

**CRITICAL EXAMINATION OF THE EFFECTIVENESS OF THE COPYRIGHT AND
NEIGHBOURING RIGHTS ACT 2006 IN PROTECTING INTERESTS OF MUSICAL
WORKS IN UGANDA**

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DECLARATION

, **Alinaitwe Charity**, declare that the content of this research proposal is as a result of my original work and has been submitted for my academic award and has never been submitted in his university or any other institution of higher learning.

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APPROVAL

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Sign: Jane F.....

Date: 30/1/2019.....

(As Nanvuma Jane Francis

Academic Supervisor)

DEDICATION

This research dissertation is dedicated to Mr and Mrs. Tulyamureba Henry and Family members who prepared me for education since my childhood despite their low income. My third dedication should be to my supervisor. Ms Nanvuma Jane Francis for her tolerance of hard time during my research.

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LIST OF ACRONYMS

ARIPO	African Regional Intellectual Property Organisation
CNRA	Copyright and Neighbouring Rights
CFI	Canal France International
DJ	Disc Joker
DRM	Digital Rights Management
FDI	Foreign Direct Investment
FM	Frequency Modulation
GDP	Growth Domestic Product
bid	Ibidem (As Above)
ICT	Information Communication Technology
FLA	International Federation of Library Associations and Institutions
LDC	Least Developed Countries
NLAU	National Library Association of Uganda
QNR	Questionnaire
TPMs	Technological Protection Measures
TRIPS	Trade Related aspects of Intellectual Property
JCC	Uganda Communication Commission
JLRC	Uganda Law Reform Commission
JPRS	Uganda Performing Rights Society
JRSB	Uganda Registration Service Bureau
WIPO	World Intellectual Property Organisation
WPPT	World Performance and Phonograms Treaty
WTO	World Trade Organisation

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The Constitution of The Republic of Uganda 1995

The Copyright and Neighbouring Rights Act 2006

The Trade Related Aspects of intellectual Property (Trips Agreement)

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WIPO Performers and Phonograms Treaty

ABSTRACT

Copyright is the right granted to an individual to such as music. What is protected is the creativity in the choice and arrangement of musical notes.

Therefore, this research is focused on discussing the copyright law in Uganda and its emerging legal issue, with in the music industry as a case study and applicability and relevance of the copyright law to Ugandan Artists. This thesis examines the provisions of the copyright and Neighbouring Rights Act, 2006 that protect music copy right.

Despite government's efforts in enacting and facilitating the copyright and Neighbouring Rights Act, 2006, its relevance and enforcement has remained low due to negative public attitudes and problems in the music industry to propose strategies and ways forward to improve its usage and applicability in its role to protect the artists in Uganda.

According to what is going on in the music industry in Uganda, it is evident that there is no adequate awareness by the general public about the copyright laws even within the music industry which is why many musicians intellectual property rights have been infringed upon by even fellow artists because they are also not aware about the copyright laws.

The study therefore recommends that copyright laws alone cannot put an end to music infringement therefore enforcement bodies and institutions such as the Uganda police, and all stakeholders should join the struggle and fight against the music infringement. Government agencies should also assign particular officers to deal with copyright issues and cases. The government should also task parliament to devise appropriate measures to improve on the copyright law enforcement and implementation methods in order to enhance its usage effectively. There should be sensitization of the public strengthening the musicians to work together with state holders to ensure that they obtain some payment from the people that produce their music.

CHAPTER ONE

BACKGROUND OF THE STUDY

1.0 Introduction

Copyright is a core element of intellectual property. Intellectual property rights broadly connote property rights in creations of the mind and these include; inventions, industrial designs, literary works, artistic works, symbols and images. The legal protection of intellectual property therefore encompasses the exclusive rights of a person to exploit or license particular creations of human ingenuity.¹

Copyright is a right that subsists in certain specified types of works as provided for by the Copyright and Neighboring Rights Act² One of the categories of creative works in which copyrights subsist is musical works.³ Accordingly this research thesis undertakes to examine the effectiveness of the Act in protecting the interests of copyright holders in musical works in Uganda.⁴

1.1 Background of the Study

This thesis has been inspired by the long running appeal by rights holders in musical works in Uganda for a law that protects their creative works.⁵ After overcoming the formidable challenge of foreign music-notably American, Congolese, and South African – Ugandans music industry has grown in leaps to carve out a niche for itself on the local market.⁶ This has precipitated the creation of specialist production houses, television shows, radio shows and concerts. The local music industry has also extended its influence to the advertising, marketing and even political industries.

twine J Review of current situation Regarding intellectual property policy issues, opportunities and challenges (2013) Vol 1 Uganda Living Law Journal page 2
Copyright and Neighbouring Rights Act 2006 S.19
Copyright and Neighbouring Rights Act 2006 S.5
Mr. Battle Joseph a premier entertainment journalist. The New Vision 26th February 2018
Muhimbi Sebagala Operations Manager of the Uganda Music Publishers Association (UMPA) Article accessed from www.ultimatemediaco.co.ug/article 2008.html
Muhimbi Sebagala local music at the center stage "The Sunday Monitor" 14th March 2009

This lucrative industry growth combined with increasingly aware copyright holders brought the copyright law into focus. Music piracy thrived with abandon and after a long history of non-enforcement, the rights-holders felt they deserved more. The Uganda Performing Rights Society (UPRS), a body incorporated in 1985 and which manages and administers copyright on behalf of its local members and by Reciprocal Representation Agreements (RRA) for its foreign members, offered some degree of protection.

However, against the uncontrollable whirlwind of infringement, the UPRS found its influence negligible. Practical acts of duplication, an authorized sale or other activities that bring economic benefits to the infringer at the expense of the owners entitlements to commercial gain continue unabated.

1. The repealed Copyright inherited from colonial masters Britain, carried a number of heavy duty weaknesses and these include;⁷Infringement of copyright was not a crime, civil action for damages and injunction being the only remedies of note.
 2. There was no legal requirement for works including musical works in which copyrights subsisted to be registered and this made enforcement, in comparison with other intellectual property rights such as trade mark, doubly difficult.
 3. The law was outdated, having been promulgated in 1964 and consequently neglecting to take into account important developments arising from international treaties ,which were introduced way after that date.⁸Other Uganda specific factors like the advent of technology and the implication it bore for copyright enforcement also needed to be taken cognizance of.
- The legislature accordingly passed the Copyright and Neighboring Rights Act 2006. This enactment increased the scope of protection afforded to creative works. The protection of musical works was reiterated but an important addition was the express recognition of the role played by producers, performers and other auxiliary contributors (neighboring rights).
- However, continuing voices of discontent among copyright holders in musical works pointed to a seeming inadequacy of the Act, conversely, difficulties with regard to enforcement thereof. It is also feasible that even where the law is sufficient potent, surrounding circumstances have made its enforcement impossible.

kibinga David, Intellectual Property Rights In Uganda.
World Trade Organisation and the Berne convention 1971

Contrary to assertions elsewhere,⁹ Africa is not a continent where by its very nature the respect and enforcement of copyright interest is near-impossible. The impressive management of the copyright law with respect to musical works in countries like South Africa and Malawi which are reputed to have the most effective copyright law in Africa – highlights are urgency of the problem in Uganda¹⁰.

The easy accessibility of music through the internet has further compounded the existing problems that is to say musical works can be easily posted on the internet from where they can be downloaded either for free or after subscription. Thereafter, the downloaded music is packaged for sale with the respective artists receiving no royalty remittances. Music copyright infringement through the internet is rampant in Uganda. The question that arises in such a scenario is whether the Copyright and Neighboring Rights Act can be effective in combating infringement through this medium.

1.2 Statement of the Problem

The 1964 Copyright Act cap 215 had grave shortcomings and there was need to address them thus the enactment of the 2006 Copyright and Neighboring Rights Act. Despite the enactment of the 2006 Copyright and Neighboring Rights Act, less has been implemented and many perpetrators still infringe musicians Copyrights unlimitedly. in fact, there is little or no enforcement of the Statutory provisions by Government authorities.

1.3 Objectives

1. To investigate the breadth of works protected under copyright and penalties for infringement provided for by the Copyright and Neighboring Rights Act of 2006
2. To investigate the enforcement, or lack thereof, of the rights provided for by the Act. Further, to examine the factors that has influenced the enforcement of the rights of copyright-holders in musical works.

⁹ Allan Story Study on intellectual property Rights, The internet And copyright study

¹⁰ Kalumba Robert Pirates of the Compact Disc “Daily monitor” 28 March 2009

3. To critically examine the role of Uganda Performing Rights Society (UPRS) and the copyright collective management ideal in the wider context of copyright administration and the enforcement of the rights of copyrights-holders.
4. To investigate the increasing influence of the internet and its effect on the copyright interests vested in musical works.
5. To investigate the success story of copyright enforcement in musical works in countries like Malawi and South Africa and what measures can Uganda undertake to emulate this achievement.
6. To make recommendations geared towards making the enforcements of the interests of copyright holders in Uganda more effective.

1.4 Scope

This research paper seeks to investigate the effectiveness of the Copyright and Neighboring Rights Act of 2006 in protecting the interests of rights holders in musical works. Kampala will be the main research area given its status from 2006 to 2018.

1.5 Hypothesis

This thesis is going to prove the following;

1. Widespread infringement of copyright interests of producers and singers continues on a large scale despite the enactment of the Copyright and Neighboring Rights Act 2006
2. The influence of the internet in driving acts of infringement is widely underestimated and as a result was not expressly provided in the Act of 2006.

1.6 Research Method

The mode of research in this paper will combine both qualitative and quantitative methods as the status of interests accruing to rights holders in musical works in Uganda.

Information will be gathered through interviews, participatory appraisal and case study research. The World Intellectual Property Organisation (WIPO) and the International Intellectual Property Alliance (IIPA) has used Uganda and other African countries as their case studies in their periodical examination of the state of intellectual property in various member states. Their reports and other scholarly writings of a similar subject will be a valuable source. Qualitatively,

basic survey research designs will be used to gather information from selected respondents to enable the researcher reach conclusions and not mere opinions

Particularly, examining the internet and its influence on the interests of copyright holders, innovative qualitative research techniques will be used while conducting research in this area.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

Here under, this Researcher makes a narrative analysis, review and critics of what various Authors have written about Copyright on Musical works. This analysis includes both Ugandan Authors and those outside Uganda;

Dr. Dick Kawooya,¹¹ one of the Editors of a book, entitled Access to Knowledge in Africa, when asked about the sufficiency of provisions in Ugandan copyright laws for protecting user rights; Kawooya said that “we found out from the study that most African copyright legislation exceeded international standards.” But, added Kawooya, “we also found out that there is normally a disparity between law and practice,” with widespread infringement creating a false impression that the law needs to be strengthened. Thus, the push in some countries is towards tightening control, when in fact the push needs to be towards finding a balance between rights-holder rights and user rights, and creating greater opportunity for non-infringing, non-commercial user access for private and educational purposes.

