

**A CRITICAL ANALYSIS OF INTELLECTUAL PROPERTY RIGHTS IN THE ENTERTAINMENT  
INDUSTRY IN UGANDA**

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## DECLARATION

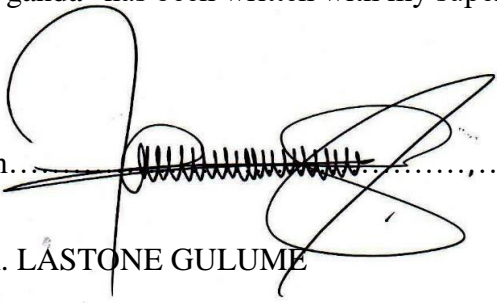
I Nakitende Alice hereby certify that this dissertation is my own original work and has never been submitted before to any institution for assessment purposes that the work conforms to the guidelines for presentation and style set out in the university guidelines. Further still I have acknowledged all sources used and have cited these in reference section.

Sign.....Date.....

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**APPROVAL**

This thesis titled “A critical Analysis of intellectual Property Rights in the Entertainment Industry in Uganda” has been written with my supervision and is submitted with my approval.

Sign.......... Date 11<sup>th</sup> May 2024.....

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SUPERVISOR.

## **DEDICATION**

I dedicate this research to the Almighty God who has enabled me go through my academic journey, my mother Mrs. Irene Nakubulwa,my aunty Mrs. Priscilla Naggayi,Compassion International for the efforts and financial support you have always made towards my education. Friends and relatives for emotional support always.

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## **ABSTRACT**

*This study focuses on assessing the relevance of copyright law to Ugandan musicians. Despite the government efforts in enacting and facilitating the Copyright and Neighbouring Rights Act 2006, its relevance and enforcement has remained unclear due to the negative public attitudes towards its poor implementation. The study focuses on such attitudes, infringement acts, its causes, challenges faced by enforcement agencies and to propose strategies and ways to improve its usage and relevancy in its role to protect the musicians’ rights. Findings from the study are targeting to discover whether the copyright laws in Uganda have been relevant and adequate enough to protect the owners of copyright and related rights against infringement. The emphasis of this research come from the fact that very few musicians make a worth-while income from sales of their music in different channels, this seems to be attributed to music infringement which remains a living night mare for many artists in Uganda. The World Intellectual Property Organisation and Member states have devised a legal regime that would afford the protection of artists to realize from the fruits of their labour. While in some developed countries, tremendous achievements have been realized, like in America and European countries, however the story seems to change in Uganda since piracy /infringement seems to be still a reality that threatens to be with us for many years to come as pirated music is found in Uganda everywhere on streets of Kampala.*

*This research will seek to examine the relevance of copyright law in curbing infringement in the music industry and reasons why infringement seems to be on the rise despite the law being enacted. The research will be considering these problems while trying to come up with practical solutions to help the state perform its duty to protect the rights of the musicians, thus the measures to improve on the copyright law enforcement in different ways and its implementation methods in order to enhance its usage and relevancy and create awareness about infringement and its emerging legal*

*issues by finding credible long term and short term solutions to such problems as may be discovered.*

#### **LIST OF ACRONYMS**

WIPO:	WORLD INTELLECTUAL PROPERTY ORGANISATION
WCT:	WORLD COPYRIGHT TREATY
TRIPS:	TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS
UPMA:	UGANDA PERFORMING MUSICIANS ASSOCIATION
WTO:	WORLD TRADE ORGANISATION
CD'S:	COMPACT DISKS
TV:	TELEVISION
IPRS:	INTELLECTUAL PROPERTY RIGHTS
UPRS:	UGANDA PERFORMING RIGHTS SOCIETY
CMOS:	COLLECTIVE MANAGEMENT ORGANISATIONS
CNRA:	COPYRIGHT AND NEIGHBOURING RIGHTS ACT
DVD'S:	DIGITAL VASETILE DISKS

MFN:	MOST FAVOURED NATIONALS
UNESCO:	UNITED NATIONS EDUCATIONAL SCIENTIFIC AND CULTURAL ORGANISATION
ARIPO:	AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANISATION
GATT	GENERAL AGREEMENT ON TARRIFS AND TRADE
CISAC	CONFEDERATION OF INTERNATIONAL SOCIETIES OF AUTHORS AND COMPOSERS

### **LIST OF STATUES**

Berne Convention for the protection of Literary and Artistic Works, 1886

Copyright and neighboring regulations 2010

Lusaka Agreement on the Creation of the African Regional Intellectual Property Organization (ARIPO) (1976)

The Constitution of the Republic of Uganda 1995

The Copyright and Neighbouring Rights Act 2006

The Police Act Cap 305

Trade Related Aspects of Intellectual Property Rights Agreement. 1995

World Intellectual Property Organization Copyright Treaty (WTC) 1967



## CHAPTER ONE

### GENERAL INTRODUCTION

#### **1.0 Introduction**

Intellectual property rights play a crucial role in the development and protection of the entertainment industry in various countries, including Uganda. The entertainment industry in Uganda has been growing steadily in recent years, with the emergence of talented artists, filmmakers, musicians, and other creative professionals contributing to the country's cultural and economic growth. This chapter highlights the overview of the study through the following subheadings:

#### **1.1 Background of the study**

In the pre-independence era, intellectual property rights were not recognized due to the influence of colonial masters who saw it as irrelevant and detrimental to their own interests. However, in the post-independence era, intellectual property laws were introduced to promote economic progress by incentivizing investment in non-tangible assets.

Intellectual Property rights in Uganda have also been quite helpful in several sectors; trade, agriculture, and industry. In trade, IPRs are investments in themselves, inventors of copyrights and trademarks do so to achieve economic goals. The business nature of IPRs can be traced from Copyright and neighbouring rights Act.<sup>1</sup> The section provides for commercial rights of an author of a copyright, he exclusively retains the rights to commercially exploit his works through publishing, producing and broadcasting and any other use that is considered of commercial benefit.<sup>2</sup>

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<sup>1</sup> (2006), Laws of Uganda.

<sup>2</sup> Section 9 of the Copyright and neighbouring rights Act

In agriculture, IPRs have revolutionized the methods of farming through new inventions that have not been heard of in the agriculture sector, new and disease resistant seeds are being developed by the umbrella body; the National Agricultural Research Organization whose vision is “*A farmer responsive research system that generates and disseminates problem-solving, profitable and environmentally sound technologies, knowledge and information on a sustainable basis* “ The input of IPRs is to grant protection to such works which will eventually lead to sustainable agricultural productivity, poverty eradication and economic development.

From the above discussion, it can remain undisputed as to how important these IPRs are to both the owners and the economy at large. However, the bigger question to ask is if by their importance as illustrated above, they deserve a place in the Constitution, the supreme law of the land.

First and foremost, Article 79(2) of the 1995 Ugandan Constitution provides that Parliament will make provisions that will have the force of law, this Article grants a Constitutional mandate to Parliament to make provisions and that these provisions will have a force of law, this means in turn that the enactment of Copyright laws is rooted in the Constitution, it serves no purpose therefore to undermine this parliamentary mandate by amending the Constitution to establish an independent provision overriding the existing parliamentary statutes. These include; the copyright and neighbouring rights of 2006, the trademark act of 2010, the industrial properties Act of 2013. These laws provide for copyrights and neighbouring rights, trademarks, patents and utility models respectively. They have not been inadequate in protecting the IPRs holder.

An IPRs holder seeking to enforce his rights in these laws will have an equal protection from the law for his IPRs in the same way if their rights were entrenched in the Constitution. This was

clearly demonstrated in *Angella Katatumba v Anti-Corruption Coalition of Uganda*<sup>3</sup> In this case, the plaintiff's song was used by the defendant for a campaign against the sale of a forest reserve (Namanve) by the government to investors. The song was used as a theme song for the campaign whereby it would be played in the background of the defendants advert on TV stations and some radio stations. This was done without the plaintiffs consent and without acknowledging her as the author of the used song. Court awarded damages worth 50 million Ugandan shillings for the infringement of the plaintiff's moral rights.

