

THE EFFECTIVENESS OF COPYRIGHT LAW IN UGANDA

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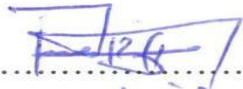
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DECLARATION

with my signature affixed hereunder, I, **BATTE FRANK**, declare and attest that the work presented in this dissertation is the product of my independent scholarly research. I further affirm that this work has not been previously submitted, in whole or in part, to any other Institution of higher learning for the conferment of any academic award.

Signature


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Date. .

APPROVAL

This is to certify that this dissertation was done under my supervision.

Supervisor: Dr. Anthony C.K. Kakooza

Signature:..


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Date: . .

16th May '25
.....

DEDICATION

I dedicate this dissertation to my mum, Omulongo Nakato H. Nalubega, for her endurance, contribution and sacrifice towards its accomplishment and her support during the four years of my study. **To Mr. Edrisa Musuuza aka Eddy Kenzo** for the tremendous efforts you have made in championing the rights of creators in the creative industry. Your advocacy will not only benefit the music industry but will also positively impact the entire creative sector. You will be remembered in the history of creators as a man who stood and fought for their rights.

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The interpretations, mistakes and shortcomings in this study are exclusively my own responsibility.

-Batte Frank

May 2025

LIST OF ACRONYMS

ARIPO: Africa Regional Intellectual Property Organization

CMO: Collective Management Organization

CNRA: Copyright and Neighbouring Rights Act

IP: Intellectual Property

IPR: Intellectual Property Rights

NIPP: National Intellectual Property Policy

TCEs: Traditiona Cultural Expressions

TRIPS: Trade Related aspects of Intellectual Property

UCC: Uganda Communication Commission

UDHR: Universal Declaration of Human Rights

UPF: Uganda Police Force

UPRS: Uganda Performing Rights Society

URRO: Uganda Reproduction Rights Organization

URSB: Uganda Registration Service Bureau

WCT: WIPO Copyright Treaty

WIPO: World Intellectual Property Organization

WPPT: WIPO Performances and Phonograms Treaty

WTO: World Trade Organization

ABSTRACT

This study critically examines the effectiveness of copyright law in Uganda, with a particular focus on its infringement. It explores the legal framework governing copyright protection at both national and international level. The study investigates the extent to which copyright law deters infringement and supports creative industry in Uganda. Through a combination of doctrinal, qualitative, and physical library data collection analysis the research identifies key challenges undermining the law's effectiveness and also the enforcement mechanisms in the Act.

The study therefore, recommended amendment of copyright and Neighboring Rights Act, establishment of Intellectual Property Tribunals, public awareness as a best way to ensure to ensure adequate protection and enforcement of the rights of the holders.

TABLE OF CONTENT

DECLARATION	i
APPROVAL	ii
DEDICATION	iii
ACKNOWLEDGMENT	iv
LIST OF ACRONYMS	vii
ABSTRACT	viii
TABLE OF CONTENT	ix
1.1 Introduction	1
1.2 Background	2
1.2 Statement of Problem	6
1.3 Objectives of the study	8
1.3.1 General Objectives	8
1.3.2 Specific objective	8
1.4 Research Questions	8
1.5 Significance of the Study	8
1.6 Justification	9
1.7 Theoretical Framework	10
1.8 Scope	13
1.9 Literature Review	14

1.10 Methodology	21
1.12 Limitation	21
1.13 Proposed Chapter Breakdown	22
THE CURRENT LEGAL REGIME OF COPYRIGHT LAW IN UGANDA	23
2.0 Introduction	23
2.1 The legal framework of copyright law in Uganda today	23
2.2 The institutional framework of Copyrights in Uganda.	27
2.3 Applicability of Copyright and Neighbouring Rights Act	34
CHAPTER THREE	48
COPYRIGHT INFRINGEMENT IN UGANDA	48
3.0 Introduction	48
3.1 Types of copyright infringement	49
3.2 Forms of copyrights infringement	56
3.3 The causes of copyright infringement in Uganda	58
3.4 The current copyright enforcement mechanisms in the Act	61
3.5 Defenses of copyright infringement in copyright law	68
CHAPTER FOUR	74
4.0 INTRODUCTION	74
4.1 Findings	74
4.2 Conclusion	77
4.3 Recommendations	78

BIBLIOGRAHY 83

LIST OF STATUTES 85

CHAPTER 1

1.1 Introduction

This research is premised on the effectiveness of copyright Law in Uganda. Some scholars like Carol Plunket¹ say, there is no precise definition of intellectual property, because it is a basket of different rights and is as diverse as human ingenuity. Intellectual Property is a product of human intellect.² However, according to the Black's Law dictionary³ Intellectual Property is the category of intangible rights protecting commercially valuable products of the human intellect.

Intellectual property is divided into four main statutory categories and two common law categories. The categories include: Copyright and industrial design, patents, Trade marks, passing off and confidential information.⁴ The statutes confer upon the owner of each intellectual property right a monopoly in the property protected.

There are different principal characteristics of intellectual property rights: property rights- Intellectual property rights are self evidently proprietary in nature. They can be bought and sold, mortgaged and licensed just like any other type of property. Secondly, Intellectual property rights are territorial in nature, that is, they arise as a result of national legislation which

¹ *Dr. Anne Marie Mooney Cotter, Intellectual Property Law*

² *Ibid*

³ *Bryan A Garner Black's Law Dictionary 11th Edition p. 963* ⁴

Supra note 1.

authorizes an official grant of the right by a national intellectual property office.⁴

This research is mainly focused on copyright as category of intellectual property law. Copyright is the right to copy; specifically a property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adopt, distribute, perform, and display work.⁵ Copyright encompasses an enormous economic and cultural field, extending to raw material of the arts, education, information, entertainment, broadcasting and the media and the design world. Although copyright is a relative rather an absolute, monopoly, monopolistic behavior is possible.⁶ This is because the demand is very likely to be large but volatile, in the fluctuating market in which we live. Any monopoly power is subject to limits, including: duration rights; fair dealing; freedom of independent creators.

1.2 Background

Copyright law is a fundamental element of intellectual property rights, developed and designed to protect and ensure the creations of authors, musicians, artists, and other creators receive recognition and financial benefits from their works. The history of copyright law starts with the early privileges and monopolies granted to printers of books. However, the history of copyright can be classified into three major generations.

⁴ *Hellen Norman, Intellectual Property Law Directions, 2nd Edn 2014*

⁵ *Supra n.2 p.424*

⁶ *Carlone B. Ncube Intellectual Property Law in Africa 2nd Edn*

The first generation: This started with the invention of the printing press and came to an end in England with enactment of the British Statute of Anne of 1710⁷ and in much of Europe with the end of the 18th century. It was the period when individual privileges were granted to publishers and authors. The

British Statute of Anne 1710, was the world's first copyright law statute. This Act introduced for the first time the concept of the author of a work being the owner of its copyright, and laid out fixed term of protection.⁸

The second generation: this generation started with first legislative enactment in the world to protect the author's rights, and it's represented by; the Statute of Anne of 1710 in England, the Federal Copyright Act of 1790 in the United States of America, and the Literary and Artistic Property Act of 1793⁹. The statute of Anne, didn't make any distinction between the citizens and foreigners for publishing in England. Whereas the literary and artistic property act in France extended the legal protection to foreigners as well as the nationals. This was the generation when the author's rights were protected by general legislation and also marked the beginning of conventions and treaties between various countries.

The third generation: the 19th century brought profound changes in the conditions which the rights of the authors were based on politics, education, and the economy created new opportunities for authors but also exposed them to widespread piracy, particularly in foreign countries. Authors

⁷ Dr. Khalid Shamim & Aqa Raza, *The Copyright and Her History*, 2022, Vol.11, Number1 NTUTJ. Of Intel. Prop.L. & Mgmt

⁸ *Ibid*

⁹ David I. Bainbridge, *Intellectual Property*, 9th Edition(Pitman publishing imprint) p.33

demanded stronger protections, but conflicting interests emerged as some nations benefited from exploiting foreign works, while cheap reprints flooded markets, undermining local authors and publishers. In the U.S., copyright laws until the late 19th century allowed rampant piracy of foreign works, especially English books. Efforts to curb this faced resistance due to vested interests in cheap reprints.¹⁰ Over decades, advocates like George Haven Putnam and American authors lobbied for change¹¹. Their efforts culminated in the International Copyright Act of 1891, which extended copyright protection to foreign works, curbing piracy and promoting fairness for authors globally.¹²

Uganda's national copyright laws have been partially harmonized through international and regional agreements, such as TRIPS Agreement, WCT, WPPT. While there are similarities among nations' copyright laws, each jurisdiction maintains its own distinct laws and regulations governing copyright. These differences can affect the scope of protection, duration, enforcement mechanisms, and exceptions or limitations, such as fair use or fair dealing. International agreements like the TRIPS Agreement aim to establish minimum standards for copyright protection, but the implementation and interpretation of these standards vary widely across countries, and international treaties like the Berne Convention.

In Uganda, the Copyright and Neighbouring Rights Act ¹³ governs these protections, granting authors exclusive rights to their works while also

¹⁰ <https://books.openedition.org/obp/1060?lang=en>. (accessed 24, April 2025)

¹¹ *Supra n.8 p. 20*

¹² *Supra n.11*

¹³ *Cap. 222*

encouraging public access to knowledge.¹⁴ copyright laws in Uganda are dated back to the period of the British rule, which began in 1894. Prior to Uganda's independence in 1962, common law and statutes of general application were applicable in Uganda the Intellectual property Rights laws of Britain inclusive.

This was so until 1991 when the supreme court of Uganda in **Uganda Motors Limited vs Wavah Holdings Limited**¹⁵ court held that the acts of general application no longer have any place in the jurisdiction of the High court of Uganda. As earlier noted that most laws of Uganda are a replication of the laws of the United Kingdom, this is where the copyrights law of Uganda derives its applicability into Uganda.

The 1902 and 1911 Orders in Council received English law into Uganda; this is when copyright law emanated from United Kingdom to Uganda where it was observed as Ugandan law by the reception clause in the 1902 orders in council¹⁶ hence becoming the Copyright Act of 1964 upon independence. This existed not until the adoption of the Copyrights and Neighboring Rights Act Of 2006 ¹⁷ . intellectual property rights are also protected as one of constitutional right under chapter IV¹⁸,this right is a government mandate under the constitution.¹⁹

¹⁴ *Ibid*

¹⁵ [1992]UGSCI

¹⁶ *David J Bakibinga Intellectual Property law in East African 2nd edition(Law Africa Publishing (K) Ltd)* p.14

¹⁷ Cap222

¹⁸ *The 1995 Constitution of the Republic of Uganda as Amended*

¹⁹ *ibid*

Article 189²⁰, the sixth schedule lists the function and services for the government of Uganda is responsible to include copyrights, patents, trademarks and all forms of intellectual property. Article 189(2) makes it clear that the regulation of copyrights or any form of intellectual property is a responsibility of the central government for the case of Uganda. However, the district councils and the councils of the lower local government units may on request by them, be allowed to exercise the functions and services specified in the sixth schedule of this constitution or if delegated to them by the the government.

The owner of copyright subsisting in a work has the exclusive right to do certain acts in relation to the copyrighted work. These acts are; making a copy, broadcasting or selling copies to the public.

1.2 Statement of Problem

Uganda has a comprehensive framework designed to protect copyrights, comprising the Constitution, various statutes, international conventions, regional conventions, regulations, and the involvement of government authorities. These measures are meant to safeguard intellectual property and provide legal protection for the rights of creators. However, in practice, the effectiveness of these instruments remains questionable due to the increasing prevalence of copyright violations.

The growing cases of copyright infringement highlight a significant gap between the theoretical existence of legal protections and their practical

²⁰ *ibid*

enforcement. This issue can be attributed to several factors, including limited public awareness, misconceptions about copyright laws, digital piracy threaten the effectiveness of the law, and challenges faced by copyright holders in asserting their rights. The lack of effective enforcement mechanisms further exacerbates this situation, rendering the existing legal provisions inadequate to curb the infringement of copyrights, hence undermining the creative industries' growth.

Although copyrights are formally recognized and protected under Uganda's intellectual property laws, such as the Copyright and Neighboring Rights Act Cap 222 and its accompanying regulations of 2010²¹, their implementation has not effectively addressed the challenges on the ground. Additionally, Uganda's obligations under international agreements, such as TRIPS Agreement and ARIPO framework, have not translated into substantial progress in curbing copyright violations.

This disconnect between law and practice has far-reaching implications, including discouraging innovation, undermining the creative industry, and depriving creators of their rightful economic benefits. Addressing this problem requires a deeper examination of the underlying factors contributing to copyright infringement and the development of effective strategies to bridge the gap between legal frameworks and practical enforcement.

