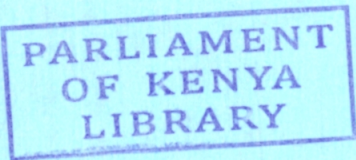


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2024**

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THE CREATIVE ECONOMY SUPPORT BILL, 2024

A Bill for

AN ACT of Parliament to establish mechanisms for the support of the persons in the creative industry; to enhance the contribution of creative industry to the economy; to establish the Creatives fund; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Creative Economy Support Act, 2024.

Short title.

2. In this Act—

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters related to trade;

“Board” means the Guild Advisory Board constituted under section 8;

“creative industry” means all activities or trade by persons that produce artistic, cultural or innovative goods and services including fashion, publishing, advertising, crafts, music, audio, visual and performing arts, video, film and imaging photography, gaming and animation, graphic design and web design that originate from creativity, skill and talent and whose exploitation may result in the creation of wealth and livelihood through the generation and exploitation of intellectual property, knowledge and technology;

“Fund” means the Creatives Fund established under section 19; and

“Guild” means the creative industry guild established under section 6;

3. The National Government and each county government shall—

Obligations of government.

- (a) create an enabling environment through direct and indirect support for creative artists and organisations;
- (b) formulate and implement policies and strategies for the development and promotion of a

sustainable and diverse creatives industry at the National and county level of government;

- (c) promote the development of entrepreneurial skills for persons in the creative economy through programmes offered in institutions of higher learning;
- (d) invest in the development of physical and virtual infrastructure to support the creative industry and design tools to enable the creative workforce effectively utilise, diversify and leverage on their services and products in order to be locally and globally competitive;
- (e) review existing international and domestic trade policies, practices that hinder the growth of the creative industry and put in place structures that mitigate against their negative impact on the industry and interventions to address the impact;
- (f) in collaboration with the private sector, facilitate access to funds for persons with disability, women and the youth in the creative industry;
- (g) facilitate the establishment of a public-private dialogue forum between persons in the creative industry and relevant departments of government;
- (h) implement strategies that promote the growth of the creative industry locally and internationally through partnerships, industry development assistance and mechanisms that facilitate innovation and linkages with creative artists locally and internationally; and
- (i) facilitate market access for creative artists.

4. The Cabinet Secretary shall establish and maintain an online platform where persons in the creative industry may publish events and current affairs in the creative industry.

Online platform.

5. The Cabinet Secretary responsible for matters related to education shall ensure that the curriculum developed under section 4(d) of the Kenya Institute of Curriculum Development Act includes subjects relating to the creative industry.

Curriculum.

No. 4 of 2013.

PART II – CREATIVE INDUSTRY GUILD

6. There is established the Creative Industry Guild.

Creative Industry
Guild.

7. The Guild shall—

Functions of the
Guild.

- (a) advise the Cabinet Secretary on the review and formulation of policies and legislation relating to the creative industry;
- (b) conduct labour market surveys and mapping exercises of persons involved in the creative industry and put in place the most appropriate strategies that facilitate the development of the creative industry;
- (c) formulate and implement strategies, programs and plans for the development of the creatives industry and that promote growth and competitiveness within the creative industry;
- (d) collaborate with the relevant institutions to facilitate the protection of the intellectual property rights of creative artists through sensitisation and awareness programs and facilitate the registration of works produced by creative artists;
- (e) collaborate with intellectual property rights enforcement agencies to ensure the enforcement of intellectual property rights of creative artists;
- (f) collaborate with the relevant entities to ensure the transparent distribution of royalties collected on behalf of creative artists and creative arts operators;
- (g) develop a framework for the classification of sub-sectors and actors in the creative industry and establish and implement sector specific mechanisms that promote innovation and growth in each sub-sector;
- (h) collect and collate information on the sectors of the creative economy that require promotion and support and implement strategies that facilitate growth in these sectors;
- (i) promote programmes on entrepreneurial skills development for its members;

- (j) represent the interests of women, youth and persons with disabilities working in the creative industry;
- (k) prescribe standards for the regulation of the creative industry;
- (l) prescribe and enforce a code of conduct and disciplinary code amongst members of the guild;
- (m) create platforms through which persons in the creative industry may showcase their talents, products or technologies; and
- (n) promote the amicable resolution of conflicts arising between persons in the creative industry.

8. (1) The Guild shall be governed by an unincorporated Advisory Board which shall consist of-

Board of the
Guild.

- (a) the Principal Secretary for matters relating to trade and industrialization or a person designated in writing;
- (b) one person nominated by the association representing the largest number of persons in the film industry;
- (c) one person nominated by the association representing the largest number of persons in the music industry;
- (d) one person nominated by the association representing the largest number of persons in the fashion industry;
- (e) one person nominated by the association representing the largest number of persons in the software development and gaming industry;
- (f) one person nominated by the association representing the largest number of persons in the literary arts industry;
- (g) one person nominated by the association representing the largest number of persons in the visual arts industry;
- (h) one person nominated by the most representative association in the dance industry;

- (i) an Advocate of the High Court of Kenya nominated by the Law Society of Kenya; and
- (j) one person being a public officer nominated by the Cabinet Secretary who shall be Secretary to the Board.