The entertainment industry in Uganda has seen significant growth and development in recent years, with the sector becoming an important contributor to the country's economy. According to the Uganda Bureau of Statistics, the entertainment industry was valued at over \$800 million in 2019, up from \$400 million in 2015 (UBOS, 2020).<sup>4</sup>

The entertainment industry in Uganda encompasses a wide range of sectors, including music, film, television, radio, theatre, and sports. The industry has been fueled by the emergence of new technologies, such as social media and streaming platforms, which have enabled artists and content creators to reach larger audiences both locally and globally.<sup>5</sup> Without adequate protection for their work, many artists and creators in Uganda are at risk of having their ideas and creations pirated or copied without their consent, leading to significant financial losses and undermining their ability to build sustainable careers in the industry.<sup>6</sup>

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<sup>3</sup> (Civil Suit No. 307 of 2011) [2014] UGCommC 107 (18 August 2014).

<sup>4</sup> Uganda Bureau of Statistics. (2020). Uganda National Household Survey 2019/2020.

<sup>5</sup> Uganda National Cultural Centre. (n.d.). About Us. Retrieved from <https://nationalculture.go.ug/about-us/>

<sup>6</sup> Kiggundu J., 'The copyright Act and Its Implications for the Music Industry in Uganda.' Makerere University, 2017.

One of the key challenges facing the entertainment industry in Uganda is the lack of adequate infrastructure and resources to support the growth of the sector. Many artists and content creators struggle to access funding, equipment, and training, which limits their ability to produce highquality content and compete with international artists. Additionally, piracy and intellectual property rights violations are common in Uganda, which has a negative impact on the ability of artists and content creators to monetize their work and earn a sustainable income. The lack of effective copyright laws and enforcement mechanisms has further exacerbated these challenges.<sup>7</sup>

Despite these challenges, the entertainment industry in Uganda has continued to thrive, with the emergence of new talent and the growth of local festivals, events, and awards shows. The government has also recognized the importance of the entertainment industry and has taken steps to support its growth, including through the establishment of the Uganda National Cultural Centre and the Ugandan Film Council.<sup>8</sup>

## **1.2 Problem Statement**

The previous law<sup>9</sup> had significant deficiencies, prompting the enactment of the Copyright and Neighboring Rights Act<sup>10</sup> as the new governing law. Despite this new law, there has been limited implementation and ongoing infringement on musical works and other copyrights. Enforcement

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<sup>7</sup> Kahunde S., 'Strengthening Intellectual Property Rights in Uganda's Creative Industries: Lessons from the Music Industry.' The East African Business Journal, 2019

<sup>8</sup> Uganda National Cultural Centre. (n.d.). About Us. Retrieved from <https://nationalculture.go.ug/about-us/>

<sup>9</sup> Copyright and Neighboring Rights Act Cap 215. <sup>10</sup> 2006.

bodies in Uganda are tasked with upholding copyright law but seem to provide inadequate support to musicians. There is a lack of awareness among musicians regarding their copyright rights and how to enforce them effectively. Infringement on musical rights is a growing issue in Uganda, necessitating action to protect musicians. Greater efforts are needed to raise awareness of copyrights and musical works, punish infringers, and strengthen coordination among bodies tasked with protecting copyright laws. This research seeks to determine whether the intellectual property rights have been adequately provided to the musicians, creators and other stakeholders in the entertainment industry in Uganda.

### **1.3 Objectives of the study**

#### **1.3.1 General objectives**

This study aims to explore the impact of intellectual property rights on the entertainment industry in Uganda

#### **1.3.2 Specific objectives**

- i. To critique the current legal framework for intellectual property rights protection in Uganda.
- ii. To identify the challenges faced by artists and creators in protecting their rights and monetizing their work in Uganda.
- iii. To recommend valuable insights into the role of intellectual property rights in promoting innovation and creativity in the entertainment industry in Uganda.

### **1.4 Research Questions**

- i. What is the current legal framework for intellectual property rights protection in Uganda?
- ii. What challenges do authors and copyright owners face in protecting their rights and monetizing their work in Uganda?

- iii. What is the role of intellectual property rights in promoting innovation and creativity in the entertainment industry in Uganda?

### **1.5 Significance of the study**

The significance of this study underlies the following aspects:

**Economic Impact:** Understanding the challenges and opportunities related to intellectual property rights in the entertainment industry will help policymakers and stakeholders in Uganda develop strategies to promote creativity and innovation in the sector since entertainment industry is a significant contributor to the economy of Uganda.

**Legal Framework:** Intellectual property rights are governed by a complex legal framework in Uganda, with laws and regulations that protect copyrights, trademarks, and patents. A critical analysis of these laws in the context of the entertainment industry will help to identify gaps and inconsistencies that may hinder the protection of intellectual property rights for artists and creators in Uganda.

**Cultural Preservation:** this study will contribute to the preservation and promotion of Uganda's cultural identity by examining the implications of intellectual property rights on cultural heritage. Intellectual property rights play a key role in preserving and promoting traditional knowledge, folklore, and cultural expressions

**International Relations:** Understanding the global context of intellectual property rights in the entertainment industry can help Uganda establish effective partnerships and collaborations with other countries, thereby enhancing its position in the global market.

## **1.6 Justification of the study**

The study on the critical analysis of intellectual property rights in the entertainment industry in Uganda is essential for several reasons.

Firstly, intellectual property rights play a significant role in fostering creativity and innovation in the entertainment industry. By protecting the rights of creators and artists, intellectual property rights create an environment where individuals are motivated to produce original works.

Additionally, the study is crucial because it will shed light on the current state of intellectual property rights in the entertainment industry in Uganda. This information is vital for policymakers, stakeholders, and industry players to assess the effectiveness of existing laws and regulations and identify areas for improvement.

Furthermore, the study will provide insights into the challenges faced by creators and artists in Uganda in terms of protecting their intellectual property rights. By understanding these challenges, policymakers can develop strategies to address them and ensure that creators and artists are adequately protected.

## **1.6 Scope of the study**

### **1.6.1 Time-based scope**

The time scope for this study is from 1986 to the present day. This time frame encompasses the period of significant developments and changes in the intellectual property laws and regulations in Uganda, particularly in relation to the entertainment industry. This period allows for an in-depth analysis of the evolution of intellectual property rights in Uganda and their impact on the entertainment sector.

### **1.6.2 Geographical**

The geographical scope would be Uganda, focusing specifically on the entertainment industry within the country. This could include analysis of the legal framework surrounding intellectual property rights in Uganda, as well as case studies of how these rights are protected and enforced in the entertainment sector.

### **1.6.3 Subject scope**

This study aims to explore the impact of intellectual property rights on the entertainment industry in Uganda, with a specific focus on the challenges faced by artists and creators in protecting their rights and monetizing their work. By examining the current legal framework for IPR protection in Uganda and analyzing the experiences of artists and creators in the country, this study seeks to provide valuable insights into the role of intellectual property rights in promoting innovation and creativity in the entertainment industry in Uganda.

## **1.7 Literature Review**

Intellectual property rights (IPR) have become a crucial issue in the entertainment industry in Uganda, as well as globally. The protection of these rights is essential for the sustainability and growth of the industry. This literature review critically analyzes the current state of IPR in the entertainment industry in Uganda, and explores the challenges and opportunities for improvement.

According to Okiror,<sup>9</sup> intellectual property rights in Uganda are protected under the Copyright and Neighboring Rights Act, which provides legal protection for the rights of creators, including authors, performers, and producers. However, enforcement of these rights remains a major

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<sup>9</sup> Okiror, W. (2017). Intellectual Property Rights and the Music Industry in Uganda. *International Journal of Business, Humanities, and Technology*, 7(6), 44-52.

challenge, as the Uganda Copyright Office lacks the resources and capacity to effectively monitor and enforce violations of IPR in the entertainment industry.

Furthermore, Balikuddembe and Tumwesigye<sup>10</sup> argue that the lack of awareness among stakeholders in the entertainment industry about the importance of IPR has also contributed to the rampant infringement of intellectual property rights in Uganda. Many artists and content creators are unaware of how to protect their works, leading to widespread piracy and unauthorized use of their content.

Additionally, Mwesigwa et al.<sup>11</sup> point out that the existing legal framework for the protection of IPR in Uganda is outdated and inadequate to address the challenges posed by digital piracy and online infringement of intellectual property rights. The lack of specific provisions for digital rights management and online distribution has made it difficult for artists and creators to monetize their works and secure fair compensation for their efforts.

On the other hand, Nansamba and Kaliba<sup>12</sup> highlight some of the recent developments in the enforcement of intellectual property rights in the entertainment industry in Uganda, such as the establishment of specialized IP courts and increased collaboration between law enforcement agencies and industry stakeholders. These efforts have resulted in some improvements in the protection of IPR, but more needs to be done to address the root causes of infringement and piracy.