²¹ *Copyrights and Neighboring Rights Regulations, 2010*

1.3 Objectives of the study

1.3.1 General Objectives

This research considers why there has been persistent copyright infringement in Uganda yet there is a law that ensures the protection of copyrights.

1.3.2 Specific objective

1. To examine the legal framework of copyright law in Uganda
2. To analyse the applicability of copyright law in Uganda
3. To establish the root causes of copyright infringement in Uganda
4. To suggest possible measures for copyright infringement

1.4 Research Questions

1. What is the relevance of copyright law in Uganda ?
2. What are the root causes of copyright infringement given the presence of copyright laws in Uganda?
3. What are the possible measures for copyright infringement?
4. What are the legal and institutional framework of Uganda's copyright laws?

1.5 Significance of the Study

This study adds value to the research area of copyright protection by critically analyzing the effectiveness of the copyright law in Uganda.

This research will basically consider how stakeholders like authors, artists, the judiciary, legislators and their effort towards enabling the protection of copyrights.

This research will also look at how copyright infringement has continued to be a common problem in Uganda today.

This study will also contribute to academic discussions on intellectual property law in particular Copyright law in Uganda and provide insights for policymakers, enforcement agencies and content creators or authors. The findings will help in formulating legal reforms and enhancing enforcement mechanisms.

1.6 Justification

Very many creators and authors of different material don't know their intellectual property rights most especially copyright rights, such people include, song writers, performers, content creators. Therefore, it is more important to undertake this study of analyzing the effectiveness of copyright law in Uganda because it analyzes how effective is copyright law in protecting people's copyrights, and economic rights as established in the constitution.²² This research helps the copyright holders to know their economic and moral rights.

²² Supra n.19

1.7 Theoretical Framework

This research is guided by the theoretical framework of copyright propertization. Copyright law is justified and explained by various philosophical theories. This section will also analyse three primary philosophical justifications for copyright law within the scope of users' rights. These three theories are: appropriation theories, economic theories, and utilitarian theories. In the end, it shows that each theory supports a far more liberal interpretation of users' rights than is currently granted by the law today. This is true particularly with respect to the creation of derivatives. While each theory supports strong copyright protection for the right of reproduction, none of them support an absolute right to make derivatives.

Appropriation Theories: Appropriation theories for copyright law are best described through a quote from Lysander Spooner: “he who does discover or first takes possession of, an idea, thereby becomes its lawful and rightful proprietor; on the same principle that he, who first takes possession of any material production of nature, thereby makes himself its rightful owner.”²³ These theoretical perspectives are centered on the authorial contributions of a creator as a justification for ownership rights in the creation. Lockean and Hegelian philosophies are creator-centric, using notions of labor or

²³ Palmer, T.G., *Are Patents and Copyrights Morally Justified? The Philosophy of Copyrights and Ideal Objects*, 13 *Harv. J.L. & Pub. Pol'y* 817, 823 (1990).

self-actualization by or of the individual creator to justify protection of her creations.

From Lockean's perspective, many secondary users do not violate the justified exploitation of the fruits of the original creator's labor. Moreover, users are entitled to their own right to appropriate from works of intellectual creation that can be considered part of the commons- even where those works are not legally part of the public domain. From the Hegelian perspective, some but not all secondary users may impact the creator's sense of self-actualization through her work but only when those secondary uses are believed to originate from the first creator and, more importantly, when those uses are not paid for. Both perspectives offer far more space for users' rights and derivative creativity than is currently offered by the law.

Labour Theory: Locke: Philosopher John Locke is likely the father of modern copyright law. Lockean theory of property is also referred to as "labour theory" Locke adamantly advocated that any violation of an individual's property right is an unacceptable and unlawful intrusion. However, while often seen as a creator-centric philosophy with respect to copyright law, Locke placed similar emphasis on protection for the collective.

Lockean justifications for copyright law must establish a delicate balance between the rights of the creator and those of users- or what Locke describes as the "commons."With respect to the balance between individual property rights and those of the common, Locke invoked his principle of "no

harm.”²⁴ Lockean philosophy dictates that when a property right is created, the unauthorized use or taking of that property by third parties harms the labourer and should be unlawful²⁵

Economic theory of Copyright law:²⁶ Copyright law is often justified not only by philosophical theories but economic ones as well. Theoretically, copyright law is used as a tool to correct market imperfections inherent to the economics of the creative industries. There are two characteristics of intellectual property, specifically copyrighted works, that create market imperfections not typically seen with tangible property that’s;

Firstly, copyrighted works are non-rivalrous, this means that a creative work may be enjoyed an infinite amount of times by an infinite number of people without depleting others of further enjoyment²⁷, and secondly, intellectual creations are non-excludable, this means that it is not always possible to prevent people who have not purchased or paid for the works from accessing and enjoying them.²⁸ The economic justification for copyright can also be described as an encouragement theory in that it is designed to encourage the production of creative works through economic incentives.

²⁴ Mitchell Longon, *A System Out of Balance: A Critical Analysis of Philosophical Justification for Copyright Law Through the Lens of Users’ Rights*, 56 U.MICH. J. L. REFORM 779(2023)

²⁵ *Supra* n.19

²⁶ *Supra* n.20 p. 792

²⁷ <https://www.openaccess.bcu.ac.uk/13177/1/A%20System%20Out%20of%20Balance%20A%20Critical%20Analysis%20of%20Philosophical%20Justifications%20for%20Copyright%20Law%20through%20the%20Lens%20of%20Users%E2%80%99%20Rights.pdf>. (accessed 17, March 2025)

²⁸ *Ibid*

Utilitarian Theory: this argues that copyright laws exist to incentive creativity and benefit society.²⁹ Truly utilitarian copyright law would likely serve to promote social welfare by advancement of arts, sciences, and thereby learning. However, it would also reject the strong monopoly protections that often benefit individuals over society that have come to define the modern legal framework. Utilitarian philosophy supports liberal users' rights that must be carefully balanced against the minimum individualist protections necessary to promote creation.

1.8 Scope

The geographical scope of the study is primarily focused on Uganda. While this study primarily focused on Uganda's legal and regulatory frameworks, has also incorporate international perspectives of copyright laws. The temporal scope of this study is focused on the period from 2006 to the present. This period is significant because the CNRA came into effect in 2006, and it has since influenced Copyrights protection practices. The research examines the evolution of Uganda's copyright laws since the enactment of the CNRA, with a particular focus its effectiveness.

The thematic scope of the study revolves around copyright protection laws, with a particular emphasis on CNRA and its impact on Uganda's regulatory landscape. The study explores effectiveness, the enforcement mechanisms of CNRA in Uganda.

²⁹ *Supra n.4 p. 76*

1.9 Literature Review

The issue of the effectiveness of copyright law has been acknowledged internationally and at most related to be a human rights concern by the UDHR³⁰ provides that everyone has the right to the protection of moral and material interests resulting from any scientific, literary or artistic production of which he is the author. Nevertheless, at the national level now Uganda confinement of the CRNA.

Copyrights law didn't originate from Uganda, but in Britain, therefore at the national level of Uganda there is no large number of literatures addressing on the effectiveness of copyrights laws. However, most of the literatures are of regional and international nature. Therefore this research came up after making reference to the following studies

According to Faruk Lubega & Jane Nanvuma³¹ all piracy is copyright infringement but not all copyright infringement is piracy. The authors discuss the two types of copyright infringement: primary and secondary infringement. However, they do not go on to outline the specific legal requirements or elements necessary to prove the existence of either form of infringement. This gap highlights the need to establish the elements that must first be demonstrated to prove infringement. This study identifies the essential ingredients for both primary and secondary infringement.

³⁰ Article 27

³¹ Farquor Lubega & Jane Nanvuma *The Principles of Intellectual Property Law in Uganda 1st edition* (The Teeparkots Inc. Publishers) p.42

According to Sarah Kaddu³² book piracy manifests in many forms which can be electronic or physical, it involves the replication of copyrighted literature through scanning, photocopying, electronic duplication and printing. The paper highlights the challenges posed by both digital and physical piracy and the need for stronger regulations to safeguard intellectual property rights of the authors.

She calls for legal reforms to keep pace with technological advancement.

Although she talks about piracy, there are other forms of infringement she doesn't mention in her book such as exploitation of the digit economy, this gap highlights the need for a reform to facilitate the commercial and cultural opportunities of the digital economy which this study seeks to address.

Creative and expression,³³ the author shows the procedure work must meet to qualify for protection. To qualify for copyright protection, a work must be **original** and originality relates to form of expression and not to the underlying idea. This article goes ahead to say, that, in some jurisdiction like south Africa, it requires the work to be fixed in material form.

The author goes further to provide that choreographic works or improvised speeches or music performances that have not been notated or recorded, are not protected. Anyone who engages without the prior permission of the copyright owner in an activity, which the copyright owner alone is

³² Sarah Kaddu. *Examining Uganda's legal and Institutional Framework in Curbing Book Piracy*, 2022, Vol 27 p.23-41, Ghana Library Journal

³³ Uganda Law Commission, *Creative Expressions, An Introduction to Copyright for Small and Medium sized Enterprises*, vol 4, *Intellectual property for business series*.

authorized to do or prohibit, is said to have violated the owner's copyright and is said to have infringed the copyright. However, the enforcement of these rights in Uganda is still a myth to a larger extent because the newly established Directorate of Copyright and Neighbouring Rights lacks capacity and strong enforcement measure to effectively monitor and address violations of IPR, since the enforcement bodies are not independent hence this study aims at addressing this challenge

According to Catherine Colston & Jonathan Galloway³⁴ copyright only subsists in the following work; original literary, dramatic, musical or artistic works; sound recordings, films or broadcasts and the typographical arrangement of published editors. They went head emphasize that the work to be original it must not be a copy. The author argues that in some circumstances, despite the existence of a qualifying copyright work, courts may refuse to enforce copyright in work in the public interest because of the nature of its content, such as immoral contents, scandalous or contrary to family life; injurious to public life, public health and safety or the administration of justice; if it incites or encourages others to act in away referred to the above mentioned.

Uganda is a rich cultural heritage, traditional knowledge and cultural expression need to be protected such cultural heritage include oral traditions, music and artistic expressions need to be protected so that the community benefits, this research aims to address the need to protect traditional knowledge and cultural expressions.

³⁴ *Catherine Colston & Jonathan Galloway Modern Intellectual Property Law 3rd Edition (Tylor & Francis e-library,2010) p.285*

Mihaly Ficsor³⁵ he talks about copyright and human rights, he puts emphasis on the rights of the authors which is well established under article 27 of the UDHR and should be in harmony with article 17 of the same statute which is on the right to property. Mihaly argues that copyrights do not necessarily grant a market power to the owners of the rights or lead to monopolies unduly restricting competition.

Mihaly went on to say that creations and production of new works and objects of related rights normally increase competition and broaden consumer choice hence the objectives of copyright law and competition law converge. Although these sources outline global principal and frameworks, they offer limited insight into how these legal standards are domesticated within Uganda's own copyright regime such as the CRNA³⁶³⁷ This gap highlights the need for context specific analysis of Uganda's framework, which this study seeks to provide.

David J Bakibinga³⁸ analyses the historical evolution of copyrights. Argues that there are two types of rights conferred by copyright protection, and these are economic rights and moral rights. He goes on to say that the law of copyright confers exclusive rights on the owner of the copyright and any person other than the owner who wishes to exercise any rights over copyrights can only do so with consent of the owner or authorization of the

³⁵ *Yo Takagi, Larry Allman, & Mpazi A. Sinjel, Teachings of Intellectual Property: Principles and methods 2nd Edition(combridge University Press) p.86*

³⁶ *Supra n.19*

³⁷ . ³⁸ *David J Bakibinga Intellectual Property law in East African 2nd edition, (Law Africa Publishing (K)Ltd) p.27*

owner. Failure to do so would be tantamount to infringement of the copyright. To him, copyright infringement may be either primary or secondary.

Caroline B. Ncube³⁸ focuses on the different legal frameworks of different African countries on intellectual property rights law and also regional legal frameworks. The author goes ahead to discuss sub regional IP organization such as ARIPO and OAPI. The writer argues that OAPI's legal framework is much broader in coverage than ARIPO and it includes annexes on literary and artistic property. ARIPO has a counterpart in its recently adopted Kampala Protocol on Voluntary Registration of Copyright and related rights of 2021.

