

**THE EFFICACY OF THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT NO19  
OF 2006 ON THE PROTECTION OF MUSICAL WORKS IN UGANDA.**

**BY**

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**A RESEARCH REPORT SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL  
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## DECLARATION

I Muhereza Robert declare that the information in this Research Report is true to the best of my knowledge and it has been done through extensive research and consultation from all reliable sources and advisors in the same field of profession. The work herein is my research on the topic "efficacy of the Copyright and Neighboring Rights Act of 2006 on the protection of musical rights in Uganda. "This research is far -reaching and comprehensive on issues of law and facts.

SIGNATURE:  DATE: 11/07/2019

### APPROVAL

I certify that I have supervised and read this study and that in my opinion it conforms to acceptable standards of scholarly, presentation and is fully adequate in scope and quality as a dissertation in partial fulfillment for the award of Degree of bachelors of Laws at Kampala international university.

SIGNATURE: Nane -f DATE: 1/7/15

NAME; Mrs. NANVUMA JANE FRANCIS

## **DEDICATIONS**

This work is dedicated to BYAMUKAMA Family. Namely; my parents, brothers and sisters; Nazaro, tumwine, puricilah, letah and prosper who invested all they could towards my research and the course at large.

May God, the good lord bless the work of your hands.

## **ACKNOWLEDGEMENT**

I would like to express my gratitude and sincere appreciation towards all those who have contributed in one way or the other towards my academics, specifically towards the completion of this dissertation.

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Special thanks goes to my father Mr. byamukama Nazario, my mother Mrs. Tumwine annet, for their utmost financial rendered support, and without them this would be unaffordable.

My dear friends; Obedi, john, jacob. Thanks very much for your contribution towards this noble cause, my God reward you abundantly.

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The police act

## LIST OF ACRONYMS

CRNA-	Copyright and Neighboring Rights Act 2006.
PRS-	performing rights society
WIPO –	World Intellectual Property Organization
TRIPS-	Trade Related aspects of Intellectual Property Rights
URSB-	Uganda Registration Services Bureau
ARIPO-	African Regional Intellectual Property Organization
WTO-	World Trade Organization
UCC-	Uganda communication commission
ULRC-	Uganda Law Reform Commission
Ibid -	Ibidem (as above)
UPPC -	Uganda publishing and Printing Corporation
UPRS-	Uganda performance Rights Society
WPPT-	World performance and phonograms Treaty
URSB -	Uganda Registration Services Bureau
DJs-	disco jokers



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## **ABSTRACT.**

Uganda has diverse and rich traditional knowledge, covering socio-economic aspects of life like music, folklore, apprenticeship, handcraft, production, medicine, etc. The Copyright and intellectual property laws in Uganda stems from the British Copyright laws and intellectual property regimes. As a result these laws are based on western modes of authorship and ownership, since all laws concerning copyright protection has got its origin from Britain.

Musical rights is one of the rights protected by the<sup>1</sup> This study will critically analyze the efficacy of the Copyright and Neighboring Rights Act No.19 of 2006, on the protection of musical rights in Uganda. Chapter one provides an introduction, background to the research paper as well as outlining issues that will be discussed this section covers the historical development of music industry from the pre-colonial period to the present times. It also provides an insight into the music industry as well as the issues brought about by the limited lack of enforcement of Copyright in the Music industry. The chapter further includes the statement of the problem which gives an insight of the width of the problem that the researcher intends to address. In the same chapter the research methodology and the scope of the study are discussed. Chapter two includes the literature review of what other researchers and the academia have written in relation to the same research problem. Chapter three will include a detailed discussion of the legal framework on Copyright law in Uganda with Specific reference to the protection of Musical works. Chapter four will be a guided detailed discussion of the research findings, a presentation and analysis of the same.

Finally chapter five will include and discuss recommendations to the different and relevant stakeholders if the law is to adequately give protection to musical works in Uganda.

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<sup>1</sup>Copyright and Neighboring Rights Act No .19 of 2006.

## CHAPTER ONE

### 1.0 Introduction.

**Norman Mbabazi** a lawyer, team leader and President of Intellectual Property Centre (IPC) defines copyright as a bundle of exclusive legal rights concerned with the protection of literary and artistic works often referred to just as ‘works’<sup>2</sup>. The IPC does intellectual property awareness, litigation and training, lobbying for best practice legislation and liaising between users and the creators of intellectual works.

“Copy” means a production of a work in a written, recorded or fixation form or in any other material form, but an object shall not be taken to be a copy of an architectural work unless the object is a building or a model.

Derivative work<sup>3</sup>” means work resulting from adaptation, translation or other transformation of an original work but which constitutes an independent creation in itself;

“Author” means the physical person who created or creates work protected<sup>4</sup> and includes a person or authority commissioning work or employing a person making work in the course of employment.

Moral right” means the right to claim authorship or performance.<sup>5</sup>

Neighboring rights” include rights of performing artistes in their performances, rights of producers and music publishers and rights of broadcasting companies in their programs and others.<sup>6</sup>

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<sup>2</sup> Weekly Observer Newspaper Article available at <http://www.uprs.biz> accessed on 1<sup>st</sup> March 2019

<sup>3</sup> Under section 2 of the copyright and neighboring rights act 2006

<sup>4</sup> under section 2 of the Copyright and Neighboring Rights Act 2006

<sup>5</sup> Section 10 of the Copyright and Neighboring Rights Act 2006

Performance” means the presentation of a work by actions such as dancing, acting, playing, reciting, singing, delivering, declaiming or projecting to listeners or spectators <sup>7</sup>

performer” includes an actor or actress, singer, musician, dancer or other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

Producer” means a person who organizes and finances the production of an audio visual fixation or sound recording.

Publication” means the lawful reproduction of a work or of an audio-visual or audio visual sound recording, fixation or of sound recording for availability to the public; and includes public performances and making available of a work on the internet.

It is important to note that for work to be copyrighted it needs to be original and be reduced into material form. The word Original was defined in the case of **University of London Press Ltd v University Tutorial Press Ltd**<sup>8</sup> to mean that it should not be copied but originate from the author.

Copyright work is further considered original when the author has exercised the right kind of labor, skill or effort otherwise known as intellectual creation in producing work.

