephone; or (d) through any other digital electronic media acceptable to the parties concerned.

(3) The Panel shall, in the absence of an agreement between the parties to the arbitration proceedings, determine the means by which the conference shall be conducted.

22. (1) The Panel shall determine the admissibility, relevance, materiality and weight of evidence. Evidence

(2) The Panel may, at any stage of the arbitration, at the request of a party or on its own motion, order a party to produce such documents or other evidence as it considers necessary or appropriate and may order a party to make available to the Panel or to an expert appointed by it or to the other party any property in its possession or control for inspection or testing.

23. (1) The Panel may, at the request of a party or on its own motion, inspect or require the inspection of any site, property, machinery, facility, production line, model, film, material product, or process as it deems appropriate. Site visits

(2) A request for an inspection shall be made within a reasonable time prior to any hearing.

(3) Where the Panel grants such a request, it shall determine the timing and arrangements for the inspection.

(4) All the costs associated with the site visits shall be borne by the responsible party, unless otherwise directed by the Panel.

24. (1) For the purposes of this rule, confidential information means any information, regardless of the medium in which it is expressed, which is — Confidential Information

(a) in the possession of the party;

(b) not accessible to the public;

(c) of commercial, financial or industrial significance; and

(d) treated as confidential by the party possessing it.

(2) A party who invokes confidentiality of any information he or she wishes or is required to submit in the arbitration, including to an expert appointed by the Panel, shall make an application to have the information classified as confidential by notice to the Panel, with a copy to the other party.

(3) The application under subrule (2), shall be in Form H set out in Schedule I.

(4) The Panel shall determine whether the information is to be classified as confidential and of such a nature that the absence of special measures of protection during the proceedings may cause serious harm to the party invoking its confidentiality.

(5) Where the Panel so determines, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign non-disclosure of information in Form G set out in Schedule I.

25. (1) The Panel may, at the request of a party, hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral argument or both. Hearings

(2) In the absence of a request by the parties, the Panel may use its discretion to decide whether to hold such a hearing.

(3) A hearing shall be convened within 30 days of receipt by the claimant of the answer to the request and the statement of defence under rule 16.

(4) Where no hearing is held the proceedings of the Panel shall be conducted on the basis of documents or other materials alone or in circumstances where the parties have agreed in writing for a document-only arbitration to be conducted.

(5) A hearing before the Panel shall be open to the public unless the panel, on the request of either party, directs otherwise.

	<p>(6) Where there is a need to protect confidential information or the integrity of the arbitral process, the Panel may make arrangements to hold in private that part of the hearing requiring such protection.</p>
Witnesses	<p>26. (1) The Panel may require either party to disclose to the other party the - -</p> <ul style="list-style-type: none"> (a) identity of his or her witnesses; (b) subject matter of their testimony; and (c) relevance of their testimony to the proceedings. <p>(2) The Panel may, on its own discretion, limit or reject any witness.</p> <p>(3) A witness who gives oral evidence may be cross examined by any of the parties or the Panel.</p> <p>(4) Where a witness is unable to appear before the Panel in person, his or her testimony may be submitted in the form of a sworn statement.</p>
Experts	<p>27. (1) The Panel may, after consultation with the parties, appoint one or more independent experts to advise it on a specific issue.</p> <p>(2) The Panel shall avail a copy of the report of the expert to all parties upon receiving it.</p> <p>(3) A party shall be given an opportunity to express his or her opinion about the report.</p> <p>(4) A party may, subject to the approval of the Panel, question the expert during the proceedings.</p> <p>(5) The opinion of any expert on an issue before the Panel shall be subject to the Panel's assessment in the context of the proceedings, unless the parties have agreed that the expert's determination shall be conclusive in respect of any specific issue.</p>
Filing of statement of claim	<p>28. (1) Where a claimant fails, without good cause, to submit his or her statement of claim as per rule 11 (6), his or her claim shall become invalid.</p> <p>(2) Notwithstanding the provisions of subrule (1), the Panel may extend the filing period by 14 days -</p> <ul style="list-style-type: none"> (a) where the claimant shows good cause as to why the statement was not filed in accordance with subrule (1); and (b) upon payment by the claimant of the extension of application fee provided under Schedule 2.
Default	<p>29. (1) Where a respondent fails, without good cause, to submit his or her statement of defence as per rule 16, the Panel may proceed with arbitration and render a final award.</p> <p>(2) The Panel may proceed with arbitration and render an award if a party, without good cause, fails to avail himself or herself to present his or her case within the time determined by the Panel.</p> <p>(3) Where a party fails, without good cause, to comply with any requirement of these Rules or direction given by the Panel, the Panel may - -</p> <ul style="list-style-type: none"> (a) make an order for specific performance; (b) make an order for costs; (c) impose a penalty of not less than P5 000 but not exceeding P20 000; (d) dismiss the case; or (e) make such directions as may be necessary to give effect to orders made by the panel.
Closure of pleadings	<p>30. (1) The Panel shall declare the pleadings closed when it is satisfied that the parties have had adequate opportunity to present submissions and evidence.</p> <p>(2) The Panel may, if it considers it necessary owing to exceptional circumstances, decide on its own motion or on application of a party, to re-open the pleadings if declared to be closed at any time before the award is made.</p>

