Copyright News
A Quarterly Publication of the Kenya Copyright Board

The Publishing Industry in Kenya

Protecting Copyright, A book in every hand
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Design and Layout: Sanabora Design House Limited

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PICTORIAL

Newly appointed KECOBO Board of Directors being taken through the copyright registration system.

Ms. Waithaka (circled), KECOBO Senior Public Communications Officer, briefing the media on the destruction of pirated materials at EcoPost Limited.

Dr. Ouma (circled), KECOBO Executive Director and other staff members at the WEEE Centre during the destruction of e-waste materials.
Publishing in Kenya has been on the rise with the growth of more local publishers. This has proved to be useful in reducing illiteracy levels, probably making the content of educational material better in a bid to change the industry in Kenya. Local publishers have tried to promote the spread of locally printed books not just in Kenya but even beyond its borders.

In the past most of the publishing houses were subsidiaries of international companies but local companies have emerged on a large scale. However, in the recent past there have been concerns on how local books should be published when economic and political interests of multinationals dominate the environment.

As a result, publishers in Kenya founded an umbrella body for publishers known as the Kenya Publishers Association (KPA) to enhance the state of the industry in Kenya. KPA has been instrumental in the fight for a national book policy which was introduced in 1998. It has also been on the forefront of organising National Book fairs which are used as a trade promotion tool for local books.

In addition, publishers under KPA collaborate with other international, regional and local organisations such as the International Publishers Association (IPA), African Publishers Network (APNET), KOPIKEN (the Reproduction Rights Society of Kenya), the Kenya Institute of Education (KIE) and the National Book Development Council (NBDC) among others. The National Book Development Council (NBDC) in particular seeks to encourage the development of a strong book industry and an entrenched reading culture in Kenya.

Challenges facing the Publishing Industry
Currently, the industry is facing numerous challenges which if not addressed could drastically affect it among them;

- Piracy, this is a very major challenge facing the publishing industry. Many Kenyans, especially students, prefer to photocopy books instead of buying for many reasons. Subsequently, many photocopy shops are located close to educational institutions where both students and lecturers/teachers thrive on photocopying. This practice hurts the industry as millions of shillings are lost in photocopying.

A survey undertaken in year 2010 by the Reproduction Rights Society in Kenya (KOPIKEN) on 100 photocopy shops indicated that a total of 7 million copies of copyright protected material were done annually. Based on this figure and assuming that on average it costs Ksh.2/= to photocopy
one copy it means that a total Ksh.14 million was lost through these 100 photocopy shops annually. It is a well known fact that photocopy shops exist in thousands all over the country and they mushroom and disappear as quick. This means that much more money is lost via this vice.

The Kenya Copyright Board in conjunction with other stakeholders are actively fighting this piracy. In addition, the Copyright Act 2001 has strengthened the laws against piracy and on enforcement.

- A poor reading culture amongst Kenyans resulting in low demand for leisure books. Most Kenyans have not been embraced the culture of leisure reading while most youngsters prefer other forms of leisure like watching TV and playing computer games rather than reading.
- Approximately 85% of all the local publishers are text book publishers, resulting in very stiff competition. There is therefore an urgent need for the publishers to diversify and exploit other upcoming publishing areas such as leadership.
- The prevailing economic state in the country also greatly affects the industry resulting in low sales volumes.
- Another challenge facing publishers in Kenya has been the slow embracing of digital publishing and digitisation of works.
- The recently proposed introduction of laptops in primary schools by the government is another potential challenge that might grossly affect sale of text books in the future.

Despite the above challenges, there are opportunities for the future in the industry such as:

- With the growth of universities and numerous middle level colleges publishers have an opportunity of generating more local content for these users.
- Digital publishing is another opportunity which if exploited to the maximum can result in immense industry growth. Although the transition from analogue to digital has been very slow within the publishing industry it should be embraced to reap the associated benefits.
- The proposed review of education curriculum and increased liberalization are other immense opportunities for new players in the field. In the past the big multinationals dominated the industry but today local new publishers have a chance to grow and thrive.

All in all, if the noted challenges are addressed and the industry aggressively exploits these opportunities, the publishing industry may just be on its way to success.

By: Sharon Chahale Wata
Mr Wamuhiu, the author of the premier Kenya Counties map is grateful to KECOBO for their timely invention which saved his copyright works from copyright infringers.

