

**FAIR USE IN THE DIGITAL AGE: AN ANALYSIS OF THE ADEQUACY OF THE  
COPYRIGHT AND NEIGHBOURING RIGHTS ACT IN RELATION TO DIGITAL  
CONTENT**

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## DECLARATION

I, **RUKUNDO ALVIN** declare that I am the sole author of this report and that during the time of this study, it has not been registered for any other academic award or qualification, nor has any material been submitted wholly or partly for any other award. This report is a result of my own research work, and where reference was made to other people's works, the same have been duly acknowledged.

Signature :  .....

Date : 4<sup>th</sup> June 2025

## APPROVAL

This is to certify that this research report has been written by RUKUNDO ALVIN and is now ready to be submitted in for examination with my approval as the supervisor.

Signed :  \_\_\_\_\_

Date: 04<sup>th</sup> June 2025

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## **DEDICATION**

I dedicate this work to my lovely mother Kyomugisha Beneth for her unconditional love and support in terms of tuition payment and moral support. She has worked tirelessly to make sure that I never lack, always feel loved and nurtured me into a very responsible person. I owe you the world mother. I also want to thank my siblings that is Ainembabazi Charity, Natuwhera Abia, Katusiime Edgar, The Late Twimukye Dickson and Tushabe Victor for their unwavering moral and financial support. Finally, I want to thank my friends who have made law school a good and memorable experience.

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Special thanks goes to The Almighty God for the wisdom, knowledge and understanding which he has granted unto me throughout my years in law school and life itself. I thank, in a special way, my supervisor, Mr. Muhangi Kenneth without whom this study would not have seen the light of day. I also thank the lecturers and tutors for the knowledge I have acquired in law school and the management and staff of Uganda Christian University.

## LIST OF ACRONYMS AND ABBREVIATIONS

<b>ACRONYM/ABBREVIATION</b>	<b>FULL FORM</b>
CNRA	Copyright And Neighbouring Rights Act
URSB	Uganda Registration Services Bureau
IP	Intellectual Property
WIPO	World Intellectual Property organisation
NCHE	National Council For Higher Education
MOOC	Massive Open Online Course
DMCA	Digital Millennium Copyright Act (U.S.)
U.S.A	United States Of America
U.K	United Kingdom
ISP	Internet Service Provider
TDM	Text and Data Mining
UCC	Uganda Communications Commission
OSP	Online Service Provider

## **ABSTRACT**

This dissertation critically examines the adequacy of Uganda's Copyright and Neighboring Rights Act (CNRA) in addressing fair use within the evolving digital landscape. With digital technologies transforming the production, distribution, and consumption of content, the gap between the competing interests of copyright creators' rights and public access seems to be growing. The study examines the fair use provisions of the CNRA in the face of digital challenges, evaluates Uganda case law, Angela Katatumba decision, and compares international approaches to copyright limitations and exceptions. Findings suggest critical deficiencies in Uganda's legal regime such as minimal statutory direction concerning use of digital content and enforcement of the law. The study ends with suggestions for law reform and judicial interpretation in order to strike a balance and ensure that our copyright regime is technology friendly and forward looking.

## Chapter 1

### 1.0 INTRODUCTION

Copyright refers to a field of law that protects literary, scientific and artistic works. It is a branch of intellectual property that is concerned with the mode of creation, regulation, protection and enforcement of qualifying works. The law of copyright therefore, gives an author of original works exclusive rights for an ascertainable period of time to exploit and benefit from the work, including its publication, distribution and reproduction.<sup>1</sup>

The statute of Ann (1710), considered to be the first modern copyright laws laid a foundation for today's systems of protection. It acknowledged the importance of protecting authorship to encourage learning and safeguard the financial interests of authors and their families. International frameworks such as The Berne Convention for the Protection of Literally and Artistic Works (1886) and The WIPO Copyright Treaty (1996) have established standards for copyright protection promoting uniformity and cross-border enforcement.

The case of **University of London Press Vs. University Tutorial Press**<sup>2</sup> further illustrated the principles of copyright ownership. It emphasised that unless there is a clear contractual transfer, authors retain their rights, which ties back to the fundamental principles established by earlier statutes and common law precedents. These principles remain relevant in Uganda's copyright system.

Uganda's copyright system is rooted in these international frameworks, enshrined within **The Copyright and Neighboring Act, Cap 222**<sup>3</sup> here after referred to as **the CNRA**. The act highlights the requirements for one to claim under copyright law, the duration for protection, what amounts to copyright infringement, exceptions to copyright protection

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<sup>1</sup> Intellectual Property Law In East Africa Second Edition By David Bakibinga On Pg.2

<sup>2</sup> University of London Press Vs. University Tutorial Press [1916] 2 Ch. 601

<sup>3</sup> The Copyright and Neighboring Act, Cap 222 (Act 19 of 2006) Published in Uganda Gazette 47 on 4 August 2006, Assented to on 31 May 2006, Commenced on 4 August 2006

among others. However, in the digital age, challenges of protection of creative works have intensified, particularly with the rapid increase of digital content such as memes, live streams, TikTok content and AI-generated content which often raise complicated questions about copyright infringement and the extent to which this law can adapt to these digital transformations.

A crucial aspect of Uganda's copyright framework is **fair use**, set out in **Section 14** of the Act<sup>4</sup>. This exception allows a more flexible approach by considering whether a particular use, such as criticism, research, news reporting, or education is justified without the copyright holder's permission. This flexibility has overtime proved to be relevant especially in the digital age where content like AI-generated works and memes have blurred the traditional copyright boundaries.

This research examines how Uganda's copyright law, particularly the fair use exception adapts to digital media trends. It explores whether the existing legal provisions sufficiently address the challenges, posed by digital age content like memes, live streams and AI-generated content or if further legal reforms are necessary.

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<sup>4</sup> The Copyright and Neighboring Act, Cap 222 (Act 19 of 2006)

## 1.2 BACKGROUND OF THE STUDY

The rise of the digital age has significantly altered how creative content is produced, shared, and consumed. This has challenged the traditional copyright laws. Today, memes, TikTok videos and AI-generated content have become a dominant way of how people express themselves and a common form of entertainment on the internet. Unlike traditional media, memes and AI-generated works often modify or incorporate copyrighted material

In Uganda, copyright is governed by The Copyright and Neighboring Rights Act, Cap 222 and this act was established before the widespread use of digital technologies and content sharing platforms like snap-chat, Instagram, WhatsApp among others. As a result, it is uncertain how works like memes fit within Uganda's copyright system, making it difficult to determine what constitutes fair use. This is because these emerging forms of content raise complex copyright questions which seem not to be answered by the existing laws in Uganda which are designed in a way that they do not accommodate such issues.

To address these challenges, there is a need for legal clarity and possible reforms to ensure Uganda's copyright framework adequately protects creators while allowing room for innovation and digital expression.

This research is important because it examines whether the fair use framework provided for in The Copyright and Neighboring Rights Act, Cap 222<sup>5</sup> is sufficient enough to address modern digital copyright issues or if legal reforms are needed. By analysing global trends and Uganda's legal framework, this study aims to provide insights that could help policymakers, content creators, and legal practitioners navigate copyright challenges in the digital era.