31. A party who knowingly proceeds with arbitration and fails to raise an objection after becoming aware that a provision or requirement of the Rules, or direction of the Panel has not been complied with shall be deemed to have waived his or her right to object.

Waiver

32. (1) The Panel may make a preliminary, interim, interlocutory, partial or final award.

Awards and other decisions

(2) The Panel shall provide full reasons for its findings.

(3) The Panel shall in making an award fix the costs of arbitration which may consist of - -

(a) the arbitrators' administrative fees;

(b) expenses incurred by the arbitrator including - -

(i) travel expenses, and

(ii) communication expenses;

(c) the cost of expert advice;

(d) such other assistance required by the Panel; and

(e) such other expenses as are necessary for the conduct of the arbitration proceedings including - -

(i) cost of meeting,

(ii) hearing facilities, and

(iii) any other expense not listed.

(4) The Panel may, subject to an agreement by the parties, order a party to pay the whole or part of a reasonable expenses incurred by the other party in presenting his or her case and for legal representation.

(5) The Panel shall be free to determine the interest at such rates as it considers appropriate, without being bound by legal rules or interest and shall be free to determine the period for which the interest shall be paid.

(6) The costs of arbitration proceedings shall, as far as possible, be debited from the deposits required under rule 40.

(7) The Panel shall, subject to any agreement of the parties, apportion the costs of arbitration proceedings between the parties in consideration of the circumstances and outcome of the arbitration.

33. Arbitration proceedings shall be conducted and concluded within 90 days after delivery of the statement of defence under rule 16 (1).

Length of proceedings

34. (1) The final arbitral award shall be handed down within 30 days of conclusion of arbitration proceedings.

Final arbitral award

(2) Where the Panel fails to hand down the final arbitral award within 30 days of conclusion of arbitration proceedings, the Panel shall submit a written explanation for the delay to the parties.

(3) The Panel shall submit further written explanations as to why the final arbitral award is not handed down every 30 days until the final arbitral award is handed down.

35. (1) A party to an arbitration proceeding may, within 30 days after the receipt of the award, with notice to the other parties in an arbitration proceeding, request the Panel to make an additional award as to claims which were presented in the arbitral proceedings but not decided on by the Panel.

Effect and enforcement of award

(2) A party to arbitration proceedings, undertakes to comply with the award without delay unless such award is overruled or set aside by a court of law within the jurisdiction of Botswana.

(3) Arbitration awards made by the Panel shall be final and binding on the parties.