Howard Besser¹² an associate Professor at UCLA School of Education & Information asserts that “the goal of copyright is to provide for the general welfare” and “promote the progress of science and useful arts” by encouraging further creation. The rationale behind copyright is that granting creators temporary monopoly rights over their creations will encourage them to create more. The real goal of copyright is to ensure that new knowledge will be developed and circulated through society”.

¹¹ Dr. Dick Kawooya on Access to knowledge in Africa

¹² Professor at UCLA School of Education and Information

Halima Abdallah Kisule,¹³ a journalist from Northern Uganda, wrote stating that; ‘In Uganda, the widespread burning of counterfeit CDs has robbed musicians of their due’. The law was civil in nature and largely unused in litigation, so much that many people believed that Uganda operated without one and as a result, individuals and organizations regularly infringed on the rights of artists, oftentimes pirating, duplicating and playing their music with impunity for economic gain. And the impunity continues to this day, one year after the Copy Right and Neighboring Rights Act 2006 was introduced into law.

Uganda Performing Rights Society (UPRS) manages and administers copyright on behalf of its local members through assignments and by Reciprocal Representation Agreements for its foreign members.

Nathan Kiwere,¹⁴ ‘Why the Global Battle against Copyright abuse can be won’ (2011) Issue 004 April-June *My Copyright*, 9 writes; “Some years ago, perhaps one or two decades back, matters of Copyright in Uganda’s creative industry were either unknown or the players flouted them with impunity knowing well that the strong arm of the law was far out of their reach. Many treated it as a western precept that had little or nothing to do with us here. However, the momentous growth in the arts sector over the years and particularly the significant progress made in the area has increasingly made it necessary that measures are adapted to tame criminal tendencies that have come with this growth. As in any other commercial transaction, musicians hoped to ply their trade in this popular mass entertainment not only for the love of it but to earn a living out of it. But, like any other business sector, the wolves that have been lurking around to snatch the opportunities that are occasioned by the booming music industry have ended up snitching the lion share of the returns thereof. These wolves perhaps better known as thieves are rather euphemistically referred to as pirates and now as it is legitimate music dealers are competing unfavorably with these pitiless pirates.”

¹³ Nathan Kiwere, *Why the Global Battle against Copyright abuse*

¹⁴ Halima Abdallah Kisule. A journalist from Northern Ugandan.

This Researcher optimally coincides with Nathan Kiwere's article and derive two explicit issues being raised; the prevailing lucrative Piracy and the drastic competition created by pirates against the legitimate music dealers.

The Increasing Economic importance of goods and services protected by intellectual Property rights in the realm of international trade has greatly contributed to the birth of piracy in inter alia musical works. Trade in products embodying protected musical works such as CDs, Audio tapes, CD-ROMs is now a booming Business worldwide.

Consequently, musicians have been in the worst hit by the absence of legal protection. Ugandans have seen many veteran musicians like Elly Wamala, Jimmy Katumba and Bands like Afrigo Languish in abject poverty while unscrupulous producers enrich themselves by pirating their songs on cassettes & CDs for sale locally and abroad. Worse still, some musicians perform other musicians' songs. Further, foreign Music is abound in Uganda and is exploited in complete disregard of the protected Copyright in them for instance Music by the Legends like Lucky Dube and Michael Jackson.

Laddie Prescott & Victoria are the only writers who vividly give a detailed analysis of Musical Works as a subject of Copyright. They also expound infringement of Musical works and therefore stress that it is the ear not the eye, which is the principal Judge. Further more; they are the only contemporary authors on folk tunes as being part of musical works.

Their analysis will guide me and help me to understand the musical works concept in Uganda and how folk tunes feature in this type of work.

Aaron Agulnek¹⁵ writes "A while back a friend told me that the Republican Governor of Florida, Charlie Crist, was using the Talking Heads song "Road to Nowhere" in a campaign ad. He's running for Senate. Well, using a recording of a song or even just using that song and not the original recording, in an advertisement without permission is illegal, unless the composition has gone into the public domain. It's not, just illegal because one is supposed to pay for such use

¹⁵ In an internet article entitled "David Byrne Sues to Protect Song Rights in Florida June 10, 2010, from David Byrne's Blog"

and not paying is, well, theft - it's also illegal because one has to ask permission, and that permission can be turned down.

Besides being theft, use of the song and my voice in a campaign ad implies that I, as writer and singer of the song, might have granted Crist permission to use it, and that I therefore endorse him and/or the Republican Party, of which he was a member until very, very recently. The general public might also think I simply license the use of my songs to anyone who will pay the going rate, but that's not true either, as I have never licensed a song for use in an ad. I do license songs to commercial films and TV shows (if they pay the going rate), and to dance companies and student filmmakers mostly for free but not to ads.

I'm a bit of a throwback that way, as I still believe songs occasionally mean something to people they obviously mean something personal to the writer, and often to the listener as well. A personal and social meaning is diluted when that same song is used to sell a product (or a politician). If Crist and his campaign folks had asked to use the song, I would have said no even if they had offered a lot of money, such as I have been offered in the past for ad use (though I've always turned these offers down).

I believe my audience is aware of this no-ad use policy of mine, and part of the respect I am accorded as an artist is due to my maintaining this policy. Needless to say, if they thought I'd licensed a song to a political campaign they might not respect me as much in the morning.

John McCain's campaign used the Jackson Browne song "Running on Empty" and Reagan's folks used Springsteen's "Born in the U.S.A." Both were used illegally without permission, and in the case of the Jackson Browne song a lawsuit was brought. After the Republicans lost several motions attempting to dismiss Browne's complaint, they settled with him. Part of the settlement said that the Republican National Committee promised to respect artists' rights and to obtain licenses for the use of copyrighted works in the future. So, it's not like they weren't warned, or hadn't been burned before.

Now, there is such a thing as fair use. Typically the type of free use that doesn't require a permission might be a student quoting a passage in a book to make a point in a graduate paper, or someone using part (not all) of "Road to Nowhere" to identify, say, the marching groove in that

song as a metaphor for the inexorable forward momentum of time, or some such notion. These uses are typically exempt from licensing, permission and fees. In this case, however, the use was not to comment on or explain something about "Road to Nowhere," "80s music in general, Talking Heads or Cajun accordion riffs - it was used solely to further Governor Crist's advertising strategy in his Senate primary campaign a campaign that has nothing to do with me or my music.

Another tactic the Republicans have used to justify this kind of thing is the right to political free speech. Their argument is that the song is integrate to making a political point, and therefore falls under free speech. Well, that's just crazy talk the song has nothing to do with Crist's political views. It simply has a title that is a handy catchphrase, as does the Jackson Browne song but the content of the song itself doesn't have any connection with the politician's campaign or agenda.

So, my lawyers and I have filed a lawsuit and we also hope the Republicans might not engage (again) in this kind of illegal behavior in the future.

In *Intellectual Property On The Internet: What Is Wrong With Conventional Wisdom?*,¹⁶ a presentation made at the Internet Publishing And Beyond The Economics Of Digital Information And Intellectual Property Conference in January 1997 in New York, James Bossen and Erik Moskin examined the growth of the internet and its impact on intellectual property rights.

The growth of internet has put pressure on traditional intellectual property protections such as copyright and patents. Some forms of information, when made accessible on the Internet, are easily copied. Because costs of copying are low and because copying is often anonymous, publishers have often responded with more aggressive enforcement of existing intellectual property rights and with calls for extensions of those rights to cover additional content, new media and new forms of access. This effort can actually be seen as part of a twenty-year trend towards tighter intellectual property enforcement and extensions of intellectual property rights.

But the authors still retain the presence of mind to make a cautionary statement that reflects the reality.

This response and this trend towards tighter intellectual property rights are not always appropriate, especially on the internet. The Internet that is to say World Wide Web possesses

¹⁶ Massachusetts Institute of Technology (MIT) Working Paper 00-01. Accessed from www.researchinnovation.org/iippap.pdf

characteristics that may make such policy inappropriate – the web is a community that is highly interactive and dynamic. Indeed, much of the software that runs the web is free or open software. However Messrs Bossen and Maskin assume a highly persuasive position that never the less did not find favour with the objectives of this research. Bossen and Maskin argue that the conventional view that tighter intellectual property protections always improve innovation incentives is based on defective reasons.

Essentially, the duo propounds a philosophical argument. They state that intellectual property rights should be used to enhance creativity and value addition by enabling others to copy and hopefully improve rather than consume itself with protecting the commercial entitlement of authors and owners of copyright works.

2.1 History

2.1.1 Early beginnings

The most basic formulation of copyright – dating back almost to the beginnings of civilization commenced with a near belated recognition of the problems unauthorized copying of work precipitated. professor Bainbridge write; Dating back to the days of civilization there has been those eager to profit from the work of others. in ancient times, the idea that the author of the work of literature had economic rights to establish dissemination and copying was not particularly ell established, and yet those who falsely a work were considered contemptible¹⁷, Bainbridge points out two factors that limited the importance of protecting literal works. Works of literature in medieval times were chiefly religious and were written by scholarly monks who would work pain sparingly preparing their glorious books. As a result of massive human labour and skill required to produce such works accordingly there was no market for books due to the general illiteracy of the potation at large¹⁸.

There was also another culturally significant reason for most of human existence, oral tradition has dominated. Narrative was in constant flux and performance was regarded more highly than authorship, which seldom could be credited since most culture was built on religious culture or

¹⁷ David Bain bridge Intellectual Property Law , LONGMAN, Fifth Edition page 29.

¹⁸ Ibid

common folklore and did not originate from an individual creator¹⁹ as such, any claim by an individual to be the sole originator of an idea would hastily be repulsed.

England itself subscribed to this belief²⁰ but there was still no escaping a growing campaign for increased copyright protection and accordingly, there was a guild of writers of text letters, limners, book binders, book-sellers and parch miners formed in London²¹. This is perhaps this period come to having an intellectual property inspired lobbying society.²²

2.2 Printing Technology

Bainbridge writes that 'printing has had a greater impact on civilization than any other single invention'. he could not have been more correct. the printing press inarguably changed every dimension of civilization, copyright being one of many²³.