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<sup>5</sup> Section 14 of The Copyright and Neighboring Rights Act, Cap 222

### **1.3 STATEMENT OF THE PROBLEM**

Digital platforms and other modern technology are now the primary means of communication, creativity and information processing. With content like memes and AI-generated works emerging as the most popular forms of entertainment and expression on social media and in important industries like marketing and education, this has completely changed the way content is created. Copyright law has undoubtedly faced several difficulties as a result, and Uganda's laws appear to be under more strain in light of these recent developments.

Uganda's copyright laws allow limited use of copyrighted material without authorisation under Section 14 of The CNRA. However, the provision is broadly framed and lacks specific guidelines on how it applies to fast-paced evolving digital content such as memes and AI-generated works. The absence of clear and detailed legal provisions creates ambiguity in determining whether digital content like a meme is infringing on someone's copyright or if it is within the parameters of the fair use exception. This is because many memes use elements from movies, television shows or photos that are protected works.

Similarly, AI models are often trained on large amounts of data that in most cases include copyrighted works. The Ugandan legal framework lacks enough legal precedents and detailed laws on the extent to which AI-generated works interact with pre-existing copyrighted materials, who should be held liable in case of infringement and if they are transformative enough to qualify as fair use.

The absence of clear legal guidelines on how Uganda's fair use exception applies to these emerging digital content has led to significant legal and practical challenges for law practitioners and other stakeholders like content creators and marketing companies. For example, content creators, social media users, and AI developers operate under uncertain circumstances, unsure of whether their content violates copyright laws or qualifies as fair use. This uncertainty discourages innovation, as creators may refrain from creating works to avoid potential legal consequences.

Without express guidelines, courts and regulators are left to interpret fair use on a case-by-case basis, leading to inconsistent judgments and uncertainty in legal outcomes. Therefore, this study aims to examine Uganda's fair use threshold in relation to digital content in order to determine whether the current copyright framework is adequate for providing legal clarity or if it needs to be reforms.

## **1.4 OBJECTIVES OF THE STUDY**

### **1.4.1 GENERAL OBJECTIVE**

- To evaluate the adequacy of Uganda's fair use provisions in light of challenges posed by digital content.

### **1.4.2 SPECIFIC OBJECTIVES**

1. To analyse the current scope and interpretation of fair use under CNRA.
2. To assess the extent to which the CNRA applies to modern digital content such as memes and AI-generated content.
3. To evaluate legal gaps and uncertainties in the CNRA regarding the regulation of digital content.
4. To compare Uganda's fair use framework with international copyright laws and other jurisdictions in order to identify the best practices that could inform local legal reforms.
5. To propose recommendations for strengthening Uganda's copyright laws, ensuring they balance innovation, digital creativity, and copyright protection in the evolving digital landscape.
6. To contribute to the existing literature on the fair use exception in Uganda's copyright laws

## **1.5 RESEARCH QUESTIONS**

1. What is the scope and nature of fair use under CNRA
2. How adequate is The CNRA
3. What are the legal challenges created by the lack of explicit guidelines for digital content in Uganda's current copyright framework?
4. What reforms could better align Uganda's copyright regime with the digital age?

## **1.6 SIGNIFICANCE OF THE STUDY**

This study is significant as it critically examines the adequacy of the CNRA in addressing fair use within the context of digital content. By examining the gaps in legal provisions, this research highlights how the lack of clear guidelines affects content creators, copyright holders, and digital platforms in an era where online spaces are dominated by memes, AI-generated content and live streams. The findings aim to provide appropriate recommendations for reforming Uganda's copyright framework, ensuring it is better equipped to handle emerging digital challenges.

## **1.7 JUSTIFICATION OF THE STUDY**

Although Uganda's fair use exception offers flexibility, it lacks explicit guidance on how it applies to modern digital content, leaving significant gaps in enforcement and application. This study is justified because it will critically analyse how fair use functions in the digital context and evaluate its effectiveness in addressing emerging issues. By identifying key legal gaps and offering reform recommendations, this research will help modernise Uganda's copyright law, ensuring it remains relevant and effective in protecting creators' rights while fostering digital innovation and creativity in the ever-evolving digital landscape.

## **1.8 METHODOLOGY**

This study adopts a purely doctrinal research methodology that will rely upon a logical, thorough and analytical examination of the relevant case law, statutes, library and desk research from Ham Mukasa library and other legal documentation to develop a convincing rationale that the problem exists, analyses the facts related to the problem, and relates them to the relevant cases and statutes under study.

## **1.9 SCOPE OF THE STUDY**

This study solely focuses on assessing copyright law adaptation to digital content and an analysis of fair use in the digital age. The aspiration behind this study is that Uganda's copyright laws have had challenges and issues relating to if digital content like memes and AI-generated content fall within the fair use exception.

## **1.10 TIME SCOPE**

This research will be carried out within a period of ONE months from the date of assent to the proposal submitted.

## **1.11 SYNOPSIS**

Chapter One: contains an introduction to the problem, background, statement of the problem, objectives of the study, Research questions, scope of the study, methodology, significance of the study, justification of the study, hypothesis and synopsis.

Chapter Two: Literature Review

Chapter Three: Copyright Issues in the digital age

Chapter Four: Findings, recommendations and conclusion.

## **1.12 CONCEPTUAL FRAMEWORK**

This research proposal aims to explore how copyright laws in Uganda are adapting to digital content such as memes and AI-generated content specifically the fair use exception in the CNRA. The study seeks to identify how factors such as lack of explicit guidelines on fair use in the digital context impact innovation and content creation.

### **1.12.1 Independent Variable**

- The fair use exception in copyright law: the legal framework and scope of fair use and its applicability on digital content

### **1.12.2 Dependent variable**

- Clarity and Applicability of Fair Use in Uganda's Copyright Law: the extent to which the fair use provision under the CNRA addresses issues arising from digital content and provides legal certainty.

### **1.12.3 RELATIOSHIP**

The research hypothesises a causal relationship between the fair use exception in copyright law and the applicability of the exception to emerging forms of digital content such as memes:

- ✓ A more detailed provision of the fair use exception in copyright law is expected to address digital content issues more effectively and provide legal certainty

## Chapter 2 : LITERATURE REVIEW

### 2.1 Introduction

This chapter explores existing literature on the concept of fair use, particularly in the context of the digital age. It examines academic perspectives, theoretical approaches and comparative legal frameworks that contribute to the understanding of fair use across other jurisdictions. The discussion highlights how technological advancements in the digital age have challenged traditional copyright norms and how different jurisdictions like The United States Of America and The United Kingdom have reacted.

### 2.2 Conceptual framework

As earlier established in Chapter 1, this study adopts a conceptual framework that examines how fair use exception in Uganda's copyright law framework applies to digital content such as memes and AI-generated content works. The framework assumes a relationship between a more detailed provision of the fair use exception in The CNRA and its ability to address digital content issues more effectively and provide legal certainty in the digital space.

### 2.3 Review of international literature

#### United States Of America

In the U.S.A, fair use is governed by The Copyright Law of the United States (Title 17) and Related Laws Contained in Title 17 of the United States Code<sup>6</sup>. **Section 107 of the Copyright Act of 1976**<sup>7</sup> provides the legal framework for determining whether a particular use is fair and identifies certain types of uses such as criticism, comment, news reporting, teaching, scholarship, and research as examples of activities that may qualify as fair use.