(2) The persons nominated under subsection (1) shall be appointed by the Cabinet Secretary by notice in the *Gazette*.

(3) The Cabinet Secretary shall, in appointing the persons under subsection (1) ensure that no more than two thirds of the members of the Board are of the same gender.

9. A person is not qualified for nomination or appointment as a member of the Board under section 8 if that person—

Disqualification
for appointment.

- (a) has violated Chapter Six of the Constitution;
- (b) is adjudged bankrupt; or
- (c) has been convicted of an offence and sentenced to imprisonment for a term of more than six months.

10. The persons nominated under section 6 shall be appointed for a term of four years renewable for one further term.

Tenure.

11. The office of a member of the Board appointed under section 8(2) shall become vacant if the member—

Vacation of
office.

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of at least six months;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) is absent, without reasonable cause, from three consecutive meetings of the Guild;
- (e) resigns in writing addressed to the Cabinet Secretary;
- (f) is removed from office by the Cabinet Secretary for —
 - (i) being unable to perform the functions of his or her office by reason of mental or physical infirmity; or

- (ii) failing to declare his or her interest in any matter being considered or to be considered by the Board; or

(g) dies.

12. (1) The members of the Board shall elect from amongst themselves a chairperson and vice-chairperson.

Offices in the Board.

(2) A person elected as a chairperson or vice-chairperson under subsection (1) shall serve for a term of two years.

(3) A person appointed under section 8(a) and (i) shall not be eligible for election as chairperson of the Board under subsection (1)

(4) A person shall not be eligible for election as a chairperson or vice-chairperson if the person has served as a chairperson or vice-chairperson of the Board in the two years preceding the election.

13. (1) The Cabinet Secretary shall designate an appropriate administrative unit within the respective Ministry to serve as the Secretariat of the Board.

Secretariat.

(2) The Secretariat shall consist of —

(a) a public officer designated by the Cabinet Secretary from the Ministry to serve as the head of the secretariat; and

(b) such other public officers as the Cabinet Secretary shall, in consultation with the Board, deploy for the proper performance of the functions of the secretariat under this Act.

(2) The head of the Secretariat and persons deployed under subsection (2)(b) shall possess such knowledge and experience in matters relating to the creative industry as the Cabinet Secretary shall, in consultation with the Board, determine.

14. The functions of the Secretariat shall be to —

Functions of the Secretariat.

(a) provide technical and administrative services to the Board;

(b) implement the decisions, strategies, programmes and policies of the Board;

- (c) make recommendations to the Board on the formulation and implementation of programmes for the achievement of the functions of the Board;
- (d) on behalf of the Board, establish and maintain relationships with international, national and local institutions involved in the creative industry and other related activities;
- (e) collaborate with State agencies, financial institutions and other stakeholders in the implementation of policies, strategies and programmes developed pursuant to this Act;
- (f) train, disseminate information and provide linkages and networks with local and international institutions which engage in capacity building on intellectual property, innovation, market access and penetration and matters affecting the creative industry;
- (g) conduct studies, research and investigations in order to enhance the development of the creative industry in Kenya;
- (h) maintain a data base setting out information on creative artists in Kenya, stakeholders and players in various sectors of the creative industry and programmes in place to facilitate the growth of the creative industry;
- (i) establish, in collaboration with the private sector, incubation programmes for persons in the creative industries;
- (j) make arrangements for periodical evaluation of the policies and programmes in relation to the objects and functions of the Board; and
- (k) perform such other functions as may be assigned to it by the Board.

15. Membership to the Guild shall be on a voluntary basis.

Membership.

16. (1) A person who wishes to be a member of the Guild shall submit an application in the prescribed form to the Board.

Application to the Guild.

(2) The Board shall consider an application under subsection (1) within fourteen days of receipt of the application.

(3) Upon consideration of an application under subsection (2), the Board may —

- (a) approve the application and enter the name of the applicant in the roll;
- (b) grant the application subject to such conditions being met as the Board shall consider necessary; and
- (c) reject the application;

(4) A person who is aggrieved by a decision of the Board under subsection (3) shall appeal to the Cabinet Secretary.

17. (1) The Board shall cause to be entered the names of all persons whose application is granted under section 10(3) into the roll of creatives.

Roll of the Guild.

(2) A benefit or incentive under this Act shall only be made available to a person whose name appears in the roll.

18. The Guild shall ensure reasonable access to its services in all parts of the country so far as it is appropriate for the effective and efficient discharge of its functions under section 7.

Decentralization of the guild.

PART III — INCENTIVES FOR CREATIVES

19. The Guild shall, in collaboration with the respective county executive committee members responsible for matters relating to trade, put in place measures to support the establishment and development of the creative industry and shall, for this purpose —

Support to creatives.

- (a) subsidise the formalisation of creatives;
- (b) facilitate the protection of the intellectual property of innovations by creatives in Kenya and with international organisations;
- (c) provide fiscal and non-fiscal support to creatives admitted into incubation programmes under this Act;

- (d) provide support in the form of research and development activities; and
- (e) provide such other support to enable the development and growth of creatives registered under this Act.