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<sup>6</sup> Section 21 of the Copyright and Neighboring Rights Act 2006

<sup>7</sup> Section 22 of the Copyright and Neighboring Rights Act.

<sup>8</sup> (1916) Ch. 601

The requirement of reducing work in material form is essential in that ideas per se are not protected but the expression of ideas<sup>9</sup>.

### **1.1 Background to the study.**

To many Ugandans, Copyright is still unfamiliar. In practice, it started as common decency and a reflection of the enlightenment of man that was first brought into law in 1909<sup>10</sup> that was passed by the British parliament. This first statute was improved into the Copyright Act<sup>11</sup> and then reformed many times into the Copyright Acts of<sup>12</sup>

The origin of the protection of musical works can be traced to the first reception of English laws in Uganda by virtue of the 1902 order in Council. After attaining independence in<sup>13</sup> 1962, Uganda incorporated various laws into its legal system and among these was the Copyright Act of 1964. These laws were imported and emanated from the colonial masters and the inevitable consequence was that they were neither tandem nor consistent with the socio-economic realities of the people of Uganda.

Musical copyright was adopted from the British law and the information available suggests that the first attempt at Copyright was the passing of the Copyright Act in July 1964 Cap 18; two years after independence. On 20<sup>th</sup> July 1964 the copyright Act was passed to govern all intellectual property rights in Uganda. The Act then came into force by virtue of Section 14 of the Judicature Act Cao 16 now Cap 13.

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<sup>9</sup> Section 6 of the Copyright and Neighboring Rights Act and Article 9.2 of the Trips Agreement.

<sup>10</sup> In the statute of Anne

<sup>11</sup> Of 1836

<sup>12</sup> 1906, 1911, 1928, 1956, 1958 and 1963

<sup>13</sup> 1962

After 1964, Musical works evolved overtime and widened in scope as a result of immense technological advancements. Because of this there was the creation of antecedent rights and the new forms of infringement that were never anticipated in the then legislation. Various changes and developments occurred especially in the Bio Technological Neighboring rights and the proliferation of the internet thus broadening the gap and reality.

During the colonial times, a British body called the Performing rights society of England (PRS) handled all Ugandan musicians' rights. The musicians got royalties from Radio Uganda- the only radio then after independence. Music was not aired for free until 1971 when Amin became the President and all the Copyrights went up in smoke. The late former President suspended PRS operations in Uganda, and Radio Uganda stopped paying artistes their royalties.

The need for adequate protection arose, concerned parties saw the invested efforts by producers, performers and artists in general in the acceleration of certain works like music and literature. They observed that much as the original authors and artistes were being protected, the neighbors had limited benefit and were thus being exploited. The law reform commission in detection of such massive divergence between the law and the reality and the ongoing exploitations, made a couple of advancements and recommendations leading to modification of domestic legal framework.

In 2004, the then Omro County (Guru district) Member of Parliament Hon Jacob Alayna came up with a Private Members Bill<sup>14</sup> which was then tabled before the Parliament of Uganda. This

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<sup>14</sup> The Copyright ad Neighboring Rights Bill No 16 of 2004

bill led to the enactment of a New law<sup>15</sup> assented to by the President for the protection of all intellectual Property in Uganda Musical works inclusive.

## **1.2 Statement of the Problem.**

The 1964 law<sup>16</sup> had grave shortcomings and there was a need to address them which subsequently led to the enactment of the<sup>17</sup> as the new governing law in this area. Despite the enactment of this new law, less has been implemented and many perpetrators still infringe on musical works and other copyrights. Despite the rich provisions of the Copyright and Neighboring Rights Act and the regulations in the protection of Musical works in Uganda, there is continued infringement on the copyright and disrespect of musical works.

First and foremost, the enforcement bodies are mandated to initially carry out and enforce the copyright law in Uganda as always is and has been in Uganda. The bodies charged with the enforcement seem to be putting less power in helping musicians themselves hence the need to solve this by analyzing the efficacy of the copyright law in the protection of the Musical works. The musicians themselves and performers do not have enough knowledge in regard to their copyright rights and how best they can enforce them.

The fact remains that infringement on musical rights is a growing concern in Uganda, actions need to be taken so that musicians can be protected. Much work still needs to be done to promote awareness of copyrights and musical works in relation to implementation of musical rights, and to punish those found infringing on the musical works of artists. There is need also to strengthen and coordinate the bodies tasked with protecting copyright laws and fighting infringement on musical works.

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<sup>15</sup> The Copyright And Neighboring Rights Act of 2006.

<sup>16</sup> Copyright and Neighboring Rights Act Cap 215.

<sup>17</sup> Copyright and neighboring Rights Act of 2006



The main problem being investigated in this research is whether the Copyright and Neighboring Rights Act of 2006 has efficiently addressed musical rights in Uganda, the answer of which will be addressed in the research findings.

The researcher will also make his recommendations based on the filed findings in his chapter five of this research paper.

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

#### **1.3.1 General Objective**

The general objective of the study is to critically analyze the efficacy of the Copyright and Neighboring Rights Act<sup>18</sup> in the Protection of Musical rights in Uganda.

#### **1.3.2. Specific objectives**

- i. To analyze the existing legal and institutional framework of copyright law in Uganda.
- ii. To discuss the concept of effective enforcement in relation to copyright in the music industry.
- iii. To examine the factors that influence enforcement of copyright and related rights in Uganda.
- iv. To make recommendations for proper enforcement of The Copyright and Neighboring Rights Act in Uganda.

### **1.4 Hypothesis**

The hypothesis to test in this research is “whether the 2006 Copyright and Neighboring Rights Act adequately cures the ineffectiveness of Copyright legislation and the problem faced by musicians in Uganda as encountered in the 2006 Copyright Act regime

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<sup>18</sup> Act No 19 of 2006

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

The study will be of great importance to the musicians in Uganda by helping them to know their different rights and the possible avenues where they can go to enforce their rights, this will also be relevant to the performers.

Most importantly the study will help the different enforcement bodies in proper enforcement of the law so as to rightly do what they are empowered to do by virtue of what they are empowered to do, on matters of policy formulation the policy makers will be empowered in making proper regulations for the better protection of the musical works. The study will also be of great significance to the academia and researchers as well as the Judiciary in better appreciating the Law on copyright and its credibility and criticisms as a means of enforcement mechanisms that can better be adopted so as to help in the protection of the musical works in Uganda.