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<sup>10</sup> Balikuddembe, H., & Tumwesigye, B. (2019). Challenges of Intellectual Property Rights Enforcement in Uganda's Music Industry. *International Journal of Humanities and Social Science*, 9(4), 8-18.

<sup>11</sup> Mwesigwa, A., et al. (2018). Copyright Protection in Uganda: Challenges and Opportunities for the Creative Industry. *African Journal of Law and Criminology*, 8(2), 67-79.

<sup>12</sup> Nansamba, P., & Kaliba, K. (2020). The Enforcement of Intellectual Property Rights in the Ugandan Film Industry: A Case Study of the NABY CLUB. *International Journal of Media, Culture, and Communication Studies*, 6(1), 2138.

In another article, Adeyemo, L. A. (2017)<sup>13</sup> argues that the lack of effective enforcement mechanisms and the overall legal framework for protecting intellectual property rights in Nigeria contribute to the prevalence of piracy and infringement in the entertainment industry. This article provides a critical analysis of the current state of intellectual property rights in the entertainment industry in Nigeria. It explores the challenges faced by stakeholders in protecting their intellectual property rights, particularly in the context of piracy and unauthorized use of copyrighted material.

Akinwale, A. B.<sup>14</sup> explores the economic significance of intellectual property rights in the entertainment sector, particularly in promoting innovation and creativity. The paper also discusses the need for stronger enforcement mechanisms and greater awareness among stakeholders to protect their intellectual property rights in Nigeria's rapidly growing entertainment industry. This research paper analyzes the role of intellectual property rights in driving the growth of the entertainment industry in Nigeria.

Eze, U. C.<sup>15</sup> discusses how advancements in digital technology have influenced the creation, distribution, and protection of intellectual property in the entertainment sector. The paper highlights the challenges posed by digital piracy and the need for stronger regulations to safeguard intellectual property rights in the evolving landscape of the Nigerian entertainment industry. This study examines the impact of digital technology on intellectual property rights in the Nigerian entertainment industry. Eze, U. C. (2020)

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<sup>13</sup> Adeyemo, L. A. (2017). Intellectual property rights in the entertainment industry in Nigeria: A critical analysis. *Journal of African Law*, 61(3), 465-488.

<sup>14</sup> Akinwale, A. B. (2019). Intellectual property rights and the growth of the entertainment industry in Nigeria. *Entertainment and Sports Law Journal*, 17(1), 85-102.

<sup>15</sup> Eze, U. C. (2020). The impact of digital technology on intellectual property rights in the Nigerian entertainment industry. *Journal of Intellectual Property Law & Practice*, 15(4), 345-362.

In a study conducted by Price Waterhouse Coopers (PwC),<sup>16</sup> it was estimated that piracy accounts for a loss of over R16 billion annually to the South African economy. Despite the existence of legal frameworks for the protection of IPRs in South Africa, there are several challenges that hinder effective enforcement of these rights. One major challenge is the prevalence of piracy and counterfeiting, which pose significant threats to the revenues of creators and rights holders. Another challenge is the lack of awareness and understanding of intellectual property rights among creators and rights holders. Many artists in the entertainment industry are not fully knowledgeable about their rights and how to protect them, which makes them vulnerable to exploitation and infringement.

### **1.8 Methodology**

The researcher will adopt a qualitative cross-sectional descriptive design which concerns analysis of documents.

The researcher will majorly focus on desktop research where by research will be collected by making critical analysis of secondary data of various literatures like law journals, textbooks newspapers and online Articles.

Further documentary review will be one of the ways in which data will be collected and it will require a researcher to analyze and obtain data from statutes like the Constitution of the Republic of Uganda 1995 as amended and Copyright and Neighboring Act which concerns intellectual property rights in the entertainment industry.

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<sup>16</sup> PriceWaterhouseCoopers. (2020). Economic Impact of Piracy and Counterfeit Goods in South Africa. Available at: <https://www.pwc.co.za/en/publications/intellectual-property/economic-impact-of-piracy-and-counterfeit-goods-in-south-africa.html>

## **1.9 Outline of Chapters**

Chapter one introduces the study highlighting the background of the study, problem statement, objectives and research questions, scope and significance of the study, literature review, methodology and outlines of chapters.

Chapter two will identify the challenges faced by artists and creators in protecting their rights and monetizing their work in Uganda. Artists and creators in Uganda encounter obstacles in safeguarding their rights and earning money from their work. Issues such as insufficient knowledge of their rights, inadequate legal protections, piracy, restricted distribution channels, limited resources, lack of industry support, and cultural attitudes towards intellectual property contribute to unauthorized use of their work, loss of income, and challenges in sustaining their livelihoods.

Chapter three will criticize the current legal framework for intellectual property rights protection in Uganda.

Chapter four will provide recommendations and conclusions towards valuable insights into the role of intellectual property rights in promoting innovation and creativity in the entertainment industry in Uganda.

## **CHAPTER TWO CURRENT LEGAL FRAMEWORK FOR INTELLECTUAL PROPERTY RIGHTS**

### **PROTECTION IN UGANDA**

#### **2.0 Introduction**

This chapter provides for provisions in the constitution and other laws and critiques the current legal framework for intellectual property rights protection in Uganda.

#### **2.1 The Constitution of the Republic of Uganda 1995 as amended**

The 1995 constitution of Uganda is to the effect that<sup>17</sup>, every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business.

Furthermore, 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 interests<sup>18</sup>.

The constitution provides protection of works of Copyright owners and it is to the effect that<sup>19</sup>, every person has a right to own property either individually or in association with others. And no person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied<sup>20</sup>;

The taking of possession or acquisition is necessary for public use or interest of defense, public safety, order or public health; and

The compulsory taking of possession or acquisition of property is made under a law which makes provision for; prompt payment of fair and adequate compensation, prior to the taking of possession

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<sup>17</sup> Article 40 (2)

<sup>18</sup> Article 40 (3) (a)

<sup>19</sup> Article 26 (1)

<sup>20</sup> Article 26 (2) (a)(b)

or acquisition of the property and a right of access to a court of law by any person who has an interest or right over property.

Copyright owners are accorded a procedure of enforcing their rights in case of infringement, the provisions of the constitution<sup>21</sup> are to the effect that any person who claims that a fundamental or other right or freedom guaranteed under the constitution has been infringed or violated may apply to competent court for redress which may include compensation

Thus copyright owners can individually bring a claim of infringement of their rights or the claim can be instituted by an organization on behalf of individuals for copyright infringement and in case of dissatisfaction with the decision the aggrieved party can appeal to competent court.<sup>22</sup>

In relation with instances in the entertainment industry in the country we have seen individuals like Angela Katatumba instituting claims of infringement individually, thus in the same line the Uganda Performing rights society an association for authors more so musicians instituted a claim against MTN seeking a declaration that the MTN concert at which UB40 held a public performance in Kampala in February 2008 was unauthorized hence an illustration of an association instituting a claim.<sup>23</sup>

Further still the constitution provide that in administration of justice adequate compensation shall be awarded to victims of wrongs.<sup>26</sup> Hence an equity maxim no party shall suffer a wrong without a remedy, therefore we have seen courts giving various remedies to aggrieved parties in entertainment industry for example in a case of Obsessions Company Ltd v Warid

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<sup>21</sup> Article 50(1)

<sup>22</sup> Article 50(2), (3).

<sup>23</sup> Uganda Performing Rights Society v MTN (U) LTD (Civil Suit No 287 of 2010).

<sup>26</sup> Article 126(c).

Telecom(Uganda) LTD<sup>24</sup> justice David Wangutusi entered judgment in the favor of the plaintiffs and awarded general damages of Ushs 50,000,000,exemplary damages of Ushs 10,000,000 and permanent injunction against the defendant for infringing on copyrights of the plaintiff by recording several songs of the plaintiffs in their systems and offering them for sale as caller tunes to their customers without the plaintiffs consent,licence or assignment.

The parliament is vested with powers to enact laws on any matter for the peace order development and good governance<sup>25</sup>, hence in using such powers the copyright and Neighboring Act 2006 was enacted to govern and offer copyright protection in the entertainment industry in Uganda.

### **2.3 The Copyright and Neighboring Rights Act 2006**

Copyright Act.<sup>26</sup> That protects copyright owners, also unveils ways that are used to pirate music in Uganda and the reasons advanced for the piracy. The problems encountered by music copyright owners in enforcing their rights are also discussed. The provisions, policies and practices of Uganda's copyright laws, enforcement bodies and institutions relating to music business are critically analyzed pointing out their weaknesses and making proposals for reform. Under the Copyright Act<sup>27</sup>, Neighboring rights are derived from a work protected by Copyright. They are rights of performers such as singers or actors, producers of phonograms and broadcasting organizations to protect their funds, labor and knowledge used to deliver works to the public.