	<p>(4) Where a party to arbitration proceedings fails to comply with an arbitral award –</p> <p>(a) the aggrieved party may by leave of Court apply for an Order confirming the arbitral award; and</p> <p>(b) the Court may give judgement in terms of the arbitral award.</p>
Certified copy of arbitral award	<p>36. (1) The Copyright Office may, at the request of either party, avail at a fee, set out in Schedule 2, a copy of an arbitral award certified by the Copyright Office.</p> <p>(2) A certified copy of the arbitral award shall be deemed to comply with the requirements of Article IV(1) (a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958 as supplemented by the Recognition and Enforcement of Foreign Arbitral Awards Act.</p>
Cap. 64:02 Currency	<p>37. The monetary awards by the Panel shall be expressed in Botswana Pula or any other tradeable currencies as agreed by the parties and deemed appropriate by the Panel.</p>
Settlement	<p>38. (1) The Panel shall encourage parties to settle disputes through –</p> <p>(a) negotiation; or</p> <p>(b) mediation.</p> <p>(2) Where the parties agree on a settlement of the dispute before the handing down of an award by the Panel, the Panel shall terminate arbitration proceedings and record the parties' terms of settlement in the form of a consent award.</p> <p>(3) Subject to rule 38 (2), the Panel shall not give reasons for an award made.</p> <p>(4) Consent award shall be signed by the panel and transmitted to the Copyright Office and each party.</p>
Correction of award	<p>39. (1) A party may, within 30 days of receipt of the final award, by notice to the Panel, request the Panel to correct any clerical, typographical or computational errors.</p> <p>(2) Where the Panel considers the request justified, it shall within 30 days of receipt of the request make the corrections, and such corrections shall be in a separate memorandum signed by the Panel and shall be attached to the award.</p>
Deposits	<p>40. (1) A claimant shall deposit money as an advance for the costs of arbitration under rule 32 (3).</p> <p>(2) The Copyright Office may, during the course of arbitration proceedings request further deposit from the claimant.</p> <p>(3) A claimant deposits shall be paid within 30 days after receipt of notification from the Copyright Office.</p> <p>(4) Where the amount of the counter-claim –</p> <p>(a) greatly exceeds the amount of the claim; or</p> <p>(b) involves examination of significantly different issues,</p> <p>the Copyright Office shall establish two separate deposits for the claim and counter-claim, and the claimant shall pay the deposit for the claim and the respondent shall pay the deposit for the counter-claim.</p> <p>(5) The Copyright Office shall issue two reminders for payment of deposits and where a party fails to comply with the second reminder within 15 days of issue, the party shall be deemed to have withdrawn their claim or counter-claim as the case may be.</p> <p>(6) The Copyright Office shall, after the award is handed down –</p> <p>(a) render a report to the parties of the deposits received and return any unspent money to the parties; or</p> <p>(b) demand payment of any amount owing from the parties.</p>

<p>41. The arbitrator shall not be liable to a party for any act or omission committed during the exercise of his or her arbitral functions.</p>	<p>Liability</p>
<p>42. (1) An arbitrator shall be impartial and independent. (2) The consideration of impartiality and independence shall include, but not limited, to whether there exists any past or present relationship, direct or indirect, whether financial, professional or of any other kind, between the arbitrator and any of the parties, their attorneys or other representatives, or related entities or any individual. (3) An arbitrator shall, before accepting appointment, declare in writing and in a declaration by arbitrator on independence and impartiality in Form II set out in Schedule 1 of any circumstance that may give rise to justifiable doubt as to the arbitrator's impartiality or independence, or confirm in writing that no such circumstance exists. (4) If, at any stage during the arbitration, new circumstances arise that might give rise to justifiable doubt as to the arbitrator's impartiality or independence, the arbitrator shall promptly disclose such circumstances to the parties and the Panel.</p>	<p>Impartiality and independence</p>
<p>43. (1) Where a member of the Panel is participating in an arbitration proceeding at which is being discussed a matter in which the member or immediate family member of the member has direct or indirect interest in a private capacity, the member shall, as soon as practicable upon commencement of the arbitration, disclose such interest in Form I set out in Schedule 1 and shall not, unless the Panel otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to such matter. (2) For purpose of this rule "immediate family member" means a spouse, son, daughter, sibling or parent of the member. (3) Where a member fails to disclose his or her interest in accordance with subrule (1) and a decision by the Panel is made benefiting such member or his or her immediate member of the family, such decision shall be null and void to the extent that it benefits such member or his or her immediate family member. (4) A member who fails to comply with the provisions of subrule (1) commits an offence and is liable to a fine not exceeding P20 000.00 or to imprisonment for a term not exceeding two years, or to both.</p>	<p>Disclosure of interest</p>
<p>44. (1) A member of the panel who participates in an arbitration proceeding, shall regard and deal with as confidential all documents and information relating to the copyright dispute. (2) A person to whom confidential information is revealed through working with the Panel shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceeding. (3) A member who fails to comply with the provisions of subrule (1) commits an offence and is liable to a fine not exceeding P20 000.00 or to imprisonment for a term not exceeding two years, or to both.</p>	<p>Confidentiality</p>
<p>45. (1) An arbitrator shall accept appointment in writing and shall communicate such acceptance to the Minister. (2) An arbitrator shall by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the business of the Panel to be conducted efficiently and expeditiously. (3) The quorum at any meeting of the Panel shall be a simple majority of the members.</p>	<p>Acceptance of appointment as arbitrator</p>