Prior to the invention of the printing press, stories remained in the oral tradition or underwent the continual fixing of the text in monasteries. The advent of standardized printing blocks meant that the text was now presented in a fixed manuscript in specific ways that could be attributed to singular writers. This introduced the concept of a correct or authorized version of a text so that any cheap reproductions were then considered to be an act of piracy²⁴

The technological breakthrough that was the printing press also coincided with the emergence of individual rights and property and spread of market relations. The resulting need for copyright protection could not be disputed²⁵. Brought the possibility of compensation for literal labor, it also presented a unique set of problems. the unrestricted rivalry among printers brought into existence competing and unauthorized editions of various works which diminished prospects of any payment for the authors, editors and printers of the original issue and thus discouraged further undertaking²⁶.

Copyright law therefore, in its rawest form, was a legal concept with origins in Great Britain but its original motives were questionable. In the 16th century, religious conflicts spurred the circulation of pamphlets, closely followed by legislation that banned writings of heresy, sedition

¹⁹ Ugandan Law Reform Commission (ULRC) Study Report On The Copy Right And Neighbouring Rights Law, LAW COM PUB NO.9 OF 2004 Page 11

²⁰ Bainbridge, supra at note 2

²¹ History of Copyright Law, Wikipedia.org

²² Bainbridge, supra

²³ Uganda Law Reform Commission

²⁴ Bainbridge supra

²⁵ Ibid

²⁶ Ibid

and treason. As a result, the custom of printers and authors to have their name listed with their creations began as a law demanding this practice, not to ensure the originator due credit, but in order for the king to keep track of disobedient writers²⁷.

In 1555 the royal charter established the stationer's company and granted it exclusive control of all printing in the United Kingdom. Limiting the number of publishers was a key strategy in the government's arsenal to regulate writings²⁸. However, after the lapse of a century, increased socio-political liberalization manifested itself in the development of the copyright law, with printers monopolies rife, the king of England and Scotland used his royal prerogative to pass the licensing Act of 1662 as concern rose over the unregulated copying of books.²⁹

2.3 Statute of Anne 1709

The Licensing Act lapsed in 1695 and a furious petition by London book sellers and printers was accepted and resulted into the 1709 Statute of Anne³⁰. The Statute of Anne is widely regarded as the first copyright law and it succeeded a period where the piracy of books had flourished. This statute first accorded exclusive rights to authors rather than publishers, recognizing that copyright originated from the author³¹ could not control their use after sale. It also placed a time limitation on the monopoly enjoyed by holders of a copyright. In 1790, the Statute of Anne was copied by the United States of America Congress³².

Progress continued to be made. While notion of a substance of copyright was now accepted, there was dispute over the rights in a work once the duration of copyright protection expired. The book publishers argued that a perpetual common law copyright existed beyond the term outlined in the statute, and that therefore, copyright was a natural right³³. The case of *Millar V Taylor*³⁴ delivered a victory of proponents of this view. The case involved the poet James Thomson's book. 'The Seasons'. A book seller purchased the publishing rights to The Seasons. After the

²⁷ Uganda Law Reform Commission, *supra* at note 2

²⁸ *ibid*

²⁹ History of Copyright Law, Wikipedia.org

³⁰ Game Development Piracy and Plagiarism, sourced from Intellectual or Insanity.org

³¹ History of Copyright Law, Wikipedia.org

³² Bainbridge

³³ Professor Tom Bell, Intellectual Privilege

³⁴ (1769)4 BURR, 98 ER 201

copyrights term expired, the defendant began publishing his own competing publication which contained Thomas's poem.

Judge Mansfield sided with the publishers, finding that copyright is a form of property and the common law rights were not extinguished by the Statute of Anne. The Judge reasoned the publishers had a perpetual common law right to publish a work for which they had acquired the rights.³⁵

However, this victory was short lived. The House of Lords in England brought disagreements on the length of copyright to an end in the landmark case *Donaldson V Beckett*³⁶. The House of Lords rejected the notion of a common law copyright with Lord Camden firmly asserting that works to which a copyright has expired fall to the public domain.³⁷

2.4 International Conventions

The 19th Century precipitated the internalization of copyright³⁸. The Berne Copyright Convention of 1886, and to which 148 states are signatories is administered by the World Intellectual Property Organisation (WIPO). The Universal Copyright Convention, administered by the United Nations Educational Scientific and Cultural Organisation (UNESCO), is the other significant international convention of this period.³⁹

Both conventions lay down minimum standards for copyright protection and provide for reciprocity of protection between those countries that have ratified the convention⁴⁰. The reciprocal protection initiated by the conventions has been instrumental in the protection of works of copyright on a much wider and more homogeneous scale than would otherwise have been the case⁴¹.

The World Trade Organisation (WTO) administered Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement of 1994 is also important in this regard⁴². The TRIPs treaty aims to provide a minimal level of intellectual property protection in all WTO member states.

³⁵ History of Copyright Law.

³⁶ (1774) 4 BURR 2408, 98 ER 257.

³⁷ Lord Camden delivered the lead judgement in resolution of that

³⁸ Uganda Law Reform Commission, *supra*

³⁹ Uganda is a signatory to this convention and is obliged to transform these provisions into their domestic laws

⁴⁰ Article 16 of the Bern Copyright Convention (1985)

⁴¹ Bainbridge, *supra*

⁴² The TRIPs Agreement

The agreement establishing the WTO provides that all member states⁴³ shall ensure that their laws and regulations are brought to conform to their obligations under the Agreement⁴⁴. However, the TRIPs Agreement grants Least Developed Countries (LDC) the right to delay the implementation into national law and even provides for further extension if a request is so made⁴⁵.

2.5 History of Musical Works

The scope of copyright law was generally increased to include other works such as engravings and prints, dramatic works and musical works in 1882. However it must be said that musical works did not enjoy the same ready-made recognition that was afforded to book writers

The first widely acknowledged musical works case is *Bach V Longman*, which was decided in the United States of America. The composer Johann Christian Bach sued a publisher for selling unauthorized copies of his, J.C Bach, works. The piece of legislation in question was the Statute of Anne and the defendant publisher argued that it did not extend protection to the type of creative works in dispute. The Judge emphatically declared that printed sheet music was covered by the Statute of Anne.

In the United States of America, the first copyright statute enacted in 1790 only covered books, maps and charts. However, the second copyright statute, which was enacted in 1831, included musical compositions as copyrighted subject matter. However it still took a considerable time before any tangible progress in as far as the protection of musical works was made.

In 1972, sound recordings were not protected by copyright in the USA because those works were readable by machines. But as a result of widespread copyright infringement of sound recordings on vinyl records by copies on magnetic tapes, the US Congress made sound recordings copyrightable. The United Kingdom, for its part fortified its protection of musical works with the Copyright, Designs and Patents Act 1988.

Composers in 1700s and 1800s sold their own manuscript of music along with the right to publish and sell the music to a publisher to a lump-sum of money, during this period, publishers did not pay royalties to composers. The publisher owns the copyright on the sheet music. This

⁴³ Section 1; Article 9 TRIPs Agreement

⁴⁴ Article 11 of the Agreement establishing The World Trade Organisation

⁴⁵ The request is made to the World Trade Organisation TRIPs Council

general trend continued in modern times as music publishing companies and manufacturers of sound recordings were financially successful but composers and performers of serious music remained poorly rewarded. However composers of what is called popular music, mostly songs, have become millionaires from royalties on their copyrighted works. But ultimately, it was the advent of technology that introduced an entirely new dimension. Sandler writes;

Prior to approximately 1940, people routinely made their own entertainment often by playing musical instruments either alone or in small groups. During this time, there was a flourishing market for sheet music for amateur musicians including arrangements of symphonies and opera. Today, with ready access to radio, television and sound recordings, most people listen to professional entertainers instead of making their own entertainment. This change in behavior is an example of how technology has changed society.

Yet another person wrote of the exponential growth of the music industry and increasing copyright implications;

In the course of past century a rush of technological changes has made music more accessible and ubiquitous than ever before. Cinema, the gramophone, radio, the juke box, television, the electric guitar, transistors, LPs, stereo, the Walkman, discotheques, CDs, the internet, DVDs, the MP3, the iPod and all the rest have drenched the modern world in music. Moreover, the eruption of youth culture after 1945 simultaneously propelled musicians to pole position in both status and material reward. As the annual Sunday Times Rich List shows, no other branch of performing of creative arts can boast such a concentration of wealth. When Bono or Bob Geldof lecture politicians on what to do about the problems of the Third World, those politicians have to appear to be listening.

2.6 MUSICAL WORKS - THE LEGAL DICHOTOMY

2.7 The copyright framework

The entire copyright body in a particular work rests on six legs. The questions that must be answered are; (1) Before a work can be protected, what are the requirements that must be met before copyright can subsist in it? (2) After determining that copyright subsists in a work, how is the question of authorship and ownership resolved and established? (3) Do circumstances abound

that give rise to a situation of co-authorship? (4) Depending on who the owner and the author are, what rights accrue to either party? (5) When does infringement occur (6) does the infringer have a defense?

These questions have been answered by different authorities. The cases of *Walter V Lane* and *Ladbroke Football V William Hill* examined the substance of copyright in news paper articles written by reporter's and coupons used to wager football bets respectively. Both cases established that the test of whether the work is an original literary, dramatic or musical work is of the skill, labour, effort and expertise expended to [reduce the item in question.

Regarding ownership and authorship, the general rule is that copyright vests in the employer and commissioner of the said work unless there is an agreement to the contrary. But in an employer-employee relationship, copyright in the work in question can vest in the employee even in the absence of an agreement stipulating otherwise. In the absence of such agreement, the taste to determine in whom copyright vests in whether the skill, effort or judgment expended by the employee's normal duties or within any special duties assigned to him.

Bryne V Statist and *Stevenson Jordan V MacDonald* provide two contrasts. In *Bryne V Statist*, the plaintiff was ruled to have the right to claim copyright in translating pieces he worked entirely on his own and independent of his ordinary duties though he was permanently employed by the editorial staff of the *Financial Times*.

In *Stevenson Jordan V McDonald*, an employed accountant gave some lectures which he later incorporated into a book. Lord Denning ruled that even though his employers had provided secretarial help, the copyright in the lectures belonged to the accountant because he was employed as an accountant to advise clients and not to deliver lectures. However, part of the book was based on the report the accountant had written for a client of his employers and so the copyright in that part belonged to the employer.