Caroline goes ahead to explain the difference between the Bangui Agreement and Kampala Protocol on Voluntary Registration of Copyright and related rights, stating that the Bangui Agreement covers substantive elements such as eligibility for protection, rights, and duration whilst the Kampala Protocol is only about registration of the said rights. The study will highlight the loopholes in the Kampala protocol: the protocol talks about voluntary registration; however, innovation in creating a centralized registration system for African creators, suffers from limited legal enforceability across member states due to its non mandatory nature and lack of harmonization with national laws. This study examines how voluntary registration under the Kampala Protocol can be strengthened by encouraging ARIPO member states to adopt enabling legislation that grants evidentiary

³⁸ *Caroline B. Ncube Intellectual Property Law in Africa 2nd Edition (published by Routledge) p.44*

value or presumptive ownership to registered works thereby enhancing the protocol's legal relevance within national jurisdictions.

Dick kawooya, Ranald Kakungulu and Jeroline Akubu³⁹ argue that the 2006 Copyrights Act makes no mention of digital rights management systems or technological protection measures. This study is going to dive into digits and provide a solution to this gap. They go ahead to analyse different laws and policies which are connected to copyright in Uganda. They cite the lack of effective administration of the law, weak enforcement and lack of awareness among stakeholders as a recipe for a problematic copyright environment. This study is will address these challenges and also provide implementation.

Anthony C.K. Kakooza⁴⁰ argues that the purpose of copyright system is protecting the works of authorship from those who would otherwise illegally profit from them. To him, recognition of ownership is established whereby society recognizes an individual as the owner of particular form of express. He goes ahead to give the characteristics of a copyright. He emphasizes that copyrights in TCEs are tangible and easily identifiable.

The author emphasizes the importance of protecting IPR through effective implementation. In this regard, reference is made to model laws, regional agreements, and national legislation that safeguard TCEs, to the researcher,

³⁹ *Country Report African Copyright And Access To Knowledge (ACAZA)Project Uganda July 2009*

⁴⁰ *Anthony C.K. Kakooza, The Cultural Divide: Traditional Cultural Expressions and The entertainment industry in developing economies(DPhil thesis, University of illinois at Urban Champaign, 2014)*

this underscores the notion that enacting sound laws is not sufficient on its own-government must also ensure proper enforcement and consistent followup. International and regional treaties should be complemented by deliberate state action. Furthermore national authorities must exercise caution in balancing these legal commitments with market competitiveness, avoiding scenarios where international obligation undermine local economic interests.

David I Bainbridge⁴¹ emphasizes that where a person is in fiduciary relationship to another and creates the work in question in the context of that relationship then he will hold the copyright in the work on trust for the other. He goes further to emphasize that copyright tribunal is the old performing right tribunal with more powers and much wider scope of operation and it handles cases of copyright infringements. Although there is a law that protects fiduciary relationships in IPR, disputes arising from copyright infringement in Uganda are handled by High Court. This has contributed to a significant backlog of copyright related case. This research maps out the need to address this challenge.

Uganda Law Reform Commission⁴² this report emphasizes the need to reform the Copyright law in order to facilitate the commercial and cultural opportunities of the digital economy. The report provides for other avenues where Uganda need to reform its Copyright and Neighbouring Rights Act such as encourage innovation and reward creativeness, and the need for copyright regime that is more flexible and adaptable.

⁴¹ David I. Bainbridge, *Intellectual Property*, 9th Edition(The Pitman Publishing Imprint) p.119

⁴² Uganda Law Commission, *Review of the copyright and neighbouring rights Acts, 2006 Report*

1.10 Methodology

This research adopted a qualitative research methodology approach design which concerns analysis of documents as a basis for this research whereas library research and internet research are to be used as methods of data collection. The study is conducted through the usage of physical library whereas these methods are used to analyze various scholarly writings on more pertain to the effectiveness of Copyright law in Uganda whereby conducted by making critical analysis of secondary data of various literature like Online Articles, textbooks, Law journals.

Online resources from trusted websites are relied upon in accessing information and materials relating to this research problem. Such information and materials included laws reliable and published scholarly works and other reliable published information from trusted websites like the Pdf Driver books search engine.

1.12 Limitation

Limited books in the library about copyright hence limited access to reliable data on copyrights, the researcher faced a challenge of gathering data from different sources since the library is not well equipped with Intellectual Property Text Books and this has limited the researcher's research. However, as a way of mitigating this factor, the researcher opted for internet research method as way of overcoming this challenge.

1.13 Proposed Chapter Breakdown

- i) Chapter One provides the background of the study, the general objective of the study, have an overview of the legal problem, research questions, objectives and significance, literature review and the methodology.
- ii) Chapter two maps out the legal regime, institutional framework of copyrights in Uganda, and applicability of the CNRA.
- iii) Chapter three explores an overview of Copyright infringement, and causes of copyright infringement, enforcement mechanisms in the CRNA and defences for copyright infringement in Uganda.
- iv) Chapter four is the summary of the study's findings, conclusions and recommendations.

CHAPTER TWO

THE CURRENT LEGAL REGIME OF COPYRIGHT LAW IN UGANDA

2.0 Introduction

This chapter covers the conceptual framework and protection of copyrights in Uganda. This chapter is divided into three segments: firstly, the conceptual legal framework of copyright in Uganda which is anchored in national legislation, regional treaties and agreements, and international convention. Secondly, analyses the institutional framework of copyrights in Uganda.

Thirdly,

2.1 The legal framework of copyright law in Uganda today

The 1995 constitution of the Republic of Uganda⁴³, it provides that every person in Uganda has a right to practise his or her profession and to carry on any lawful occupation, trade or business. Its also to the effect that, every worker has a right to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social rights and also have a right to collective bargaining and representation.⁴⁴

In relation to the above article, the creators' economic rights and moral rights are protected by the above articles, and many of the creators have joined collecting societies such as UPRS, the objectives of these collecting societies are; to provide its members or other persons in need of it, with

⁴³ Article 40(2)

⁴⁴ Ibid Art.40(3)a&b respectively.

information on all matters relating to copyright and neighbouring rights and to give advise and keep its members informed about their rights and interests⁴⁵

Article 26⁴⁶ provides for protection from deprivation of property, it further provides for that no person shall be compulsory deprived of property or any interest in or right over property of any description. This protection is mandatory and it's a responsibility of the government as required by Article 189 and the sixth schedule of the constitution⁴⁷

Marrakesh Agreement⁴⁸, establishes the WTO⁴⁹ and the functions of WTO are; to facilitate the implementation, administration and operation of this agreement; provide a forum for negotiation among members; administer trade policy review mechanism⁵⁰ it also facilitates access to published works for persons who are blind visually impaired or otherwise print disabled connecting to copyrights.

WIPO Copyright Treaty⁵¹, this is an international treaty adopted in 1996 by the WIPO member states. This treaty deals with the protection of works and the rights of their authors in the digital environment. It also deals with two

⁴⁵ Supra n.14 Sec.57(g)

⁴⁶ Supra n.19

⁴⁷ Ibid

⁴⁸ (1994)1867 UNTS 154

⁴⁹ Ibid Art.1

⁵⁰ Ibid Art. 3

⁵¹ (adopted 20 Dec 1996, entered into force 6 march 2002) 2186 UNTS 121.

subject matters to be protected by copyright: computer programs⁵² and complications of data or other material⁵³

TRIPS Agreement ⁵⁴ , it took effect in January 1996. The Agreement introduced global standards for protecting and enforcing all forms of IPR including those for copyrights. ⁵⁵ Uganda is a signatory to the TRIPS Agreement. The purpose of this agreement is to the effect that the protection and enforcement of IPR should contribute to the promotion of technological innovation, and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in manner conducive to social and economic welfare and to balance of rights and obligations.⁵⁶

Bern Convention⁵⁷, sometimes its referred to as the Paris convention⁵⁸ Its an international copyright agreement that provides for automatic protection for literary and artistic works⁵⁹ in member countries, regardless of the author's nationality or the country where the work was first published.⁶⁰

ARIPO is an inter-governmental Organization that facilitates cooperation among member states in IP matters. The purpose for the establishment of this organization: firstly, to promote the harmonization and development of

⁵² Ibid Art.4

⁵³ Ibid Art.5

⁵⁴ World Trade Organization, Agreement on Trade-Related Aspects of Intellectual Property Rights,WTO, Geneva 1994

⁵⁵ Moni Wekesa and Ben Sihanya, Intellectual Property Rights in Kenya, p.6

⁵⁶ Supra n.56, Art.7

⁵⁷ Bern Convention for Protection of Literary and Artistic Works, 1971

⁵⁸ Supra n. 53, Art.1(3)

⁵⁹ Supra n.59 Art.1

⁶⁰ Ibid Art.3

IP laws, and matters related thereto, appropriate to the needs of its members and the region as a whole.⁶¹ Secondly, to promote, in its members, the development of copyright and related rights and ensure that copyright and related rights contribute to the economic, social and cultural development of members and the region as a whole.^{62,63}

Kampala Protocol on Voluntary Registration of copyrights and Related Rights⁶⁴ is the recent African regional legal framework adopted to facilitate voluntary registration of copyright and relate across African countries. It was developed under the auspices of ARIPO.

The purpose of Kampala Protocol, firstly, to establish, manage, facilitate and coordinate a system for voluntary registration and notification of copyright and related rights. ⁶⁴ Secondly, to uphold common principles regarding voluntary registration and notification of copyright and related rights.⁶⁵ Thirdly, to provide copyright holders means of presumption to authorship or ownership of rights⁶⁶ and lastly, to ensure that creative industries contribute to the socio-economic development of countries.⁶⁷

Common Market Protocol⁶⁸ East African countries have taken an extra mile to protect and strengthen administration of IPRS, the five countries promulgated the Common Market Protocol which came into force on 1st July

⁶¹ Art.3(a)

⁶² Art.3(l)

⁶³ ,ed

⁶⁴ Ibid Art.3(a)

⁶⁵ Ibid Art.3(b)

⁶⁶ Ibid Art.3(c)

⁶⁷ Ibid Art.3(d)

⁶⁸ Protocol on the Establishment of the East African Community Common Market, 2010 ⁷⁰

Ibid Art.5(3)k, Art.43

2010. This protocol provides for governance and administration of IPR. It provides that the partner states shall co-operate in the promotion and protection of IPR.⁷⁰ The partner states shall put in place measures to prevent infringement, misuse and abuse of IPR and promote awareness.⁶⁹

Copyright and Neighbouring Rights Act 2006,⁷⁰ apparently in Uganda, this is the statute which regulates and protects copyrights and related rights. It protects literary, scientific and artistic work⁷¹⁷²

Copyrights and Neighbouring Rights Regulations⁷⁴ the regulation provide for the registration of rights, assignment, transfer; registration of collecting societies and protection of neighbouring rights.

National Intellectual Property Policy⁷³ this was enacted in may 2019 mainly: to establish appropriate IP infrastructure that supports innovation and creativity; to develop human capital for the IP value chain; and to enhance utilization of IP system.

2.2 The institutional framework of Copyrights in Uganda.

In Uganda, there are different institutions responsible for effective governance and administration of Copyrights as discussed below;

⁶⁹ Ibid Art.43(3)

⁷⁰ Supra n.14

⁷¹ Ibid Sec.5

⁷²

⁷³ May 2019

Uganda Registration Service Bureau. This is a statutory body established under Uganda Registration Service Bureau Act⁷⁴ some of its functions are to administer and give effect to the relevant laws and provide registration services; to carry out registrations required under the relevant laws; to maintain registers, data and records on registrations affected by the bureau and to act as a cleaning house for information and data on those registration.⁷⁵

URSB is the main body responsible for the registration of copyright and IPR, it acts as a Copyright Office in Uganda. Recently on 25, April 2025, the Minister of Justice and Constitutional Affairs, Hon. Norbert Mao together with the registrar General of URSB, Ms. Mercy K. Kainobwiso unveiled the newly established Directorate of Copyright and Neighbouring Rights at URSB⁷⁶. The purpose of the directorate are: safe guarding copyrights interests; promoting awareness of IPR; ensuring compliance with copyright law to foster creative and innovation.⁷⁷ This directorate is under URSB.