### **1.6 Purpose of the Study.**

The purpose of this study is to establish the efficacy of the Copyright and Neighboring Rights Act in protecting musical works in Uganda. It will further help academia, researchers and the judiciary in broadening their knowledge in the subject of study by identifying the loopholes and strengths of the law in protecting the rights of musicians, performers and producers in Uganda and come up with recommendations to improve how best musical works can be protected.

## **1.7 Research Methodology.**

### **1.8 Geographical scope (Area covering)**

Although Uganda is geographically wide, most of the music recording studios and celebrated artists operate their business within Kampala and only go upcountry for shows.

Moreover , the office of the registrar general , the collecting societies in place , the supreme court , court of appeal , , headqutors of the high court are also located in Kampala , so my target respondents will available in Kampala and in neighboring districts. For this reason almost all the data comprising this research will be collected from kamala and its neighboring districts like wakiso and mukono.

Wakiso and mukono will be selected because selected and most of the respondents in this research who work in Kampala revealed that they reside in Kampala district, some in reside in wakiso district and the rest in Mukono.

### **1.8 Research design.**

This study employed both qualitative and quantitative research methods.

**Qualitative research methods** this will comprise of intensive interviewing of respondents especially music artists , music consumers and sellers of musical works , officers from the registrar generals department of the ministry of justice and constitutional affairs , judges, magistrates and court Registrars.

**Quantitative research method** this will be used by way of structured questions which will be administered along the unstructured ones to the above respondents.

## **1.9 Target population.**

The research targets and concentrates on three distinctive categories of respondents like copyright owners, relevant government authorities and music consumers.

### **1 music copyright owners.**

These basically includes , musicians , song writers , bands , music groups , collecting societies, and owners of recording studios , depending on who the copyright vests in.

### **2 Government officials.**

This targets population involves law makers like parliament , the law reform authorities (Uganda Law reform commission),the regulating and monitoring agencies like Uganda broadcasting council/Uganda commission and Uganda Registration Services Bureau),and officers from the registrar Generals Department of the Ministry of Constitutional Affairs , Judges who have handled cases on the subject of Musical copyright and Uganda Revenue Authority.

### **2 Music products consumers.**

Consumers are so broad but averagely constitutes , the sellers and distributors of audio tapes, video tapes, compact discs(CDs) and (DVDs) .They also include bars and Restaurant operators , radio and television stations , Night clubs and Discotheques and people who use and listen to music in their homes , vehicles and other private places.

## **1.10 DATA SOURCES:**

### **Primary data**

Primary data sources included answers from respondents are gathered in form of interviews and interview guides, primary data also includes the researcher's observations of the respondents.

### **Secondary data.**

Secondary data sources will include Acts of parliament, law reports, unreported judgments, text books journals, policy reports, manuals and reports from conferences and workshops on intellectual property Rights generally and particularly on music copyright. The intent too was to download articles, cases and legislation or enactments of other countries for comparative purposes.

The researcher intends to visit the following places /resource centers to access the relevant secondary data.

- 1 Uganda Performers Rights Society (UPRS), Amber House, first floor, Kampala road.
- 2 Uganda Law Reform Commission(ULRC)
- 3 National Library of Uganda , Buganda Road –Kampala
- 4 Kampala international university library
- 5 maker ere university main library
- 6 Uganda Registration Services Bureau
- 7 The High Court of Uganda Library
- 8 National Library association of Uganda

### **1.11 Scope of the study.**

#### **Subject Scope**

The study will analyze the efficacy of the Copyright and Neighboring Rights Act<sup>19</sup> on the protection of Musical works in Uganda specifically in Kampala Metropolitan area. The study concentrates on examining the recent developments in copyright law in Uganda and in particular, the comparative analysis and outweighing the different provision of the law by examining whether they sufficiently accord protection of the musical works in Uganda.

The choice of the musical industry was deliberate as this is one area where enforcement has been a major issue in Uganda. Enforcement is the key concept in this research paper. A critical analysis of existing enforcement mechanisms is important to determine whether or not they serve the purpose for which they were formed. If not, what changes are required?

#### **Time scope.**

The study will be limited to the period from 2000 to the year 2019. The choice of this period is deliberate because the researcher believes that it will help him to assess whether the Copyright law has efficiently accorded protection to Intellectual Property specifically in the area of Music since this is one of the areas that the Act was enacted to accord protection to. More so the period of 2006 to date is the post-enactment period of the Act hence will address the information that the researcher intends to get.

#### **Geographical scope**

Geographically Uganda and Kampala in particular has been chosen for various reasons with specific reference to the music industry. Firstly, Kampala is home to many Prominent and

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<sup>19</sup> No 19 of 2006.

upcoming artistes and musicians in Uganda. It has many promoters and producers notwithstanding the fact that it houses a lot of media houses and clubs who are also stakeholders in the music industry. The area will therefore give the researcher firsthand information on the breadth of the problem.

### **1.12 Research questions**

The research questions to be answered include,

1. Do you know about Copyright law?
2. What do you know about it?
3. What is the impact of the Copyright and neighboring rights Act since it came into force in Uganda?
4. How relevant are the provisions of the Copyright and Neighboring Rights Act of 2006 in conferring the necessary protection ton to musical works in Uganda?
5. What are the possible solutions that may fortify effective implementation of the Copyright legislation to elevate the prevailing challenges?

## CHAPTER TWO

### LITERATURE REVIEW

**William fisher** in his book<sup>20</sup> said that copyright creates a system whereby the copyright owner is granted the exclusive right to use or exploit his or her work in order to ,firstly to compensate and reward him for his efforts and creativity and secondly ,to act as an incentive for further creativity. He further states that the reward or incentive results from the opportunity for the author to gather all the fruits of his creativity for a limited periods of periods of time.

However William fisher did not tackle the protection of musical rights in African countries, Uganda in particular, hence my research comes to cater for the loophole cited above.