Spirit of co-authorship also abound. Where parties make contributions to the subsistence of copyright in a work, the parties will be co-authors. But there is an important qualifications; the contribution cited must not be insignificant- it must go to the roots of the subsistence of copyright in the said work.

The case of *Tate V Thomas* is instructive here. One of the questions the Court of Appeal had to deal with was whether Joseph Peterman's the purported assignor formulation of the name, lead characters and other scenic props in a play amounted to a substantial contribution to the

subsistence of copyright in a play such that a right which he could assign could accrue to him. In an uncompromising judgment, Eve J ruled that the sum total of Peterman's contribution did not amount to anything worth protecting in the United Kingdom Act. This is actually a question of fact and the judge found that Peterman's contribution did not extend to the subject matter of the copyright, the contribution itself being insignificant and negligible.

The copyright holder has both moral and economic rights. Economic rights permits the copyright holder to perform acts in respect of the work that would yield commercial benefit though as shall shortly be seen, these rights can be assigned or licenced. Moral rights are the rights to be identified with his creation and have a measure of control as to how it should be used regardless of ownership of economic rights. These rights are unextinguishable.

Infringement occurs when a person without a valid authorization deals with any copyright work contrary to the permitted free use of the work in question. However, there is an important caveat here. In order for an unauthorized usage to constitute infringement, a material and substantial part must be taken.

The alleged infringer also has a number of defenses, the infringer can claim that the extraction in question was a fair dealing that a valid assignment existed that the alleged breach was in the public interest.

In the strictest legal sense, a musical work is a work consisting of music exclusive of any words or action intended to be sung, spoken, or performed with the music. Therefore, musical works consists of more than just a melody or Musical notes written on a score-sheet. It includes all material which is capable of having an effect on the human ear such as harmonies and orchestration.

A song will possess two copyrights, one in the musical composition itself and the other in the lyrics, the latter being a literary work under section 2(g) of Copyright and Neighboring Rights Act. In general however, a song has never contrived to be that simple. The question of originality must first be answered. The time worn test of skill, labour, effort and expertise expended appears to be a straightforward evaluation but controversies nevertheless abound. Even more convoluted can be the question of authorship and subsequently what rights accrue to whom, as Middleton noted;

Popular music pieces can only rarely and in heavily qualified ways be attributed to a single author, a composer. More commonly, their production is a collaborative process which may

involve lyrics, song-writers, singers, instrumentalists, arrangers, orchestrators, producers, engineers, set designers and video directors

What arises in this situation is a shared copyright, it must be noted, is not necessarily a situation of joint authorship but rather a shared copyright? Joint authorship is covered by section 11 of the copyright and neighboring rights act which stipulates that

Where work is created by more than one person and no particular part of the work is identified to have been made by each person, such that the work is indistinguishable, all the authors shall be co-owners of the economic rights and the moral rights to that work and the co-owners shall have equal rights in that work and the co-owners shall have equal rights in that work.

2.8 Assigning and Licensing of Copyright

Like all Intellectual property rights, copyright is capable of assignment, indeed, one of the primary values of owning copyright is the ability to transfer some or all of the rights to the third parties. These transfers can be for all of the copyrights in a work or can be limited for a portion of the rights provided, which usually takes the form of copyright licenses.

Assignment authorizes the assignee to deal with the work in a manner that would be ordinarily be infringement of copyright. Therefore, the original owner sells his rights to a third party and can no longer exercise control over how the third party uses those rights. An assignment can therefore be thought of as disposal of the copyright by way of sale or hire or by will.

However, an assignment can be partial limited in terms of the things the assignor can do or in terms of the period of substance of copyright. In more advanced music industries, an assignment would entail all the contributors to song transferring their rights to record company, music publishing associations or collecting societies which then remit royalties in return in accordance with the agreement.

A license is more restrictive. It is an agreement where the copyright owner maintains ownership of the rights involved but allows a third party to exercise some or all of the rights without fear of a copyright infringement suit. Where the copyright holders wishes to exercise some control over how the third party uses the work in question, a license will be performed. In return for this arrangement, the licensee will pay the licensor either by way of lump-sum or by making royalty payments. This license can also be exclusive or non exclusive. The question of assignment and

licensing is important for it helps to determine with whom, notably, the economic rights in creative works lies and therefore the right to bring a suit in copyright infringement.

CHAPTER THREE

THE LEGAL REGIME IN UGANDA

3.0 Introduction

The 1902 Order In Council provided that Uganda would receive and enact laws in use in the United Kingdom which then had a protectorate mandate over Uganda. It is under these auspices that the United Kingdom's Copyright Act of 1956 was received in Uganda before being repealed by the Copyright Act of 1964.⁴⁶

This chapter conducts a sweeping examination of the copyright regime in Uganda, starting with the most original conception of copyright in the cultural setting to the enactment of the Act of 1964. The Act of 1964 was repealed by the Copyright and Neighbouring Rights Act of 2006⁴⁷ and this segment shall also examine the rationale that inspired reform in Uganda's copyright legislation...

A cursory comparison between the Act of 1964 and the Act of 2006 especially in respect of the protective mechanisms offered to the respective rights holders shall also be conducted. This inquiry is critical for it will help establish whether the Act of 2006 addressed the shortfalls that led to the Act of 1964 to be viewed with little regard and which ultimately precipitated reform.

3.2 THE COPYRIGHT ACT OF 1964

Inadequacy of copyright protection.

The Copyright Act of 1964 was Uganda's first copyright legislation. The notable features of this Act include the following;

- The stipulation of work eligible for copyright was fairly restricted. The first schedule to the Act provided that only literary, musical, artistic works, cinematograph films, gramophone records and broadcasts were eligible for copyright protection under section 3 of the Act.⁴⁸

⁴⁶ copyright & neighbouring rights Acts 2000, 5.3

⁴⁷ Bakibinga David PHD, intellectual rights in Uganda, reforms 7 international management formulation. paper delivered at the islam land pakistan, December 2017 PAGE 4

⁴⁸ Ibid common law remedies are also available but as tabora, supra et page 4 writes at page 10

- Section 13 provided that the remedies available for infringement of a copyright would be (1) damages limited to the loss, if any incurred by reason of infringement, together with such addition sum as may be having regard to flagrancy of the infringement or benefit gained by the infringer, (2) an injunction to restraint further infringement or restrainthe same and an injunction requiring the delivery-up the court and destruction or other disposal of the infringing copies in question.

Developments in technology and international treaties introduced after 1964 served to make the Copyright Act woefully inadequate.⁴⁹ The scope of works eligible for copyright proved too narrow and the interests of auxiliary contributors (neighbouring rights) were catered for further the Act provided only civil remedies for infringement.

Justification for reform

The United Kingdom Copyright Act along which the Copyright Act was numerous reforms while the Ugandan statute s remained willfully unrevised.⁵⁰ That this called for a stronger and up to date copyright be introduced became critical. The Uganda Law Reforms Commission (ULRC) noted;

As currently written the Copyright Act impedes investment because of lack of confidence in the protection that the law can provide. There is need for changes to the law the provisions should be clearer, as well as the offences and remedies. The laws needs to be modernized to cope with global changes which include the broader area of the work protected elsewhere in the world. For long, Ugandans whose livelihoods depend on copyright laws have wanted with both civil and criminal remedies, with minimal interference with the rights that that are granted to legitimate users. Ugandan artists continue to be robbed contrary to Article 26 of the Constitution of the Republic of Uganda on protection from deprivation of property rights, of their works because of poor protection granted by the law. Further, the reform of copyright law is geared towards bringing Uganda's legislation in line with her international obligations, including the Trade-Related Aspects of Intellectual Property (TRIPS) Agreement. The law

⁴⁹ Uganda law reforms common (ulrc), study report on the copyright and neighbouring rights. Law pub no 9 of 2017

⁵⁰ *ibid*

seeks to strengthen the enforcement mechanisms and provide adequate remedies to the rights holders for infringement of their work⁵¹

Uganda Registration Service Bureau

This is a corporate with perpetual succession and a common seal and may sue or be sued in its corporate name and is responsible for miscellaneous registrations and collection and counting for revenues under various relevant law and for the enforcement and administration of those laws and to provide for other related matters.

The objectives of the body are seen under section 4 of the Uganda Registration Service Bureau Act as;

- 1 To administer and give effect to the relevant laws and to provide registration services and collect and account for all revenue provided for under those laws, and
- 2 To advise the government on matters relating to registration services under the relevant laws and to assist the government in the formulation of policies relating to the collection of revenue.

The functions as per section 2 include;

1. To carry out all registrations required under the relevant laws,
2. To maintain register, data and records on registrations affected by the bureau and to act as a clearing house for information and data on those registrations,
3. To evaluate from time to time the practicability and efficacy of the relevant laws and advise the government accordingly,
4. To carry on research and also disseminate research findings in the fields covered by the relevant laws through seminars, workshops, publications or other means and to recommend to the government any improvements in the relevant laws appearing to the bureau to be required as a result, To charge fees for any services performed by the bureau
5. To perform any other function of to carry out such other activity as may be conducive or incidental to the efficient discharge of its objects or as the minister may, by statutory instrument, direct.

⁵¹ Edgar tabora supra at note 4

So as seen above, before a business can be started in Uganda, it needs to be registered and the registration body is responsible for the task. Once the business is registered, it receives a certificate which allows it to carry out the business it's registered for specific period (usually a year) which is subject to renewal.

It's under section 25 that the registrations referred to in section 4 shall be carried out as provided by the relevant laws under which the registration is made, and the registers shall be maintained as prescribed under those laws . So a business that intends to break the laws can never be registered by this body. So the question arises as to how these businesses that are involved in copyright infringement are offered certificates to operate. This can be seen in various ways;

First from the interviews conducted there were no visible certificates seen in the shops and when asked, about them I was informed the certificates were kept in safe places. This could mean that these businesses are operating illegally without any licenses and that is why the registration body cannot enforce the copyright laws.

Secondly if these shops indeed did have certificates in safe places then they were obtained through false information for example saying that the business to sell clothing items (which were seen in the shop) and not disclose the information about selling illegal copyright work.

Whatever the situation may be, it seems that the Uganda Registration Service Bureau does not follow up on the certificates it offers to these businesses and thus being inefficient on its duty to enforce the law. This may be due to lack of funds or proper coordination as may also be evident from the fact that such an important body has no working website from which someone could easily access their current activities or lodge any complaints without having to physically go to their offices.

THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT

In 2004, the Honourable Jacob Oulanyah, the then Member of Parliament for Omoro County in Gulu District introduced a private members bill entitled the Copyright and Neighbouring Rights Act Bill No.16 of 2004.⁵² This Bill sought to repeal the Copyright Act of 1964 and commenced as the Copyright and Neighbouring Rights Act in 2006 following Presidential assent.

⁵² James Wasula, general secretary of the Uganda Reformers Rights Society (URRS) 127 Copyrights and Neighbouring Rights Act 2006 s. 5

The Copyright and Neighbouring Rights Act of 2006 is considered a far stronger piece of legislation than its predecessor. The inadequacy of the Copyright Act has been criticized *ad nauseam* and the Act of 2006 accordingly embraced a more expansive framework with regard to both the scope of protection and remedies prescribed for infringement of copyright. The notable additions include the following;

1. An increased scope of works for eligibility of copyright. The Copyright and Neighbouring Rights Act of 2006 extended copyright protection to choreographic works and pantomimes, computer programs and electronic data banks and other accompanying material, works of applied art, derivative works, and traditional folklore.
2. The economic and moral rights of authors are specifically provided for.

The duration of copyright protection in respect of copyrights was increased to fifty years after the death of the author.

The recognition of neighbouring and performer's rights and the extension of copyright protection to such rights holders. The rights also make a specific recognition of the right of producers.

In respect of penalties for infringement and general enforcement, the Act makes the following additions;

3. The imposition of criminal sanctions for infringement of copyright. The offender if found guilty, is on conviction liable to a fine not exceeding one hundred currency points or imprisonment not exceeding four years or both. This penalty covers the publication, distribution, reproduction of the work, its performance, broadcast or communication in public and importation of a work into Uganda.
4. The contravention of the right of producer of sound record or audio-visual fixation is liable on conviction to a fine not exceeding twenty five currency points or imprisonment of one year or both.
5. Other criminal sanctions are prescribed for a person who sells or buys in the course of trade or imports any apparatus, article, machine or thing knowing that it is to be used for making infringing copies of works fine is 5 currency points or imprisonment for one year or both.
6. The imposition of liability on a person who having reasonable grounds to know or suspect that the act will induce, enable, facilitate or conceal and aid infringement, alters moral rights information, distributes, broadcasts or imports any performance or copy of a sound recording knowing the moral rights information has been altered and communicates to public a live

performance without the authority of the owner on the premises of the occupier (for which the occupier will be held liable).

7. The imposition of liability on a body of persons, the secretary in case of a company and all partners in the event of partnership'
8. Powers are afforded to the Minister to appoint copyright inspectors for the efficient discharge of the duties and functions of the Registrar of Copyright. However this section is not mandatory. The inspectors and any other staff of the collecting society authorized to do so may enter any premises to investigate whether there has been a contravention of the Act. These inspectors are also vested notably with the power to seize and detain any substance or article which he or she has reasonable cause to believe to be in infringement of a copyright of a work. Any person who obstructs such an inspector commits an offence.
9. The Act also makes a specific provision for collecting societies who are authorized to among others, pay royalties to its members who are the appropriate beneficiaries. The members of the collecting societies may also be appointed as copyright inspectors.

CHAPTER FOUR

THE EFFECTIVENESS OF THE 2006 COPYRIGHT ACT ON THE PROTECTION OF MUSICAL WORKS IN UGANDA: DATA ANALYSIS

4.0 Introduction

In this chapter, I intend to analyze the contribution of the 2006 Copyright and Neighboring Rights Act on the protection of musical works in Uganda. However, the Act protects musical works which are registered at the Copy right office; therefore the analysis shall feature on the contribution of the Copyright office. Secondly, we shall look at the broadcasting council which monitors radio and Television broadcasts to ensure that there is no purported infringement of musical works among others. Thirdly, we shall look at the contribution of the collecting societies and fourthly the contribution of the Courts law vis-à-vis the Law making & Law reform bodies altogether.

4.1 FIELD FINDINGS

According to the field study conducted by the researcher between March 2011 and August 2011, the following data was gathered from the field;

In an Interview with Mr. James Wasula⁵³, He says that broadcasters, hotels and restaurants and many college graduates who have failed to find jobs have resorted to burning counterfeit CDs for a living. He explains that a survey conducted early this year in 29 trading centers with 443 dealers revealed that dealers earn 10m Ugandan shillings (UGX) per day (\$5.93 USD). In his words, he explained that Infringement of copyright or Neighboring rights occurs where, without a valid transfer, license, assignment or other authorization under the Copyright and Neighboring Rights Act of 2006, a person deals with any work or performance contrary to the permitted free use and in particular where that person does or causes or permits another person to reproduce, fix, duplicate, extract, imitate or import into Uganda otherwise than for his or her own private use.

⁵³ Interview on Monday 7th March 2011 at Amber House, 1St floor-Kampala.

In an Interview with Jose Chameleone (a.k.a Joseph Mayanja)⁵⁴; He says that in one incident (around February 2003), He was ganged against by a number of music retailers and DJs because he contested the illegal release of his then unreleased single 'Bei Kali' by the retail community. Radio and in a rare report, 'TV stations to pay for music', the monitor newspaper of Mon 19th April 2004 unveils that Ralph Ochan, the permanent secretary in the Ugandan ministry of gender, labour and social development acknowledges that radio and television station owners will have to pay some money for every song they air. In addition, hotels, nightclubs and other public places where music is played will part with an agreed fee for local music. This in summary attributes this development to Uganda Performing Rights Society (UPRS) and its general secretary James Wasula. Wasula according to the article states that UPRS is in conformity with the Worldwide Intellectual Property Organization (WIPO) and the broader implication is that UPRS will also advocate for the Copyright of foreign artists and societies that are attached to the WIPO. As a member of the Afrigo hand, James Wasula has been at the forefront of the struggle and mobilization of artists to attain a recognizable Copyright law in Uganda. There have been mixed reactions to the pronouncements from a cross section of stake- holders.

In an Interview with Joel Isabirye (a Journalist and writer) it was found out that in 2003, Akiiki Romeo was a musician and production director with Capital FM 91.3 and in one of the interviews with a Journalist (writer) named Joel Isabirye, he asserted as follows on the Copyright law; He told Joel Isabirye that "It is possible to enact the copyright law and collect royalties because that is how it is supposed to be. However Government will first have to impose a quota of local music to be played by all stations because if this law is activated many stations will just stop playing the local music ". Romeo's concerns are widespread.

According to the findings from Uganda Communications Commission⁵⁵ (the Licensing Authority of all Broadcasting Media Houses in Uganda),It was found out that, though the Government through the ministry of information specifies a certain quota of local content including music at the time of application for radio and television licenses, many stations don't give that a second thought.

⁵⁴ Interview with this researcher at Club cherries in Kabalagala town, Kampala-June 2011.

⁵⁵ Broadcasts department

Hemdee Kiwanuka, CEO No-End Entertainment on the other hand believes ‘Copyright is just the musician’s job to make it work. The law has always been there. We have it upon ourselves to make it work. We must be united.’

Collin Mutambo program Director of Radio Simba which is Uganda’s leading indigenous radio station that relies on local music for 80 percent of its broadcasts were of the view that. Right now, radio stations have partnerships with artists. Radio stations are still a new thing here and to ask them to pay the musicians would be too ridiculous. He adds that some stations cannot even afford to pay broadcast fees. We as radio stations may either cut down on the local music we play or even cut out music and talk more, or at least we ask for a submission fee.’

On whether advertisers are subjected to pay for this burden, as suggested in some circles Collin retorts that ‘Advert clients are not responsible. It is unfair to give them an extra fee.’ Then he also concurs that there would be monitoring hassles for the UPRS ‘Copyright societies in the west have software systems with track of actual play in that it is possible to monitor each station to know which songs were played at what time. The only possibility in Uganda is if artists go to Steadman Group to monitor all stations in Uganda, which is hardly possible. This copyright thing needs ten to twenty years to work’. He concludes.

Lyrical G⁵⁶, a rapper on the other hand thinks that ‘People who cut CDs should be the first to face prosecution, for radio stations, this is promotion; everyone gets happy when their song is played on radio.’ With these varying and sometimes emotional views the issue of Copyright has been shadow talk for a while in Uganda. Frightful to those who know the extent of money involved in the piracy business. A series of industry personnel I have spoken to overtime have all been wary of the protracted conflict that would arise in the case of mooting for copyright. Klear Kut producer Dawoo in 2001 voiced similar concerns.

Geoffrey Komakech, most popularly known as DJ Languna, is an example of a Ugandan musician whose singing has not made any difference to his bank account, unlike his music superstar counterparts in the western world. In 2005, he won the Pearl of Africa Music Award for the northern region with his song Anjulina (or Angel), a love song he modernized from an Acholi folk song. Though he released the song in 2000, it took five years for it to be recognized.

⁵⁶ In a brief dialogue with this researcher, 2nd June 2011.

“My first album is still selling. People still ask for Anjulina,” he says. Ironically, Languna got only 100,000 UGX (\$59 USD) even though it took 3.5m UGX (\$207.72 USD) to produce. Why?

“I was conned. I did not know how to sell music. [The conman] was in the music industry he told me he would [make tapes of my music], sell them and then bring me the money. I never saw him again,” he says. “In the UK I got money,” he adds.

This clearly illustrates a lively example of avenues that perpetrators use to benefit freely from Artists works. In fact, Copyright Infringement is mostly propelled by Music promoters some of whom take advantage of the upcoming Artiste 's deceiving them that they will promote their musical works.

In an Interview, He says ‘I want artists to be paid for all they’re worth, but yo! Too many powerful people pirate the music and so there is a lot at stake and they will not give up without a fight’.

Halima Kasule reveals that Komakech(DJ Laguna) has now been invited twice to perform at the Peacock Pub in London. This makes him the first musician from northern Uganda to perform abroad yet his problems are enormous - at one time he struggled’ with the thieving promoters who appear to be the biggest beneficiaries in the industry. “We have bad promoters. They disappear with our money. They are rich people who buy our music as if they are buying tomatoes,” he says. The new copyright law portends to protect the likes of Komakech: Only those agents who sign contracts with the artists and pay an agreed-upon sum of money to them can then sell those artist& music to the public. Those who sell music illegally may now find themselves in court, where they might be ordered to pay damages to the artist as well as be required to destroy any illegally obtained music in their possession. In addition, the new law protects the artist 50 years after his/her death.