Enforcement bodies and institutions such as the Uganda Police, Broadcasting Council, Collecting Societies, Courts of Judicature and all stakeholders should join the move and fight the piracy plague. Government agencies should assign particular officers to deal with copyright issues or

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<sup>24</sup> (HCT-00-CC 373 OF 2010).

<sup>25</sup> Article 79(1)

<sup>26</sup> Section 2 of the Copyright and Neighboring Rights Act, 2006.

<sup>27</sup> Ibid

cases. This means establishing special sections in the Police, Uganda Revenue Authority and the Court system to deal with copyright cases without delay<sup>28</sup>.

According to the Act, no person of any kind is allowed to create, duplicate, distribute, broadcast, make publicly available, sell or offer for sale, lease or rent out, give public performances, or import audiovisual recordings for distribution into Uganda unless they have a license from the owner of the copyright and neighboring rights or a collecting society.

### **Application of the Act (Section 3)**

The act protects all works even those published before this act was enacted. Copyright owners are vested with , exclusive rights under section 9 of the Act, to do or authorize other people to publish, produce or reproduce the work; to distribute or make available to the public the original or copies of the work through sale or other means of transfer of ownership; to perform the work in public; to communicate the work to the public by wire or wireless means or through any other means... including through the internet; where the work is pre-existing work, to make a derivate work; to commercially rent or sell original or copies of the work; to do, in relation to that work any act known or to be known in the future; or to reproduce transcription into Braille which is accessible to blind persons. Section 10 provides for protection of moral rights and it is accorded to authors of the work, to be recognized every time the work is performed even in the case of transfer of the economic right.

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<sup>28</sup> Section 5 (1) of the Copyright and Neighboring Rights Act, 2006

### **Duration of copyright protection (Section 13)**

Protection of copyrightable works that is to say economic rights of the author are protected for fifty years from the date of making the work or from the date the work is made available to the public with the consent of the author.

### **Assignment of copyright and licensing (Section 14)**

Intellectual property though intangible in nature it can be transferred by the owner, just like any other property and this can be through assignment, licensing, transferring or bequeathing to another person the economic rights in a copyright in whole or in parts; and transfer to any Braille production unit in Uganda the economic rights in the Braille translation.

### **Copyright infringement (Section 46)**

Copyright infringement occurs when without the consent or authorization of the owner's work that is to say through licensing, transfer or assignment one uses or deals with others work contrary to the permitted free use and in instances where that person permits others to use such work, through duplicating it or reproduce the same. Further still the use of a piece of work in a manner prejudicial to the honor or reputation of the author shall be deemed an infringement of the right of the owner of the right.

### **Civil remedies (Section 45)**

The Act provides civil remedies and is to the effect that an aggrieved party or any person whose rights are in imminent danger of being infringed or are being infringed may institute proceedings

in the commercial court for an injunction to prevent the infringement or to stop the continuation of the infringement.

### **Administration of Copyright**

Section 41 of the Act establishes a Registrar of Copyright and other officers .the National Copyright Information Centre shall be the Registrar's office.

In addition to processing license applications, the Registrar will register works and productions that must be registered under this Act, register collecting societies, advise and discipline collecting societies, record assignments, licenses, and transfers of copyrights, record copyright contracts pertaining to exploitation of rights, and provide information to the public and users of copyright works regarding copyright and neighboring rights. The Registrar will also work with collecting societies to advise the Government on matters pertaining to copyright and neighboring rights, as well as perform any other duties or functions related to copyrights, neighboring rights, and collecting societies that may be necessary for the effective operation of this Act.

According to the Copyright Act, neighboring rights are those associated with the auxiliary roles that producers of sound recordings, audiovisual, and broadcasting companies play in the realization of literary or artistic works; they also include the rights to destiny and dominance in works; and they reduce the distance between works when they are published. These auxiliary roles are reliant on the author's work, without which they cannot commence. The author of any work covered by section 5 of the Copyright Act (above) is entitled to protection under the Copyright Act if the work is original and reduced to material form in any way, regardless of the work's quality or intended use.

### **3.3 The police Act Cap 305**

Article 211 of the 1995 constitution puts in place police as an institution and Article 212 provides for its functions where one of the major is to protect life and property which also include copyright works. Section 4(1) of the police Act<sup>29</sup> further provides that one of the major function of police is to protect life and property and this duty extends to protection of copyrights though intangible but also regarded as a property. Therefore police is mandated to extend protection to copyrights as a property.

### **3.4 Copyright Protection at a Regional Level 3.4.1 Lusaka Agreement on Creation of the African Regional Intellectual Property**

#### **Organization (ARIPO) (1976)**

Intellectual property at African level is governed by ARIPO and it was ratified by Uganda on August 8, 1978. The major reason for establishing ARIPO are to promote harmonization and development of intellectual property laws and to establish a close relationship between member parties.<sup>30</sup>

State members to the agreement are required to take all necessary steps within their means to ensure to facilitate the exchange and dissemination of information and to provide training and research facilities.<sup>31</sup>

#### **3.4.2 The global music industry**

Based on artistic skill and highly specialized resources, music is a quietly crucial copyright work.

Although the modern music industry originated in the early 20th century, when advancements in

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<sup>29</sup> Police Act 303.

<sup>30</sup> Article 3 of the ARIPO

<sup>31</sup> Article 11 of the ARIPO

recording technology made live performances less important and instead focused on reproduction, much of its current form can be attributed to the post-war golden age's rising incomes and individual experimentation, particularly the growing financial independence of young people. The United States market, with \$500 million in sales, dominated the business in the late 1950s, when it was still relatively modest. Over 4 billion records—any sound recording in any format—were sold globally by 1998, bringing in close to \$39 billion in revenue. 1. A Additionally, music is now more closely associated with other entertainment products like TV shows, movies, and videos, which creates additional revenue sources. With almost one-third of all music purchases coming from each region, Europe and North America lead the global music market. Sales of recorded music worldwide make up just under 25%, with the Japanese market dominating the Asia-Pacific region. Nonetheless, the developing globe is home to the markets with the quickest rate of growth. The global demand for musical works has prompted the ratification of several international agreements to safeguard and regulate musical works against infringement. As a party to several of these conventions, Uganda is obligated to abide by their terms.

### **3.4.3 Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS)**

TRIPS, also known as the Agreement on Trade-Related Aspects of Intellectual Property Rights, is a crucial component of the World Trade Organization (WTO) Agreements, which established legally binding duties among WTO member states in 1995. All of the nations in the South-East Asian region—aside from Bhutan, the Democratic People's Republic of Korea, and TimorLeste—are WTO members. The obligations of Member States with regard to several types of intellectual property rights are covered under the TRIPS Agreement: patents, industrial designs, geographical indications, trademarks, copyright and related rights, patents, layout-designs (topographies) of integrated circuits, and protection of undisclosed information. The WTO's dispute resolution process applies to the TRIPS Agreement. In the event of a non-

compliant nation, Member States may, as a last resort, use trade sanctions to enforce the organization's agreements and regulations.

### **General principles of TRIPS Agreement**

National and Most Favored Nation Treatment Part I of the TRIPS Agreement also incorporates certain general principles, including national and most Favored nation (MFN) treatment. The national and MFN treatment principles should be familiar from the study of GATT 1994. While these principles have their own special characteristics in application to IPRs, the general idea is the same. Pursuant to the national treatment principle, a Member should treat foreign nationals in a manner equivalent to local nationals for the purpose of obtaining and enforcing rights in IPRs, as well as in defending against allegations of abuse.

Pursuant to the MFN principle, a Member should treat nationals of different Members in the same manner, and should not grant special privileges to nationals of particular Members. Both the national and MFN principles are subject to certain limitations and exceptions.

The TRIPS provide for copyright and related rights<sup>32</sup> where;

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article *6bis* of that Convention or of the rights derived there from.
2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

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<sup>32</sup> Part 2 Article 9 of the TRIPS

### **Term of protection (article12)**

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within

50 years from the making of the work, 50 years from the end of the calendar year of making

### **Limitations and Exceptions (Article13)**

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

#### **3.4.4 Berne Convention for the protection of Literary and Artistic Works 1886**

Adopted in 1886, the Berne Convention addresses the rights of authors and the preservation of their works. It gives artists—poets, authors, musicians, painters, and so on—the ability to manage the usage, distribution, and terms of their creations. It is built around three fundamental ideas and includes a number of clauses that specify the minimal level of protection that must be provided. The Berne Convention was further updated in Paris in 1896, Berlin in 1908, Berne in 1914, Rome in 1928, Brussels in 1948, Stockholm in 1967, and Paris again in 1971 before being amended once more in 1979. On April 24, 1928, New Zealand joined the Rome Revision.