**Cornish W, Llewellyn D and Alpine T** in his book<sup>21</sup> purports that, as of recent, the challenges to intellectual property rights at so many levels have prompted the courts to their repertoire of civil procedures, while Parliament has been active in increasing the range and severity of criminal law in this field. The authors have further adhered to the TRIPS Agreement<sup>22</sup> which calls for the enforcement procedures and permits effective action against intellectual property, “including expeditions remedies to promote protection and remedies which constitute a deterrent to further infringements,” setting out new consensus on the measures which must exist in the legal system of World Trade Organization( WTO) countries. The authors in this context have however did not talk about the essence of copyright protection upon nations that do not adhere to the TRIPS agreement and as much as the TRIPS Agreement to be of good will and presupposes for the harmonization of laws protecting acts of infringement, such an

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<sup>20</sup> Theories of international property in munzer s. (1Ed).(2001)

<sup>21</sup> Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights, Sweet and Maxwell, 7<sup>th</sup> Edition, Pp.56

<sup>22</sup> Agreement on the Trade Related Aspects of Intellectual Property Rights



agreement is however not binding to all states, as for dualist states like Uganda, they tend only to merely oblige to the agreement rather than actually be bound to it.

However the above author did not tackle the protection of musical rights, hence my research comes to cater for the above loophole.

**Rose, A.M.** in his book<sup>23</sup> said that the copyright claimant is either the author of the work or a person or organization who has obtained from the author all the rights the author initially owned, when the claimant named is not the author, a brief transfer statement is required to show how the claimant acquired the copyright. Examples are by written agreements and by inheritance, when the name of the claimant is not the name of the author, but the two names identify one person, the relationship between the names should be explained. Copyright is the right granted to an individual to protect his skills and efforts in producing some work such as a book, song or picture. What is protected is the creativity in the choice and arrangement of words, musical notes colors, shapes, to mention but a few.

A music copyright gives the author exclusive rights to control the publication, distribution of copies, public performance for payment or broadcasting the whole or sections of the work.

However the author above did not analyze the protection of musical rights in the Ugandan context, hence my research comes to cater for the loophole cited above.

**Stim R** in his book<sup>24</sup>, states that if the copyright owner has registered the work prior to the infringement, then the owners may elect, any time prior to final judgment, either actual damages/ statutory damages, where actual damage refers to damages that are provable, inform

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<sup>23</sup> Copyright in stage production elements, requirement of originality and record under English law Ent.( 1<sup>st</sup> ed)Lr.30.(1998)

<sup>24</sup> Intellectual Property: Patents, Trademarks and Copyright, Pp. 192

of profits from the sale of a pirated work or the loss resulting from the reduction in value of the copyrighted work, while, statutory damages are monetary damages awarded for infringement of any work in regards to the provision of the law.

The author despite providing for the scope of both statutory and actual damages, has however failed to provide for the scope as regards to a situation where the statutory damage provided for is less, as compared to the actual damage one incurred, and to what extent shall one claim for actual damage where the law in regards to matters of copyright infringement, only tend to comply and adhere to the statutory damages rather than actual damages, the author did not also address the issue of protection of musical rights in Uganda. Thus my research comes to cater for the above loophole.

**Dean O H** in his book <sup>25</sup> said that appreciation of music in other African countries has increased among local users, which is attributed to factors such as concerts, and proliferation of satellite television that showcases artists from within the content .He also says that 91 disposals income in a given country also dictates the consumption of music, which will affect the sales. Users play an important role when it comes to enforcement of copyright in music industry.

The author further asserts that producers in Kenya and South Africa were considered opinion that lack or limited knowledge on copyright contributes to the decline in music sales, where users are well informed, the incidence of unauthorized use is lower than in cases where they are ignorant of the law and rights contained therein. He further says that copyright has been in place in most sub Saharan Africa since the advent of the colonial era, for most countries, copyright owners have not benefited from copyright laws, as they have not been enforced.

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<sup>25</sup> Handbook on south African Copyright law, op cit, p.1-4. (1<sup>st</sup> ed)

Until recently in countries like Uganda, people assumed that there was no copyright law as the<sup>26</sup> was considered outdated and did not provide for criminal sanctions. A new law was passed by parliament in 2006, which was hopefully thought to remedy the situation.

However the author did not talk about the protection of musical rights in Uganda, hence my research comes to cater for the above loophole.

**Hilbur, R** in his book.<sup>27</sup> Said that Copyright comprises of two main sets of rights: the economic rights and the moral rights. The economic rights of reproduction, broadcasting, public performance adaption, translation, public recitation, public display, distribution and so on. The moral rights include the author's right to object to any distortion, mutilation or other modification of his work that might be prejudicial to his or her reputation. Music has two components, lyrics and music, these are two creative acts, that of the songwriter who writes the lyrics and the composer who writes the tune. They are the originator of music without which the industry would not exist as record companies rely on their creativity, the composer has copyright in a song while the songwriter has got literary copyright in the song.

However the author above did not put in regard the protection of musical rights in Uganda, thus my research comes to cater for the above loophole.

. **Frank J Penna** in his article ,<sup>28</sup>says that music industry in Africa has developed into an industry that employs thousands of people either directly or indirectly ,however not many musicians have made it a career and have to rely on other means to support themselves. The intangible nature of copyright is such that unauthorized use does not necessarily divert the

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<sup>26</sup> 1964 copyrght act

<sup>27</sup> Enhancing creativity in in sampling saves music in 1997, (2nd Ed) author).accessed on 29<sup>th</sup> of May 2019.

<sup>28</sup>The Africa music project in Michael Finger and Philips Schuler. (eds.) poor people's knowledge: promoting IP IN Developing countries .oxford University press p96.

owner or copyright holder of his property but instead deprives him of earnings that would have accrued had he made and distributed the copies. This is due to the fact that copyright works are public goods, which means that they are non-rival and non-exclusive. Although the initial cost of producing the original is high, the cost of reproducing music is minimal. Unauthorized commercial use in the music industry is thus not seen to be a crime or illegal, in some cases, there is a discrepancy between statutory provisions and what happens in practice, it creates loopholes for the protected works.

There are instances where the law is presented but simply not enforced as a whole or in print. However the above researcher did not tackle the protection of musical rights in Uganda, hence my research comes to cater for the above loophole.

**Namuddu, Janet** in her report,<sup>29</sup> said that in Uganda the Musical industry has sometimes suffered threats due to the fact that there is unauthorized commercial production of the Copyright protected works. This is because of the fact that there is less enforceability of the law governing copyright in Uganda. There are various reasons as to why most music kiosks continue in infringement on musical works and key among them is the fact that despite the existence of the law there is lack or limited will to enforce it the law<sup>30</sup>.