Challenge of arbitrator's participation.	<p>46. (1) An arbitrator may be challenged by a party, if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence.</p> <p>(2) A party may challenge an arbitrator's participation during the arbitration proceedings, if he or she becomes aware of circumstances which arise at any point after commencement of the arbitration proceedings.</p>
Notice of challenges	<p>47. A party challenging the participation of an arbitrator shall notify the Copyright Office, the Panel and the other party, stating reasons for the challenge, within 14 days after becoming aware of the circumstances that give rise to justifiable doubt as to the arbitrator's impartiality and independence.</p>
Right to respond to challenges	<p>48. Where participation of an arbitrator is challenged, the other party and the arbitrator shall have the right to respond to the challenge and shall send within 14 days after receipt of the notice referred to in rule 47, a copy of its response to --</p> <p>(a) the Copyright Office;</p> <p>(b) the party making the challenge; and</p> <p>(c) the Panel.</p>
Suspension of arbitral proceedings	<p>49. The Panel shall suspend the arbitration proceedings where a challenge is lodged under rule 46 until a decision is taken on the challenge.</p>
Recusal or removal of arbitrator	<p>50. (1) An arbitrator shall recuse himself or herself where the other party agrees to the challenge or where the arbitrator voluntarily agrees to the challenge.</p> <p>(2) Where the other party does not agree to the challenge and the arbitrator does not recuse himself or herself, the decision of the challenge shall be made by the Panel.</p> <p>(3) The Panel may, where the arbitrator has become <i>de jure</i> or <i>de facto</i> unable to fulfil or fails to fulfil the duties of an arbitrator, release the arbitrator from position of arbitrator acting upon the request of --</p> <p>(a) the arbitrator;</p> <p>(b) a party to the arbitration; or</p> <p>(c) the Copyright Office.</p> <p>(4) The Panel shall go ahead with the arbitration proceedings following a removal of an arbitrator provided the remaining arbitrators form a quorum.</p> <p>(5) Where the Panel does not form a quorum, the Minister shall co-opt a member to replace the arbitrator who has recused himself or herself from the proceedings or who has been removed under subrule (3).</p>
Proceedings after replacement of arbitrator	<p>51. Whenever a co-opted arbitrator is appointed following a successful challenge or need for replacement, the Panel shall, having regard to any observations of the parties, determine whether all or part of any prior proceedings are to be repeated.</p>
Appeals	<p>52. A party who is aggrieved by any decision of the Panel may appeal against that decision to the High Court within 30 days of notification of the decision.</p>

SCHEDULE 1



Schedule 1
Form A

COPYRIGHT ARBITRATION PANEL

Case Number: _____

Form A
Application for Arbitration
(Rule 11(1) and 12 (1))

Official Use

PART A:

1. Request for Arbitration; (please tick where applicable)

Ordinary application

Urgent application (If urgent application complete Part B)

PART B:

2. Details of claimant(s):

- i. Name of the claimant: _____
- ii. Identity Number/Registration Number¹: _____
- iii. Physical Address: _____
- iv. Postal Address: _____
- v. Telephone: _____
- vi. Fax: _____
- vii. Email: _____

3. Details of claimant's authorised representative(s) (if applicable):

- i. Name of representative: _____
- ii. Identity Number/Registration Number: _____
- iii. Physical Address: _____
- iv. Postal Address: _____
- v. Telephone: _____
- vi. Fax: _____
- vii. Email: _____

¹ Oming number for citizens and a passport number for non-citizens.