Maps are tools of work meant to accurately communicate geographical data. Subsequently, following the creation of counties he immediately saw this as an opportunity and immediately embarked on producing maps that the public could use to understand the new counties.

Unfortunately, shortly after releasing the genuine county maps in the market he noted that pirates had reproduced similar but distorted counties maps which lacked a scale and were printed on cheaper paper. These maps were being sold to unsuspecting motorists during the Nairobi traffic jam snarl ups.

Fortunately, he had registered the counties map at the Kenya Copyright Board subsequently he visited the KECOBO office and lodged a complaint. The following day, the copyright inspectors conducted their investigation and later conducted raids on the Nairobi streets arresting a number of hawkers. On further interrogation by the officers, the hawkers led them to the pirates den which was in River Road and arrested the source pirate. Since then these pirated county maps have stopped being sold on the streets and are now only available in bookshops.

Mr Wamuhiu is very grateful for KECOBO’s swift action because he is now earning substantial income from his creative works. Based on his experience, he would like to advice all copyright works authors to register their works with the Kenya Copyright Board so that incase of any infringement on their works KECOBO can quickly verify the ownership and then arrest the pirates.

"All copyright works authors should register their works with the Kenya Copyright Board so that incase of any infringement on their works, KECOBO can quickly verify the ownership and then arrest the pirates."

By: Mr James Mwaura Wamuhiu - Managing Director - SERVICE LIMITED
INTERVIEW:
Lawrence Njagi
Chairman - Kenya Publishers Association (KPA)

Introduction:
Mr. Njagi is the Managing Director of Mountain Publishers and the Chairman of the Kenya Publishers’ Association (KPA).

1. What is Kenya Publishers Association (KPA) and who are its key stakeholders?
Kenya Publishers Association is the umbrella body of all member publishing houses in Kenya. It primarily promotes and lawfully protects the interests of the publishing industry in Kenya. In addition, it seeks to protect its members by collectively dealing with problems in the best way possible.

KPA’s key stakeholders are drawn from the publishing industry. Currently, KPA’s membership comprises of approximately 80 registered publishers who contribute about 95% of all books published in Kenya. Amongst the key stakeholders are Longhorn, Jomo Kenyatta Foundation (JKF), Kenya Literature Bureau (KLB), Moran, Mountain Top, Target, Phoenix, East Africa Educational Publishers, Oxford, WordAlive, Kwani, Focus and Evangel.

2. What is KPA’s mandate?
KPA’s mandate is to ensure the widest spread of books through:

a) Lobbying the government and other stakeholders for policies and decisions favorable to the industry.

b) Providing training to improve knowledge and skills so as to improve professionalism in the industry.

c) Creating an information center on industry news and activities.

d) Networking with other organisations to promote a reading culture in the country and the region.

e) Providing opportunities for local and regional publishers and other book industry players to showcase and market their products through Book fairs and other national and international meetings.

3. What challenges do Kenyan publishers and booksellers face?

a) Piracy and unauthorized copying of books.

b) Expensive credit limiting the number of books published per year.

c) Corrupt practices especially collusion between booksellers and schools in the purchase of learning materials.

d) Poor reading culture among the citizens.

e) Absence of a National Book Policy that will guide the book trade in the country.

f) Death of the paper manufacturing mills in Kenya, approximately 90% of all paper used to publish books in the country is imported.

g) Poor or non-existence of school and community libraries.

4. How effective is enforcement when it comes to infringement of books?
Unfortunately, the Kenyan law is very lenient when pirates are caught and prosecuted. In addition, majority of the police do not fully understand the copyright law resulting in a weak enforcement process. In most cases the culprits go “scot free” due to their ignorance. Other times the wheels of justice move so slowly that by the time the case is heard and determined, the publisher has made serious losses.

Sadly, very few cases if any have gone through the full legal cycle. The maximum fine of Ksh.800,000/= is sometimes laughable given the
INTERVIEW:

nature of the crime. Most culprits tend to print large volumes of pirated printed books sometimes worth Ksh.20 million. A fine of Ksh.800,000/= is therefore very insignificant and not a problem to such a culprit. KPA would therefore suggest that the court fines should be based on the value of the pirated materials confiscated.