20. There is established the Creatives Fund which shall consist of—

Creatives Fund

- (a) monies that may be appropriated to the Fund by Parliament; and
- (b) grants, donations, bequests or other gifts made to the Fund.

21. (1) The Board shall issue out of the Fund monies in form of grants to persons in the creative industry in accordance with a criteria determined by the Cabinet Secretary by Regulations.

Objects of the Fund.

(2) The Cabinet Secretary shall, ninety days upon coming into force of this Act publish the Regulations setting out the—

- (a) eligibility criteria for a grant from the Fund; and
 - (b) procedure for application for a grant from the Fund.
- (3) The Regulations developed under subsection (1) shall ensure that a person is eligible for a grant from the Fund if that person—

- (a) is not above the age of thirty-five years; and
- (b) has not benefitted from any other financial support scheme by the National or county government.

22. (1) The Cabinet Secretary may, in consultation with the Board and where necessary for the development and growth of creatives under this Act, establish a credit guarantee scheme.

Credit guarantee scheme.

(2) The credit guarantee scheme under subsection (1) shall have as its objectives—

- (a) the provision of accessible financial support to creatives;
- (b) a framework for credit guarantee for creatives;

- (c) guarantee for investors in creatives;
- (d) availing of financial and credit information to creatives; and
- (e) capacity building on financial and risk management to creatives.

(3) Where a credit guarantee scheme is established pursuant to subsection (1), the Cabinet Secretary shall prescribe –

- (a) a strategy and operational goals that are aligned to the objectives under subsection (2);
- (b) a criteria for eligibility and qualification for recipients of funding under the scheme;
- (c) guidelines for the monitoring and evaluation of projects undertaken under the scheme and the efficiency of the operations of the scheme; and
- (d) mechanism for transparency, accountability and reporting on the activities of the scheme.

23. The Guild shall put in place a programme for the training and capacity building of creatives under this Act and shall, for this purpose establish a platform setting out information at the national and county level of government, on–

Training and
capacity building.

- (a) existing incubators;
- (b) available training programmes;
- (c) mentors and resource persons;
- (d) intellectual property rights;
- (e) projects under existing incubation programmes;
- (f) available fiscal and non-fiscal support services;
- (g) business information necessary for the management and development of creative artists; and
- (h) such other information as the Guild shall, in consultation with the county executive committee member consider necessary.

24. (1) The Guild shall facilitate creative artists in the

Application for grant or revocation of patents.

- (a) application for registration, grant, revocation and institution of legal action for infringement of intellectual property rights; and
- (b) filing and registration of intellectual property pursuant to international instruments.

25. The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to finance, put in place measures for the granting of fiscal incentives including tax incentives as shall be considered necessary for the development of creatives in the country.

Fiscal incentives.

26. The incentives and benefits under this Part shall only be made available to members of the Guild whose names have been entered into the roll under section 11.

Scope of incentives.

PART IV — MISCELLANEOUS PROVISIONS

27. (1) The Cabinet Secretary may make regulations generally for the better carrying out of the provisions of this Act.

Regulations.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations —

- (a) on the conditions and process for the exemption of creatives from registration fees;
- (b) on workplace and labour issues with employees, independent contractors, and service providers;
- (c) on commercial transactions, including product development, production, corporate partnering, advertising, marketing, and sales;
- (d) on employee benefits and compensation;
- (e) on protection of intellectual property rights;
- (f) on the relationship between founders and employees;
- (g) on the exemption of creatives from anti-competition laws;

- (h) on the intergovernmental support for creatives;
- (i) for the reporting and accountability of a grant issued to a person under this Act;
- (j) for the de-registration of a person from the Guild;
- (k) for the process of admission of a person in the creative industry into an incubation programme;
- (l) for the advertising and impact assessment of the measures of creatives; and
- (m) for incentives to invest in innovative creatives.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The creative economy leverages on human creativity, innovation and ideas as a means of economic development. Citizens working in the creative industry contribute to the gross domestic product by creating employment opportunities, paying taxes as a result of the activities they are involved in. The creative sector also contributes to the country's participation in the global economy as the skills and products in this sector transcend borders. The needs of persons in the creative economy have traditionally taken a back seat in the priorities of the state as more emphasis is laid on mainstream sectors. However, in an increasingly hyper connected world, the creative industry is quickly outpacing other sectors of the economy. This Bill recognizes this watershed moment and proposes to make systemic interventions to ensure adequate support to persons in the creative industry including proposing the formation of a Guild to champion the rights and welfare of creatives.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit fundamental rights and freedoms. Clause 19 proposes to delegate legislative powers to the Cabinet Secretary responsible for Trade and Industry to make Regulations for the better carrying out of the provisions of the law.

Statement on how the Bill concerns county governments

The creative sector contributes to development both at the national and county government. Further the creative industry includes activities culture and public entertainment. These activities relate to county government functions under Part 2 of the Fourth Schedule to the Constitution. The Bill therefore affects the powers and functions of the county government and is therefore a Bill that concerns counties in terms of Article 110(1)(a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 2nd May, 2024.

EDDY GICHERU OKETCH,
Senator.