² For companies, business names, societies or any other organisation



Schedule 1

Form B

Case Number: _____

Official Use

COPYRIGHT ARBITRATION PANEL
Form B
Statement of Claim
(Rule 11(6))

PART A:

1. Name of the claimant(s): _____
2. Name of Respondent(s): _____

PART B:

3. Provide a full description of the nature of the circumstances of the dispute including an indication of the rights and properties involved, the nature of technology involved and where applicable include a description of the contract or any other agreement relating to the dispute.

4. Please provide a description of the relief sought for the arbitration.

5. Please provide documentary evidence upon which the claimant seeks to rely. (Copies of all documentary evidence should be attached as annexes).

PART C:

6. Has this matter been subjected to proceedings either before a court of law, any other entity or discussed formally with the respondent? (Tick where applicable):

Yes No

If yes, please provide details and outcome thereof.

PART D:

7. Declaration

I _____
solemnly declare that the above information is to the best of my knowledge, complete and accurate, I understand that the discovery of incorrect and/or false information relating to this application shall result in the rejection of my application and I shall be held responsible for any costs associated with such dishonest conduct.

Submitted by: _____

Signature: _____ Date: _____

List of Annexes



Schedule 1

Form C

COPYRIGHT ARBITRATION PANEL
Form C

Case Number: _____

Consent to Arbitration
(Rule 15 and 16(I))

Official Use

PART A:

- 1. Case Number: _____
- 2. Name of the complainant(s): _____
- 3. Name of the respondent (s): _____
- 4. Details of the respondent's authorised representative(s) (if applicable):
 - i. Name of the respondent(s): _____
 - ii. Identity Number/Registration Number: _____
 - iii. Physical Address: _____
 - iv. Postal Address: _____
 - v. Telephone: _____
 - vi. Fax: _____
 - vii. Email: _____
 - viii. Proof of authorisation to represent the Respondent(s): _____

PART B:

5. Respondent's acknowledgement and consent:

I, the undersigned Respondent, state that I have received and read the request for arbitration and statement of claim from the Complainant submitted for arbitration by the Copyright Arbitration Panel and hereby consent to arbitration in accordance with the Copyright Arbitration Rules, the dispute described by the Complainant named in section A herein.

¹Attach letter or copy of a contract as proof of agreement to be authorized as a representative

PART C:

6. Declaration:

I _____
solemnly declare that the above information is to the best of my knowledge, complete and accurate. I understand that the discovery of incorrect and/or false information relating to this application shall result in the rejection of my application and I shall be held responsible for any costs associated with such dishonest conduct.

Submitted by:

Signature _____, Date: _____

List of Annexes



Schedule 1

Form D

COPYRIGHT ARBITRATION PANEL
Form D

Case Number: _____

Statement of defence
(Rule 16(5))

Official Use

PART A:

1. Case Number: _____

2. Name of the Complainant(s): _____

3. Name of the Respondent(s): _____

3.1. Details of Respondent's authorised representative(s) (if applicable):

i. Name: _____

ii. Identification No. / Registration No.: _____

iii. Physical Address: _____

iv. Postal Address: _____

v. Telephone: _____

vi. Fax: _____

vii. Email: _____

viii. Proof of authorisation to represent the Respondent(s):

PART B:

4. Statement of defence:

1 Attach letter or copy of a contract as proof of agreement to be authorized as a representative

5. Documentary evidence upon which the respondent seeks to rely. (Copies of all documentary evidence shall be attached as annexes)

PART C:

6. Counter claim (if any) (Copies of all documentary evidence shall be attached as annexes)

PART C:

7. Declaration:

I _____
solemnly declare that the above information is to the best of my knowledge, complete and accurate. I understand that the discovery of incorrect and or false information relating to this application shall result in the rejection of my application and I shall be held responsible for any costs associated with such dishonest conduct.