5. Recently, one of the Kenya’s leading local newspapers published a two page article citing how some publishers have been colluding with pirates? Please enlighten us more on this.

Yes, sadly some publishers are colluding with some booksellers (pirates) to sell pirated materials. Some big booksellers (pirates) have organised printing of pirated books, especially set books, with schools and small booksellers. The pirates distribute the pirated books to smaller booksellers and schools at hefty discounts of sometimes up to 60%. However, unknown to the parents and general public most of these books have distorted information making it very difficult for students to study using these books.

6. Do you think that the Kenya Copyright Board (KECOBO) has done enough to fight piracy? If not, please suggest strategies that KECOBO should embrace to effectively fight piracy.

KECOBO has certainly reduced the level of piracy and the level of public awareness has increased. Many people now know that photocopying is outlawed. The raids KPA and KECOBO have jointly carried out have sent strong signals to the public that the Government through KECOBO is serious about curbing piracy.

Below are other suggestions that should be implemented to effectively tighten the fight against piracy:

a) KECOBO should work with the Kenya Revenue Authority (KRA) to ensure that all books being imported into the country are cleared by KECOBO and the source and destinations are well known. Today most of the pirates print offshore and subsequently import the complete books. Since such books must go through the normal clearing process, KRA should demand a letter, as part of the clearing documentation from KECOBO.

b) The government should allocate more resources to KECOBO to enable it build its capacity and subsequently enhance its programs & operations.

c) More police officers should be allocated to KECOBO and if possible post some of these officers at the county level to ensure quick arrests and prosecutions of pirates.

7. Do you think Kenya will one day be a piracy free country? If not, then why not? If yes, in approximately how many years?

Sadly, Kenya like any other country in the world cannot be free of piracy. It is like saying that Kenya can one day be free of thieves (crime)! In every society, there will always be those that will break the law.

Piracy is theft of Intellectual Property and a “perceived short cut” to riches. However, the only thing that can happen in Kenya is to significantly reduce the number of piracy cases. It is difficult to estimate when such a kind of reduction is likely to take place, but with consistent piracy fighting and proper facilitation of KECOBO this vice can be brought to control.

For more details on the Kenya Publishers Association please visit our website; http://www.kenyapublishers.org/
In the last Copyright News (issue 8), the author promised to examine a ground breaking suit awaiting consideration at Delhi High Court pitting Indian publishers against a photocopy shop and the University of Delhi (Oxford University Press and others versus Rameshwari Photocopy Services and Another CS. No.2439/2012). The case has not been decided and therefore he shall examine the arguments of the parties and the discussions surrounding the case.

The plaintiffs in this case are Oxford University Press, Cambridge University Press and Taylor & Francis Group all publishers against a photocopy shop based at Delhi University, with the university as a second defendant. The plaintiffs are seeking a permanent injunction, damages and delivery up against the defendants who are accused of photocopying, reproduction and distribution by sale of books published by the petitioners. The photocopy shop apart from photocopy of whole books is also accused of preparing compilation course packs based on syllabi of the second defendant which encouraged its students to purchase them. Photocopied books were from the university’s library.

According to the plaintiffs, the act constitutes blatant infringement of copyright for commercial gain. The photocopy shop did not hold a Reprography license as required by law. The plaintiffs are claiming damages to the tune of Rs.60 million (approximately Ksh.140 million). An interim injunction was issued restraining the defendants. As a result of the suit, all photocopying services ceased operations at the Delhi University campuses and libraries.

A visible campaign to have the publishers abandon the claim is being carried out. Over 300 authors including Nobel Laureate Amartya Sen signed a petition against the suit claiming that education should be exempted. A student group and an association of academics have since joined the suit as interested parties. This case and the one filed by Novartis are being cited as assaults on the public interests established within Intellectual Property system.

Meanwhile the Indian Reprographic Rights Society has revved up its licensing program at universities and colleges with some success. However the upper limit of 10% content is hotly contested with some proposing a 30% threshold for the country where the cost of text books is beyond the reach of many especially where locally published editions do not exist. Among Indian authors, a case is being made for open access publishing for academic publications. So far, there have been no other significant developments in the courtroom.