However the researcher did not tackle the protection of musical rights in Uganda, thus my research comes to cater for the above loophole.

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<sup>29</sup> Efficacy of Uganda's copyright Laws in Combating Music Piracy Namudddu, Janet 2009. Available at (<http://makir.mak.aca.ug/handle/10570/201>, accessed on 29<sup>th</sup> of May 2019

<sup>30</sup> Copyright and Neighboring Rights Act of 2006

**Edgar R** in his article.<sup>31</sup> Stated that Musical infringement is a growing concern affecting Uganda's music industry. He further notes that while some musicians have been forced to go to court to protect their musical works and image, their experiences are slow and their families. This means that they have to travel a lot within Kampala and its suburbs and towns beyond to perform yet if they were earning off royalties it could save them the strenuous work, travels and additional expenses. For example the Observer Newspaper in Uganda reports between January 1<sup>st</sup> and May 31<sup>st</sup> 2006, Capital FM Played artiste Ngoni's 'Nasima Gwe' hit a total of 543 times but he was never paid<sup>32</sup>.

He however did not show how courts have interpreted the law to protect musical works. And besides his article is more of an opinion from a personal observation.

Hence my research comes to cater for the loopholes above through conducting interviews with different categories of people like artists to get different opinions and data regarding the research topic.

**Prof Samuel Wangle** in his report<sup>33</sup> noted that by 1966 the lack of effective Intellectual property protection in East Africa warranted significant improvement needing the adaptation and enlargement of Legal, Administrative and Enforcement framework as well as human capacity. He further observed that, although the legal framework and the necessary institutional framework for Intellectual Property Administration has been established, he addressed the need of other Intellectual Property implementing Agents such as the Police Department, the Customs office and the Judiciary needing adequate preparation in order to be able to increase protection of the Intellectual Property Rights. He goes ahead to assert that copyright is the right

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<sup>31</sup> Online article available on <http://www.uprs.biz/>

<sup>32</sup> Ibid

<sup>33</sup> Economic and Social Research foundation in Tanzania, Dar es Salaam

granted to an individual to protect his skills and efforts in producing some work such as a book, song or picture. What is protected is the creativity in the choice and arrangement of words, musical notes, colors, and shapes to mention but a few. Copyright protects the owner of the property against those who copy or otherwise use the form expressed by the author<sup>34</sup>. A music copyright gives the author exclusive rights to control the Publication, distribution of copies, public performance for payment or broadcasting the whole or sections of the work in the Musicians country or abroad. Those are termed as the economic rights of the musician. It is thus unlawful to use a copyrighted musical work without the copyright owners' consent.

However the researcher did not talk about the protection of musical rights in Uganda, thus my research comes to cater for the above loophole.

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<sup>34</sup> copyright comprises of both economic rights and moral rights

## **CHAPTER THREE**

### **THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING PROTECTION OF MUSICAL WORKS IN UGANDA.**

#### **3.1 Introduction**

This chapter provides for the legal and institutional framework of Copyright Protection in Uganda; whereas to the legal framework, the chapter discusses on the laws both domestic and international laws, and their statutory provision towards the protection of musician's copyrights, while as regards to institutional framework the chapter explores on the undertakings of such institutions' role towards the protection of musical works in Uganda.

#### **INTERNATIONAL LEVEL**

##### **3.1 International Conventions on the Protection of Copyrights.**

Uganda being a member in the international community is signatory to some of the International Conventions at a global level, by which the protection of copyrights are provided for. It is from some of these agreements through which Ugandan legal instruments enacts their statutes to conform to its international obligation, for instance the recognition of right of performers; phonogram producers and broadcast organizations are provided and adhered from the Rome Convention.

##### **3.1.1 Berne Convention**

This is the major and first international convention in the area of copyright. It was promulgated and arrived at Berne in the year 1886 and caters for the protection of literary and artistic works.

Uganda is not a party to the Bern convention, but owing the fact that many provisions of the Bern convention are incorporated into the World Trade Organization (WPO) Agreement on the

Trade related Aspects of Intellectual Property Rights (TRIPs Agreement), of which Uganda is bound to, these Bern provisions nevertheless apply. The appendix to the Bern Convention provides for statutory licenses, primarily for translation and certain kinds of reproductions and while Uganda notified the appendix, it has still enacted the similar provisions within the 2006 Copyright Act.

Under the Berne Convention, copyrights for creative works do not have to be asserted or declared, as they are automatically in force at creation: an author need not "register" or "apply for" a copyright in countries adhering to the Berne Convention. As the work is "fixed", author is automatically entitled to all copyrights in the work, and to any derivative works unless and until the author explicitly disclaims them, or until the copyright expires. The Bern convention under<sup>35</sup> defines works which are offered protection to include literary and artistic works like production in scientific domain, whatever maybe the mode or form of its expression such as books , pamphlets and other writings ,lectures ,addresses ,sermons choreographic works of some nature ,dramatic or dramatic music . All these works are offered protection regardless of which ever form they may be. The same protection of musical rights is illustrated under<sup>36</sup> authors of dramatic and dramatic musical and musical works shall enjoy the exclusive rights of authorizing the public performance of their works.

### **3.1.2 The agreement on Trade Related Aspects of Intellectual Property Rights. (TRIPS)**

The TRIPs Agreement is the culmination of the Marrakesh Agreement that led to the creation of the World Trade Organizations (WTO) in 1994 and hence TRIPs Agreement form Part 1C

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<sup>35</sup> Article 2 of the Bern convention

<sup>36</sup> Article 11 of the Bern convention



of the WTO Agreement which came out of the series of Multilateral Trade Negotiations (MTNs).

In April 1994, Uganda signed the Marrakech Agreement establishing the World Trade Organization (WTO), requiring it to comply with, among other things, the TRIPS Agreement. Uganda has undertaken several legal reforms to comply with WTO rules, though significant work remains to be done. Uganda being a least developed country (LDC), was not obliged to comply with the TRIPS Agreement until 2013 with respect to copyright, and due to this the 2006 copyright and neighboring Act largely implemented a number of the copyright provisions in the TRIPS Agreement.