Submitted by:

Signature _____ Date: _____

List of Annexes



Schedule 1

Form E

COPYRIGHT ARBITRATION PANEL
Form E

Case Number: _____

Reply to Counter Claim
(Rules 16(S))

Official Use

PART A:

1. Name of Complainant(s): _____
2. Name of Respondent(s): _____
3. Name of Representative(s): _____

PART B:

4. Response to counter claim:

PART C:

5. Documentary evidence upon which the respondent seeks to rely. (Copies of all documentary evidence shall be attached as annexes)

PART D:

6. Declaration:

I, _____
solemnly declare that the above information is to the best of my knowledge, complete and accurate. I understand that the discovery of incorrect and/or false information relating to this application shall result in the rejection of my application and I shall be held responsible for any costs associated with such dishonest conduct.

Submitted by:

Signature _____ Date: _____

List of Annexes



Schedule 1

Form F

COPYRIGHT ARBITRATION PANEL
Form F

Case Number: _____

Request to Classify Confidential Information
(Rule 44 (3))

Official Use

PART A:

1. Case Number: _____
2. Party requesting classification: _____
3. Name of the other Party: _____

PART B:

4. Describe the confidential information to be classified:

5. Outline the format in which the information is documented:

6. Who should the information be disclosed to for the purpose of this case:

PART C:

7. Declaration:

I _____
solemnly declare that the above information is to the best of my knowledge, complete and accurate. I understand that the discovery of incorrect and or false information relating to this application shall result in the rejection of my application and I shall be held responsible for any costs associated with such dishonest conduct.

submitted by:

Signature _____ Date: _____

List of Annexes



Schedule 1

Form G

COPYRIGHT ARBITRATION PANEL
Form G

Case Number: _____

Non-Disclosure of Information
(Rule 44 (5))

Official Use

PART A:

1. Disclosing Party: _____
2. Recipient: _____

PART B:

3. Recital:

The Recipient understands that the Disclosing Party has disclosed or may disclose information relating to the matter under arbitration, which to the extent previously, presently, or subsequently disclosed to the Receiving Party is hereinafter referred to as "Confidential Information" of the Disclosing Party.

PART C:

4. Provisions:

In consideration of the disclosure of Confidential Information by the Disclosing Party, the Receiving Party hereby agrees: (i) to hold the Confidential Information in strict confidence and to take all reasonable precautions to protect such Confidential Information (including, without limitation, all personnel the Receiving Party employs with respect to its own confidential materials), (ii) not to disclose any such Confidential Information or any information derived therefrom to any third person, (iii) not to make any use whatsoever at any time of such Confidential Information except in arbitral proceedings. The Receiving Party shall sign this nondisclosure agreement.

5. Immediately upon completion of the arbitral proceedings, the Receiving Party will return to the Disclosing Party all Confidential Information and all documents or media containing any such Confidential Information and all copies or extracts thereof, save that where such Confidential Information is a form incapable of return or has been copied or transcribed into another document, it shall be destroyed or erased, as appropriate.
6. Neither Party shall assign or transfer all or any part of its rights under this Agreement without the consent of the other Party. This Agreement may not be amended for any other reason without the prior written agreement of both Parties. This Agreement constitutes the entire understanding between the Parties relating to the subject matter hereof unless any representation about this Agreement was made fraudulently and, save as may be expressly

referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto.

7. This Agreement shall be governed by the Government of Botswana and the parties agree to submit disputes arising out of or in connection with this Agreement to the non-exclusive of the courts in the country.

PART C:

8. Information disclosed to the Recipient:

PART D:

9. Declaration:

I _____
solemnly declare that the above information is to the best of my knowledge, complete and accurate. I understand that the discovery of incorrect and or false information relating to this application shall result in the rejection of my application and I shall be held responsible for any costs associated with such dishonest conduct.