Collective management Organisation. CMOs are collective management Organisations established by owners of copyright to protect and enforce their economic rights.⁷⁸ These CMOs play a crucial role in administering of copyright in the modern era aggregating rights and centralizing licensing,

⁷⁴ Cap.217, Sec.2

⁷⁵ Ibid Sec.3

⁷⁶ <https://ursb.go.ug/2025/04/29/ursb-unveils-the-directorate-of-copyright-and-neighbouring-rights/>. (24th April, 2025)

⁷⁷ Ibid

⁷⁸ <https://www.ipos.gov.sg/about-ip/copyright/collective-management-organisation>. (24th, April, 2025)

monitoring and enforcement functions. In order for these CMOs to operate fully in Uganda, they must be registered.⁷⁹

There are only three CMOs in Uganda; Uganda Reproduction Rights Organization, Uganda Federation of Movie Industry, and Uganda Performing Rights Society. These are discussed below in detail;

Uganda Performing Rights Society. UPRS is a society that was formed in 1985 by authors mainly musician to advance the cause of copyright administration in Uganda. Its recognized by the engorgement as a collecting society and it's a member of the CISAC.⁸⁰ UPRS is mainly for musical works and its main role is to collect royalties through licensing agreements with music users and later distribute the same inform of royalties to its members.⁸¹

The necessity of copyright collecting society is imperative on account of the fact that society has the expertise and means of monitoring copyright users for purpose of assessing royalties that is required to be paid to individual copyright owner. It would be impossible for individual artist to monitor the various media that exploit the copyrights such artists to determine the level of royalty that should or ought to be paid⁸²

⁷⁹ Supra n.14, Sec.56

⁸⁰ <https://uprs.go.ug/about-us-2/>. (26, April,2025)

⁸¹ ibid

⁸² Cellutant Kenya Ltd v Music Copyright Society of Kenya Ltd [2009] eKLR ⁸⁵ Supra, n.82

UPRS helps entities that play music as part of business activities like radio stations, clubs, media houses obtain permission from copyright owners for the use of their music. UPRS is open to all copyright owners such as performers, songwriters, publishers and producers⁸⁵

Uganda Reproduction Rights Organization. URRO was incorporated in 2010 and legally registered to act on behalf of Authors, publishers of literary works to protect their copyright. Distribute royalties and contribute to the IFRRO.⁸³

URRO negotiates and concludes reproduction licenses with different users in Uganda.⁸⁴

Uganda Federation of Movie Industry. UFMI is a member based copyright management organization thus a copyright collecting agency or CMO; a body created by copyright law to engage in collective rights management of film industry in Uganda with authority to license copyrighted works and collect royalties as part of the compulsory licensing or individual licenses negotiated on behalf of its members.⁸⁵ It was formed in 2006.

In the case of Bwanika Julius & Others v URSB & UFMI⁸⁶ Justice Ssekaana Musa stated that, *“the URSB should render guidance to the UFMI on how to make or amend the constitution that would govern and include all members. The membership should be open to any person who is a*

⁸³ <https://urro.ug/>. (27, April, 2025)

⁸⁴ Ibid

⁸⁵ <https://ufmi.co.ug/>. (28, April, 2025)

⁸⁶ Misc. Cause No.083 of 2018

stakeholder.....URSB should issue out a collecting Society Licenses calls on fresh applicants with knowledge and experience in copyright management to take on roles of collecting society for the film industry” this clearly indicates that URSB plays an oversight role over CMOs.

He further stated that, “the single role of collecting society is to collect royalties and distribute them on behalf of their members.”⁸⁷ This indicates how effective are CMOs in doing their work.

Uganda National Musician Federation:This was established in 2023 with a vision to create a united voice for the music industry in Uganda. It was established because there was a need for collective representation and advocacy in the face of the industry challenge. Its mission is to promote and protect the interests of musicians in Uganda.⁸⁸ The birth of UNMF was as a result misunderstanding in the National Musician Association between the stakeholders which split them into two. While both collecting society and the federation play significant role in the protection of copyright, their functions differ. The collecting society mainly focuses on collecting royalties and distributing them on behalf of their members⁸⁹ whereas the federation operates as umbrella body that represent the interests of musicians and foster industry development.

⁸⁷ Ibid

⁸⁸ <https://unmfederation.com/about/mission.php>. (May, 6, 2025)

⁸⁹ Supra, n.89

It was a great idea to separate UNMF and UMA because the two organizations have different roles. In the case of **Bwanika Julius & Others v URSB & UFMI**⁹⁰ Justice Ssekaana Musa stated that, “it was wrong to merge a federating body with a collecting society because these two institutions do totally different works and such cannot be merged whatsoever.” It was there a great idea for separate UNMF from UMA

However, a growing rivalry between UNMF and UMA has created friction within the creative industry. Disagreements over mandates, representation and control of copyright related revenue have led to public confusion among artists and the stakeholders. In most cases, musicians are uncertain about which organization to align with, leading to low compliance with copyright licensing and weakened enforcement efforts. This institutional conflict undermines public confidence in the copyright system, delays royalty payment and dilutes the collective voice needed to lobby for a stronger copyright protection and reform.

Justice Ssekaana Musa said⁹¹, “A strong and efficient copyright system rests on three pillars; an appropriate legal framework, efficient mechanism for enforcing the rights not at just court level and lastly develop a collective management system.” Not until a collaborative framework or clear regulatory guidance is established, this rivalry continues to pose a challenge to the promotion and respect of copyright in Uganda.

⁹⁰ Misc. Cause No.083 of 2018

⁹¹ Ibid

Copyright Institute of Uganda. CIU is established to promote copyright law awareness and education in order to steer interest in and advance the study and understanding of copyright law in relation to copyright and neighbouring rights.⁹²

Uganda National Council for Science and Technology. This is a statutory body established under Uganda National Council for Science and Technology Act⁹³ The purpose of the council: to assist in the promotion and development of indigenous science and technology; to protect through appropriate patent and to operate a national patent office.⁹⁴

Uganda communication Commission. UCC is a also a statutory body established by the Uganda Communication Commission Act⁹⁵ the function of the commission are: to promote competition including the protection of operators from acts and practices of other operators that are damaging to competition, and facility the entry into markets of new and modern system and services.⁹⁶ UCC plays a crucial role in regulating broadcasting and online content to prevent copyright infringement in electronic media.

⁹² <https://www.devex.com/organizations/copyright-institute-of-uganda-ciu-159800>. (28, April, 2025)

⁹³ Cap.211, Sec 2

⁹⁴ Ibid Sec.4

⁹⁵ Cap.103, Sec.4

⁹⁶ Ibid Sec.5

Uganda Police Force. UPF is a unit established under the Police Act⁹⁷ the function of UPF are; to protect the life, property and other rights of individuals⁹⁸ these rights include IPR. The Intellectual Property Enforcement was established, and this was in cooperation with the Uganda Police, URSB

High court of Uganda. This is established under the constitution⁹⁹ and its to the effect that the judicial power of Uganda shall be exercised by the courts of judicature which shall consist of the High Court of Uganda.¹⁰⁰ The High Court has different division but copyright cases are handled by the commercial division. Commercial Court means an administrative arrangement by which commercial court matters are assigned to a judge of High Court sitting at Kampala or at High Court in any other part of Uganda¹⁰¹

2.3 Applicability of Copyright and Neighbouring Rights Act

This Act applies to any work, including work created or published before the commencement of it, which has not yet fallen into public domain where the work is: created by citizen of Uganda or resident; first published in Uganda, respective of the nationality or residence of the author.¹⁰² And created by a person who is a national of or resident, and first published in a country referred to under section 80 of CNRA.¹⁰³ Copyright or neighbouring rights owners who is not a citizen or resident of Uganda shall be protected under

⁹⁷ Cap.324, Sec.2

⁹⁸ Ibid Sec.4

⁹⁹ Supra n.19,

¹⁰⁰ Ibid Art. 129(c)

¹⁰¹ Judicature(Judicial Review) Rules, 2009. R.2

¹⁰² Supra n.18, Sec.1

¹⁰³ Ibid

the CNRA if the work was first published in a country which is specified under Part I and part II of the schedule 2 of the CNRA¹⁰⁴

One of the fundamental tenants of copyright is that copyright does not exist to protect ideas but rather the form in which they are expressed.¹⁰⁵ This notion is well provided for under the CNRA that, ideas, concepts, procedures, methods or other things of a similar nature are not protected by copyright.¹⁰⁶ Article 9(1)¹⁰⁷ is to the effect that copyright protection shall extend to expression and not to ideas, procedures, methods of operation or mathematical concepts as such.

In Faulu Kenya Deposit taking Microfinance Limited v Safaricom Limited¹⁰⁸

it was stated that “what was required to attract copyright protection in the expression of ideas was an exercise of skill (the use of one’s knowledge, developed aptitude or practice ability in producing the work) and judgment (the use of one’s capacity for discernment or ability to form an opinion or evaluation by comparing different options in producing the work) which exercise would necessarily involve intellectual effort.”

In Byte Legion Technologies v MTN(U) Ltd¹⁰⁹ it was quoted that, “it is possible to have to have a confidence document, be it formula, plan, sketch or something of that kind, which is the result of work done by the maker on materials which may be available for use of anybody; but what makes it

¹⁰⁴ Ibid Sec.80

¹⁰⁵ *Hellen Norman, Intellectual Property Law Directions, 2nd Edn 2014, p.269*

¹⁰⁶ Supra n.18, Sec.5

¹⁰⁷ Supra n.56

¹⁰⁸ Civil Case 756 of 2012; [2012] eKLR

¹⁰⁹ HCT-00-CC-395-2009

confidential is the fact that the maker of the document has used his brain and produced a result which can only be produced by somebody how goes through the same process....” it was stated by J Geoffrey Kiryabwire that the plaintiff is seeking to protect an idea rather than an original product.

The fundamental requirement for copyright protect is that the work must be authors’ own intellectual creation.¹¹⁰ The author of any work specified in section 4 shall have a right of protection of the work, where work is original and is reduced to material form in whatever method irrespective of the quality of the work or the purpose of which is created, the protection of the work of the author shall not be subject to any formality.¹¹¹ as per this provision, the work to be protected it must be original and fixed into material form. There are three elements required to be proved for copyright protection in Uganda; Authorship, Originality, and Material form.

Originality

For a work to be entitled to copyright protection, it must be original.¹¹² Section 4(1)& (2)¹¹³ provides for the protection of original works that are reduced to material form. Under subsection 3 to provide that a work is original if it is the product of the independent efforts of the author.

The work doesn’t have to be unique or even meritorious for it to be original.

Rather originality is more concerned with the manner in which the work was

¹¹⁰ Supra n.59, Art.2(5) & Art.8

¹¹¹ Supra n.18, Sec3

¹¹² Supra n.38, p.65, Sec.3(1)

¹¹³ Supra, n.18

created and is usually taken to require that the work in question originated from the author, its creator and that it was not copied from another work.¹¹⁴ There is clear definition of originality of work regards to copyright, even the CNRA doesn't provide for its definitions. However, the courts of law have established principles to help in the determination of the originality of the work:

The test of originality was discussed in the case of **Stella Atal v Ann Abels Kirata**¹¹⁵ where stated that the test of originality is based on whether the same plan, arrangement, and combination of materials have been used before the same purpose or for any other purpose. If they have not, then the plaintiff is entitled to copyright, although he may have gathered hints from existing and known sources.

In **Ladbroke Ltd v William Hil**¹¹⁶, court observed that copyright Acts are not concerned with the originality of ideas but with the expression of thought and in the case of literary work with the expression of thought in print or writing. The originality which is required relates to expression of the thought. But the act Act does not require that the expression must be in an original or novel form, but that the work must be copied from another author.

¹¹⁴ Supra n.42, p.44

¹¹⁵ High Court Civil Suit No.967 of 2004

¹¹⁶ [1964] 1 W.L.R.273 at p.227

Derivative work means work resulting from adaptation and translation or other transformation of an original work but which constitutes an independent creation in itself.¹¹⁷ Derivative works such as translations, adaptations and other transformation of preexisting works under subsection (1) and encyclopedias and anthologies are protected as original works provided their content is selected and arranged in an original way.¹¹⁸ **Peterson J¹¹⁹ in University of London Press Ltd v University Tutorial Press Ltd** stated, that work must not be copied from another work, but it should originate from the author. The implication of this is that the constituent parts of the work themselves need not be new in any sense and that the work as a whole can be made up from common place and preexisting materials.¹²⁰ In **Macmillan & Co Ltd v K& J¹²⁴** it was held that although many complications have nothing original in their parts, yet the sum total of the complication may be original for the purpose of copyright.

Material Form/Fixation

Fixation means the embodiment of images or sounds or both images and sounds in a material form sufficiently stable or permanent, to permit them to be perceived, produce or otherwise communicated through a device during a period of more than transitory duration¹²¹ Article 2(2)¹²² is to the effect that it shall be a matter for legislation in the countries of the Union

¹¹⁷ Supra, n.18, Sec.2

¹¹⁸ Ibid Sec.4(2)

¹¹⁹ [1916] 2 Ch.601

¹²⁰ Supra, n.42 at p.47 ¹²⁴

[1998] FSR 431.

¹²¹ Supra, n.18, Sec.2

¹²² Supra n.59

to prescribe that works in general or specified categories of works shall not be protected unless they have been fixed in some material form. In Uganda, for the work to be eligible for copyright protection, it must be reduced to material form.

¹²³ The rationale for material form requirement is based on the fact that copyright protects expressions of ideas and not ideas themselves. ¹²⁴ Copyrights only protect idea in the tangible form.