According to Article 9 of the TRIPS Agreement, New Zealand must abide with

Protection to be granted, as well as special provisions available to developing countries that want them for use.

Additionally, "moral rights" are provided by the Convention. These rights include the right to assert ownership of the work and the right to protest any negative action taken against the work

that could harm the author's honor or reputation, such as mutilation, deformation, or other modification.

Regarding the length of protection, it is generally required to be granted until the 50th year following the author's passing. There are, nonetheless, several exceptions to this broad guideline. The duration of protection for works that are anonymous or pseudonymous ends 50 years after the work has been legally made available to the public, unless the author's identity is clearly identifiable through their pseudonym.<sup>33</sup>

#### **3.4.4 World Intellectual Property Organization Copyright Treaty (WTC)**

WIPO was established in 1970 following the entry into force of the Convention Establishing the World Intellectual Property Organization (Stockholm, 1967) (hereafter the “Convention”), adopted by the States parties to the existing Unions.

In the preamble of this treaty (WCT), the contracting parties, desiring to develop and maintain the rights of authors in their literary and artistic works in a manner as effective and uniform as possible. Recognizing the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works, and emphasizing the outstanding significance of copyright protection as an incentive for literary and artistic creation, recognizing the need to maintain the rights of authors and the larger public interest, particularly education, research and access to information as reflected in the Berne Convention they agreed among others that;

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<sup>33</sup> Under the TRIPS Agreement, any term of protection that is calculated on a basis other than the life of a natural person must be at least 50 years from the first authorized publication of the work, or – failing such an event – 50 years from the making of the work. However, this rule does not apply to photographic works, or to works of applied art.

## **In relation to the Berne Convention Article 1**

- (1) This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention. This Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other treaties.
- (2) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the Berne Convention for the Protection of Literary and Artistic Works.
- (3) Hereinafter, “Berne Convention” shall refer to the Paris Act of July 24, 1971, of the Berne Convention for the Protection of Literary and Artistic Works.
- (4) Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.

## **Scope of Copyright Protection (Article 2)**

Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such. **Copyrightable Subject Matter (Article 4)**

A computer program is protected under Article 2 of the Berne Convention as a literary work.

Computer programs are covered by this protection regardless of how they are expressed.

Compilations of information or other materials, in any format, that qualify as intellectual creations due to the way their contents have been chosen or arranged are protected as such. This

protection is not applicable to the data or material itself, and it does not override any copyright that may be present in the data or material that is part of the compilation.

### **Duration of Protection of Photographic Works Article 9**

In respect of photographic works, the Contracting Parties shall not apply the provisions of Article 7(4) of the Berne Convention.

### **Limitations and exceptions (Article 10)**

(1) In accordance with their national laws, Contracting Parties may restrict or waive the rights granted to authors of literary and artistic works under this Treaty in specific circumstances as long as those circumstances do not interfere with the work's usual commercial use or unreasonably jeopardize the author's legit interests.

In implementing the Berne Convention, Contracting Parties agree to restrict any restrictions or exceptions to rights to specific circumstances that do not interfere with the work's usual utilization or unduly jeopardize the author's legitimate interests.

### **Applicability of the Treaty (Article 13)**

Contracting Parties shall apply the provisions of Article 18 of the Berne Convention to all protection provided for in this Treaty.

### **Enforcement of the Remedies (Article) 14**

(1) In compliance with their respective legislative frameworks, the Contracting Parties promise to implement the necessary steps to guarantee the implementation of this Treaty.

(2) The Contracting Parties shall ensure that their laws provide for effective enforcement procedures against any act of infringement of rights covered by this Treaty, including prompt remedies to prevent infringements and remedies that serve as a deterrent to future infringements.

## **CHAPTER THREE CHALLENGES THAT COPYRIGHT OWNERS FACE IN PROTECTING THEIR RIGHTS AND MONETIZING THEIR WORK IN UGANDA.**

### **3.0 Introduction**

Authors of various works in entertainment industry such as music and dramatic works play a vital role in the society, enriching our lives with their creativity and talent. However, such people face various challenges when it comes to protecting their rights and monetizing their work. This chapter will delve into the specific challenges faced by copyright owners and authors in Uganda, providing detailed explanations and critiques. This chapter discusses challenges faced by artists and creators in protecting their rights and monetizing their work in Uganda. Copyright owners in Uganda encounter obstacles in safeguarding their rights and earning money from their work. Issues such as ignorance of their rights, inadequate legal protections, piracy, restricted distribution channels, limited resources, lack of industry support, and cultural attitudes towards intellectual property contribute to unauthorized use of their work, loss of income, and challenges in sustaining their livelihoods.

### **3.1 Challenges Authors and Copyright owners Face in Protecting Their Rights and Monetizing Their Work in Uganda**

#### **3.1.1 Limited Access to Legal Support**

In Uganda, copyright holders frequently encounter difficulties obtaining legal assistance to uphold their rights. Legal services can be prohibitively expensive and difficult to obtain, especially for up-and-coming comedians and musicians who might not have the money to retain attorneys. They are at a disadvantage when handling copyright infringement complaints or negotiating equitable contracts because of this lack of legal support. In order to meet the demands of writers and copyright holders, efforts should be made to offer inexpensive or pro bono legal services. *MTN (U) Ltd & Anor v. Ssebagala, Al Hajji Nasser Ntege Ssebagala*, the plaintiff in this case, sued MTN Uganda Ltd. on the grounds that the company had violated his copyright by exploiting his speeches as ring tones or caller melodies without getting his permission. The court's ruling in this case emphasized the value of copyright protection and the requirement for using the legal system to enforce such rights.

This case emphasizes how crucial legal support is for protecting people's rights, particularly in the entertainment industry. It also serves as an illustration of the potential consequences of insufficient legal representation, which could lead to the violation of writers' rights. Therefore, efforts to provide writers and copyright holders with access to legal services are essential to the development and protection of Uganda's entertainment industry.

#### **3.1.3. Piracy and Unauthorized Distribution**

In Uganda, copyrighted works are often pirated and distributed without authorization. It can be difficult for authors and copyright holders to prevent their work from being sold and illegally replicated, which can cause them to suffer large financial losses. In *Obsession Company Ltd. v. Warid Telecom u LTD*, the applicant filed a lawsuit against the respondent for unauthorized use

of their work for commercial gain. that of To counteract piracy, the government must to impose more stringent penalties for copyright violations and raise public awareness of the value of supporting artists by acquiring authorized reproductions of their works when These instances highlight how important it is to have strong legal defense and enforce copyright laws in order to shield artists and producers from piracy and unapproved distribution.

This also demonstrates the possible efficacy of taking legal action to compensate the harmed parties and discourage similar behavior. It is imperative that the government persists in formulating approaches to tackle these problems, such as more severe sanctions for violators and awareness-raising initiatives to uphold intellectual property rights.

#### **3.1.4. Lack of Collective Management Organizations**

By administering artists' and creators' copyrights and collecting royalties on their behalf, collective management organizations, or CMOs, play a vital role in defending the rights of these individuals. However, there aren't many reputable and successful CMOs in Uganda. This makes it more difficult for artists to make money off of their creations and get paid fairly for their labor of love. The *Ssebagala v. MTN (U) Ltd & Anor*<sup>34</sup> case highlights the need for the government to support the creation and maintenance of CMOs in order to guarantee that artists and creators can profit monetarily from their work. Al Hajji Nasser Ntege Ssebagala sued MTN Uganda Ltd. on the grounds that the company had violated his copyright by using his speeches as caller tunes and ring tones without getting his permission.