Unfortunately, the culprits are usually smarter than the courts. Wasula says that they have come together to claim that there is another intermediary body that claims to be working for artists and that as such, they say they are not sure who to pay royalties to. “This trade adversely affects the music industry. Legitimate music dealers are competing unfavorably with the pirates. Music distributors are unable to pay commensurate remuneration to musicians,” he says.

Matters are made worse by FM radio stations in the country. There are 100 licensed stations in Uganda. The music played on these stations has not been purchased legitimately except at three stations that signed a contract to pay only 750,000 UGX per annum (\$445 USD) to UPRS. Wasula explains that in all, broadcasters alone play 1.7 million songs 41 million times per year on these FM stations. If they were to sign contracts it would translate into 1.7 million contracts in just one year, which offers reasonable compensation to the artists.

In an E-mail response from Shaka Tutankhamen (aka Reggae Winston Mayanja)

Reggae maestro, singer, songwriter, promoter and producer Shaka Tutankhamen (aka Reggae Winston Mayanja) a Uganda based in the UK, was drawing the final battle plans against copyright infringement and he thoughtfully wrote in an E-mail. 'I am still figuring out how to deal with the radios.' Copyright battles are as old as mankind because for as long as man has existed, he or she has created pieces that are textual or non-textual.

Imitation or copying has been that far back. In recent times however some famous copyright incidents have included Internationally, The famous Napster sued RIAA (Record Industry Association of America) against illegal downloads of music of recording artists in America. Eminem on 28th March 2002 was sued by Jacques Louissier purportedly because he stole parts of Louissier's single 'pulsion' which he then used on his 'kill you' single from the 'marshall mathers' album.

In an Interview with Geoffrey Kiryabwire, J, a Justice who has dealt with cases involving Infringement of Musical Copyright in Uganda, He responds by citing the following; That in **Uganda Performing Rights Society Limited v Fred Mukubira**⁵⁷ the applicant, Uganda Performing Rights Society, as the assignee of copyright in the musical works of various local artists in Uganda, filed a suit against the respondent for alleged copyright infringement. The applicant sought a permanent injunction and damages for infringement. Further to the suit, the applicant applied ex parte for a temporary injunction to restrain the respondent from further infringement of copyright. The applicant also sought orders to search the respondent's premises and seize all material relating to the copyright infringement. The main issues at the hearing of the application were whether the Court had authority to grant the temporary injunction whether the

⁵⁷ Misc. Application 818 of 2003 (Arising from High Court Civil Suit 842 of 2003)

applicant satisfied the conditions for grant of an order and whether the suite was properly brought under Section 13 of the 1964 Copyright Act.

Geoffrey Kiryabwire, J., held that: Section 13 of the Copyright Act provides a remedy of direct statutory prohibitory injunction in cases of copyright infringement; In the instant case, where the application was made *ex parte* for a temporary injunction, pending disposal of the main suit based on Sections 38 and 39(2) of the Judicature Act⁵⁸ alone, the Court did not have sufficient legal authority to grant the order;

The learned Judge gave three conditions for grant of search and seizure orders are that:

1. There must be an extremely strong *prima facie* case
2. The potential or actual damage to the applicant must be serious and,
3. There must be clear evidence that the respondents have in their possession incriminating materials which they may destroy before any application inter parties can be made.

In the case (*Supra*), the Application satisfied all the conditions for grant of the order. As a result, the application was granted. It should be noted that, unlike the recent changes by 2006, the 1964 Copyright Act did not observe several author's rights including; Economic rights of author, Moral rights of author and Co-author's rights/Neighboring rights.

In **Attorney General V Sanyu Television**⁵⁹, the Attorney General, as a representative of Uganda Television, a public television station, filed a suit against the respondent/defendant for infringement of broadcasting rights. It was the plaintiff/applicant's case that by means of an agreement with the Union of National Radio and Television Organizations of Africa (URTNA) and Canal France International (CFI), Uganda Television was granted exclusive rights to broadcast live coverage of the 1998 World Cup football series and that the respondent had infringed these rights by screening the matches on its television station, Sanyu TV. The applicant made the present application for an injunction restraining the respondent from further broadcasting the matches pending disposal of the main suit. Counsel for the respondent challenged the application arguing that the suit and application had been made against the wrong party, which was a non-legal entity.

⁵⁸ Cap 14, laws of Uganda

⁵⁹ High Court Suit No. 614 of 1998, Reported in Uganda Commercial Law Reports 1997-2001

James Ogoola, J, held that the respondent infringed the plaintiff's copyright. The respondent admitted having infringed the copyright and apologized for the act. As a result, the application was allowed and an injunction granted.

Interview with Justice Tabaro; He defines Copyright as that branch of law which deals with the right of intellectual creations. It confers exclusive rights of exploitation to authors of original literary, dramatic, musical and artistic works created through old or new technology in Uganda.

Asked about what amounts to Infringement of Copyright, Justice Tabaro refers to Section.46 of the 2006 Copyright and Neighboring Rights Act, and says that infringement occurs when a person without valid transfer, license assignment or other authorization under the Act deals with the work or does any act falling within the exclusive rights copyright owner. See S. 46 for the specific acts of infringement) see the specific acts of infringement in S. 46 (compare S.9 and S.5 (3)

Infringement includes use of a work in a manner prejudicial to the honour and reputation of the authors.⁶⁰

That Infringement is not actionable unless it involves the whole piece of work or a substantial part of the work, Section.45 (5) of the Act, and see the meaning of substantial taking (plix products Vs Frank). The learned Justice adds that; the test for determining infringement is whether there is a substantial similarity between the plaintiff and defendant's work, Frank Day and Hunter Ltd Vs, Bron, it was held that I the works are sufficiently I objectively similar, this may raise a presumption of copying that the defendant used need o rebirth and the needs to be a casual connection between the original and the infringing items otherwise coincidental copying is not sufficient to constitute copying and infringement extents to partial copying in relation to the substantive part.

⁵⁰ Section. 46 (2) of the Copyright and Neighboring Rights Act,2006

4.2.1 UGANDA PERFORMING RIGHTS SOCIETY: Research Survey (2003).

In 2003 (When the 1964 Act was still operative), Uganda Performing Rights Society (hereafter referred to only as UPRS) conducted a research survey which aimed at establishing the amount of money that was lost due to having a weak copyright law in force.

The survey revealed that every radio station present at the time would at least play six songs on the airwaves in at least a period of One hour (On average). This implies that, if for instance the active hours in a day were from 6am to 12 am (Midnight) and carrying on for a whole year, the estimate was that, a radio station plays 108 songs on daily basis and 39420 songs annually. The presumption in the thesis is that on the radios is that if every station was asked to pay only 500 for each song that would make a distributable income of UGX1, 182,600,000 per annum?

Going by this assumption the UPRS posited, the government was also 'osing UGX 354,780,000 Tin unpaid royalties. UPRS further unearthed revealing statistics in regard to musical works and according to an uncompleted survey, the UPRS estimated of the over eight million ad million adult Ugandans about by one million buy twelve music albums each per annum. That means that twelve million copies were sold per annum representing an average income UGX 18,000,000,000.

However, the survey revealed that largely because of unchecked piracy, only about one million five hundred thousand albums were recorded as average sales per annum. This means that the balance often million five hundred thousand compact discs (CDs) were pirated sales, representing a loss in revenue to copy right owners of about UGX 1,575,000,000 and over UGX 4,700,000,000 to the government in taxes .that was the situation in 2003 and the replaced copyright act of 1964.

4.3 UGANDA PERFORMING RIGHTS SOCIETY: Research Survey (2007).

In 2007, after the enactment of the stronger copyright and neighboring rights act, the UPRS conducted yet another survey.

This survey returned similarly depressing figures. In February that year, a random survey was done in selected localities to establish the number of pirates using computers and the revenues lost . 23 towns /trading centers were visited and 443 computer operators interviewed. The

quantifiable economic loss came to rights - holders in musical works came to an astounding 3,500,000 UGX per annum.

More so; UPRS assumed that if legitimate sales of music in Uganda are One-half of the pirated sales, and the total value of pirated music in Uganda is 10 times the total value of legitimate sales, the gross revenue from pirated sales would be UGX 52,500,000,000.

Note: In emulating the efficacy of the 2006 legislation, as per the field Findings, it is wise to outweigh it with the 1964 Act so that one can put to balance and digest if there is any commendable efficacy. While Outweighing the Efficacy of the 1964 Copyright Act Visa-Vis the 2006 Copyright and Neighboring Rights Act, It should be borne in mind that the 1964 Act took effect as Copyright Legislation until 2006.

Essence of copyright protection in Uganda:

The study portrayed Copyright protection as being mainly concerned with the way ideas are expressed and its primary function is to enable authors, composers and others to make some sort of living from their work .Copyright extends to almost everything, published or unpublished, that can be called a work. The act specifies the nature of protected rights. These include , novella and other literary works , tables compilations and computer programs which courts as literary works, lectures, addresses speech and sermons, plays scripts for cinema films dance and mi. all of which count as dramatic works. Other include music , CDs and other records , tapes perforated rolls, other devices for reproducing sound and television broadcasts and cable programmes and the typography of book see detailed list in section 5 of the act read together with the definition section.

In general, the 2006 Copyright Act places great emphasis on copyright protection, which has the potential to limit access to educational and research materials.

4.4 Works eligible for protection under the 2006 Act

4.4.1 Works contrary to public policy

By way of exception from the general rules, the courts will not protect a work that is illegal, immoral, indecent or similarly undeserving of protection. Protection may be conferred on even works which may not ordinarily have literary merit in **Elanco v Mandops**⁶¹, the issue was whether a leaflet with detailed instructions as to use of the herbicide and information about it was capable of attracting protection. It was held that the defendants could not be allowed to make use of the plaintiff's skill and judgment to save themselves from the trouble of and cost of assembling and selecting literature.

In music generally, vocals and music videos are all considered protected, therefore, Protection extends to vocal works in music but also symbols and diagrams as long as the plaintiff has expended skill, labour and judgment. In **Anacon Corp. V environmental Research Technology**⁶² the question was whether circuit diagrams fell within the meaning of literary or artistic work, Held, the court was left satisfied that the creation of P's circuit had involved sufficient original work to create copyright works, the circuit diagrams were also literary works. That provided the work was written down and contained information which could be read by someone, as opposed to being appreciated simply with the eyes, it was a literary work.