In Kenya the dilemma facing India has landed our “shores”. Massive course pack and general ‘beyond license’ copying goes on unabated especially in many higher education institutions. KOPIKEN, the Kenyan Reprographic Rights Society has been struggling to issue licenses to curb the practice with no license reported so far. It is therefore expected that in due course recourse to the courts is inevitable. In a further update, the United States Supreme Court upheld the first sale doctrine thereby aligning the country among those that have adopted the International Exhaustion principle in a case that has alarmed publishers.

By: Edward Sigei
Destruction Of Copyright Infringed Materials

Over One Ton Of Pirated Music CDs And Movie DVDs Destroyed

On 24th January 2013, the Kenya Copyright Board (KECOBO) in collaboration with EcoPost Limited destroyed by crushing over one ton of unauthorised (pirated) copies of music CDs and film DVDs with an estimated street value of over Ksh. 5 million. EcoPost Limited utilises the crushed CDs and DVDs as a resource to manufacture aesthetic, durable and environmentally friendly fencing “ecoposts”.

The destruction aimed at sending a very strong message to the infringers and the general public at large that KECOBO is committed to the fight against music and film piracy subsequently they should stop this menace. The event attracted extensive media coverage from different media stations amongst them the Nation Media (NTV), Radio Africa, The Star, NRK/Norwegian Broadcasting Corporation and Kiss TV. Prior to the event, Radio Citizen had extensively covered the event through morning activations during which Inspector Mwala tackled the role and the mandate of KECOBO, types of copyright works, the Anti-Piracy Security Device (APSD) and the dangers of copyright infringement. The classifieds ran three times a day for five days.

According to a research conducted in Kenya, it is estimated that the level of piracy in the music and film industry is over 98%. These high levels of piracy are a great impediment to the development of the creative industry in the country as the pirates live off other people’s Intellectual Property and curtail further growth of the industry.

The highest penalty for offenders is a fine of Ksh. 800,000/= and a jail term of ten years. Apparently, this has not deterred the copyright infringers subsequently the Kenya Copyright Board is proposing harsher sentences and fines that will be based on the value of the copyright infringed goods impounded multiplied with a given factor to make it more “painful” for the criminals and serve as deterrent for would be offenders. The Draft bill will be presented to the Attorney General by July 2013.

By: Lucian Mue

Assorted Copyright Infringed Materials Destroyed

On 28th February 2013 the Kenya Copyright Board (KECOBO) in collaboration with Waste Electrical and Electronic Equipment (WEEE) Centre destroyed over one ton of impounded e-waste materials comprised of illegal music CD and movie DVD duplicators, VHS machines, coaxial cables, television broadcast decoders and receivers used in the illegal distribution of television broadcast signals. The materials were drawn from the exhibits of concluded court cases as a result of concerted efforts by the Kenya Copyright Board in collaboration with the Kenya Police and the music/film rights holders.

WEEE Centre, a department of Computers for Schools Kenya (CfSK), runs an environmentally friendly operation that implements best management practices (BMP) for handling e-waste materials, reuse of serviceable electronic equipment and components, recycling through material recovery, management for energy recovery and disposal of materials that cannot be safely handled locally by exporting them to competent partners overseas.

In the last one year, more than 120 cases have been investigated with 108 prosecuted and concluded with fines and custodial sentences meted out against the offenders. KECOBO will continue to work with the rights holders and other enforcement agencies to ensure that the levels of piracy in the copyright industries are brought down. This will help in the creation of intellectual capital and spur economic growth.

By: Lucian Mue
The Kenya Copyright Board (KECOBO) in conjunction with the Creative Enterprise Centre organised a one day seminar titled “Making A Living From Music” at the Sarakasi Dome, Ngara - Nairobi. The seminar was designed to give young and upcoming artists an opportunity to learn the importance of music and art as a career and how they can maximize their gains.

Mr Edward Sigei, KECOBO Chief Legal Counsel, started by defining the term Intellectual Property and then further expounded on the term copyright. He also explained to them the role, mandate and functions of the Kenya Copyright Board. He stressed to them on the benefits of registering their copyright works with KECOBO as this could be used as evidence in court as proof of ownership in case their music works are pirated.

In addition, Mr. David Muriithi of Creative Enterprise Centre & a KECOBO Board Director made a presentation on how young artists can earn a living out of their creativity. He greatly emphasized that in the current times music is a very creative and lucrative career which they could pursue.