The provision under the act is provided below in extenso

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<sup>6</sup> <https://www.copyright.gov/title17/>

<sup>7</sup> <https://www.copyright.gov/title17/92chap1.html#107>

### “107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phone records or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.”

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

In the case of **Thomson Reuters v. Ross Intelligence, Inc.**<sup>8</sup> Thomson Reuters brought up an action against AI startup Ross Intelligence, alleging that the latter had unlawfully used Westlaw's proprietary headnotes that is summaries of key points of law to build an AI-powered legal search engine. Ross had earlier requested to be licensed to use Westlaw content to train its AI search tool, but Thomson Reuters rejected. Ross then went ahead to engage a third-party company, Legal Ease, which created bulk memos that largely incorporated Westlaw's headnotes and were used to train Ross' search tool. Ross' argument

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<sup>8</sup> <https://www.loeb.com/en/insights/publications/2025/02/thomson-reuters-v-ross-intelligence-inc>

was that his actions amounted to fair use as a defence to Thomson Reuters' copyright infringement claim.

“The court granted Thomson Reuters' motion for partial summary judgment on its direct copyright infringement claim, holding that Ross had infringed over 2,000 Westlaw head-notes. The court also held that Ross' use of the head-notes did not amount to fair use as a matter of law. The court weighed the purpose and character of the use, nature of the copyrighted work, amount and substantiality of the work used in relation to the whole, and effect of the use on the potential market for or value of the copyrighted work in favor of Thomson Reuters. Court emphasised that Ross’ product was intended to serve as a “market substitute” for Westlaw and thus could adversely impact a potential derivative market for Thomson Reuters to license its head-notes as AI training data.”<sup>9</sup>

The legal doctrine of **transformative use** is key in the United States’ jurisprudence, often favoring uses that add new meaning or function. This legal doctrine arose from a 1994 Supreme Court decision in the case of **Campbell v. Acuff-Rose Music** where “the Court focused not only on the small quantity taken from the copyrighted work but also on the transformative nature of the defendant’s use. The case concerned a song by the group 2 Live Crew entitled "Pretty Woman," which, according to an affidavit, was meant to "through comical lyrics, satirise the original work." The Court was persuaded that no infringement occurred because the defendant added a new meaning and message rather than simply superseding the original work. This meant that the new work likely would not affect the market for the original work, so the copyright owner would not suffer financial harm.”<sup>10</sup>

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<sup>9</sup> <https://www.loeb.com/en/insights/publications/2025/02/thomson-reuters-v-ross-intelligence-inc>

<sup>10</sup> <https://www.justia.com/intellectual-property/copyright/fair-use/transformative-use/>

The four factors usually considered by judicial officers are:

- the purpose and character of your use
- the nature of the copyrighted work
- the amount and substantiality of the portion taken, and
- the effect of the use upon the potential market.<sup>11</sup>

In a recent 2015 case of **Authors Guild v. Google, Inc.**<sup>12</sup> The plaintiffs filed a copyright infringement lawsuit against Google for digital copies of millions of books, including theirs, without permission through its Library Project and its Google books project.. The district court found “Google's actions constituted fair use under 17 U.S.C. 107. On appeal, court ruled that Google’s unauthorised digitising of copyright-protected works, creation of a search functionality, and display of snippets from those works are non-infringing fair uses. The purpose of the copying is highly transformative, the public display of text is limited, and the revelations do not provide a significant market substitute for the protected aspects of the originals.”

One would argue that the principle of Fair use provided for within in the U.S. copyright framework is the most flexible doctrine among all other jurisdictions as seen above. It easily adopts to the new challenges within the digital age by allowing limited use of copyrighted works assessed through the four factors within the statutes.

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<sup>11</sup> <https://fairuse.stanford.edu/overview/fair-use/four-factors/>

<sup>12</sup> No. 13-4829 (2d Cir. 2015) <https://law.justia.com/cases/federal/appellate-courts/ca2/13-4829/13-4829-2015-10-16.html>

The doctrine of transformative use in my opinion is the most relevant when it comes to digital content like memes, AI-generated works, live streams among others. It is however important to note that this doctrine's flexibility varies from case to case as seen in the various cases discussed above but the most important underlying constant factor is how the work affects the market of the copyrighted works. Works that create an unfair competition with the original work may not qualify under fair use.

## United Kingdom

“The UK follows a more restrictive **fair dealing** model under the Copyright, Designs and Patents Act 1988 chapter III<sup>13</sup>. In the UK, ‘fair dealing’ is allowed in relation to a copyright work. It must be noted at once that this has nothing to do with ‘dealing’ in a trade sense. It can be roughly equated to ‘use’. Thus, fair dealing covers research (now only non-commercial research) or private study, criticism, review and reporting current events. The fair dealing provisions allow the copying or other use of the work which would otherwise be an infringement, and in many circumstances the amount of the original work used is very relevant. It may be fair dealing to include 5 per cent of another work for the purpose of criticism or review. It would not normally be fair dealing to incorporate the whole of the other work. The proportion of work taken can be relevant to whether the second author can successfully plead the fair dealing provisions, so this immediately brings into question the relationship between fair dealing and the taking of a substantial part of a work. If the part taken is not substantial, then there is no infringement of copyright and no need to rely on the permitted acts.”<sup>14</sup>

“In **Independent Television Publications Ltd v Time Out Ltd**<sup>15</sup>, Whitford J said: Indeed, once the conclusion is reached that the whole or a substantial part of the copyright work has been taken, a defence under section 6(2) or (3) [of the Copyright Act 1956, some of the fair dealing provisions] is unlikely to succeed.<sup>16</sup>

Factors that have been identified by the courts as relevant in determining whether a particular dealing with a work is fair include:

- does using the work affect the market for the original work? If a use of a work acts as a substitute for it, causing the owner to lose revenue, then it is not likely to be fair

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<sup>13</sup> <https://www.legislation.gov.uk/ukpga/1988/48/part/I/chapter/III>

<sup>14</sup> Intellectual Property by David Bainbridge 8<sup>th</sup> Edition On Page 222

<sup>15</sup> [1984] FSR 64

<sup>16</sup> Intellectual Property by David Bainbridge 8<sup>th</sup> Edition On Page 223

- is the amount of the work taken reasonable and appropriate? Was it necessary to use the amount that was taken? Usually only part of a work may be used

The relative importance of any one factor will vary according to the case in hand and the type of dealing in question.”<sup>17</sup>

In The case of **British Broadcasting Corp Vs British Satellite Broadcasting Limited**<sup>18</sup> Court’s finding was that the defendant’s use of short excerpts taken from BBC’s live broadcasts of World cup matches to show highlights of matches in it’s sports news programme amounted to fair dealing for purposes of reporting current events and was therefore protected.

From the above provisions about fair dealing in the UK, it is most important that one determines the degree of effect by which their work will affect the original work on the market. This seems to be the main underlying factor and the whole rationale behind this is to eliminate the unfair competition. This can be assessed in relation to the amount of work used and whether it is substantial enough to cause another person to mistake it for the original work.

Someone who benefits financially from any work cannot claim to be fairly dealing with the work. This in line with digital content means if someone uses a substantial part of a copyrighted work say for example a song to come up with AI-generated work then they cannot claim under fair dealing in the UK jurisdiction.