4.5 WORDS AND COPYRIGHT:

Songs are made up of words, and the question is whether words are capable of copyright protection. In **EXXON Corp V EXXON Insurance consultants International Ltd**,⁶³ it was held that copyright could not exist in the invented word EXXON merely because it could not be described as original literary work, that the work must offer information, instruction or pleasure in the form of literary enjoyment (see Elvis Presley Application on whether names are capable of attracting copyright protection, see character merchandising).

⁶¹ (1979)EsR46

⁶² 1994)ESF 649

⁶³ 1982) Ch 119

A work sought to be protected must involve literary skill, labour and judgment. In **Express News Papers v Liverpool daily post**,⁶⁴ the question as to whether a competition in a newspaper was a literary work, held that the game millionaire of the month published in a daily newspaper involved skill and labour and was a literary work for the purpose of Copyright proceedings. The publication of the grids and sequences involved skill and labour and copyright therefore existed as a literary work in each of the grids.

4.6 MUSICAL WORKS IN UGANDA: Infringement of Copyright and Neighboring Rights.

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 and can be remedied under the Copyright and Neighboring Rights Act of 2006.

4.6.1 Remedies to Infringement of Musical Works.

Civil remedies;

These are provided for in Section 45 of the Copyright and Neighboring Rights Act of 2006. The Act provides civil remedies so that a 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 then continuation of the infringement.

In an interview with the registrar Uganda Registration Services Bureau on issues of Administration of Copyright; He quoted Section 41 of the Copyright and Neighboring Rights Act of 2006.

This Section provides for a Registrar of Copyright and other officers. The Registrar's office shall be the National Copyright Information Centre. The Registrar shall process applications for licenses; register works and productions to be registered under this Act; register collecting

⁶⁴ (1985) FSR 306

societies; give guidance to and discipline collecting societies; register assignments, licenses and transfers of copyrights; register copyright contracts relating to exploitation of rights; provide Copyright and Neighboring rights information service to the public and users of copyright works; in collaboration with the collecting societies, advise Government, on matters relating to Copyright and Neighboring rights; perform any other duty or function relating to Copyrights, Neighboring rights and collecting societies as may be necessary for the better functioning of this Act or as the Minister may by regulation prescribe.

The Board of Directors of the Uganda Registration Services Bureau may appoint such number of assistant registrars, copyright inspectors and other officers as may be necessary for the efficient discharge of the duties and functions of the registrar of copyrights under this Act.

4.6.2 Registration of rights

The owner of a Copyright or a Neighboring and any holder of an assignment, license or transfer of a Copyright or Neighboring rights may register the right, assignment, license or transfer with the Registrar for the purpose of keeping evidence of ownership of the right; identification of works and authors; and maintenance of record of the rights.⁶⁵

Rule 3 (2) of the Copyright and Neighbouring Rights Regulations provides that an application to the Registrar for registration shall be made in Form 1 specified in Schedule 2 to the Regulations and shall be accompanied by—

- a) A deposit consisting of copies or records representing the work for which registration is applied, whether the work is published or unpublished; and
- b) A non-refundable application fee specified in Schedule 3 to these Regulations.

4.6.3 Application for Copyright

The application for registration of Copyright or Neighboring rights shall state the Following - (Rule 4)

⁶⁵ Section 43 Copyright and Neighboring Rights Act of 2006

1. The title of the work sufficient to identify the work, or if the work has been published as part of a larger work, the title of that larger work in addition to the title of the contribution;
2. A description of the nature of the work being registered as specified in section 5 of the Act, such as literary work, dramatic or musical works, audio visual and sound recording works and others;
3. The name and registered address of the author and owner of the Copyright or Neighboring rights and his or her nationality;
4. The date of birth of author;
5. If the author is dead, the date of death;
6. The year in which creation of the work was completed;
7. The date and year of publication, if work is published;
8. The names and addresses of copyright claimants such as assignee, transferee of licensee, if any;
9. If the registration being applied for is for derivative work, state the pre-existing work; and
10. The date and signature of the applicant.

Upon receiving an application for registration of a Copyright or Neighboring right, the Registrar shall publish the notice of the application in the Gazette specified in Form 2 of Schedule 2 and the fees for the publication of the notice shall be paid by the applicant.

Where, after sixty days from the date of publication of the application in the Gazette, there is no objection lodged against the registration, and the Registrar is satisfied that all the necessary information has been provided by the applicant, the Registrar shall enter the name of the applicant in the register as the author or owner of the Copyright or Neighboring right.

Upon registration, the applicant shall be issued with a certificate of registration as proof of registration. The form of the certificate of registration is specified in Form 3 of Schedule 2 to these Regulations.

4.6.4 Objection to registration (Rule 6)

A person who wishes to object to the registration of a Copyright or Neighboring right may, by ordinary letter, lodge an objection against the registration with the Registrar : within sixty days

from the date of publication of the application in the Gazette.

Upon receipt of the letter of objection, the Registrar shall, as soon as practicable notify the applicant of the objection. The Registrar shall then convene a meeting of both the applicant and the objector, or their agents, where the parties cannot attend in person, in order for the applicant to address the reasons for the objection.

Where the Registrar is satisfied with the reasons for the objection, the registrar shall not register the copyright or neighboring right.

(a) Exempted acts not categorized as Infringement under the Act.

These are the instances whereby use of an author’s work without license would not amount to an infringement. Such permission emanates from the law and protects the culprits of such ‘would be’ infringement. For instance;

i. Fair use privilege

Infringement can be direct or indirect. Direct infringement where defendant without authority from the owner, copies or use can be copyrighted material. Indirect infringement occurs when the defendant authorizes a third party to use copyrighted material without any authority to do so.

Fair use,' is provided for in *Section 15 of the Act*, exempts the user from seeking the rights-holder's consent for use of a work in the course of research, teaching, criticism and review, news reporting, public library reproduction, judicial proceedings or translation into Braille or sign language. *The 2006 Copyright Act does not specify what portion of a work can be used under fair use, but Section 15(2) provides for consideration of 'the purpose and character of the use, including whether the use is of a commercial nature or is for non-profit educational purposes', as well as consideration of the 'nature' of the work being used, 'the amount and substantiality of the portion used' and the effect on the 'potential market' for the work when it is decided whether a use falls in the realm of fair use.* The discretion therefore lies with the courts in interpreting the provision. And although there is no express provision for protection of digital works, it can be argued that Section 15 applies equally to digital and non-digital works, *Fair use is a powerful tool for both education and social commentary.* This concept allows teachers to present small portions of a work for class discussion, and reviewers to quote from a work without obtaining permission from the rights holder. Fair use also permits the parody of a work, fostering content creation. The elimination of *fair use* would not only hurt education and social welfare, but could stifle the very creativity and content production that copyright was intended to foster. It would also drastically alter the delicate balance between rights holders and information users. In a world without *first sale*; publishers could refuse to distribute to unfriendly critics, organizations could prevent gadflies or consumer groups from viewing documents that might be used to paint them in unflattering terms, authors could prevent known satirists from getting copies of their works and libraries would not be able to lend works

A proposed elimination fair use and First sale for digital material would gut much of copyrights ability to promote the public interest, turning it into a vehicle that guarantees economic rights to copyright holders. This would continue a trend to increasingly favoring rights holders over consumers and the public good.

Notably, the earlier 1964 Copyright Act contained a 'fair dealing' provision instead of fair use. The old fair dealing provision was concise and stringent; the new fair use provision is arguably more liberal and flexible. The shift from fair dealing to fair use potentially creates a window to widen access, provided that the courts (in case of a dispute) interpret fair use liberally. Much would depend on whether the listed categories are interpreted as illustrative or exhaustive of permitted activities.

ii. First Sale

The *First sale* doctrine limits a rights holders control over a copy of a work to the very first time that copy is sold. According to *first sale*, anyone who purchases a work can then do what they want with that copy, even if the rights holder opposes that use. *First sale* allows the purchaser of a work to resell it, lend it, share it, or destroy it without ever consulting the rights holder. Among other social benefits, the *First sale* doctrine has permitted libraries, used bookstores, and used record stores to operate without having to consult with a rights holder each time they lend or sell a work. In an interview with Mr. Fred Otunnu, Head of communications and consumer affairs-Uganda communications Commission (a government institution that governs all Media Houses in Uganda), he contends that Uganda is under a new policy of switching from analog broadcasting to Digital Broadcasting. Mr. Mutabazi Godfrey, (the Executive Director of Uganda broadcasting Council) in fact confirmed that by December 2012, Uganda will have fully switched from analog broadcast to digital transmission. My concern in relation to copyright protection is that, digital encourages copyright infringement.

Libraries, educational institutions, and consumer groups have asserted that legislation in the digital age should maintain the kind of balance between rights holders and the public interest that existed with analog material, rather than tip this balance significantly towards the information industry. Attempts to remedy perceived threats to rights holders' profits create severe threats to public interests that have traditionally been protected by *fair use* and *first sale*.

iii. Provisions for teaching and learning

Section 15 of the Act subsumes fair use for teaching purposes in schools, colleges and other educational institutions if it is 'fair'. The Act is, however, silent on distance and e-learning, as

well as on the number of copies of works or illustrations permitted to be used in terms of the teaching exception. Moreover, the fair use provision is quite broad, making it difficult to predict how the law regulates specific scenarios.

Libraries and archives Libraries and archives are important gateways to accessing knowledge. There is a brief mention, in the Section 15 fair use provision, of reproduction by public libraries and non-commercial documentation centers being allowed under fair use. Thus, in publicly accessible libraries and non-commercial documentation centers, copying of works and limits on the number of copies permitted, depend on interpretation of Section 15 on fair use.

In practice, regardless of the legal provisions in place, it is possible to copy and utilize substantial portions of works from both publicly accessible libraries and commercial libraries. Though the law seeks to limit what may be photocopied, its enforceability is very limited in Uganda. This aids access to knowledge generally, but in the long run, creators of such works might more vigorously enforce their rights, thus curtailing access. There is no express public lending rights (PLRs) provision under the Act, meaning that there is no provision for libraries to pay fees to rights-holders for the practice of lending out copyright works.

iv. Assignment of copyright and licensing

This is provided for under Section 14 of the Copyright and Neighboring Rights Act of 2006 .The owner of a copyright may as if it were movable property assign, licence, transfer or bequeath 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.