In the case of University of London Press Ltd v University Tutorial Press Ltd¹²⁵ it was stated copyright Acts are not concerned with the originality of ideas but with expression of thought and in the case of literary work with the expression of thought in print or writing.

AUTHORSHIP

Author means the physical person who created or creates work protected under section 4 and includes a person or authority commissioning work or employing a person making work in the course of employment.¹²⁶ The person making a work is its author ¹²⁷ The author who created any work listed in section 4 of the CNRA has a right of protection of the work, where the work is original and reduced into material form.¹²⁸ The person who originates the

¹²³ Supra n.18, Sec.3(1)

¹²⁴ Supra, n.38, at p.19

¹²⁵ Supra n.115

¹²⁶ Ibid Sec.2

¹²⁷ Supra n.35, p.336

¹²⁸ Supra n.18, Sec.3

work and gives it material existence that constitutes it into a work protected under the Act is deemed to be the author of that work.¹²⁹

The authors of the work protected under under the Act enjoy their absolute moral and economic rights. Section 8¹³⁰ provides for the economic rights of the author. It further provided that the owner of a protected work have exclusive rights over their work.¹³¹ The author of any work protected by copyright shall have a moral rights¹³² section 9 above recognizes only two major moral rights: the right of attribution or paternity and integrity.¹³³

Where there are more than two persons, make material contribution to the creation of a qualifying work, they are deemed to be joint authors. Joint ownership only rises where the individual author's contribution to work cannot be distinguishable from each other, and the authors have collaborated with each other.¹³⁴ The CNRA is to the effect that, where work is created by more than one person and no particular part of the work is identified to have been made by each person, such that the work is indistinguishable, all the authors shall be co-owners of the economic rights and the moral rights relating to that work and the co-owners shall have equal rights in that work.

¹²⁹ Supra n.38, p.20

¹³⁰ Supra n.18

¹³¹ Ibid

¹³² Ibid Sec.9(1)

¹³³ Supra n.38, p.30

¹³⁴ Supra n.111

The requirements of joint authorship were laid down in the case of **Beckingham v Hodegns**¹³⁵ which are: there must be a collaboration in the creation of the new musical work; there must be significant and original contribution from each author; and the contribution of each author must not be separate.

The definition of an author includes a person or authority commissioning work or employing a person making work in the course of employment.¹³⁶ there is no way we can talk about authorship and we neglect commissioned work or work made course of employment. Where a person creates a work in the course of employment or under commission, including for the government or international body, the copyright vests in the employer or commissioning body unless otherwise agreed. The moral rights in the work shall always remain with the actual author of the work.¹³⁷

However, there is an exception Section 7(1)&(2) which is to the effect that vesting of copyright referred to in subsections 1 and 2 shall not apply to work created within the stipulated schedule of work of an employee¹³⁸ In **Jordan & Harrison v MacDonald & Evans**¹³⁹ Court of Appeal held that the copyright in a book written by an accountant belonged to his estate not his employer, with the exception of one chapter which was based on a project

¹³⁵ [2003] EWCA Civ 143 (2003)

¹³⁶ Supra, n.42

¹³⁷ Ibid Sec.7

¹³⁸ Ibid Sec.7(3)

¹³⁹ (1952) 69 RPC 10

¹⁴⁴ [1973] RPC 765

which his firm, who were management consultants had taken, he was not employed to deliver lectures or write books. Hence the accountant was the author. However, In **Beloff v Press-dram Ltd** ¹⁴⁴ it was held that an internal memorandum written by a journalist to her editor belong to her employer, the Observer, not her. She was employed as part of the business and her work was an integral part of that business.

The CNRA provides for categories of work eligible for copyright protection to include; literary, scientific, and artistic works.¹⁴⁰ And these are discussed below:

Literary works:

These include; articles, books, pamphlets, lectures, addresses, sermons and other works of similar nature.¹⁴¹ It should already be clear that a literary work does not have to be a work of literature and this is implied by the inclusion of tables, complications, computer programs, preparatory design material for computer program and databases in the category of literary works.¹⁴² Person J siad in **University of London Press Ltd v University Tutorial Press Ltd**,¹⁴³ that, it may be difficult to define literary work as the Copyright Act, but it seems to be plain that is not confined to literary work in the sense in wjhich that pharse is applied for instance to meredith's novels and the writings of Robert Louis... in a view the words literary work

¹⁴⁰ Supra, n.18,sec.4

¹⁴¹ Supra, n.18, Sec.4(1)a

¹⁴² Supra n.42, at p.55

¹⁴³ Op.Cit

cover work which is pressed in print or writing irrespective of the question whether quality or style is high.

However, there is a minimum threshold below which the work will not attract protection¹⁴⁴. For a work to be an original literary work it must accord with the phrase taken as a whole. It is not sufficient that a work satisfies each word individually. This is another limitation on the scope of copyright, effect of which is similar to de minimis principle.¹⁵⁰

In Exxon Corporation v Exxon Insurance Consultants International Ltd.¹⁴⁵

the claimant urged that word Exxon was an original literary work within the meaning of Copyright Act 1956. it was held that the term original literary work was a composite expression denoting a literary enjoyment. For the word or expression to be within the meaning of original literary work, it was not enough that the work could be described as original, literary and a work. Although Exxon could be described thus separately, it was not an original literary work because it conveyed no information, provided no instruction and gave no pleasure in the form of literary enjoyment.

Dramatic work; these include dramatic, dramatic-musical ¹⁴⁶ they also include a works of a dance and mime as dramatic. The categories of dramatic works are mutually exclusive.¹⁴⁷ For a copyright to subsist in dramatic work, they must be recorded. Dramatic work need not to be

¹⁴⁴ Supra, n.101, at p.271 ¹⁵⁰

Supra n.42, at p.57

¹⁴⁵ [1981] 3 All ER 241.

¹⁴⁶ Supra n.18, Sec.4(1)b

¹⁴⁷ Supra, n.35 at p.300

written down as long as it is recorded in some medium, even if the recording is unauthorized.¹⁴⁸ The problem with protecting a format as dramatic work is that a dramatic work should be capable of being performed. A dance must be capable of being danced and a work of mine must be capable of being mined.¹⁴⁹

In Xpedia Management & 4 Ors v Attorney General & 5 Ors¹⁵⁶ Mumbi Ngugi J, held that section 30A of the Kenyan Copyright Act which provides for “equitable remuneration for use of sound recording and audio visual works” does not limit the rights of copyright owners to property as guaranteed in Article 40 of the Kenya Constitution.

Musical work; these are defined as work consisting of music, exclusive of any words or action intended to be sung, spoken or spoken, or performed with music, rather a statement of the obvious.¹⁵⁰ In cases of songs, words and music are separate copyright works and so may be owned by different people¹⁵¹ The song will, therefore have two copyrights: one in the music and one in the words of the song, the latter being literary work.¹⁵²

Copyright can also subsist in secondary musical works, so that transcriptions and arrangements of another’s work may secure copyright for the

¹⁴⁸ Supra, n.101, at p.272

¹⁴⁹ Green v Broadcasting Corporation of New Zealand [1989] RPC 700, at p.702

¹⁵⁶ [2016] eKLR

¹⁵⁰ Supra, n.146

¹⁵¹ Ibid

¹⁵² Supra n.42, at p.59

transcriber.¹⁵³but the transcriber could be guilty of infringing the copyright in the earlier piece of music should the copyright still subsist in it, if the subscriber makes his/her arrangements without the permission of the copyright owner¹⁵⁴

However, making a new performing edition of an incomplete old work of music out of copyright may itself be worthy of copyright protection even if few or no new notes are added.¹⁵⁵ **In the case of Hyperion Records Ltd v Dr. Lionel Sawkin**¹⁵⁶ Mummery LJ rejected hyperion's argument that Dr. Sawkin had not written any new music so his work was not a musical work, He also said, 'In principle, there is no reason for regarding the actual notes of music as the only matter covered by musical copyright.....it is wrong in principle to single out the notes as uniquely significant for copyright purpose and to proceed to deny copyright to other elements that make some contribution to the sound of the music when performed, such as performing indications, tempo and performance practice indicators, if they are product of a person's effort, skill and time...' hence, it is clear that music could not have been played at all without Dr. Sawkin's work in creating the performing editions.

Artistic work: they include; works of drawing, painting, photography, typography, mosaic, architecture, sculpture, engraving, lithography and

¹⁵³ Supra, n.146 at page 305

¹⁵⁴ Supra n.42 at p.60

¹⁵⁵ Ibid

¹⁵⁶ [2005] RPC 32,at pars 55 & 56

tapestry.¹⁵⁷ According to Jacob LJ in **Nova productions v Mazooma Games Ltd**¹⁵⁸ he said, all the things falling within the artistic work category have one thing in common in that they are all static, non moving. Artistic works must be original, however there is no requirement for them to be recorded as their very existence implies some form of tangibility.¹⁵⁹

Speech, sound recording, and films: these include; audiovisual works and sound recordings, including cinematographic works and pantomimes.¹⁶⁰ there are sometimes referred to as a derivative works. Derivative work which by selection and arrangement of its content, constitute original work.¹⁶¹ They are usually based on original literary, dramatic, musical and artistic works.¹⁶² Copyright doesn't subsist in sound recording or films to the extent that they are copies of another sound recording or film, nor does copyright subsist in a broadcast or typographical arrangement to the extent that they infringe in another broadcast or arrangement.¹⁶³ there is no express requirement that these derivative works be original because many would fail.¹⁶⁴

In the case of Sikuku Agaitano v Uganda Baati¹⁶⁵ it was held that the person who created and did the video shooting or the person who carried

¹⁵⁷ Supra, n.145, Sec.4(1)f

¹⁵⁸ [2007] RPC 25 at para.16

¹⁵⁹ Ibid n.42 at p.61

¹⁶⁰ Supra n.145, Sec.4(1)c

¹⁶¹ Ibid (i)

¹⁶² Supra n.42 at p.68

¹⁶³ Supra, n.3 at p.312

¹⁶⁴ Ibid, at para.4

¹⁶⁵ HCCS No.298 of 2012

out the work of shooting the photos and videos are the author or authors of the work.

CHAPTER THREE

COPYRIGHT INFRINGEMENT IN UGANDA

3.0 Introduction

IPR, Copyright inclusive are fundamental legal entitlement that deserve the same level of protection just like other human rights enshrined in the constitution.¹⁶⁶ copyright is vital at fostering creativity, cultural, identity and economic development. In Uganda, the infringement of copyright has become increasingly prevalent, posing serious challenges to both copyright holders and the broader creative industry.

This Chapter explores the various dimensions of copyright infringement in Uganda, with particular attention to its root causes. It also maps out the effectiveness of the existing CNRA in addressing the copyright infringement.

Copy right infringement is the act of violating any of the a copyright owner's exclusive rights granted by the federal Copyright Act¹⁶⁷ The law of copyright confers exclusive rights on the owner of the copyright and any other person other than the owner who wishes to exercise any rights over the copyrights can only do with consent or authorization of the owner. Whoever wants to exercise any of the economic rights must first seek the consent or authorization of the rights of the holder. Failure to do so would be tantamount to infringement of the copyright¹⁶⁸

¹⁶⁶ Supra, n.19

¹⁶⁷ Supra, n.3, p.934, para.1

¹⁶⁸ Supra, n.38, p.43

The CNRA provides that infringement of copyright or neighbouring right occurs where without a valid transfer, licence, assignment or other authorization, a person deals with any work or performance contrary to the permitted free use and in particular where that person does or causes or permits another person to reproduce, distribute, exhibit to public for commercial purpose and use of a piece of work in a manner prejudicial to the honour or reputation of the author shall be deemed an infringement of a copyright of the owner of the right¹⁶⁹

3.1 Types of copyright infringement

Copyright infringement entails taking work without the consent of its owner rather than any dealing with physical object. Copyright may be infringed vicariously and strictly. Therefore, infringement is confined to: Primary and Secondary acts of infringement. There are two types of copyright infringement: Primary and secondary infringement as discussed below;

Primary infringement. Under this activities of those involved in fringing the copyright owner's exclusive rights that is looked at.¹⁷⁷ copyright is infringed by a person who without the license of the copyright owner does any acts restricted by the copyright.¹⁷⁰ these acts include; coping, issuing of copies to the public, renting or lending work to public, communicating work to the

¹⁶⁹ Supra n. 18, Sec.45 ¹⁷⁷

Supra n.38 at p.51

¹⁷⁰ Supra n.35 at p.360

public, adapting a literary, dramatic or musical work. All these acts are well provides for under the CNRA¹⁷¹

In most cases the liability under primary infringement is strict liability. In the UK without permission infringes. Liability is strict: no knowledge that one is infringing is required; neither innocence nor intent is relevant. However, lack of knowledge, or reason to believe that copyright subsisted in the copied work at the time of infringement prevents a claimant recovering damages, but not other remedies.¹⁷²

In actions for primary infringement, the onus of proof of infringement on the copyright fall upon the claimant to show on the balance of probabilities. In **Francis Day and Hunter v Bron**¹⁷³ Willmer LJ said, in order to constitute reproduction, within the meaning of the Act, there must be: a sufficient degree of objective similarity between the two copyright work, and causal connection between the plaintiff's and the defendant's work. **Diplock LJ**¹⁷⁴ said, once the two elements of sufficient objective similarity and causal connection are established it is no defence that the defendant was unaware that what he was doing infringed the copyright in the plaintiff's work. The two principles which are stated by in the case of Francis Day and Hunter are instructive in protection of copyright in Uganda where copyright infringers especially in informal markets or small scale content creators on media platforms frequently claim they were unaware that the work they copied was actually protected. The position of Diplock that, the idea that lack of

¹⁷¹ Supra n.18, Sec.45(1)

¹⁷² Supra n.35 at p.360

¹⁷³ [1963] Ch. 587 at p.627

¹⁷⁴ Ibid at p.624

knowledge is not defence once objective similarity and causal connection are proven, helps to prevent infringers from escaping liability simply by pleading ignorance or unintentionality. By incorporating this strict reasoning of Diplock would strengthen enforcement by placing responsibility on users to verify the originality and ownership of the content they reproduce. This would also serve to educate the public that copyright protection does not depend on only a person's awareness of the law but rather on the act of unauthorized reproduction.