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<sup>17</sup> <https://www.gov.uk/guidance/exceptions-to-copyright>

<sup>18</sup> [1990] EWCA Civ J0629-3

## **BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS**

Adopted in 1886, the Berne Convention addresses the rights of authors and the protection of works. It gives authors, musicians, poets, painters, and other creators the power to decide who can use their works and under what circumstances. It centers on three key concepts and includes a number of clauses that specify the minimal level of protection that must be provided, along with additional clauses that are available to developing nations who wish to utilize them.<sup>19</sup>

The Berne convention provides for certain limitations and exceptions particularly under Article 9(2), Article 10 and Article 10bis<sup>20</sup>.

Article 19 (2) introduces the 3 step test and provides that “It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.”

Additionally, Article 10 and 10bis permit use of works for purposes such as teaching, quotation, and reporting current events, provided such use is compatible with fair practice and doesn't unfairly harm rights holders for example it emphasises that the source of the information that is the name of the author must be clearly indicated. Article 10 and 10bis are provided below in extenso respectively:

### Article 10

(1) “It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

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<sup>19</sup> <https://www.wipo.int/treaties/en/ip/berne/>

<sup>20</sup> [https://www.unido.org/sites/default/files/2014-04/Berne\\_Convention\\_for\\_the\\_Protection\\_of\\_Literary\\_and\\_Artistic\\_Works\\_28.09.1979\\_0.pdf](https://www.unido.org/sites/default/files/2014-04/Berne_Convention_for_the_Protection_of_Literary_and_Artistic_Works_28.09.1979_0.pdf)

(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilisation, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilisation is compatible with fair practice.

(3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.”

#### Article 10bis

(1) “It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.”

## THE WORLD INTELLECTUAL PROPERTY organisation (WIPO)

“The World Intellectual Property organisation (WIPO) is one of the specialised agencies of the United Nations (UN) system of organisations. The “Convention Establishing the World Intellectual Property organisation” was signed at Stockholm in 1967 and entered into force in 1970. However, the origins of WIPO go back to 1883 and 1886, with the adoption of the Paris Convention and the Berne Convention respectively. Both of these conventions provided for the establishment of international secretariats, and both were placed under the supervision of the Swiss Federal Government. The few officials who were needed to carry out the administration of the two conventions were located in Berne, Switzerland.

Initially there were two secretariats (one for industrial property, one for copyright) for the administration of the two conventions, but in 1893 the two secretariats united. The most recent name of the organisation, before it became WIPO, was BIRPI, the acronym of the French-language version of the name: United International Bureaux for the Protection of Intellectual Property (in English). In 1960, BIRPI moved from Berne to Geneva”.<sup>21</sup>

In simple terms, **The WIPO** is a specialised UN agency that promotes the protection of intellectual property globally. WIPO provides a framework within which member states, including Uganda align their municipal copyright laws to meet international standards.

WIPO’s Copyright Treaty (WCT) under Article 10<sup>22</sup> introduces a globally recognised standard for exceptions and limitations to copyright and is provided below in extenso:

“(1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty

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<sup>21</sup> WIPO Intellectual Property Handbook: Policy, Law and Use WIPO PUBLICATION NO. 489 (E) Second edition 2004

<sup>22</sup> [https://www.wipo.int/wipolex/en/text/295166#P83\\_10885](https://www.wipo.int/wipolex/en/text/295166#P83_10885)

in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

(2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.”

This provision governs how fair use is applied in municipal laws, especially in the context of digital content. It introduces a three step test as already established in the Berne convention, which creates a high threshold for the legality of exceptions to copyright. The three steps are:

1. **Certain special cases** that is the exception must be clearly defines and narrow in scope.
2. **No conflict with normal exploitation.** The use must not harm the commercial market for the work.
3. **No reasonable prejudice to the legitimate interests of the author.** The author’s economic and moral rights must be respected.

From the above review of international literature, it is evident that the three step test, which originates from Article 9 of the Berne convention and is replicated in Article 10 of the WIPO Copyright Treaty is a critical element in international copyright law.

It is important to note that the three step test is not a test to measure fair use directly but is instead a standard used to determine the validity and scope of limitations and exceptions to copyrights under international law. It sets boundaries within which countries can create exceptions or limitations to copyright like fair use.

In Uganda’s context, understanding the role, limitation and scope of the three step test is important as it helps in assessing the kind of reforms that can be introduced in order to

make The CNRA more flexible specifically the fair use provision under Section 14 without breaching its international obligations.

## **2.4 Review of Uganda’s Legal Framework on copyright and fair use**

In Uganda, copyright laws have historically focused on traditional literary and artistic works, with limited adaption to the the fast paced growing complexities of digital content. In order to critically assess the adequacy of The CNRA in the digital age, it is essential to examine the legal framework from a national perspective. This section therefore reviews Uganda's statutory provisions and key judicial decisions like The Angela Katatumba case.

To begin with, Uganda’s Copyright and Neighbouring Rights Act, 2006 (CNRA) serves as the principal legal framework for the protection of copyright and related rights. Notably, Section 14 of the CNRA adopts a fair use provision, allowing the use of protected works without authorisation in certain circumstances. **Section 14 of the CNRA** is provided below in extenso:

### “14. Fair use of works protected by copyright

(1) The fair use of a protected work in its original language or in a translation shall not be an infringement of the right of the author and shall not require the consent of the owner of the copyright where—

(a) the production, translation, adaptation, arrangement or other transformation of the work is for private personal use only;

(b) a quotation from a published work is used in another work, including a quotation from a newspaper or periodical in the form of press summary, where—

(i) the quotation is compatible with fair practice; and

(ii) the extent of the quotation does not exceed what is justified for the purpose of the work in which the quotation is used, and

(iii) acknowledgement is given to the work from which the quotation is made;

(c) a published work is used for teaching purpose to the extent justified for the purpose by way of illustration in a publication, broadcast or sound or visual recording where the use is compatible with fair practice and acknowledgement is given to the work and the author;

(d) the work is communicated to the public for teaching purposes for schools, colleges, universities or other educational institution or for professional training or public education where the use is compatible with fair practice and acknowledgement is given to the work and the author;

(e) the work is reproduced, broadcast or communicated to the public with acknowledgement of the work, in any article printed in a newspaper, periodical or work broadcast on current economic, social, political or religious topic unless the article or work expressly prohibits its reproduction, broadcast or communication to the public;

(f) any work that can be seen or heard is reproduced or communicated to the public by means of photograph, audiovisual work or broadcast to the extent justified for the purpose when reporting on current events;

(g) any work of art or architecture in a photograph or an audiovisual or television broadcast is reproduced and communicated to the public where the work is permanently located in a public place or is included by way of background or is otherwise incidental to the main object represented in the photograph or audiovisual work or television broadcast;

(h) for the purposes of current information, a reproduction in the press, broadcast or communication to the public is made to—

(i) a political speech or a speech delivered during any judicial proceeding; or

(ii) an address, lecture, sermon or other work of a similar nature delivered in public;

(i) for the purposes of a judicial proceeding, work is reproduced;

(j) subject to conditions prescribed by the Minister, a reproduction of a literary, artistic or scientific work by a public library, a non-commercial documentation centre, a scientific institution or an educational institute if the reproduction and the copies made—

- (i) do not conflict with the normal exploitation of the work reproduced;
  - (ii) do not unreasonably affect the right of the author in the work; and
  - (k) any work is transcribed into braille or sign language for educational purpose of persons with disabilities.
- (2) In determining whether the use made of a work in any particular case is a fair use, the following factors shall be considered—
- (a) the purpose and character of the use, including whether the use is of a commercial nature or is for non-profit educational purposes;
  - (b) the nature of the protected work;
  - (c) the amount and substantiality of the portion used in relation to the protected work as a whole; and
  - (d) the effect of the use upon the potential market for value of the protected work.
- (3) The fact that a piece of work is not published shall not of itself prejudice the requirement of fair use in accordance with subsection (2)”

While examining Section 14 of the CNRA, it is necessary to take into account Uganda's international obligations under the Berne Convention and the WIPO Copyright Treaty (WCT). These instruments impose the "three-step test" as a guiding principle for any copyright limitations or exceptions.