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<sup>34</sup> *Ssebagala v MTN (U) Ltd &Anor (2015)*

In order to safeguard artists' rights and provide just remuneration, these incidents demonstrate the importance of CMOs and legal procedures. Growth in Uganda's creative sector and the welfare of artists depend on the government's establishment and support of CMOs

#### **3.1.4. Limited Market Opportunities**

Artists and creators in Uganda often face limited market opportunities to showcase and sell their work. There is a lack of well-established platforms, galleries, and exhibitions that provide exposure and market access for artists. This makes it challenging for artists to reach a wider audience and monetize their work effectively. Efforts should be made to create more platforms and opportunities for artists to showcase their work, both locally and internationally. Indeed, the limited market opportunities for artists and creators in Uganda pose a significant challenge to their ability to showcase and sell their work. The absence of well-established platforms, galleries, and exhibitions restricts their access to a wider audience and hampers their potential for monetization. To address this issue, it is imperative to create more avenues and opportunities for artists to exhibit and promote their work, both within Uganda and on an international scale. Locally, the government, art organizations, and private stakeholders should collaborate to establish and support art galleries and exhibition spaces. These spaces can serve as platforms for artists to display their creations and engage with the public. By fostering a vibrant art scene, these galleries can attract art enthusiasts, collectors, and potential buyers, thereby creating a sustainable market for artists. Additionally, organizing regular art festivals and events can provide artists with opportunities to showcase their work to a larger audience. These events can be curated to highlight the diversity and talent of Ugandan artists, attracting both local and international visitors. By promoting these events through effective marketing strategies and leveraging digital platforms, artists can gain exposure and generate interest in their work.

Furthermore, it is crucial to explore international collaborations and partnerships to expand market opportunities for Ugandan artists. Engaging with international art fairs, exhibitions, and residency programs can expose artists to a global audience and open doors for international sales and recognition. Establishing connections with art galleries, collectors, and curators abroad can facilitate the export of Ugandan art and contribute to the growth of the local art market.

### **2.1.5. Exploitative Contracts and Unfair Royalty Rates**

Authors and Copyright owners in Uganda frequently encounter exploitative contracts and unfair royalty rates. They may be pressured into signing contracts that give away their rights or receive minimal compensation for their work. This exploitation is often due to the power imbalance between artists and industry stakeholders. The government should enact regulations to protect artists from unfair practices and ensure that they receive fair and equitable compensation for their creative contributions. The power imbalance between artists and industry stakeholders can lead to situations where creators are not fairly compensated for their work, and this calls for government intervention to establish regulations that protect the interests of artists. In Uganda, there have been cases that reflect the challenges artists face regarding contracts and royalties for example in the case of **Guwubira v Katwitta**, This case dealt with a dispute over a contract and highlighted the need for clear and fair agreements to prevent exploitation.<sup>35</sup> In a related case of **Luzinda v Ssekamatte & 3 Others**, In this case, the court addressed issues related to the unauthorized use of artistic work, which is closely related to the need for fair contracts and royalty arrangements.<sup>36</sup> These cases underscore the importance of legal support for artists in understanding and negotiating

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<sup>35</sup> Guwubira v Katwitta (2021)

<sup>36</sup> Luzinda v Ssekamatte & 3 Others (2020)

contracts that respect their rights and ensure fair compensation. They also demonstrate the role of the judiciary in upholding the rights of artists and setting precedents that can guide future agreements and disputes. It's crucial for the government to consider these examples as part of the broader effort to create a more equitable environment for artists and creators, where their contributions are respected and adequately rewarded. This could involve the development of standard contract templates, education programs for artists about their rights, and the establishment of regulatory bodies to oversee the enforcement of fair practices in the industry.

### **3.1.6 Limited Intellectual Property Education**

Many artists and creators in Uganda lack proper knowledge and understanding of intellectual property rights. They may not be aware of the importance of copyright protection or how to enforce their rights. This lack of education leaves artists vulnerable to exploitation and makes it difficult for them to navigate the complexities of the creative industry. Educational programs and workshops should be implemented to raise awareness and provide artists with the necessary knowledge to protect their rights. The lack of intellectual property education among artists and creators in Uganda is a concern that can lead to the exploitation of their rights and hinder their ability to protect their creative works. Educational initiatives are indeed crucial in empowering artists with the knowledge to navigate the legal aspects of the creative industry. While there are no specific decided cases in Uganda that directly address the issue of intellectual property education, the outcomes of certain cases do highlight the consequences of a lack of awareness. In case of **Guwubira v Katwitta**<sup>37</sup>. This case illustrates the complexities involved in legal disputes over intellectual property and the importance of understanding one's rights and the mechanisms for their enforcement. Also, in the case of **Luzinda v Ssekamatte & 3 Others**. The judgment in this

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<sup>37</sup> Guwubira v Katwitta (2021).

case underscores the need for artists to be aware of their rights to prevent unauthorized use of their work.<sup>38</sup> These cases, although not directly related to educational programs, emphasize the importance of intellectual property knowledge in protecting artists' rights. They serve as a reminder of the potential risks artists face when they are not adequately informed about their legal rights and the avenues available to them for recourse.

### **3.1.7. Cultural Perceptions and Stigma**

In Uganda, there can be cultural perceptions and stigma surrounding artistic professions. Some individuals may view art as a hobby rather than a legitimate career, leading to a lack of support and recognition for artists and creators. This can make it challenging for artists to monetize their work and gain societal acceptance. Efforts should be made to change these perceptions and promote the value of art as a profession that deserves respect and support. The cultural perceptions and stigma that surround artistic professions in Uganda are indeed a barrier that can impede the recognition and financial success of artists and creators. While there may not be decided cases in Uganda that directly address the issue of cultural perceptions and stigma in artistic professions, the broader legal framework and judicial decisions can still play a role in shaping societal attitudes and providing a supportive environment for artists. For instance, cases that affirm the rights of artists and creators can help to legitimize the arts as a profession. Legal recognition of the economic and moral rights of artists sends a message that their work is not merely a hobby but a valuable contribution to society that warrants protection and respect.

Moreover, legal decisions that enforce copyright and related rights can contribute to a more favorable environment for artists by ensuring that they receive fair compensation for their work. This, in turn, can help to shift public perception by highlighting the importance of the arts and the

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<sup>38</sup> Luzinda v Ssekamatte & 3 Others (2020).

need for societal support. While legal cases alone may not be sufficient to change cultural perceptions and stigma, they are a crucial component of a broader strategy that includes education, public awareness campaigns, and the promotion of success stories within the artistic community. By showcasing the achievements and contributions of artists, society can begin to recognize the value of art as a legitimate and important profession. It's essential for stakeholders, including the government, educational institutions, and the media, to collaborate in promoting the arts and supporting artists. This collective effort can lead to a greater appreciation of the arts and help to dismantle the stigma that artists face, ultimately fostering a more vibrant and sustainable creative industry in Uganda.

### **3.1.8 Lack of Collaboration and Networking**

Collaboration and networking are essential for artists and creators to expand their reach and monetize their work. However, in Uganda, there can be a lack of platforms and opportunities for artists to connect and collaborate with industry professionals and fellow artists. Efforts should be made to create networking events, workshops, and mentorship programs that facilitate collaboration and foster a supportive creative community. Many artists struggle to find financial backing for their projects. Whether it's producing an album, creating a film, or organizing an art exhibition, funding is essential. While there may not be specific legal cases directly related to funding for artists, broader legal decisions can indirectly impact the availability of resources. For instance, cases like **Guwubira v Katwitta and Uganda v Mwesigwa and Anor** highlight the importance of justice and fairness. Although not directly about funding, these cases contribute to the overall legal environment that affects copyright owners and authors rights and opportunities.<sup>39</sup>

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<sup>39</sup> Guwubira v Katwitta (2021)11 and Uganda v Mwesigwa and Anor (2020)22

### **3.2 Conclusion**

In conclusion, the challenges faced by authors and copyright owners in Uganda in protecting their rights and monetizing their work are significant and multifaceted. From the lack of adequate copyright protection and limited access to legal support to piracy, exploitative contracts, and limited market opportunities, authors in Uganda face numerous obstacles in their creative journey. However, it is important to recognize that these challenges can be addressed through collective efforts and the implementation of supportive measures. The government should take proactive steps to strengthen copyright laws, establish transparent royalty collection systems, and provide funding and grants to support artists and creators. Additionally, the establishment of wellfunctioning collective management organizations can play a crucial role in protecting artists' rights and ensuring fair compensation. Education and awareness programs are also essential to equip artists with the knowledge and skills needed to navigate the complexities of the creative industry. By promoting art appreciation and changing cultural perceptions surrounding artistic professions, society can create a more supportive environment for artists to thrive.

## CHAPTER FOUR

### SUMMARY OF FINDINGS CONCLUSIONS AND RECOMMENDATIONS

#### 4.0 Introduction

The analysis and presentation of the study's field samples, interviews, observations, and recommendations as well as the study's conclusions are covered in this chapter. The recommendations are directed towards the government and highlight potential solutions to the problems enforcement agencies encounter in handling copyright violations in Uganda. Compiling a response to the research questions is another goal of the study. Uganda's numerous associated music industry-related piracy and infringement incidents. Ugandan music industry causes of infringement. The difficulties Ugandan officials encounter when enforcing copyright laws against violations.