These elements are discussed below;

Objective similarity

This requirement of objective similarity requires the court to compare the source work with the alleged infringement. The purpose of such comparison is to enable the court to decide whether the similarities are more likely to be the result of copying rather than coincidence, taking into account whether the similarities are close, numerous and extensive and disregarding similarities which consist of common place or unoriginal information or general ideas.¹⁷⁵ Diplock LJ¹⁷⁶ said, 'it is conceded on the one hand that the two works show considerable similarities' in the same case court compared the similarities between the melodies of the plaintiff's song and that of the defendants¹⁷⁷

¹⁷⁵ Supra, n.101 at p.307

¹⁷⁶ Supra, 174 at p.622, para.5

¹⁷⁷ Ibid para.4

In **Designer Guild Ltd v Russel William Ltd**.¹⁷⁸ The house of Lords noted that the first step comprises identifying similarities and difference between the copyright work and the alleged copy making a visual comparison. Then the court must decide whether the similarities are sufficient close to be more likely to result from copying than coincidence. This decision holds a substantial value in the protection of copyright infringement in Uganda where copy our copyright litigation is still developing and courts often lack technical or artistic expertise to assess complex works. In most cases of copyright disputes there is absence of clear guidelines on how to conduct such comparative analysis often results in inconsistent rulings and sometimes dismissal of claims due to insufficient evidence. By adopting a two step approach from designer guild, the courts would be better equipped to conduct objective similarities of the alleged infringement.

Causal connection

Derivation means that there must be a causal link between the claimant's and the defendant's works. The claimant's work must be a source of the infringement. The length of the causal chain does not matter.¹⁷⁹

The general principles apply as for infringement of copyright by copying is that there must be a causal connection, it can be direct or indirect from the original design.¹⁸⁰ Once sufficient similarity is found, the defendant's work must be shown to have originated in the claimant's: similarity alone will not

¹⁷⁸ [2001] ESR 113

¹⁷⁹ Supra n.101 at p.308

¹⁸⁰ Supra, n.42 at p.267

suffice to constitute reproduction. **Willmer LJ**¹⁸¹ said, where there is a substantial degree of objective similarity, this of itself will afford prima facie evidence to show that there is a causal connection between the plaintiff's and the defendant's work; at least, it is a circumstance from which the inference may be drawn.

This principle of causal connection is relevant in the protection of copyrights in Uganda, where proving actual copying is hindered by limited investigative capacity and lack of evidentiary resources. In many cases of copyright disputes plaintiffs are unable to demonstrate access or intentional copying due to informal distribution channels and unregulated nature of local markets. By adopting the judgment of William LJ would strengthen enforcement by allowing Uganda's courts of law to infer copying from high levels of similarity thereby enabling more practical and rights-sensitive adjudication. His reasoning would also serve as a deterrent to would be infringers who rely on the assumption that minor alterations or lack of documentation will shield them from liability. Hence, bridging the gap between the legal protection and practical enforcement in case its incorporated in Uganda's copyright jurisprudence.

The above discussed requirements of copyright infringement in primary infringement also apply to secondary infringement.

Secondary Infringement

¹⁸¹ Supra,no.177

The liability for secondary infringement to a copyright occurs when the defendant undertakes commercial dealings in infringing copies.¹⁸² It comprises of importing, possessing, selling, letting or hiring, offering for sale or hire, exhibiting in public and distributing.¹⁸³ these acts may not be performed by the person who is the primary infringer.¹⁸⁴ The secondary infringement differ from primary infringement where liability is strict, here liability is vicarious some times.

Authorising infringement also falls under secondary infringement. This is defined to mean to authorize another to do one of the restricted act. It amounts to infringement.¹⁸⁵

Secondary infringement also has some preconditions which must be satisfied before the alleged infringer can be held to have been infringed. These are; requirement of knowledge and the facts that the infringer must have been dealing in infringing copies:

The requirement of knowledge.

For secondary infringement the person responsible must have knowledge or reason to believe that the copies are infringing copies or whatever.¹⁸⁶ In **Columbia Picture Industries v Robison**¹⁸⁷ Scott J. Cited d dictum from the Judgement of Harvey J in a Australian Case, **Albert v Hoffnung & Co. Ltd(1921)22 S.R.** where hervy J defined Knowledge: ‘ Knowledge in this

¹⁸² Supra n.101 atp.320

¹⁸³ Supra n.18, Sec.45

¹⁸⁴ Supra, n.35 at p.386

¹⁸⁵ Supra ibid at p.375

¹⁸⁶ Supra n.42 at p.185

¹⁸⁷ [1987] 1 Ch.38 at p.67, para.E

section cannot mean in my opinion any more than notice of facts such as would suggest to reasonable man that a breach of the copyright law was being committed....in my opinion knowledge means notice which would put a reasonable man on inquiry' in the **Robison case** it was held that knowledge required extended to situation where the defendant deliberately refrained from inquiry and shut his eyes to the obvious, cannot be heard to say that he lacked the requisite knowledge.¹⁸⁸

Infringing copy

Its defined as a copy whose making constituted an infringement of the copyright in the work in question.¹⁸⁹ courts of law have interpreted this definition. In the case of **CBSL Ltd v Charmdale**¹⁹⁰ Browne-Wilkinson J held that the wording of the 1956 Act required the court to make but one hypothesis. Here the goods had been made by the copyright owner. Had that person made them in the united Kingdom rather than in USA, they would not have been infringing copies. The defendant was liable.

Once copyright owner alleges an infringement of a copyright, in most cases substantiality arises. In such cases infringement may relate to the whole of the work or a substantial part of it.¹⁹¹ In this regard, substantial is matter of quality not quantity. The question of substantiality has been taken by the courts as referring to the quality of what has been taken rather than its quantity in proportion to the whole. **In the case of Ladbroke Ltd v William**

¹⁸⁸ Ibid, para.F

¹⁸⁹ Supra, n.35 at p.388

¹⁹⁰ [1980] 2 ALL ER 807 at p.108, para.d-j

¹⁹¹ Supra, n.18,Sec.44(5)

Hill Ltd¹⁹² L.Pearce said: whether a part is substantial must be decided by its quality rather than its quantity. The reproduction of a part which by itself has no originality will not normally be substantial part of the copyright and therefore will not be protected.

3.2 Forms of copyrights infringement

Copying: this restricted act applies to every description of copyright work, and includes the making of temporary copies or copies which are incidental to some other use of the work. Copying is reproducing the work in any material form, including storing the work in any medium by electronic means. It can be direct or indirect. Work will be infringed by its being reproduced in any material form.

Peer to peer file sharing: The development of technology in Uganda led to many copyright infringement in the creative industry-for example the development of MP3 compression technology for digital files, and broadband access to internet, allow a rapid and easy transmission of digital music files over electronic networks. These files may be burnt to CDs Memory cards, Flash Discs, played on Mp3 player and listened to on PCs. Compression technology also allows films to be transmitted and downloaded quickly.

Rental and lending right.

Rental is making a copy of the work available for use on terms that it will or may be returned, for direct or indirect economic or commercial advantage, and lending is making a copy of work available for use on terms that it will

¹⁹² [1964] 1 WLR 273 at p.293

or may be returned otherwise than for direct or indirect economic or commercial advantage, through establishment which is accessible to the public.¹⁹³ The right to public lending of books or other writing is granted under the CNRA, but this right has been violated whereby people are given books end-up making more copies for economic purposes hence an a copyright infringement. In some cases films and sound recordings usually include other works of copyright. For example the dialogue of a film may be based on a novel or have been written as screenplay. Music may be included in the sound track, the film director must get a license from the music owner to use the his/her music, but in most cases they don't get their consent hence infringement.

Public performance, showing or playing a work in public

Public performance and the public playing or showing of certain types of work infringes copyright unless done with permission of the copyright owner. The performance of a work in public is an restricted by copyright in literary, dramatic and musical works¹⁹⁴. The playing or showing a sound recording, a film or broadcast in public is an act restricted by the copyright in the work. Therefore playing of music to members of the public for example background music in a cafe or restaurant and bars to which the public have access, is a restricted. This is the most common form of infringement of copyright in Uganda. Most restaurants and bars in Uganda play music to the public without the permission of the copyright owners.

¹⁹³ Supra n.42 at p.176

¹⁹⁴ Ibd at p.177

Another example is miming of song of another artists to the public for commercial benefits without their permission. For example recently Lil Pazzo a Ugandan artist was served with legal notice of copyright infringement by the family of the late kato Lubwama, that Pazzo's song uses their father's original composition without permission.

3.3 The causes of copyright infringement in Uganda

Ignorance of some the stakeholders in the creative industry like authors, musicians, performers, producers, photographers, event organizers lack proper knowledge about copyright law and the rights they protect. Most of the stakeholders do not understand some principles of copyright law like, fair dealing: this principle of fair use allows for limited use of copyrighted material without permission for purposes like private person use only, quotation, teaching purposes, research.¹⁹⁵ Misunderstanding or misinterpretation of fair use may lead to mistakenly believing that the use of the copyrighted work is permissible when its actually constitutes to an infringement.

In the case of **Angella katatumba V Anti-Corruption Coalition of Uganda**¹⁹⁶ court held that the defendant's use of the song 'Lets go Green' for the plaintiff in an advertisement jingle in relation to a campaign for the forest conservation didn't fall within the ambit of fair use exception hence amounted to copyright infringement. This case clearly brings out the point of misunderstanding of some principles of copyright law by stakeholders,

¹⁹⁵ Supra, n.18, Sec.14

¹⁹⁶ Civil Suit No.307 of 2011

here ACCU misunderstood the concept of fair use which resulted into an infringement.

Lack of awareness of the stakeholders as a component of ignorance of stakeholders; stakeholders who ain't directly involved in creative industry may not fully understand copyright laws and its implications. This lack of awareness can lead to unintentional infringement when using or distributing copyright materials without proper authorization. For example many people in Uganda, most especially those working at Nasser Road where most of the printing and photocopying business is located, reproduce copyrighted materials like authored books for commercial benefits without the authorization of the copyright owners, are often unaware that this constitutes an infringement of the author's rights. This illustrates how lack of awareness has significantly contributed to copyright infringement in Uganda.

The development of technology has led to infringement of copyright. The rise of internet, smartphones, social media platforms and also development of MP3 compression technology for digital files has made it easier for people to access and share content without the creator's permission. People download music, stream live performers without being licensed to do so from the copyright owner. In most cases people attend music events/ shows with their phones and cameras and start to record the performers performing on stage without the authorization from the CMO. The developments in technology have led to peer to peer file sharing application that facilitates

the illegal distribution of copyrighted movies, music. This act is mostly done at movie/music libraries.

High levels of unemployment among the youth to day has led to copyright infringement. According to UBOS rate of of unemployment is 12.3% for people between the age of fifteen years and above.¹⁹⁷ this report shows how young people in Uganda face limited job opportunities and economic hardships due high unemployment rates without stable income sources to earn a living and the taxes in taxes in Uganda are to high for them to survive. Most of them resort to unauthorized reproduction and sale of copyrighted work as a quick remedy to earn money.