This test requires that permitted uses be limited to certain special cases, not conflict with the normal exploitation of the work and not unreasonably prejudice the legitimate interests of the rights holder. Although the CNRA lists a number of exceptions, there is little guidance on how these relate to digital content.

The lack of explicit clauses on transforming digital uses—such as AI-generated content or memes—raises doubts about the Act's compliance with the evolving interpretation of the three-step test in the digital era. Although Uganda's legal framework mostly reflects

international copyright restrictions, Its analog-era structure restricts its digital relevance and makes it less flexible to the demands of fair use in the digital age.

The case of **Angela Katatumba v Anti-Corruption Coalition of Uganda (ACCU)**<sup>23</sup> is a landmark case whose judicial decision directly engages with the application of Section 14 of The CNRA.

The brief facts of the case are that the plaintiff (Angela Katatumba) is a composer, producer and copyright holder of a musical production called “Let’s Go Green”. The plaintiff also reduced the production into audio and visual form. She has marketed the hard-copy as well as the soft copy versions on YouTube and other soft media. The plaintiff alleged that she performs the product in public for gain as well as advancing her environmental conservation agenda. That in April and May 2011, the plaintiff discovered that a substantial portion of the lyrics and content of the above mentioned production were incorporated into and released as part of an advertisement by the defendant wherein her production prominently features. Further that incorporation of the lyrics and content into the advert was knowingly made by or on the instructions and for the benefit of the defendant without the plaintiff’s knowledge or consent. That the advert and publication amounts to infringement by the defendant of the plaintiff’s copyright in the production “Let’s Go Green”.

On the issue of whether the Defendant's actions fell within the fair use exception, the plaintiff’s argument was that section 14 (1) of the Copyright and Neighbouring Rights Act lists 11 situations which are considered to be fair use and that the Defendants use did not fall within the 11 situations spelt out under the provision. Namely, the adaptation of the Plaintiff’s song into an advertisement was not "for private use only" but was released to the public by mass media on at least two radio stations for five days. Secondly, section 14 (1) (b) and (c) do not assist the Defendants used because it did not acknowledge the Plaintiff as the author in the advertisements or at all. section 14 (1) (d) does not assist either because

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<sup>23</sup> CIVIL SUIT NO 307 OF 2011

it only protects use in educational institutions and also requires acknowledgement of the source. In a like manner subsection (e) requires acknowledgement. section 14 (1) (f) is also irrelevant because it deals with situations where work is referred to in the course of "reporting on current events". section 14 (1) (g) is totally irrelevant as it refers to situations where a copyrighted work is coincidentally captured in the background of a production, performance of broadcast, and not where it is deliberately integrated into the Defendant's production itself. The rest of section 14 (1) does not relate to the Defendant's scenario<sup>24</sup>

The defendant on the other hand argued that the extract of the verse in the song that was used in the Defendant's jingle was not substantial and therefore not actionable. The jingle substantially contains messages from the Defendants to the public in prose to engage their leaders in preventing the unlawful giveaway of Namanve Forest. The substantiality test must be applied to the lyrical content and length of time of the jingle in comparison with the song "Let's Go Green". To that extent the Defendant's jingle is in creative, transformative and entitled to the corporate protection in its own right. No loss or harm was intended or occasioned by the unsubstantial use of portions of the song in the Defendant's jingle. The actions of the Defendant fall within the elements of fair use doctrine as set out under the Copyright and Neighbouring Rights Act. The use of the song was done to communicate to the public de-gazetting of Namanve Forest<sup>25</sup>

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<sup>24</sup> <https://ictpolicyafrica.org/fr/document/1g0t57rprv3?page=9>

<sup>25</sup> <https://ictpolicyafrica.org/fr/document/1g0t57rprv3?page=11>

In its judgement, the High Court held that the Defendant's use of the Plaintiff's song did not qualify as fair use within the meaning of Section 14 of the CNRA. Justice Madrama emphasised that the use was deliberate and extensive, noting that the Plaintiff's song "Let's Go Green" was used throughout the entire advertisement jingle, including as a background track during spoken commentary. The Court found that this usage was not incidental or fragmentary, but integral to the Defendant's message, thereby constituting unauthorised exploitation of the Plaintiff's copyright. Moreover, there was no acknowledgement of the author nor any valid transfer, licence, or authorisation granted. The Court concluded that the use failed to meet the fair practice standard or the limited-use threshold required under Section 14(2), and instead fell within the definition of infringement under Section 46(1).<sup>26</sup>

A significant gap within Uganda's copyright and fair use framework lies in the absence of an express provision on **transformative use** which has proved to be a key component of modern fair use law, especially in the digital age. Important to highlight is the distinction between derivative works in Uganda's legal framework from transformative use.

A derivative work is a new work based upon one or more pre-existing works e.g.translations. Under The CNRA **Section 9 (f)**, the right to create derivative works is an exclusive right of the copyright holder. Making a derivative work without permission from the author is generally considered to amount to infringement<sup>27</sup>.

A case study of derivative work in Ugandan music is the famous **Mbilo Mbilo Remix by Eddy Kenzo** which featured **Nigerian artist Niniola**<sup>28</sup> which was built on Eddy Kenzo's original song with the same melody and structure Mbilo Mbilo but added new vocals from the female artist, instrumentals and lyrics.

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<sup>26</sup> <https://ictpolicyafrica.org/fr/document/1g0t57rprv3?searchTerm=right&page=26> Pg 26- pg36

<sup>27</sup> World Intellectual Property Organization, *Understanding Copyright and Related Rights* (WIPO 2016) <https://www.wipo.int/publications/en/details.jsp?id=4085>

<sup>28</sup> <https://www.youtube.com/watch?v=hGSluBRWlxs>

On the other hand, a transformative use is one that adds new expression, meaning, or message to the original work. It changes the purpose or character of the work in a way that justifies reuse. Hereunder, unauthorised use may be legal if it's sufficiently transformative and meets the other fair use factors. Therefore while a transformative work may be derivative work, not all derivative works are transformative. For example a meme may suffice as a transformative piece of work.

### **Chapter 3 : COPYRIGHT ISSUES IN THE DIGITAL AGE**

The emergence of digital technologies has changed the way creative works are created, accessed and shared. Digital platforms today offer rapid access to content like music, movies, online books and academic material all over the globe compared to traditional distribution methods that depend on physical media like CDs, flash discs e.t.c. This transformation has not only enlarged the reach market for authors and creators but has also raised a number of challenges for the effectiveness of existing copyright laws that were primarily designed to cater for an analog environment.