The participants were also advised on the importance of good artist management by Mr R Kay, of Ingoma Talent Management, who informed them that a positive attitude and being serious about music as a career were critical success factors. He further added that producer management plays a crucial role in the success or failure of an artist so they should choose their producers very wisely.

Jimmy Gait, a successful Kenyan musician, also attended the seminar and shared his experience on how an artist can make a living from music and the challenges that come with it.

All the Collective Management Organisations (CMOs) in the music industry namely Music Copyright Society of Kenya (MCSK), Performers Rights Society of Kenya (PRiSK) and Kenya Association of Music Producers (KAMP) were also in attendance. Each CMO made a presentation on their role and also recruited new members.

The KECOBO HIV and Aids committee used this opportunity to conduct sensitisation to all participants and together with the assistance of staff from Liverpool VCT, the participants were offered free counselling and testing services.

At the end of the seminar the participants were grateful for the information and advice they had received from the different presenters. In addition, they requested the Kenya Copyright Board to partner with the Sarakasi Trust and provide them with more training sessions.

_by: George Mbaye_
According to the National Authority for the Campaign Against Alcohol & Drug Abuse (NACADA), drug and substance abuse problems have a costly impact on the workplace as well as on the community.

In year 2007, NACADA conducted a national assessment survey on drug and substance abuse and found that drug use is linked with a considerable amount of illness, disability, and death.

As a follow up of this 2007 national survey, the Authority carried out a similar survey in 2012. The study found that nationally 13.6% of Kenyan population aged between 15 years to 65 years is currently dependent of alcohol, tobacco (9.1%), miraa (4.2%), bhang (1%) and heroin (0.1%).

In year 2010 NACADA had conducted a drug and substance nationwide survey targeting the public sector workplace and its findings confirmed that alcohol and drug abuse in the public service is widespread with alcohol being the most abused substance with a prevalence of 33%, out of whom 17% reported to be drinking with their workmates.

In response to this social problem, the Government of Kenya stipulated the inclusion of alcohol and substance abuse programmes in the public institution’s performance contract regime requiring them to implement activities aimed at reducing the prevalence of alcohol and drug abuse and minimizing the negative effects.

In addition, they were directed to periodically undertake surveys to establish the situation over time for development of effective intervention strategies.

In line with this government directive, in May 2013 the Kenya Copyright Board (KECOBO) conducted a baseline survey on alcohol and drug abuse to help establish the magnitude of the problem among its employees and recommend an effective workplace alcohol and drug abuse programme for the organisation. A structured self-administered questionnaire and a key informant interview guide were the main data collection tools.

A total of 27 staff members took part in this survey. The findings of the survey were commendable because it found that the current usage of alcohol and other drugs by the KECOBO employees is low with only alcohol featuring under current usage.

Subsequently, NACADA recommended that KECOBO should continue to hold regular staff sensitisation sessions on the negative consequences of alcohol and drug abuse. In addition, the office should post Alcohol and Drug Abuse (ADA) information materials on its notice board to enhance employees' knowledge on ADA.

By Susan Tonui
Mr Leonard Kinyua (left) and Mr Meshack Otieno (centre) from KECOBO in Sri Lanka.

KAMP, PRISK and KIPA officials shake hands after signing a collecting agreement in February 2013.

Ms Catherine Bunyassi-Kahuria (circled), KECOBO Senior Legal Counsel, addressing media at EcoPost Limited during the destruction of pirated CDs and DVDs.

KECOBO staff having lunch with visiting government officials from Zambia.

Mr Leonard Kinyua (left) and Mr Meshack Otieno (centre) from KECOBO in Sri Lanka.
PICTORIAL

Microsoft East Africa officials attending a meeting with KECOBO staff.

KECOBO staff at EcoPost Limited destroying pirated music CDs and movie DVDs.

WEEE Centre staff destroy impounded e-waste materials.

Ms Catherine Bunyassi-Kahuria in Geneva attending a WIPO Committee meeting on Traditional Knowledge.

KECOBO staff attending the NACADA sensitisation awareness training in the boardroom.
An Overview Of Programme Based Budgeting

Introduction

As part of the public financial management reforms, in the year 2000, the Government introduced the medium term expenditure framework - a three year rolling budget plan. However, the link between budget, policy priorities and planning has continued to be weak and largely incremental. The budget presented to Parliament for approval has remained at line items level which emphasises inputs as opposed to the tangible results that the budget is expected to achieve.