Submitted by:

Signature _____ Date: _____

Disclosing Party

Name: _____

Title: _____

Address: _____

Date: _____

Witness: _____

Recipient

Name: _____

Title: _____

Address: _____

Date: _____

Witness: _____

List of Annexes



Schedule 1

**COPYRIGHT ARBITRATION PANEL
Form II**

Form II

Case Number: _____

**Declaration of Independence, Impartiality and
Confidentiality
(Rule 42 and 44)**

Official Use

I, _____ of Identity Number: _____, postal address
_____, physical address: _____ do hereby
confirm that;

- (a) I accept to serve as an arbitrator under Rule 17 of the Copyright Arbitration Rules and declare that I shall abide by all applicable policies and guidelines that may be developed to govern the work of the Panel. By accepting to serve as an arbitrator, I declare that I shall execute my responsibilities honestly, fairly and within the time periods required by the Copyright Arbitration Rules.
- (b) I am independent and impartial and intend to remain so, and that to the best of my knowledge and belief, and the information currently available to me, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that might be of such a nature as to call in question my independence and impartiality, in dispensing my duties as a member of the Copyright Arbitration Panel. I further confirm that, I shall disclose any circumstances that could arise in the future, that may give rise to justifiable doubt of my independence and impartiality.
- (c) I agree to hold in trust and confidence any information or documents disclosed to me, discovered by me or prepared by me in the course of or as a result of my membership to the Copyright Arbitration Panel and agree that such information shall only be used for the purposes of the work of the Panel and shall not be disclosed to any party, unless authorized. Further, I understand that any unauthorized disclosure by me of information will render me liable to legal action.

Signed at: _____

Signature: _____

Date: _____



Schedule 1

Form I

**COPYRIGHT ARBITRATION PANEL
Form I**

Case Number: _____

**Declaration of interest, independence, impartiality
and confidence**
(Rule 42, 43, 44 and 46)

Official Use

PART A:

1. Case Number: _____

2. Name of Panel Member: _____

Declaration (confirm by ticking the appropriate box):

3. I, _____ of Identity Number: _____, postal address
_____, physical address: _____

do hereby confirm that;

- (a) there exists no interest arising from past or present relationship, direct or indirect, whether financial, professional or of any other kind, between me and any of the parties, their lawyers or other representatives, or related entities and individuals;

YES NO

- (b) I am impartial and independent to the case and the parties, and intend to remain so, and that to the best of my knowledge and belief, and the information currently available to me, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that might be of such a nature as to call in question my impartiality and independence, in relation to the case;

YES NO

- (c) I shall regard and deal with, as confidential, any information or documents disclosed to me in relation to the case. Further, I agree that the information shall only be used for the purposes of resolution of the dispute at hand and shall not be disclosed to any party, unless required to do so in terms of any written law or for purposes of any judicial proceedings.

YES NO

If you have ticked NO to any of the above, please provide the details in the table below:

	Name of associated party	Type of business of the associated party	Type of interest (e.g. shares, employment, partnership, payment, e.t.c) and or any circumstances that may give rise to justifiable doubt of your independence and impartiality	Current or past interest (if past interest, indicate year of association)
1.				
2.				
3.				
4.				
5.				

Recusal from participating in the arbitration proceedings?

YES

NO

Signature: _____ Date: _____

Chairperson/Secretary signature: _____ Date: _____

SCHEDULE 2



COPYRIGHT ARBITRATION PANEL

Fees

(Rule 11(1), 12(1) and 28(2)(b))

Ordinary Application:

1.	Filing fees for an individual	P250
2.	Filing fees for the organisation	P500

Extension of Application:

3.	Extension fees for an individual	P125.00
4.	Extension fees for the organisation	P250.00

Fees for copies and certification:

		For an individual	For the organisation
1.	Non-certified copy	P5.00	P10.00
2.	Certified copy (per page)	P10.00	P20.00

MADP this 23rd day of March, 2023.

KGAPBLA MMUST,
Minister of Trade and Industry.