The biggest problem in this digital era is striking a balance between the protection of intellectual property rights of creators and the public's right to access information. Although digital tools have enabled people to interact with material in creative ways such as remixing, parody or educational use, they have also caused more infringement and widespread unauthorised use. As a result, copyright laws face new complexities in defining and regulating fair use in a rapidly evolving digital era.

This chapter explores these emerging challenges by examining how digitisation affects copyright enforcement, protection and fair usage in Uganda. It further sets a foundation for evaluating whether The CNRA adequately addresses the realities of digital content.

## **Nature of copyright and key practical issues in the digital age**

Traditional copyright law was developed for physical creations like books, CDs, hard copy photographs. However, the rise of digital platforms has significantly changed how creative works exist. Today, instead of a physical book, compact disc or hard copy photograph, a song or a picture is just data on a computer. This makes it easy to copy it, change it and share it with everyone online across the globe at a very little or no cost. This is a big shift from the old days.

Digital content includes a broad number of works. Think about all the things you see online like music, videos, e-books, digital drawings, memes, podcasts on platforms like YouTube and TikTok. These digital formats make it hard to tell the difference between what is the original work and derivative creations thereby challenging the traditional concepts of originality, fixation into material form and authorship.

For example, fixation, traditionally understood as the requirement that for work to be protected it must be in material form, becomes problematic in a digital setting. Many works are generated and consumed on digital platforms in real time e.g. live streams and podcasts or are stored in cloud systems without ever taking a physical and permanent form. The issue now is whether such works meet the legal qualification of being in material form under Section 3 of the CNRA.

Furthermore, the concept of originality in the digital age faces reinterpretation. Online content creation involves remixing, reusing and building on pre-existing works. Platforms like TikTok and YouTube mainly involve posting derivative works that often include copyrighted materials. This makes assessment of what qualifies as original work hard because the line between infringement and inspiration becomes blurred.

The duration of protection which is the lifetime of the author and 50 years after their death under Section 12 of the CNRA has also increasingly become controversial in the digital age. This is because online content might be popular and relevant for a short time but remain legally protected for a very long time. This long protection can hinder new creative

work especially where exceptions like fair use are unclear or limited. A re-examination of the purpose of copyright and how long works should be protected in the digital age ought to be considered.

Copyright laws usually differ from country to country. When it comes to digital content, a work uploaded in Uganda can instantly be seen by anyone anywhere across the globe<sup>29</sup>. This makes it more confusing and challenging about which country's laws should apply. Also, there are new modes of usage like hyperlinking, embedding and AI-generated works. This brings about the need for legal systems to address such usage which was not envisaged in the current CNRA.<sup>30</sup>

Unauthorised use and piracy. This involves duplicating and distributing copyrighted materials without permission from the copyright holder. This is facilitated by the ease of copying and sharing content online and have therefore become rampant.

Piracy has exists in various forms like counterfeit books and unauthorised reproductions of music and movies. However, the digital era has made it more common its scale and impact exponentially. Common examples include:

- File-sharing networks: Platforms like Napster (in its early days) and torrents enable users to download and share content like music, movies, and software.
- Streaming websites: Many sites stream pirated content without authorisation, allowing viewers to access copyrighted works for free.
- Cracked software: Pirated versions of software bypass licensing systems, often with the help of "cracks" or modified versions.

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<sup>29</sup> [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1063.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1063.pdf)

<sup>30</sup> [https://unctad.org/system/files/official-document/ictsd2006ipd1\\_en.pdf](https://unctad.org/system/files/official-document/ictsd2006ipd1_en.pdf)

The ease of access, anonymity, and global reach of the internet make piracy particularly difficult to combat. A single pirated copy of a movie or song can be uploaded and shared across the globe within minutes.<sup>31</sup>

The ambiguity between fair use and infringement is another major issue in the digital age. Digital platforms have enabled widespread participation in content creation often for non-commercial and educational purposes. Practices such as quotation, parody, satire, criticism<sup>32</sup>, educational use, and transformative remixes have become common forms of digital expression.

Many of these common uses of digital content fit the idea of fair use however although such uses might be acceptable in principle, Uganda's copyright law does not clearly define or guide how to assess them. For example, The CNRA provides for certain exceptions like educational use and private use but there is no clear guidance on how they apply to new technologies like streaming, online platforms, or social media sharing and they are strictly interpreted, often favoring copyright holders and discouraging flexible interpretation in favor of users.

Additionally, the rise of content sharing platforms like YouTube, Facebook and TikTok which act as intermediaries and often host infringing content uploaded by users without permission raises legal issues like **intermediary liability**<sup>33</sup>. This refers to whether platforms should be held liable for infringing content posted their users. Jurisdictions like the USA have laws in place like The Digital Millennium Copyright Act (DMCA)<sup>34</sup> that protect such platforms from direct liability under certain conditions like immediate take down of infringing content where there is a take down notice<sup>35</sup>.

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<sup>31</sup> <https://www.trademarkia.com/news/copyrights/copyright-vs-piracy>

<sup>32</sup> [https://unctad.org/system/files/official-document/ictsd2006ipd1\\_en.pdf](https://unctad.org/system/files/official-document/ictsd2006ipd1_en.pdf)

<sup>33</sup> <https://www.eff.org/issues/dmca>

<sup>34</sup> Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (Oct. 28, 1998).

<sup>35</sup> <https://www.eff.org/issues/dmca>

A takedown, or a takedown notice, is a request made by a copyright owner to an online service provider (OSP) to have material that infringes their copyright-protected work removed from a website or other online service. Once the online service provider has received a compliant notice, it must act expeditiously to remove or disable access to the infringing material. The service provider must then promptly notify the user that originally uploaded the material that it has been removed. If the user believes that the material was removed as a result of mistake or misidentification of the material, the user may submit a counter-notice requesting the reinstatement of the material.<sup>36</sup>

In a 2007 case of **Perfect 10 V Google**<sup>37</sup>, court reversed the lower court's holding that Google's thumbnails were not a fair use. The facts were that adult entertainment publisher Perfect 10 sued Google's Image Search service arguing that Google violates copyright law by indexing Perfect 10 photos posted on unauthorised websites then making and delivering thumbnail images of those photos in its search results. Perfect 10 also contended that Google should be held liable for any copyright infringement that occurs on sites that Google links to.<sup>38</sup>

The Court correctly discerned the technology at issue, finding that when you frame a page or provide an in-line link, it's the site that you're pointing to that could be displaying the picture, not the search engine that coughs up the HTML. Court further held that Google could not "supervise or control" the third-party websites linked to from its search results.<sup>39</sup>

This is not the case with Uganda's copyright laws. The CNRA does not make provisions to address the liability of online platforms and the same goes with case law as there are less or no legal precedents to address the issue of intermediary liability. This leaves so many Ugandan online users with limited options and remedies when their content is misused online. It also undermines both enforcement and innovation.

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<sup>36</sup> <https://www.copyright.gov/512/>

<sup>37</sup> 508 F.3d 1146 (9<sup>th</sup> Cir. 2007)

<sup>38</sup> <https://www.eff.org/cases/perfect-10-v-google>

<sup>39</sup> <https://www.eff.org/deeplinks/2007/05/p10-v-google-public-interest-prevails-digital-copyright-showdown>



### **Impact on stakeholders.**

Ugandan content creators are leveraging digital platforms like YouTube, TikTok, and Instagram to showcase, distribute, and monetise their work across the globe. However, this exposure also comes with threats like online piracy, unauthorised sharing and weak enforcement mechanisms which undermine the earnings of creators. Furthermore, many creators find it difficult to assert ownership over digital content that is derivative or to control how their work is used in the absence of clear laws for digital rights management.