Weakness in institutions responsible for copyright protection and enforcement. These institutions responsible for copyright protection and enforcement are well discussed in chapter II. These bodies suffer from a number of challenges which make their work difficult to effectively monitor, regulate and enforce these rights. Protection of copyrights by these bodies is undermined by corruption and bribery. In many cases, individuals who are caught infringing on copyrighted work without the authorization of the creators, bribe enforcement officers to avoid being arrested or prosecuted.

Ineffectiveness in the CNRA and delayed legal reforms have played a pivotal contribution to the rise of copyright infringement in Uganda. This has given more false confidence in the copyright infringers to continue infringing on others' rights. The CNRA doesn't address digital piracy on

¹⁹⁷ Uganda Bureau of Statistics 2024: The National Population and Housing Census 2024-Final Report Volume 1(Main), Kampala Uganda

online streaming platforms, content sharing on social media platforms, plagiarism and comcording offenses. Without clear provisions to address with the above emerging loopholes.

3.4 The current copyright enforcement mechanisms in the Act

The CNRA provides for copyright enforcement mechanism, which empowers copyright owners and copyright holders to enforce their rights through registration and also seek redress through civil and criminal remedies in the event of infringement. These are discussed below; **Registration of the copyright.**

The registration of a copyright under the Act is done through the URSB. The registration serves as proof of ownership of a copyright, though copyright itself arises automatically upon creation of the work.

The owner of a copyright or a neighbouring right may register the right with the registrar for purpose of: keeping evidence of ownership of the right; identification of work and authors; and maintenance of record of the rights.¹⁹⁸

The holder of an assignment licence or transfer of a copyright or neighbouring right may register the assignment, license or transfer with the registrar for the purpose of: keeping evidence of the assignment, licence or transfer of the copy; maintenance of records of the right; and publication of the assignment, licence or transfer.¹⁹⁹

¹⁹⁸ Supra, n.18, Sec.42(2)

¹⁹⁹ Reg.8 &9 The Copyrights and Neighbouring Rights Regulation,2010

The certificate issued by the registrar after registration of the rights act as a proof of registration.

Civil remedies

A person whose rights under this act are imminent danger to being infringed or are being infringed may initiate civil proceedings in the commercial court for remedies.²⁰⁰ and are;

Injunction

An injunction is an order of the court which prohibits an act or the commencement or continuance of an act²⁰¹ The high Court has the power to grant an injunction to restrain any from doing any act²⁰²

A person whose right has been or liked to be infringed can apply to court for an injunction to prevent the infringement or to prohibit the continuation of the infringement²⁰³ A particularly useful form of injunction is the interim injunction. In the case of *America Cyanamid Co. V Ethicon Ltd*²⁰⁴ Diplock J set down the essential elements for an injunction in copyright infringement to be granted and these included; serious Question to be tried, balance of convenience, adequacy of damages. He went a head and stated that there is no rule for use of expressions such as probability, prima facie or strong prima facie case in the context of exercise of a discretionary power to

²⁰⁰ Ibid, Sec.44

²⁰¹ Supra n.42 at p.195

²⁰² Judicature Act Cap.16,Se.42

²⁰³ Supra n.18, Sec.44(1)

²⁰⁴ [1975] AC 396 at page 408

grant an interlocutory injunction leads to confusion as to the object to be achieved by this form of temporary relief.²⁰⁵

In *Zeenode Ltd v A.G, Makerere University*²⁰⁶ sets out a standard four-part test is applied in deciding whether a party is entitled to an interlocutory injunction: applicant has a prima facie case against the defendant; applicant will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue; the threatened injury to the applicant outweighs the threatened harm the injunction might inflict on the respondent; and the granting of a preliminary injunction will disserve the public interest.

The two cases above; *Cyanamid* and *Zeenode*, establish the importance of provisional relief in copyright enforcement. The principles in the above cases allow right holders to halt the exploitation of their copyright. However, the inclusion of the public interest in the *Zeenode* test also ensures that injunctions are granted in manner that could stifle access to knowledge or disproportionately affect essential services.

Delivery up and Destruction

Upon application by a copyright owner, court may order that infringing copies, or articles designed or adopted for making copies of the copyright owner's work are delivered up to him or such other person as the court may direct.²⁰⁷ the CNRA provides that all productions, duplication, translation,

²⁰⁵ Ibid at p.407 para G&H

²⁰⁶ Misc. Appln. No. 347 of 2021 arising from C.S.No. 148 of 2021

²⁰⁷ Supra n.42 at p.199

extracts, imitations and all other materials involved in the infringement be forfeited and disposed of as the court may direct.²⁰⁸

In the case of *Stellah Atal v Ann Abels Kiruta*²⁰⁹ it was stated that the remedy of delivery up is available where a person- has an infringing copy of the work in his possession, custody or control in the course of business; or has in his possession , custody or control an article specifically designed or adapted for making copies of a particular copyright work knowing or having reason to believe that it has been or is able to be used to make infringing copies. Court held that the exhibits and impounded artistic works infringing mask and masai collection which has the wall hanging be destroyed by fire under the supervision of the court bailiff and also ordered the court bailiff to file a certificate of destruction with the registrar on carrying out this order.

Damages and order for account

Damages may be assessed on the basis of the equivalent royalty or licence fee which the infringer would have paid to the owner had he carried out his acts under a licence. Damages and Accounts are alternative remedies and may be available where infringement has been flagrant.²¹⁰ the grant of an injunction shall not affect the author's claim for damages in respect of loss sustained by him or her as a result of the infringement of the right.²¹¹ A person who sustains any damage because of the infringement of his or her

²⁰⁸ Supra n.18, Sec49(2)b

²⁰⁹ H.C.C.S No.967 of 2004

²¹⁰ Supra n.42, p.191

²¹¹ Supra n.18 Se.44(3)

right may claim damages against the person responsible for the infringement whether or not that person has been successfully prosecuted.²¹²

In the case of **Kawere Godfrey v New Vision**²¹³ it was quoted that, “*the measures for damages is depreciation caused by infringement to the value of the copyright as a chose in action. Thus if the defendant has dealt with the plaintiff’s copyright as if he had a licence the defendant ought to pay as damages an amount equivalent to the fair fee or royalty which he would have to pay licence to the acts, which he has done and damages may be said to be at large.*”

In **James Park v East African Education Publishers Ltd H.C.C.S No.155 of 2001 madrama I zama J**, held that in the premises the plaintiff was entitled to damages for loss of income for the period unaccounted for by the defendants.²¹⁴

The method of protecting copyright is to discourage people from infringing copyright owner’s rights with impunity. This may be done by an award of damages based on the common law principle of restitution in integrum²¹⁵

CNRA provides that all sums of money arising out of the offence and received by the offender be accounted for by the offender and paid to the person entitled to economic rights.²¹⁶

Anton pillar orders

²¹² Ibid sec.44(4)

²¹³ Civil Suit No.71 of 2014

²¹⁴ Supra n.38 at p.80

²¹⁵ Angella Katatumba v Anti-Corruption Coalition Uganda Civil Suit No.307 of 2011

²¹⁶ Supra, n.18. Sec49(2)a

Court has power to to grant search orders, this order is relevant in all forms intellectual property. A copyright owner has limited power to seize. The CNRA provides that upon an ex parte application by a right owner, the court in chambers make an order for the inspection of or removal from the infringing person's premises, of the copyright infringing materials which constitute evidence of infringement by that person.²¹⁷ An inspector may at any reasonable time and on production of the certificate of authority enter any premises, ship, aircraft or vehicle for the purpose of ascertaining whether there is or has been, or in connection with those premises, ship, aircraft or vehicle any contravention of the act.²¹⁸ section 53²¹⁹ provides for the modes of inspection of the premises, powers and responsibilities of the inspector under the act, particularly concerning the enforcement of copyright law.

In the case of Anton Pillar KG v Manufacturing Processes Ltd²²⁰ Lord Denning M.R. said that, an Anton Pillar order can be made by a judge ex parte, but it should only be made where it is essential that the plaintiff should have inspection so that justice can be done between the parties, he further noted that in the enforcement of this order, the plaintiff must act with due circumspection and they must not force themselves into the premises, in case the defendants refuse them to enter and inspect.

This principle in the above case if its integrated properly in Ugandan practice, this doctrine could strengthen the investigation arm of copyright

²¹⁷ Supra n.18, Sec.44(2)

²¹⁸ Ibid Sec.52

²¹⁹ Ibid

²²⁰ [1976] Ch.55 at p.61, para.A-D

enforcement while also reinforcing the principle that justice must be sought without undermining procedure fairness and civil rights.

Criminal remedy

The CNRA makes provision for certain criminal offences associated with copyright infringement. The seriousness with which certain forms of piracy are now taken, often involving organized crime and money laundering has been met by a substantial increase in the maximum penalties now available for copyright offences. Infringement of a copyright can lead to fines and imprisonment of a person who infringes on the right of another.²²¹

These offences are not of strict liability and an element of mens rea is required, and this mitigates the harshness of making directors of respectable companies potentially liable for infringement under criminal law. Thus, for a person to be guilty of any the offence he/she must possess actual knowledge or have reason to believe that copyright would be infringed or that he was for example dealing with infringing copies.²²² The CNRA provides for offences committed by a body of persons and its to the effect that, in case of body corporate every director and the secretary of the body shall be deemed to have committed the offence; and in case of a partnership or other body not being a body corporate, every partner or member shall be deemed too have committed the offence.²²³

²²¹ Supra, n.18, Sec.46 & 47

²²² Supra, n.42 at p.202

²²³ Supra, n.18, Sec 48

In *Rv Carter*²²⁴, the court of Appeal confirmed a sentence of imprisonment of nine months suspended for two years for a conviction of making and distributing infringing copies of video films. It was observed that such an activity was really an offence of dishonesty. This case is relevant to Uganda in cases where the informal economy often facilitates the widespread piracy of films, music and digital content. In case the criminal sanctions are put into practice by the courts of law in Uganda, this could send a strong signal of deterrence to those involved in unauthorized production and distribution of copyrighted work. However, as with the case of Carter, there would need to be careful balancing of criminal sanctions and the protection of due process to ensure that punishments remain proportionate and just.

3.5 Defenses of copyright infringement in copyright law

Under intellectual property law, Copyright law empowers the owner of a right to initiate legal proceedings against the infringer who has infringed on the owner's right without his/her permission. However, the law also provides for specific exceptions and defenses under which such claims may fail to prevail, even in the face of apparent infringement.

Fair use

This defense is provided for under the CNRA and its provides that, fair use of protected work in its original language or in translation shall not be an infringement of the right of the author and shall not require the consent of

²²⁴ [1993] FSR 303

the owner of the copyright where; production, translation, private study, public speeches, judicial proceedings-shall not be considered infringement in case its done with the acknowledgment and in accordance with private practice.²³³

The factors for determining fair use include; the purpose and character of the use, nature of the protected work, amount and substantiality used; and the effect of the use upon the potential market for value of the protected work.

234

²³³ Supra, n.18, Sec.14(1)

²³⁴ Ibid sec.14(2)

In the case of **Angella katatumba V Anti-Corruption Coalition of Uganda**²²⁵

court held that the defendant's use of the song 'Lets go Green' for the plaintiff in an advertisement jingle in relation to a campaign for the forest conservation didn't fall within the ambit of fair use exception hence amounted to copyright infringement.

Public interest

Public interest is a nebulous concept which can in some cases, provide a defence for copyright infringement.²²⁶ Cases where the public interest is at issue often concern the publication of information, and frequently questions of confidence also will be raised.

²²⁵ Civil Suit No.307 of 2011

²²⁶ Supra n.42 at p.216

In the case of *Lion Laboratories Ltd v Evans*²²⁷, it laid down the principles relevant to an application of the defence of public interest: There was a difference what was interesting to the public and what was in the public interest; it was the fact that the media, for example newspaper proprietors, had a private interest to increase circulation by publishing what appealed to the public; the public interest might be best served by giving the information to the police or some other responsible body rather than the press; and finally, the public interest did not arise only when there was an iniquity to be closed, and the defendant ought not to be restrained solely because what he wanted to publish was misconduct on the part of the claimant. These principles were reconfirmed in the case of *Angella Katatumba V Anti-Corruption Coalition of Uganda*.

This case highlights the importance of balancing the rights of creators with societal interests. This could guide courts of law in Uganda in determining when the public interest defence is valid in copyright infringement cases. In particular, it underscores that the public's right to information should not override the exclusive rights of creators unless such publications serve a clear or legal benefit.

Expiry of copyright

This deals with the duration of copyright in a particular. The CNRA provides for the duration of a copyright. It shall therefore be a valid defense by the defendant to that at the time he/she infringed on the alleged infringed right, the copyright protection in the work had expired and so the work was in

²²⁷ [1984] 2 ALL ER 417

public domain. The right is not infringed on assumptions as to the expiry of copyright or death of a author in case of anonymous or pseudonymous works²²⁸ A person may own an old original manuscript which is out of copyright, the author having died more than 70years ago²²⁹ here in Uganda its 50years after death of the author. A publication right exists which applies where a work in which copyright had expired in the first published after expiry of copyright.²³⁰

In **Lauri v Renad**²³¹ Kekewich J, held that the plaintiff had no right either to an injunction or damages in respect of a transaction the copyright in which has expired before the Act came into force.