The adoption of programme based budgeting follows the realisation that the current investment outlays do not necessarily translate to outcomes and that there is need to focus on tangible outputs and outcomes of all public programmes as opposed to inputs.

Programme Based Budgeting

- Programme based budgeting is an approach and process that relates resources to proposed and actual results.
- Clusters of related activities that represent the highest level of classification of the work undertaken by a department in carrying out assigned responsibilities.
- Allocates money to functions/activities and focuses on total cost of providing a service, supported by line item detail.
- Stresses on the end product and not the means.

Objectives of Programme Based Budgets

- Making public management results oriented.
- Improving efficiency/effectiveness of activities.
- Using performance information for setting targets and priorities.
- Guiding resource re-allocation with greater information.
- Making efficiency savings wherever necessary.

Programme Based Budgeting Versus Line Item Budgeting

- Programme based budgeting is a framework for planning, management and monitoring budgets that relates the purposes of resource allocations to effectiveness in achieving desired outcomes.
- Under line item budgeting the primary focus of budget management is on the utilization of inputs, using compliance audits and other methods for ensuring that resources are used for allocated purposes. While under a programme based budgeting management is focused on outputs, complemented by measures to monitor effectiveness (the extent to which targeted goals and outcomes are achieved).

Why Move to a Programme Based Budgeting System?

- To improve efficiency and cost effectiveness in public financial management using techniques and planning frameworks based on international best practice.
- To improve resource allocation by identification, ranking and prioritization of programmes.
- To improve the efficiency of budget management by including performance information in budget documents to assist monitoring and evaluation.
- To use performance information to guide outlays on different activities, providing a more structured framework for budget resource allocation, both within and across sectors.

By: George Guantai
NEWS IN BRIEF

Over 200 Police Officers Trained By KECOBO

As part of the efforts to educate and create awareness amongst the Police Officers on copyright and copyright enforcement procedures, Copyright Inspectors drawn from the Kenya Copyright Board (Enforcement Unit) conducted numerous sensitisation sessions within Nairobi County and adjacent areas.

The training targeted police stations in areas where concerns have been raised in relation to presence of people masquerading as Copyright Inspectors.

The training sessions kicked off at the beginning of January 2013 and targeted Police Stations and Divisions in Eldoret, Machakos, Athi River, Mwiki, Jogoo, Buruburu, Nairobi Central Business District (CBD), Pangani, Muthaiga, Parklands, and Huruma. During the interactive sessions, the officers raised the numerous challenges and hurdles they encountered when copyright infringement cases were reported to them due to lack of information.

The biggest challenge raised was how to establish the genuineness of the right holder and his/her work.

The Copyright Inspectors addressed all their concerns leaving the Officers much more knowledgeable. In addition, the officers were issued various KECOBO information education & communication (IEC) materials ranging from newsletters, enforcement bulletins, guides to copyright in Kenya and other essential copyright materials.

A total of 230 police officers were trained by end March 2013. KECOBO plans to train another 270 police officers in other areas by end of July 2013 to achieve its annual target of training 500 police officers.

By Ephraim Ndiritu

KAMP & PRIŠK Sign An Agreement With KIPA

In February 2013, the Kenya Association of Music Producers (KAMP) and the Performers Rights Society of Kenya (PRIŠK) signed a collecting agreement with the Kenya Intellectual Property Alliance (KIPA). The agreement commissioned both KAMP and PRIŠK to collect license fees from KIPA members most of whom are small retail audio-visual shops and outlets.

KAMP and PRIŠK are both Collective Management Organisations (CMOs) duly licensed by the Kenya Copyright Board (KECOBO) in 2008 and 2009 respectively. In accordance with Section 46 (2) of the Copyright Act 2001 Laws of Kenya, KAMP & PRIŠK collect and distribute royalties on behalf of rights holders of producers of sound recordings and performers of audio and audio-visual works respectively.

By Rosemary Waithaka
ENFORCEMENT ACTIVITIES UNDERTAKEN BETWEEN JANUARY – MARCH 2013

1. Raids Conducted

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3. Cases Taken To Court

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