For the public, digital technologies have made it much easier for the general public to access information and educational materials. Students, educators, and general users have benefited from sharing and remixing content, particularly in non-commercial contexts. However, the ambiguity of Uganda's CNRA in defining what constitutes legal educational or non-commercial use leaves users vulnerable to infringement claims, even when their intention aligns with fair use principles. This uncertainty may discourage creative expression, learning, and innovation.

Copyright holders face increasing challenges in monetisation of their copyrighted works in digital environments. The rapid and often unauthorised spread of content online can result in loss of revenue which in recent days has become the main source of livelihood for many young Ugandan content creators. Additionally, due to the lack of well organised enforcement mechanisms and clear policies on intermediary liability, pursuing digital infringement cases becomes costly, complex and close to impossible for most content creators in Uganda. Online infringement litigation is still uncommon in Uganda, primarily because of the lack of specialised IP courts, legal ambiguity, and enforcers' low level of digital literacy considering that the average age of Uganda's leaders is 65 years<sup>40</sup>

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<sup>40</sup> <https://www.monitor.co.ug/uganda/news/national/aged-government-in-charge-of-a-young-uganda-1859354>

## **Conclusion.**

The Digital environment in Uganda is rapidly evolving, marked by increased internet access, an increase in content creation, and the growing use of online platforms for education, entertainment, and expression. However, our legal framework particularly the Copyright and Neighbouring Rights Act (CNRA) has not kept pace with these developments. While the CNRA provides certain exceptions such as private and educational use, these provisions are narrow and largely focus on traditional media. The law offers no guidance on key digital realities such as intermediary liability, digital fair use, or transformative content. This delay in regulation has created significant uncertainty for all stakeholders: content creators face difficulties in protecting and monetisation of their work, users are left unclear about what constitutes fair and acceptable use and rights holders struggle with enforcement in a borderless and fast moving digital era.

The digital age introduces both opportunities and complex challenges for copyright law in Uganda. These include piracy, ambiguity between fair use and infringement and the absence of an organised structure for the protection of digital rights. Addressing these issues is essential for promoting a balanced copyright system that fosters innovation while protecting creators.

## **Chapter 4 : Findings, recommendations and conclusion.**

### **Findings**

The research above reveals that the CNRA is broad but not specific enough to cater for the complexities associated with digital content and new technologies. Even though section 15 of the CNRA outlines permitted uses that qualify as fair use such as for private use, research, teaching, and criticism, it does not adopt a flexible, open-ended standard similar to the fair use model in the United States. This constrains its ability to respond flexibly to unexpected uses of digital works, especially those enabled by digital platforms, like YouTube, TikTok, educational repositories, or research archives.

One of the critical gaps cited in the CNRA is the lack of direct guidance on how the rights of copyright holders might be balanced against the broader public interest in the digital environment. In the digital age, the distinction between infringement and lawful use has become increasingly difficult, particularly within the fields of education, parody, commentary, research, and user-generated content. But the CNRA's exception list is narrow, and does not have the flexibility to adapt to changing norms in the digital space.

Consequently, the vast majority of users, content creators, educators and innovators are confused about whether their activities constitute fair use — especially online, where copyright works go to millions or billions of people across the world. This legal ambiguity discourages legitimate digital engagement and innovation, while also overburdening copyright holders with enforcement responsibilities in areas where the law offers little clarity.

Additionally, enforcement agencies and courts are constrained by the absence of legislative guidance, making it difficult to apply the law consistently in new and complex digital scenarios. This has had a seemingly negative effect on both creativity and access to information and highlights the urgent need for legal reforms to better reflect public interest considerations in Uganda's copyright system.

Subsequent research reveals that the CNRA has not been substantially revised to reflect international copyright developments, especially those set forth in the WIPO Internet Treaties like the WIPO Copyright Treaty (WCT). These instruments call for legislation at a national level to acknowledge the challenges posed by digital technology and to adopt measures that safeguard both creators' rights and public access in a networked environment.

However, Uganda's legal environment is largely anchored on a pre-digital economy landscape with limited attention to issues such as digital reproduction, streaming, hyperlinking and platform-oriented content distribution. That disconnect leaves Uganda at a disadvantage in its capacity to adopt international copyright norms and undermines its capacity to promote digital trade, innovation and knowledge transfer across borders.

Furthermore, there is a significant gap in how the courts are interpreting and applying fair use in the digital era. Ugandan case law on copyright remains underdeveloped, particularly in relation to digital disputes. Copyright practitioners frequently cite the case of **Angela Katatumba v. The Anti-Corruption Coalition of Uganda**<sup>41</sup>. However, this case in my opinion is not a complete body of doctrine, but rather a starting point. There is still a need for more case law and consistent judicial engagement with digital copyright issues, especially as new challenges emerge in areas such as social media content, streaming, and digital education platforms. The evolving nature of technology calls for continuous legal development through both legislation and litigation to ensure clarity and adaptability in Uganda's copyright framework.

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<sup>41</sup> ibid

Another critical finding of this research is the absence of key legal doctrines within the CNRA that are essential for regulating copyright in the digital age like intermediary liability and transformative use. As digital platforms themselves are increasingly used as channels through which content is distributed and modified (whether by hosting, sharing or algorithmic promotion), there is a need to provide legal certainty about the responsibilities and liabilities of intermediaries such as ISPs, content platforms (e.g., YouTube, Facebook), and hosting services. The CNRA is silent on the concept of intermediary liability, failing to define the extent to which such actors are accountable for infringing content hosted or shared on their platforms. This lack of legal clarity makes it tough for rights holders to seek redress and for platforms to understand their duties regarding taking down content, monitoring or enjoying safe harbor protections.

Furthermore, the CNRA fails to consider or include the concept of transformative use, which is an important doctrine to the copyright debate. Transformative use has to do with whether the new work alters the original with new expression, meaning, or message. This doctrine has been pivotal in other jurisdictions (such as the U.S.) for protecting creativity and innovation in digital formats like memes, video mashups, and critical commentary. This concept is not incorporated in the CNRA which leaves authors uncertain about the legality of such digital practices but this has the potential to cripple cultural expression and creativity. By and large, such omissions show that the CNRA is still rooted in a pre-digital understanding of copyright and stress the necessity to update legal doctrines for technological realities.

## **Recommendations**

The research recommends the following in light of the findings presented in this study to enhance the adequacy of Uganda's copyright framework particularly the CNRA in addressing the challenges and realities of the digital age:

### **LEGISLATIVE REFORMS**

The CNRA should be amended to cater for the evolving nature of content creation, sharing, and use in the digital era. This can be achieved through the following:

To begin with, a more flexible fair use clause should be introduced, possibly based on the US four-factor test to give courts a wider scope in evaluating new and transformative digital use. The current structure of the Copyright and Neighbouring Rights Act (CNRA) in Uganda relies on a closed list of exceptions and limitations, which defines specific circumstances under which copyrighted material may be used without the rights holder's permission. While this provides some level of clarity, it is not flexible and does not adapt easily to new and evolving forms of digital content creation such as remixes, memes, online parodies, user generated educational content, as well as other new forms of transformative digital expression. As a result, many potentially lawful and socially valuable uses fall into a legal grey area, discouraging creativity and innovation.