The TRIPS Agreement sets down minimum standards for many forms of protection of intellectual property (IP) regulation as applied to nationals of other WTO Members. Furthermore, the TRIPS Agreement has introduced intellectual property law into the international trading system for the first time and remains the most comprehensive international agreement on intellectual property to date. Also under<sup>37</sup> gives protection to music producers, performers, and broadcasting organization.

### **3.1.3 The World Intellectual Property Organization Copyright Treaty (WIPO Copyright Treaty)**

This is an international treaty on copyright law adopted by the member states of the World Intellectual Property Organization (WIPO) in 1996. Uganda is not party to the WIPO internet Treaties ( The WIPO Copyright Treaty (WCT) and the WIPO Performers and phonograms treaty (WPPT) ) and is not therefor not bound by these two instruments .But Uganda is a

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<sup>37</sup> Article 14 of the TRIPS agreement

member of the East African Community (EAC) alongside Kenya , Tanzania , Rwanda and Burundi , which resolved to update intellectual property laws to protect creative industries in the region and Uganda is a member of the African Regional Intellectual property Organization (ARIPO) and is therefore required to harmonize intellectual property laws with ARIPO members. The WIPO Copyright Treaty provides additional protections for copyright deemed necessary due to advances in information technology since the formation of previous copyright treaties before it, hence the WIPO treaty actually tends to supplement the Berne convention in the view of technological advancements that have taken place in the area of copyright. The WIPO gives protection to all works regardless of any formalities, this is provided for under article 20 of<sup>38</sup>

#### **3.1.4 The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organization (Rome Convention).**

This convention, popularly known as the Rome Convention was signed at Rome in 1961, providing for international protection for record producers, performers and broadcasters. Producers are protected against unauthorized copying of their recordings and have a right to payment for the broadcast of their recordings, with exceptions. Under<sup>39</sup> provides for protection of dramatic works which includes music.

#### **Mini-Conclusion**

Collectively it may be asserted for that there enormous legislations and regulations that tend to provide for the scope of copyright protection. Furthermore, it may be observed that, there existence of various institutions that provide for the protection and promotion of artistic works.

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<sup>38</sup> World performances and phonograms treaty(wppt)

<sup>39</sup> Article 2 of the Rome convention

## **REGIONAL LEVEL**

### **THE AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION. (ARIPO)**

The<sup>40</sup> is an inter-governmental organization (IGO) that facilitates cooperation among the member states in intellectual property matters, with the objective of pooling financial and human resources ,and seeking technological advancement for economic ,scientific ,social and industrial development. It was established in 1976 in Lusaka, Zambia through the joint efforts of the UN Economic commission for Africa (UNECA) and the world intellectual property organization (WIPO),

## **DOMESTIC LEVEL**

### **THE 1995 CONSTITUTION OF THE REPUBLIC OF UGANDA.**

The constitution of the republic of Uganda<sup>41</sup> provides for the right to property, and by the fact that copyright is regarded to be intangible property it falls within the confines of the above article .Every person in Uganda has got a right to exclusive use of his or her property which include the right to stop any person from using without authorization, the same principle applies to copyright since it gives protection to any person with copyrighted work protection against any un authorized use.

### **THE COPYRIGHT AND NEIGHBORING 2006.RIGHTS ACT,**

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<sup>41</sup> Article 26 of the 1995 of the constitution of the republic of Uganda.

In Uganda, the law that governs intellectual rights is the<sup>42</sup> this act offers protection to both literally and artistic works. The origin of protecting musical works can be traced to the first reception of English laws by virtue of the 1902 order in council(O.I.C).After attaining independence in 1962,Uganda incorporated various laws into its legal systems ,and among these was the<sup>43</sup> ,

Musical copyright was adapted from the British law and records suggest that the first attempt at was the passing of the Act of <sup>44</sup> ,two years after independence .On 20<sup>th</sup> July 1964,a copyright Act was passed to govern all intellectual property rights in Uganda .due to the shortcomings the 1964 copyright act ,it lead to the enactment of the<sup>45</sup> ,the copyright and neighboring rights act under<sup>46</sup> this section provides for eligible works for copyright to include articles ,books ,lectures addresses ,sermons ,and other works of a similar nature , dramatic ,dramatic –musical and musical works. What is protected is not ideas, concepts or procedures but the expression of the same, this means that for one to claim copyright in his work his or her work must be reduced into material form<sup>47</sup> .

#### **THE UGANDA REGISTRATION SERVICE BUREU (URSB).**

This is a body which is concerned with the registration of all businesses, intellectual property rights which include music, books, literature and the rest, although it is not a mandatory requirement under all copyright laws for one to register his rights in the produced work, it

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<sup>42</sup> The copyright and neighboring rights act of 2006

<sup>43</sup> The Copyright Act of 1964

<sup>44</sup> 20<sup>th</sup> July 1964 chapter 81,

<sup>45</sup> Copyright and neighboring rights act of 2006

<sup>46</sup> Section 5 of the copyright and neighboring rights act of 2006

<sup>47</sup> Section 4 of the copyright and neighboring rights act of 2006

serves a better position where one's work is registered under the URSB since it is easier enforcement of one's rights in the work in cases of infringement or piracy<sup>48</sup>.

### **THE UGANDA POLICE ACT. (UPA)**

Under the Uganda police act, it empowers the police officials to enforce copyright laws in Uganda where there are reported acts of infringement by any copyright owners. Here the police act provides for the punishments like imprisonment, compensation to the copyright owners when they suffer from the acts of infringement.

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<sup>48</sup> Section 2 of the Uganda registration services bureau act.

## CHAPTER FOUR

### DATA ANALYSIS

#### 4.0 Introduction

In this chapter, I am analyzing the contribution of the 2006 copyright and Neighboring Rights Act on the protection of musical works in Uganda. The analysis is featuring on the contribution of the copyright office (URSB).Secondary I will look at the broadcasting council which monitors radios and television broadcasts to ensure that there is no purported infringement of musical works among others .Thirdly I am going to look at the contribution of collecting societies and fourthly the contribution of the courts of law vis-à-vis the law making and law reform bodies altogether.