This case highlights the relevance of understanding the duration of copyright protection and the need to enforce claims within the period of statutory protection. The CNRA clearly provides for provisions on the duration of copyright. This ruling serves are a reminder that copyright holders must act within the statutory limitation to seek remedies for infringement. This is crucial for both copyright holders and the courts of law in ensuring fair and just enforcement of copyright claims.

Acquiescence, delay and estoppel

This defence is may be raised by were the copyright owner may be aware of the activities that could infringe his copyright and yet choose to do nothing about it for a long time. In activity by the copyright owner in enforcing his

²²⁸ Supra n.42 at p.86

²²⁹ Ibid

²³⁰ Ibid at p.89

²³¹ [1892] 3 Ch.402, p.421

rights may encourage the infringer to continue infringing or even scale up his activities

In some cases, the behaviour of the copyright owner may be such that an estoppel is raised against him, this might be the case where licence might be implied where the copyright owner knows full well of what would otherwise be infringing activities and does nothing about it, leading the infringer to believe that he was the implied consent of the copyright owner²³² **The limitation Act**²³³ provides that actions shall not be brought after the expiration of six years from the date on which the cause of action arose actions founded on contracts, actions to enforce a recognizance, actions to recover any sum recoverable by virtue of any enactment or other penalties. Copyright infringement also falls under the above actions as provided for in the Limitation Act. In **Cluett Peabody & Co Inc v McIntyre Hog March & Co Ltd**²³⁴ it was held that 30years delay prevented a claim from injunctive relief in respect of an infringement.

This decision has a significant implication for copyright holders, the Uganda legal system provide for injunctive relief must be pursued within a reasonable period to ensure that defendants are not unfairly burdened by stale claims. However, the CNRA does not explicitly provide for a limitation of time on injunctive relief, the principles from this case could be used to argue for judicial discretion in cases where undue delay in asserting rights

²³² Supra n.42 at p.214

²³³ Cap.290

²³⁴ [2008] FSR 29

could undermine fairness or hinder the effective enforcement of copyright laws.

Commission work. This can work as a defence in copyright matters. A copyright of employed authors and commissioned works or authors working for international organizations belong to their employer unless evidence is shown to the contrary.²³⁵

In *Beloff v Pressdram Ltd and another*²³⁶ **Ungoed-Thomas J** held that the claim failed because the plaintiff's job is an integral part of the business of the Observer and its organization and that the plaintiff's contract with The Observer Ltd is a contract of service. Therefore, the copyright in the memorandum originally vested in The Observer Ltd and not the plaintiff.

This decision has significant implications for copyright law in Uganda, particularly in commissioned work whereby the creator may create work as an part of his/her job. This ruling highlights the relevance of contractual clarity in determining the ownership of IP created during the course of employment. Employers and employees must be aware of their respective rights and obligations under the employment contracts and also ensure that the terms regarding IP ownership are clearly delineated to avoid potential disputes over copyright ownership.

²³⁵ *Supra*, n.18, sec.7

²³⁶ [1973] 1 ALL E.R 241 at p.253, para.g

CHAPTER FOUR

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

4.0 INTRODUCTION

This chapter maps out a comprehensive analysis of the findings gathered by a researcher throughout the study, drawing conclusive insights on the current state and effectiveness of copyright law in Uganda. It also presents practical and evidence based recommendations aimed at reforming and strengthening the legal framework to better serve the interests of the government and stakeholders in the creative industry.

4.1 Findings

Several objectives were established at the outset of this study to guide the research process. The findings presented below were guided by these objectives;

i. To examine the legal framework of copyright law in Uganda

The study found out that Uganda has a legal framework that protects copyrights: The 1995 Constitution of Uganda protects of people's property and copyrights are intellectual property. It also has legal framework which was enacted in 2006 specifically for copyright protection anchored in the the Copyright and Neighbouring Rights Act. The Act protects literary, scientific and artistic work; The Copyright and Neighbouring Rights Regulations which regulates registration of copyrights; and the National Intellectual Property Policy which supports innovation and creativity.

Additionally, Uganda is a signatory to various international treaties that protect intellectual property rights such as Berne Convention, WIPO Treaty, ARIPO, Kampala Protocol, TRIPS Agreement and the Common Market Protocol which reinforce its domestic legislation

However, the study also found out enforcement institutions for copyright protection such as the URSB, Uganda Police, CMOs, UNCST, UCC, MGLSD, and High Court

ii. To analyse the applicability of copyright law in Uganda

The study revealed the widespread misunderstanding of what is protected under the copyright law. Many individuals assume that copyrights protects idea, concepts, procedures, the study revealed the general principle of copyright law that, ideas are not protected-only the expression of ideas are protected in a tangible form. The study goes ahead to examine the requirements for copyright protection. For a work to be protected, it must meet the following requirements: Authorship; Originality; Fixation/Material Form, once these requirements are met and the court is satisfied, the work will qualify for automatic protection whether registered or not.

The study found out the different categories of work protected under the CNRA which are: literary works; musical; artistic; speech, sound recordings and films and dramatic.

Despite the comprehensive scope of protection provided by the CNRA. Its applicability remains limited in practice due to low levels of awareness and enforcement.

iii. To establish the root causes of copyright infringement in Uganda

The findings of the study indicate copyright infringement is an act of violating of a copyright owner's exclusive rights granted by the Act. This infringement occurs where a person without permission uses the work of the copyright holder contrary to the permitted free use. There are two types of copyright infringement that's, primary and secondary infringement. Primary is strict liability whereas secondary infringement is vicarious liability. This study revealed there are two to prove primary infringement; objective similarity and causal connection-these elements also apply to secondary infringement. In order to prove secondary infringement there are also two preconditions; the requirement of knowledge and infringing copy. There are different forms of copyright infringement which were examined in the study to include; copying, peer to peer sharing, rental and lending right, and finally public performance , showing or playing a work in a public.

The study revealed that the primary causes of copyright infringement in Uganda include; ignorance of some stakeholders, lack of awareness of stakeholders, development of technology, high levels of unemployment, weakness in institutions responsible for copyright protection and enforcement and ineffectiveness of the CNRA and delayed reforms.

The study found out the current enforcement mechanisms in the CNRA: registration of the copyright, civil remedies and the criminal sanctions. It further established the defences available for the person alleged for infringing on the right to include; fair use, public interest, expiry of copyright and acquiescence, delay and estoppel, and commissioned work.

iv. To identify gaps and reforms of copyright law in Uganda

The study discovered that there are several gaps in the current copyright regime and these include; absence of clear provisions on digital rights management and inadequate mechanisms for collective rights management. The study outlined reforms in the CNRA to include digital rights protection, establishment of Intellectual Property Tribunal.

4.2 Conclusion

In a nutshell, this examined the effectiveness of copyright law in Uganda, with a focus on the copyright infringement and area for reform within the existing legal and institutional framework. Guided by the objectives, the study critically assessed the CNRA, analyzed its practical implementation, explored the root causes of infringement, enforcement mechanism for infringement and the defences available to a person alleged for fringing on the right. Whereas the legal framework is in place, a significant gap exists between the law and its practical enforcement. Addressing this gap requires a multifaceted approach including legal reform, institutional strengthening and public sensitization. By doing so, Uganda can be better safeguard the rights of its creators and foster a vibrant, innovative and protected creative industry.

However, also Justice Musa Ssekaana stated in the case of **Bwanika Julius & Ors v URSB & UFMI**²³⁷ that, a strong and efficient copyright system rests on three pillars;(a) an appropriate legal framework, providing substantive rights

²³⁷ Supra, n.89

to creators; (b) efficient mechanism for enforcing such rights not just at court level, but also public administration and custom level; and (c) a developed collective management system. Lack or weakness of any of these pillars would lead to failure of the whole system. He went on to state that the URSB should be guided by these principles and should be able to benchmark for the best practices around the world.

4.3 Recommendations

Drawing from the research findings of this study and the key insights that are covered during the research, the following recommendations are proposed for consideration by government agencies and all stakeholders in the creative industry. These recommendations intend to strengthen the copyright framework, enhance enforcement mechanisms and create a more supportive environment for creators in the creative industry. Their implementation would not only contribute significantly to the protection of the copyright holder's rights but also contribute to the advancement of Uganda's creative economy.

The research recommends the CNRA to be revised.

The CNRA should be revised to include the following;

Doctrine of first sale: In light of the current growing importance of access to copyrighted work and the prevalence of secondary markets in Uganda today. The researcher recommends that the CNRA be revised to incorporate this doctrine. This will not only provide legal certainty for resale and lending but also distribution of lawfully acquired physical copies of the copyrighted

works, hence enhancing consumer rights and promoting a balanced copyright regime in Uganda.

Artificial intelligence and digital: generative AI work is likely to be the next major dispute in the creative industry. In this instance AI generate the work on their own. The question that could be imposed is that who is the owner of the work authored by AI? The revision of CNRA by giving a clear definition of the term AI author and also incorporate works generated by AI in the CNRA since the current act doesn't provide for it.

Orphan work; like other jurisdictions like Rwanda provide for orphan work. The research recommends that the current CNRA be amended to include a provision which addresses orphan works. Orphan works are creative works for which the copyright owner cannot be identified or found. The absence of such a provision in the current CNRA as a legal mechanism for using such works discourages educational institutions, libraries and content developers/creators from utilizing the valuable resources. Incorporating a statutory licensing scheme or a fair use exception in the CNRA that grants the use of orphan works under well detailed specific conditions with safeguards in place to protect copyright holders who may later be found.

Doctrine of public domain, and domain public payment:the CNRA should be amended to incorporate the work eligible to fall under the public domain. Clear guidelines should be established for when and how works enter the public domain, ensuring that expired works or waived copyrights are

genuinely accessible to the public. Such works can include works whose terms of protection have expired, and foreign works which do not enjoy protection in Uganda.

The researcher also recommends for the incorporation of the domain public payment in the CNRA, this doctrine requires the users of works in public domain especially for commercial purposes to pay a small amount of fee or levy. These funds generated from domain public payment could be allocated towards cultural development, support young creators in creative industry. This mechanism ensures that even works no longer under copyright can contribute to the sustainability of the creative industry. It also promotes equity between profit driven users and the broader public interest. This fee or levy should be collected by Uganda Revenue Authority and monitor by the ministry of CMOs.

Digital environment: the CNRA must adopt to the realities of the digital age where online infringement is widespread and untraceable on social media platforms like Tiktok, Facebook, U-tube, tweeter and many other social media platforms. Digital Rights Management should be incorporated clearly in the CNRA to include the use of technological measures to prevent unauthorized access, copying and distribution of protected works. To combat online infringement a structure of notice and take down system should be adopted, requiring online platforms and hosting providers to promptly remove infringing content upon receiving a formal notice from the rights-holder. This should be accompanied by obligations to take down

infringing content swiftly and efficiently, and to suspend the accounts of the repeat infringer in case of persistent violation and this suspension of account can be done by UCC.

Improving governance of Collective Management Organization. These CMOs should be regulated by the Directorate of copyright and Neighbouring rights to ensure transparency, periodic audits and fairness in the allocation of royalties. This will restore the lost trust of creators and also promote voluntary registration. Further more, bodies like CMO, Directorate of copyright and Neighbouring rights should be empowered to block access to infringing online content particularly from rogue websites that consistently facilitate piracy.

Establishment of copyright Tribunals; that are specialized in handling intellectual property matters with a designation of specific judges with expertise in copyright and intellectual property matters to ensure a swift, informed and consistent adjudication so that justice prevails. This will also help solve the of problem of copyright and intellectual property case backlog in the High court, hence copyright and intellectual are handled expeditiously.

Strengthening Public awareness campaigns, there is a critical need to strengthen public awareness campaigns that can bridge the of undermining the widespread of ignorance of the CNRA provisions among the stakeholders

by educating them on their rights and obligations. This can be done through CMOs hence there will be a reduction in the infringement of copyrights in Uganda and empower content creators to enforce their rights.

Enhancing strict sanctions. To enhance the effectiveness of copyright law in Uganda today, its crucial to implement and enforce strict sanctions against infringements. copyright is one of those rights which has been so much abused in Uganda, its worrisome and its increasing on a rapid speed. Since the spate of infringement is increasing, available remedies and other proactive measures should be used be utilized to arrest the situation. Furthermore, stringent provisions should be inserted into the CNRA which are more effective and enforceable, and effective enforcement mechanism devised

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