Uganda could think about implementing a more open-ended fair use system akin to that in the United States to fill this gap. Under Section 107 of the U.S. Copyright Act, courts assess whether a particular use of copyrighted material is "fair" by applying a four-factor test. This test gives courts the discretion to analyse each case based on its specific context, rather than relying on a rigid checklist. Such a flexible approach is particularly well-suited in the digital era, where new forms of expression and content-sharing emerge frequently and unpredictably.

A model along the same lines in Uganda could give the judiciary the flexibility to respond to new uses of content like memes, reaction videos, online course materials and digital parody that might not be contemplated by the statute but which serve crucial educational, critical, or creative purposes. Such a reform would not only bring Uganda's copyright regime in line with international standards, but it would also advance a balanced view of copyright that respects rights holders and promotes access, innovation, and participation in the digital age.

Secondly, the CNRA should be amended to incorporate the concept of transformative use explicitly into the Act to support innovative and socially advantageous uses such as remixing, parody, commentary, and educational adaptations. One of the most significant gaps in the CNRA is the absence of the legal doctrine of transformative use, a concept that has become essential in interpreting fair use in the digital age. In countries like the US, where it is essential in determining whether a use is fair, this is an essential component of modern copyright jurisprudence.

Transformative use is particularly relevant in the digital age where artists frequently build on already existing works to produce new kinds of expression. By explicitly recognising transformative use in the CNRA, Ugandan law would provide clearer legal protection for creators engaging in transformative works and reduce the risk of unjustified copyright claims against beneficial content. Also, codifying this concept would mark a change toward a more equitable copyright framework, one that encourages innovation, free expression, and public access to knowledge in the digital age while simultaneously protecting the financial interests of rights holders.

In addition, the CNRA should recognise and regulate intermediary liability by defining the responsibilities of digital platforms and service providers in relation to infringing content, including the establishment of takedown notice procedures and safe harbor provisions. Content platforms and service providers function in a legal vacuum in the absence of clear regulations, which causes ambiguity for users and rights holders too. Digital platforms run the risk of being held liable for user-generated content unless they regulate themselves or over-censor which sometimes is at the expense of free speech and rights holders may find it difficult to enforce their rights against anonymous infringing persons using online services.

To address this, Uganda should:

- Define the legal responsibilities of intermediaries in the CNRA, including when they may be held liable for copyright infringement committed by their users.
- Establish a structured takedown notice system, which allows rights holders to report infringing content and obligates platforms to remove it within a reasonable time frame.
- Introduce safe harbor provisions, which protect intermediaries from liability provided they act quickly upon receiving notice of infringement and do not knowingly host infringing material.

Finally, the list of exceptions and limitations in the CNRA should be updated to include uses relevant to modern technologies such as:

- Online and remote education: The law should permit the digital reproduction and dissemination of copyrighted materials for educational purposes, especially in virtual classrooms, Massive Open Online Courses (MOOCs), and e-learning platforms, with appropriate safeguards.
- Digital preservation and archiving: Libraries, museums and research institutions should be allowed to preserve works by turning them into soft copies for archival

purposes, especially where physical copies are deteriorating or at risk of being lost. This is crucial for cultural preservation and educational access.

- Text-and-data mining (TDM): Modern research relies heavily on the ability to use automated tools to extract patterns and information from large datasets, including text corpora. Copyright law should explicitly permit TDM for non-commercial, academic, or scientific research purposes.

## **INSTITUTIONAL AND ADMINISTRATIVE REFORMS**

Capacity building for The Uganda Registration Services Bureau (URSB). Being the main entity in charge of copyright administration in Uganda, URSB needs to be adequately equipped to handle new issues pertaining to digital copyright. This involves:

- Technical training for staff on digital rights management, online infringement and copyright issues related to new technologies.
- Modern enforcement tools should be put in place such as digital monitoring systems and collaboration with internet platforms to track and respond to infringement.
- Dedicating skilled personnel to handle digital copyright complaints, especially involving online platforms or cross-border content.

URSB developed an efficient online copyright registration platform which enables creators to easily register and manage their works online. However, further enhancements can make the system more robust, accessible, and user-friendly for example, System improvements which include making the support various Ugandan local languages, real-time tracking of registration status and simplified user interfaces for artists with limited technical skills. In addition, wider promotion of the platform is also essential as many creators especially in rural areas or informal sector remain unaware of the service or how to use it effectively.

Judicial training and specialisation should be carried out. This is because Ugandan judicial officers are not adequately exposed to complex digital IP matters. To address this, the judiciary should establish specialised IP courts or create a division in the high court to efficiently handle disputes involving online copyright infringement, intermediary liability, and emerging forms of digital content. The judiciary should also put in place Continuous legal education programmes for judges, magistrates, and prosecutors on copyright law, with focus on digital rights and fair use principles.

## **PUBLIC AWARENESS AND STAKEHOLDER ENGAGEMENT STRATEGIES**

The government, through URSB and the Ministry of ICT, should launch nation-wide public awareness campaigns on digital copyright and fair use to educate creators, consumers, students, and businesses on their rights and obligations under the CNRA, the concept of fair use and how it applies in educational and digital contexts, the implications of unauthorised use and distribution of copyrighted content and the benefits of registration and legal protection for creators. This can be done through radio and TV programmes, social media or school out reach programmes

The government through the NCHE should Promote Copyright Literacy in institutions and Universities. Educational institutions should integrate intellectual property studies into their curriculum. Intellectual property should be made a mandatory course unit in all courses in universities most especially technology courses. This will help build a culture of respect for IP rights and foster innovation among young people. Targeted workshops and competitions (e.g., for music or digital content creation) can also raise awareness and interest in copyright compliance.

## **Conclusion**

This study set out to critically analyse the adequacy of the CNRA of Uganda with reference to the concept of fair use in the digital era. The study concludes that the CNRA offers a foundational legal framework for copyright protection but falls short of meeting the ever evolving demands of digital technology and the use of content online.

A number of findings stand out among the otherwise unsurprising research: the CNRA's reliance on a closed list of exceptions that limits flexibility; that there are no modern copyright doctrines like transformative use or intermediary liability in the CNRA; gaps in judicial interpretation of fair use in digital contexts; and the lack of alignment with international treaties and the best practices across other jurisdictions. Although Uganda has taken some steps towards modernisation such as introducing an online copyright registration system, the broader legal and institutional framework still requires significant reform to effectively regulate digital content.

The comparative insights from countries such as the US and UK further highlight the need for more flexible and technology friendly legal solutions. Notably, this type of system has long existed in the fair use doctrine in the United States where the four-factor test and focus on transformative use capture balance between authors and end users in fast-moving digital spaces.

Thus following from this, the study suggests a combination of legislative reforms and institutional capacity building as well as public involvement strategies. Strengthening the judiciary, improving URSB's digital services, and building public awareness are equally important for creating a copyright environment that can support innovation, education and creative expression in Uganda's digital economy.

In the end, a balanced, future-focused copyright framework will not only help ensure that creator's rights are protected but it will also enable users, teachers, and innovators to contribute to the digital public space in ways that matter. These are the kinds of reforms through which Uganda can construct a copyright system which is legally robust as well as socially relevant and future-proof.

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