#### 4.1 FIELD FINDINGS

According to the filed study conducted by the researcher between 2000 and 2019, the following data was gathered from the field:

In an interview with **Jose chameleon (a.k.a joseph Mayanja)** <sup>49</sup>one of the top artists in Uganda, when asked about copyright law in Uganda, said that it is the law which was made to protect their rights as artists. Also when asked how the copyright law has protected their rights as musicians, he said that the law is just in books and it has not helped them as musicians, he narrated an incident which took place around February 2003, when he was ganged against by a number of music retailers and DJs because he had contested the illegal release of his then unreleased song, Bei kali, by the retail community, Radio and in a rare report, TV stations to pay for his music. He also said that the monitor newspaper of Monday 19<sup>th</sup> APRIL 2004 unveiled that ralph Ochan, the permanent secretary in Uganda ministry of gender , labor and

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<sup>49</sup> Interview with this researcher at Kampala cerena hotel on 5<sup>th</sup> June 2019

social development acknowledged that radio and television station owners were to pay some money for every song they air out. In addition, hotels, nightclubs and other public places where music is played were to pay an agreed fee for local music. This in summary attributed to the development of the Uganda performing Rights Society (UPRS) and its general secretary James wasula. According to the article, it stated that UPRS is in conformity with the worldwide intellectual property organization (WIPO) and the broader implication was that UPRS would also advocate for the copyright of foreign artist and societies that are attached to WIPO.

Chameleon also thinks that the only way they can benefit through their works is through strict enforcement of the copyright law than keeping it in books.

**In an interview with Joel senyonyi** (a journalist and writer) when asked about copyright laws in Uganda said that it is good law which gives protection to copyright owners like artists, then on the issue of how the copyright law has offered protection to them as artists, he said that although the law offers them protection, a lot needs to be done .Joel narrated one of his interviews he had with Akiiki Romeo who was a musician and production director with capital FM 91.3 who asserted as follows on the copyright law, “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 stop playing the local music” Romeos concerns were widespread.

In an interview with the manager (Joseph Mukasa) Uganda communications commission,<sup>50</sup> which is the licensing Authority of all Broadcasting media houses in Uganda, when asked

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<sup>50</sup> Broadcasts department

about copyright law in Uganda, said that it is a law which was made to protect the rights of all copyright owners like artists, book writers and the rest. Then when asked about the efficacy of the copyright law in the protection of musical rights in Uganda said that , though the copyright act gives musicians protection many people still use their work without their consent , he gave an example of the radio stations and TV stations which play their songs without their consent. To him there is much ignorance of the law among artists which needs to be addressed first.

In an interview with **Brian Mondo a radio presenter at KFM 93.3** which is one of the Uganda s leading indigenous radio station that relies on local music for 80 percent of its broadcasts, when asked about the copyright law in Uganda said that it is the law which was made specifically to protect the rights of copyrights owners , then when asked about the efficacy of copyright law in as far as the protection of musical rights is concerned, he said that it has tried as radio stations have partnership with artists in regard to the payment of royalties which is given to the owners of the songs whose songs are played on those stations, that however radio stations are still a new thing here and that they tend to breach the same agreements when it comes to the time of paying them their royalties.

He added that some stations cannot even afford to pay broadcasts fees, and thus making it hard for them to comply with the terms agreed with the artists due to lack of enough funds

On whether advertisers are subjected to pay for this burden, as suggested in some circles, Brain said that “advert clients are not responsible. It is unfair to give them an extra fees.” Then he also concurred that there should be monitoring hurdles for the UPRS as it is in western countries where Copyright societies have a software systems with track of actual play which makes it possible to monitor each station to know which songs were played and 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, that copyright things needs ten to twenty years to works.” He concluded.

**In an interview with ley G,**<sup>51</sup> a rapper as well an artist ,when asked about copyright law ,said that it is the law which protects their rights in Uganda that is just seen in books and not working at all , as there are many people who are still benefiting from their works without paying them even a single coin . He gave an example of the people who cut CDs to be the first to face prosecution, and that for radio stations, it is one way of promoting their music. He added that everyone feels happy when their song is played on radio or on a TV station.” With these varying and sometimes emotional views the issue of copyright is seen to be a shadow talk for a while in Uganda. A series of industry persons I have spoken to overtime have all been warried of the protection conflicts that would arises in the case of mootng for copyright. Doman a producer in 2010 voiced similar concerns, He added.

In an interview with **Mr. Joffrey Rutaya**<sup>52</sup>, when asked about copyright law in Uganda, he said that he knows it as their law since it was made to protect their rights in Uganda, then when asked on the protection of their rights as artists by the copyright law, to him it has done totally northing as broadcasters, hotels and restaurants and many college graduates who have failed to find jobs have resorted to burning counterfeit CDs for a living without their consent and they have not been interfered with though the copyright law is seen to be in place. He explained that a survey conducted early this year in trading centers around Kampala suburbs with 505 dealers in music revealed that dealers earn 10 million Ugandan shillings per day. In his words ,he

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<sup>51</sup> In a brief dialogue with rye G on 4<sup>th</sup> may 2019 Uganda malime in mbarara.

<sup>52</sup> Interview on Monday 8<sup>th</sup> may 2019 at Kampala Brevard, 2<sup>nd</sup> floor -Kampala.

explained that infringement of copyright or Neighboring rights occurs where , without a valid transfer ,license , assignment or other authorization under the copyright law, a person deals with any work or performance contrary to permitted free use and in particular where that person does or causes or permits another produce , fix ,duplicate , extract , imitates or imports into Uganda otherwise than for his or her own private use. He concluded by calling upon all artists to join hands and fight their rights.

**Geoffrey komakech<sup>53</sup>** , most popularly known as DJ Laguna, is one of the Ugandan musician whose singing has not made any difference to his material unlike his music superstar counterparts in western world. when asked about copyright law in Uganda he said that it is the law which was made to protect their rights as artists in Uganda , then when asked on how the law has protected their right, said that it has tried to give them protection but still a lot needs to be done as many people still use their works without their consent, He narrated to me an incident which took place in 2008,when he won the pearl of Africa music award for the northern region with his song Angelina (or angle), a love song he modernized from an Acholi folk song. That though he released the song in 2000, it took eight years for it to be recognized. ‘My first album is still selling he said .People still ask for Angelina,” he says ironically, Laguna said that he got only 100000UGX even though it took 3.5m to produce it .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 top music , sell them and bring me the money .I never saw him again ,” in the UK I got money , he added .