Analyzing the relevancy of the copyright law in curbing infringement in the music industry of Uganda

#### INFRINGEMENT /PIRACY;

Copyright in Uganda is regulated by the copyright act 2006<sup>40</sup> and the copyright regulations<sup>41</sup> that were put in place by the legislators to replace the copyright act of 1964, to provide for the protection of literary, scientific and artistic intellectual works and their neighboring rights; and to provide for other related matters.

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<sup>40</sup> Copyright and neighboring act 2006

<sup>41</sup> Copyright and neighboring regulations 2010

This basically aims at protecting the interests and rights of copyrights owners against the main plague in the music industry which is infringement and piracy of the musical works.

**Infringement of copyright and neighboring right occurs where, Section 46.**

(1) Infringement of copyright or neighbouring right occurs where, without a valid transfer, licence, assignment or other authorisation under this Act 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 (a) reproduce, fix, duplicate, extract, imitate or import into Uganda otherwise than for his or her own private use; (b) distribute in Uganda by way of sale, hire, rental or like manner; or (c) exhibit to the public for commercial purposes by way of broadcast, public performance or otherwise. (2) The use of a piece of work in a manner prejudicial to the honour or reputation of the author shall be deemed an infringement of the right of the owner of the right.

Infringement therefore occurs when a person does any act falling within the copyright , infringement happens without the license of the owner which can be either direct or indirect.

Direct infringement occurs where the defendant without authority from the owner, copies or uses the copy right material.

**Indirect infringement/ copying**

In infringement however the question of substantiality often arises i.e exactly what amount of work would be copied.

The first thing to look at is part taken in comparison to the copyright material.

The courts use a qualitative assessment not a quantitative one indirect infringement was held to have occurred in Plix Products Vs Frank (1985)5IPR 15<sup>42</sup>6 where the issue of indirect copyright was considered , it constituted a verbal description of the plaintiff’s design be defendants. It was held that the verbal description of a copyrighted work may be a medium for indirect coping subject to certain criteria unless it is independent creation. It was further stated that there is indirect coping of the plaintiff’s copyright if there is a marked degree of similarity and deriving parts from literary description with sufficient casual connection.

#### **4.1 FINDINGS FROM COLLECTIVE MANAGEMENT SOCIETIES/ ORGANIZATIONS**

##### **UPRS: Uganda Performing Rights Society**

The Uganda performing rights society derives its mandate to operate from the copyright act<sup>43</sup> and it is regulated by Uganda registration services Bureau.

The act spells out how one obtains a copyright or neighboring right: what qualifies to be protected under the act <sup>44</sup>. Provides for how protected works may be exploited by third parties<sup>45</sup>: duration of rights protected under the act<sup>46</sup>; and creates offences for infringement of copyright and neighboring rights<sup>47</sup>. It also provides for civil remedies and sanctions for breaching its provisions by individuals or body of persons<sup>48</sup>.

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<sup>42</sup> (1985)5IPR 156

<sup>43</sup> Part (7) of Copyright and neighboring rights Acts 2006.

<sup>44</sup> Section 5 of Copyright and neighboring rights Acts 2006

<sup>45</sup> S.15 cnra

<sup>46</sup> S.13 cnra and article 12 TRIPS

<sup>47</sup> S 47 cnra

<sup>48</sup> S 45 cnra

UPRS means Uganda Performing Rights Society a society that was formed in 1985 by authors (mainly musicians) artists to advance the cause of copyright administration in Uganda. It was registered with the registrar of copyright as accompany limited by guarantee having no share capital. Thus it belongs to all members. UPRS is recognized by the government as collecting society and it a member of international confederation of societies of authors and composers (CISAC).

Therefore UPRS protects local and a foreign works through (UPRS) in their countries.

A royalty is a fee paid to the owner of copyright, by a person using his/her work . The fee is set by the society on behalf of the owner of copyright. This is at any time the some one's work is used, say your music is played by a broad caster, television station, Bank , Hotel, Supermarket, restaurant, night club<sup>49</sup>.

#### **(MOVIE MANAGER INTERNATIONAL LIMITED) MOMA**

This is in affiliation with other organizations like UNESCO, PARAGON promoters, (UMPA) Uganda Music promoters Association UPRS etc. have exhibited a great support and implementation of the copyright law by starting a campaign urging the public t0o support local artists by buying original copies of VCDs CDs, DVDs and tapes only and this implementation begun on June 2007. They also started a mechanism of sensitizing the public that the original copies must have abandoned to show that the product bought is original see S.29 CNRA and S.30.

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<sup>49</sup> www. UPRS/copyright/law accessed on 15th June 2019

On the interviews conducted from the above mentioned societies , the respondents were required to highlight various related acts of infringement / piracy in the music industry around Kampala and it was discovered that;

**The following are different ways copyright infringement of the musical works around Kampala;**

1. Massive un authorized reproduction and selling of music and movies on the streets of Kampala. Contrary to the provisions of the copyright act<sup>50</sup>. This was laid down by court in **Performing Rights Society Ltd London Theatre Of Varieties Ltd<sup>51</sup>**
2. Direct downloading of Music from the internet and use of digital computers to distribute music un authorized.

*Peer to peer network or sharing of downloads) like turbidy. Com, MP3 Jaja. Com, youtube etc*

3. Un authorized use of music by different companies without payment of royalties **S.9 capital radio ltd Vs Fm Holdings and 2 others.**

This was observed in UPRS limited Vs Fred Mukubira<sup>52</sup> where the applicant, Uganda PRS, as the assignee of copyright in the musical works of various local artists in Uganda, filed a suit against the responded for alleged copyright infringement where J Kiryabwire held interalia in the first place the defendant's acts of making and distribution of illegal reproductions with no authority amounted to infringement of the owners rights.

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<sup>50</sup> S 14 cnra 2006

<sup>51</sup> (1924) 1 AC

<sup>52</sup> misc. APPn 818 of 2003, arising from High court civil suit 842 of 2003

#### 4. Piracy

According to the interviews, it was also noted that the artists themselves duplicate their fellows songs and movies and pretend to be original authors. This also occurs when the original owner have not yet reduced his work into material form which acts as defense to the pirates. Hiding under the armpits of the law. *See S.4 CNRA in donoghue vs allied newspapers ltd 1 (1938) 1 CH 106 & 109*

In donoghue, a person may have a brilliant idea for a story, or a picture or for a play, and which appear to him to be original, if he communicates that idea to an author or an artist or a play wright, the production which is the result of the communication of the idea to the author or the artist or the play wright is the copyright of the person who has closed the idea in form . Whether by means of picture, a play or a book and the owner of the idea has no rights in the product.

Interviews from business owners involved in music and movie distribution channel;

The respondents were asked their views on the circumstances or reasons for the increased dealing with the musical works in a manner that prejudices the interest of the owners.

According to the interviews it was discovered that the major causes/ reasons to the increased piracy in Ug are;

Ignorance of the law, during the study , it was noted that most of the respondents are totally not aware of the copyright law as some of the music vendors and music and movie distributors were starting that there is no law that stops them from dealing and selling of musical works

## **Under causes of increased a infringement**

The growth of internet has seen the rise of the hacker mentality and entitlement philosophy, majority and internet users tend to think they have right to information for free and more particularly music.

Lack of public awareness, it was also discovered that some respondents are not aware of all criminal punishments and civil remedies that the law imposes on the people who infringe and pirate some one's work/ music.

Lack of popular support, the public response towards the sale and distribution is law since many people in Kampala sale these musical works to earn a living and the people cannot report cases of piracy and infringement if found

Delays in the judicial enforcement, the courts of Uganda especially the commercial division of the high court that have jurisdiction to entertain matters of intellectual property ownership are characterized with case back logs and hence end up delaying in adjudication of matters concerning copyright which makes many, hence giving chance to infringers to continue with the acts.

Corruption and weak custom enforcement to effectively protect the creative works generated by the entertainment industry, it was noted from the views of the respondents that the enforcement to adequately protect creative works generated by the entertainment industry is completely weak hence giving chance people to sell and distribute the music without authority.

In the same reign some big artists who pirate and duplicate their fellows music tend to corrupt different agencies like the police to deny justice on the detriment of the owner hence promoting piracy in the industry.

## **Interviews from the enforcement agencies**

The police force of Uganda, the judiciary, and the URSB.