Rule 8 of the Copyright and Neighbouring Rights Regulations, 2010, provides that the application for registration of an assignment or transfer shall be in Form 4 specified in Schedule 2 to the Regulations. The application shall state-

1. The Name and registered address of the author and owner of the copyright or neighbouring rights;
2. The Name, trade or business and the description of the assignor or transferor of a Copyright or Neighbouring rights;
3. particulars of the instrument, if any, under which the interest is claimed;

4. The limitations in the assignment or transfer, and shall address issues on whether or not the assignment is limited to; Some of the assignor's rights; Apart of the term of copyright; or A specified country or geographical area.

The application for registration of an assignment or transfer shall be accompanied by –

1. A copy of the instrument, if any, under which the title is claimed; and
2. An application fee prescribed in Schedule 3 to the Regulations.

Where the applicant does not claim under any document or instrument, proof of his or her entitlement to the copyright, the applicant shall accompany the application with a statutory declaration setting out the full particulars of facts upon which his or her claim to ownership of the work is based, showing that the work has been assigned or transferred to him or her.

The certificate of registration of assignment shall be in Form 5 specified in Schedule 2 to these Regulations.

A license to do an act falling within a copyright may be oral, written or inferred from conduct or circumstances. Under Rule 9 of the Copyright and Neighboring Rights Regulations, 2010, a holder of a license for copyright or neighboring rights may apply to the Registrar for the registration of the license.

The application for registration of a license shall be made in Form 6 specified in Schedule 2 and shall be accompanied by a fee prescribed in Schedule 3 to the Regulations.

The application for registration of a license shall -

- i.) state the name, address and nationality of the licensee;
- ii.) indicate full particulars of the instrument, if any, under which the interest is claimed;
- iii.) be accompanied by a statutory declaration made by the owner of the work stating -
 - a) The particulars of the relationship between the owner and the licensee;
 - b) Whether the license is a general license or a specific one;
 - c) Whether a license is granted for a limited period or not;
 - d) Whether the license is exclusive or nonexclusive.

Upon receiving an application for registration of a copyright, assignment, license or transfer of a Copyright or Neighboring rights, and on being satisfied as to the right of the person seeking to be registered, the Registrar shall cause the person to be registered as the owner or holder of the copyright work in respect of the work and shall issue the applicant with a certificate of registration as proof of registration.

(b) Enforcement of Copyright Legislation in Uganda

In Uganda today, author's musical works (and all holders of copyright and related rights) remain vulnerable to economic exploitation by users of their works in spite of the enactment of the Copyright and Neighboring right Act. This susceptibility is a result of a long history of non-enforcement of rights. This has resultantly created the erroneous impression that infringement of right is actually normal and serves as a perverse ay to promote the rights holders.

The Copyright and Neighboring rights Act of 2006 has proved largely unable to combat the acts of infringement it has been briefed to combat.

The Uganda performing rights society UPRS has conducted extensive research surveys. These lead to the unequivocal conclusion that infringement of the interests of right- holders in musical works continues unabated and the findings of a survey of particular importance to music copyright was released in "*what is copyright, what qualifies for protection, the copyright law and you, why the protection*"⁶⁶, It was unveiled that Music would make a distributable income of UGX182,600,000 per annum . Going by this assumption the Uganda performing Rights Society posited, the Government was also losing UGX 356,780,000 in unpaid royalties' .The UPRS further unearthed revealing stations in regard to musical works. According to the uncompleted survey, the UPRS estimated that of the over eight million adult Ugandans, about one million buy twelve music albums each per annum. That means that twelve million copies were sold per annum, representing an average income UGX18, 000,000,000.

However, the survey revealed that this was largely because of unchecked piracy, only about one million five hundred thousand album were recorded as average sales per annum. This means that

⁶⁶ A presentation made by James Wasula at the WAPI skills factory free Workshop (organized by the British Council)

the balance of ten million five hundred thousand compact discs (CDs) are pirated sales , representing a loss in revenue to copyright owners of about UGX1,575,000,000 and over UGX4,700,000,000 to the government in taxes that was the situation in 2003 and the repealed copyright Act of 1964.

In 2007, and after the enactment of the stronger copyright and neighboring rights act, the UPRS conducted yet another survey. This survey returned similarly depressing figures.

In February that year⁶⁷, a random survey was run in selected localities to establish the number of pirates using computers and the revenues lost. In total, 23 towns / trading centre were visited and 443 computer operators interviewed. The quantifiable economic loss came to right-holders in musical works came to an astounding 3,500, 000,000UGX per annum.

Further, the UPRS assumed (no survey was conducted in this regard due to financial

⁶⁷ February 2007

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Conclusion

In deriving a conclusion, I undoubtedly blame the current ineffectiveness of the Copyright and neighboring rights Act on the failure to afford relevant enforcement by clearly demarcating “user rights” and “holder rights”. My belief remains that with widespread infringement, our Ugandan Legislators have created a false impression that the law needs to be strengthened. In this regard, my view is that the push in our copyright legal framework should not be towards tightening control as it is in most countries. The push needs to be towards finding a balance between rights-‘holder rights’ and ‘user rights’, and creating greater opportunity for non-infringing, non-commercial user access for private and educational purposes.

5.2. Recommendations to the problem of copyright enforcement in uganda.

1. A comprehensive study should be undertaken to establish the contribution of copyright law to the National economy this due to the fact that a lot of emphasis is put on the legal aspects as if copyright is essentially about its legal nature. The crucial economic aspects have received minimum exposure rendering the copyright holders to wonder whether it is relevant at all Likewise, Government is also unaware of the revenue it loses in uncollected taxes that would accrue from royalties. No effort has been made by either the Min.istry responsible for Culture or that of Finance or even the Uganda Revenue Authority to try to find out the possible revenue that could be collected from copyright protected works. This will help on enforcement in that once something is seen to be of great economic value then great emphasis will be put on it to ensure its protection and further its development.
2. Uganda Registration Services Bureau should urgently appoint Inspectors who will help in seeing that those registered in the businesses are carrying out the right business registered for and not engaging in illegal activities like copyright infringement.
3. Police should establish specialised desks for Intellectual Property cases just like it has done for domestic, land, children and various issues. This will help to sensitise the public and the

police themselves about copyright laws and that way make it easier to enforce as it's always easier to enforce a law that is well known.

4. Sector should be given incentives for investments, these investments can be used in upgrading the special branch of the police, and improve on the enforcement agencies like the Uganda Registration Services Bureau employing investigators or acquiring a functioning website -
5. The ministries like Justice and Constitutional Affairs, Gender, Labour and
6. Social Development and Tourism, Trade and Industry need to cooperate to enforce Intellectual Property laws.
7. The government should introduce mass sensitisation programmes which could include conferences, advertisements in the newspapers, radio, and televisions to improve on the awareness of copyright laws. Various organisations like Uganda Performing Rights Society could help in this through drive intended to educate the public on the effects of copyright infringement both to the authors and the nation.
8. The government in particular the tax bodies like Uganda Revenue Authority (URA) or the financial institutions⁶⁸ should find better plans to reduce on the prices of original works for the reason there is rampant copyright infringement is because the prices of original works are too high compared to those copied from them.
9. The government of Uganda should create strong legal incentives for Internet Service Providers (ISPs) to cooperate with copyright owners in combating online piracy such service

⁶⁸ These As per www.bou.or.og accessed on 26/04/19 at 5:13 Include:

- Micro Finance Institutions in Uganda
- Acts, Policies and Regulations
- Commercial Banks in Uganda
- Credit Institutions in Uganda
- Leasing Houses in Uganda
- Operational Forex Bureau in Uganda
- Post Banks in Uganda
- Development Banks in Uganda
- Insurances in Uganda

providers include telecommunication companies like MTN (Uganda), Zain (Uganda) and many more of which will be willing to cooperate. These incentives could include fewer taxes, so as to leave room for the companies to reallocate their resources at combating online piracy.

10. Make legislative, regulatory or administrative changes necessary to empower customs officials to make ex officio seizures of counterfeit and pirate product at the border without a court order.
11. Direct the Uganda police force, Uganda registration service bureau and the judiciary to give high priority to intellectual property rights enforcement, including against retail piracy and imports of pirated products, and to seek deterrent penalties against those convicted of these crimes.

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Appendix A
INTERVIEW GUIDE FOR JUDICIAL OFFICERS

Efficacy of the Copyright and Neighboring Rights Act 2006 on the Protection of Musical Works in Uganda.

(The Interviewer is a student of Bachelor of Laws and is conducting a study to find out the contribution of the judicial officers/courts of law in fighting music piracy in Uganda, Please assist him by filling in this guide)

Date:.....

Full Name:.....

Title/Designation:.....

Duty Station:.....

1. Please give in the details of your appointment as a judicial officer from the first one to the current one

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.....
.....

2. Are you aware of the copyright law? If yes, What is the proper citation?

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.....

3. Do you know the purpose of this law?, if yes please specify

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4. Do you know the meaning and methods of music piracy, if yes, give details

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.....

5. Have you come across any case of music piracy while you are a Judicial officer? If so, give details of the case/s

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6. Why in your don't Copyright owners enforce their rights in Courts of law?

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7. In your opinion, how can courts be useful or more useful than they are in combating music piracy?

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8. Any other recommendations or advice regarding this topic?

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4. Do your customers prefer duplicate or originals or Duplicates? Give reasons

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5. Are you aware of the Copyright Law, if yes, how is it called?

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6. Do you know the purpose of this law?

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7. Do you know methods of duplicating music?

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8. If so, please list some of them.

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APPENDIX C
INTERVIEW GUIDE FOR MUSICIANS

Efficacy of the Copyright and Neighboring Rights Act 2006 on the Protection of Musical Works in Uganda

(The Interviewer is a student of Bachelor of Laws and is conducting a study to find out the observations, complaints and appreciation by Artistes on matters regarding Copyright law and its impact towards protection of musical works in Uganda, Please assist him by filling in this guide)

Date:.....

Stage Name:.....

Full Names:.....

Title/Designation/Type of Music you sing:
.....
.....

2. As one of the Successful Musicians in Uganda especially after the new Copyright legislation was enacted, what stumbling blocks do you face as a Musician?
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.....
.....

3. When did you join the Music Industry?
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.....

3. Since you joined the Music Industry, Have you ever obtained your expected sales?

If yes or No, briefly outline when and why you think the sales were as that?

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.....

4. You have been in the music Industry before the introduction of the 2006 Copyright legislation, Have you noticed any significant changes with the coming in force of the 2006 Legislation?

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.....
.....

5. Do you know some of the factors that affect Music sales for musicians?

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.....

6. If yes, list those factors

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.....

7. Do you know about Uganda performing rights society?

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.....
.....

3. Are you a registered member of Uganda performing Rights Society?

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