Artistes march ahead of signing of a memorandum of understanding to enforce the copyright law in Kampala on Friday. Government agreed to form a police unit to crackdown on copyright fraudsters. The unit will be in charge of arresting people who infringe on intellectual property, including patents, trademarks and copyright, created by musicians, artists, authors and other innovators.

At the same time, the Uganda Registration Services Bureau (URSB) launched a hologram, a symbol which will be used by Collective Management Organisations and police to identify and differentiate original audio-visual products from pirated ones.

The initiative, born out of a partnership between URSB, the Uganda Police Force and the Uganda Federation of Movie Industry (UFMI), will implement the copyright law which has been inexistence since 2006 but with no enforcement.

Speaking at the signing of a Memorandum of Understanding to establish the Intellectual Property Enforcement Unit in Kampala on Friday, the Minister of Justice and Constitutional Affairs, Maj Gen Kahinda Otafiire, said government is responsible for administering intellectual property issues.

“When you go to downtown Kampala, you find good-for-nothing fellows benefiting from the sweat of creators. You will find Chameleon’s (Joseph Mayanja) songs on Compact Discs being sold by individuals who make a lot of money yet the creator is getting nothing,” Maj Gen Otafiire said.

He added that an effectively enforced intellectual property infrastructure is necessary to ensure the stimulation of investment in innovation and to avoid commercial-scale intellectual property rights infringements.

Mr Bemanya Twebaze, the registrar general at USRB, said enforcement of copyright law will lead to creation of employment opportunities and also widen the tax base through revenue collection.

Inspector General of Police Kale Kayihura, who was represented by the director of human rights and legal services, Mr Erasmus Twaruhuka, promised to educate police officers and the public on the importance of respecting creative works.

Mr Bonny Kasujja, the director of UFMI, welcomed the creation of the enforcement unit, saying they will ensure no audio-visual works are consumed for free.

“Time has come for those who have been pirating our work to approach us and get proper work, by buying it to encourage us create more,” Andrew Benon Kibuka, head of the Federation of Performing Artists<sup>53</sup>.

In the field, the respondents were required to high light some of the challenges that they face in trying to enforce copyright laws.

And it was noted that the challenges are

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<sup>53</sup> <https://www.monitor.co.ug/News/National/Police-unit-to-enforce-copyright-law/688334-32571886nmg2hz/index.html>.

Ignorance of the law is no defence. This implies that every person is deemed to know his or her rights created by law yet a majority of people are very ignorant about intellectual property rights.

This creates a gap on enforcement of intellectual property rights.

The area of intellectual property is technical and requires skill and expertise which an ordinary person does not have. This requires the services of a lawyer who has specialised in the area of intellectual property but these are few.

Consultation and legal fees may not be affordable to persons whose rights have been allegedly infringed upon and yet require legal advice. This denies such persons access to legal services.

The owners of intellectual property are required to take the initiative to recognise the value in their intellectual property and do all it takes to defend violation of their rights. This requires due diligence on the part of intellectual property owners.

Lack of knowledge in the area of intellectual property by most people and thus their failure to appreciate the rights of intellectual property owners.

Lack of funds to initiate the process of registration and protection. Protection is guaranteed upon registration especially where the law makes it compulsory. Registration of copyright is not mandatory however, registration is relevant because it provides information which is used to identify the owner and as evidence in courts of law. Registration is done upon payment of the prescribed fees.

Failure to use the rights acquired in the intellectual property may invalidate renewal.

Failure to pay renewal fees as prescribed by law may lead to striking out of the registered right from the register.

## **4.2 Conclusion**

The current unpredictable copyright environment has an impact on author intellectual freedoms and an effect on the economic rights of authors. The existing different licensing systems and copyright works to advocate for open access, creative commons and institutional responsibilities.

Increased access to materials without restriction has resulted in copyright infringement, especially in the works that fall into legal exception for fair use. The extent of copyright infringement can be described as rampant although not being detected due to lack of awareness of laxity in the legal framework in the legal framework of exceptions for a fair use has on one hand increased access and use of copyright works but on the other hand has limited the copyright owner's expected financial gains.

The researcher also concludes that as mainly copyright is concerned with the way ideas are expressed and its primary function is to enable authors, composers and others to make sort of living from their works. Which this study have discovered not true in content of Uganda despite the legislation in place but it have not adequately proved to be relevant to copyright owners

Statutory limitations and exceptions are among the most important tools for national lawmakers to achieve balanced copyright systems that suit the specific needs of their respective countries. The relevant international copyright treaties and agreements such as the Berne Convention and TRIPs impose three requirements for national limitations and exceptions. According to 'the three-step test', limitations and exceptions must be: 1) applicable only in certain special cases; 2) not in

conflict with the normal exploitation of the work; and 3) not unreasonably prejudicial to the legitimate interests of the author/rights-holder.

The scope of a country's national copyright limitations and exceptions is influenced, among other things, by the philosophical justifications underlying the country's system of copyright protection. Generally, limitations and exceptions in civil law systems tend to be narrower than those in common law systems., it is convenient to distinguish three main approaches to copyright limitations and exceptions in national copyright laws: First, some countries, especially civil law countries, follow a detailed approach and incorporate rather long lists of narrowly phrased copyright limitations and exceptions into their copyright laws.

Fair use provisions might also be accompanied by several more specific copyright limitations and exceptions. Third, there are countries, especially common law countries, which have systems somewhere between the first two just outlined. While their copyright laws contain specific copyright limitations and exceptions such as for educational institutions, libraries and archives or quotations as examples they also employ so-called 'fair dealing' provisions, which in broader terms allow the permission-free use of copyright-protected material for purposes of research, private/personal study, private/personal use, criticism and review and news reporting.

The technicalities of fair use and fair dealing should not be conflated, but the concepts are remarkably similar. Both reflect the same fundamental principle of permitting uses that are considered fair. Pragmatically, a fair use provision tends to be, in general, more flexible because it is not confined to specific purposes or to specific categories of protected works. But ultimately, whether fair use or fair dealing applies more broadly in practice depends mostly on judicial and stakeholder interpretations (or the lack thereof) in the relevant jurisdiction.

There have been relatively few government-commissioned or government authored reports on copyright and education in the study countries. One notable exception to this pattern is a 2004 study commissioned by the Ugandan Law Reform Commission (ULRC) to examine Uganda's 1964 legislation in light of changing technologies and their potential impacts.

Infringement conducted in order to access materials was found to be rampant among users within the tertiary education communities from which interviewees were drawn. Government efforts in the study countries to enhance access to learning materials by, for instance, commissioning materials or subsidising textbook purchases are mainly directed at primary and secondary education sectors.

#### **4.3 Recommendations**

Government officials should be qualified to provide advice and information to the public on exercising their rights in terms of the Promotion of Access to Information Act and other relevant legislation. This would also help “to reduce the culture of secrecy embedded in many areas of public administration”.

To avoid access to information law being undercut by any new state secrets law or other related legislation, e.g. commercial secrecy or data protection, civil societies need to monitor the whole body of laws that manage the right to information. They need to ensure that any changes to these others laws are consistent with maximum enjoyment of the right to know

Introduction of the doctrine of domain public payment that can allow the use of works that have entered public domain for the payment of royalties would also go a long way in ensuring that the communities benefit from their works. This would generate income to the owners of copyright works

The copyright legislative process should be transparent and widely consult all the relevant stakeholders.

Enforcement bodies and institutions such as the Uganda Police, Broadcasting Council, Collecting Societies, Courts of Judicature and all stakeholders should join the move and fight the piracy plague. Government agencies should assign particular officers to deal with copyright issues or cases. This means establishing special sections in the Police, Uganda Revenue Authority and the Court system to deal with copyright cases without delay. The proposed areas for reform include keeping abreast of international developments, sensitization of the public, strengthening the enforcement provisions, encouraging musicians to cooperate with collecting societies, establishment of specialized institutions to deal with copyright matters and ensuring that stakeholders obtain some payment from the manufacturers and importers of blank tapes for recording sounds and images.

While the copyright is formed when you create, you need more to go to court to enforce your rights. In order to sue and claim damages, creators must own a copyright registered with the Ugandan Copyright Office.

Any aspiring musician needs to know the basics of music copyright law. Musicians who work hard at their art risk loss of credit to music thieves unless they learn how to protect themselves and their creations.

Collecting societies, government and right holders organizations should work together to institute a programme to benefit the authors for their long engagement in authorship such programme should integrate awareness and sensitization of its stakeholders and increased advocacy and agitation for copyright protection with strengthening strategic alliance.

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