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<sup>53</sup> In an interview at London chambers Kampala on 5<sup>th</sup> may 2019

This clearly illustrated a lively example of avenues that perpetrators of infringement benefit freely from artists work. In fact, copyright infringement is mostly propelled by music promoters some of whom take advantage of the upcoming artists deceiving them that they will promote their musical works.

Halima kasule one of the DJs at club black sugar when asked about what he knows about Dj Laguna, revealed that komakech (DJ Laguna) had been invited twice to perform at the peacock pub in London, which makes him the first musician from northern Uganda to perform abroad yet his problem are enormous – at one time he struggled the thieving promoters who appeared to be the biggest beneficiaries in the industry. “We have bad promoters he added. They disappear with our money, they are very rich people who buy our music as if they are buying tomatoes,” he said. The new copyright law pretends to protect the likes of komakech: Only those agents who sign contracts with the artists and an agreed –up sum of money to them can then be required to destroy any illegally obtained music in their possession

Unfortunately, the culprits are usually smarter than the courts. Halima said 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 said they are not sure who pays royalties too.

“This trade adversely affects the music industry. Legitimate music dealers are competing unfavorably with the parties. Music distributors are unable to pay commensurate remuneration to musician,” he said.

Matters are made worse by FM radio stations in the country .There are 200 licensed stations in Uganda. The music played on these radio stations has never been purchased legitimately except at 10 stations that signed a contract to pay only 2000000 per annum to UPRS. Halima

explained that in all, broadcasters alone plays 2.7 million songs 60 million times per year on these FM stations. If they were to sign contract it would translate into 1.9 contracts in just one year, which offers reasonable compensation to the artists.

**In an E-mail response from shake Tutankhamen (aka Reggae Winston Mayanja) <sup>54</sup>**

Reggae maestro, singer, songwriter, promoter and producer Shake Tutankhamen, who is based in UK and was born in Uganda when asked about copyright law in Uganda said that it the law which was made to the rights of copyright owners as far as he can remember , then when asked about how the some law has offered protection to the musical right ,he said that he is still figuring out what to do to radio stations in Uganda in his email he had this to say “I am still figuring out how to deal with the radios.” To him copyright battles are old as mankind because for as long as man has existed, he or she has created pieces that are textual, that Imitation or copyright has been that far back, in recent times however some famous copyright incidents included incidents like the one where the famous star nuspster sued RIAA<sup>55</sup> against illegal downloads of music of musicians in America. Eminem <sup>56</sup> was sued by Jacques louisser purportedly because he stole parts of louisssers song “pulsion” which he then used on his “kill you “single from the “marshall mathers” album.shaka concluded by saying that copyright owners should engage enforcement bodies the Uganda police in oder tohave the rights protected.

In an interview with **Mutembandje Le,**<sup>57</sup> one of the most top artists in western part of Uganda admitted that he knows little about copyright law, but when asked about how the copyright has

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<sup>54</sup> Accessed on 10<sup>th</sup> June 2019

<sup>55</sup> Record industry association of America

<sup>56</sup> On 28<sup>th</sup> march 2002

<sup>57</sup> At Sharom house in mbarara town June 11, 2019

protected their rights as artists, he said that their rights are not protected whatsoever as broadcasters, hotels and TV stations play their songs without their consent and neither are they earning anything from their music apart from the one ones they earn through concerts. According to him it makes him happy when his songs are played on TV stations like<sup>58</sup> as it earns him a name in the country, he also narrated how his song (omwana womunda) is played over 10 times in a day on TV west and over 20 times on radio west and over 12 times on vision radio every day from the year of 2016 up to date. To him this has changed his life though not financially but socially since he is now a public figure in the whole western region. On the other hand his earnings as frankly said is from agriculture, to him music is just something he does to pass time as it creates for him a name among the members of his community. The above artist doesn't know his rights under copyright Law and to him music can't be stolen as it's not property.

In an interview with **Angella katatumba**<sup>59</sup> a composer, singer and performer in Uganda when asked about copyright law in Uganda, said that as far as she knows it is the law which protects their rights as artists and when asked on how the copyright law has protected their rights as artists she said that it has tried in some way but it has failed in one way or the other as many people still use their works without their consent, she gave a scenario when she lost a lot of money from her song<sup>60</sup> which was infringed on by the Anti-corruption coalition of Uganda (ACCU) which gave the raise of the case,<sup>61</sup> where her song (Go green) was incorporated into and released as part of an advertisement jingle by<sup>62</sup> for an environmental

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<sup>58</sup> TV west located in mbarara town

<sup>59</sup> At hotel diplomat in muyenga on 14<sup>th</sup> of June of 2019

<sup>60</sup> Go green

<sup>61</sup> Angella Katatumba v the anti-coalition of Uganda (accu)

<sup>62</sup> The Uganda anti-corruption coalition of Uganda (Accu)

conservation agenda to save a forest reserve. To her she thinks that the major obstacle in fighting infringement of music is due to the ignorance of the artists about their rights under copyright laws, that many are not aware that for one to use their songs he or she must be with their consent, that to many they see it as an opportunity playing their songs on radios, TVs as being one way of promoting them. Many artists think that the only way of earning from their music is by organizing concerts and shows which makes them move upcountry in looking for money and in a long run they end up earning less due to the expenses incurred like paying organizers, hiring the venue, hiring speakers and paying transport costs due to the long distance they move. In her conclusions she argues artists, song writers, performers to wake up and get vast with their rights incorporated under the.<sup>63</sup>

**In an interview with counsel wafula Jackson<sup>64</sup>** a senior advocate of the high court of Uganda, who attained his masters in intellectual property in <sup>65</sup>when asked about copyright law in Uganda, he defined copyright as that branch of law which deals with the bright 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.

When asked about the copyright protection of musical works in Uganda, he said that the copyright law gives protection to copyright owners by giving them exclusive use but to him the major problem facing copyright owners is infringement and he referred to section,<sup>66</sup> and said that infringement occurs when a person without valid transfer, license assignment or other authorization under the Act deals with the work or dose any act falling within the exclusive

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<sup>63</sup> Copyright and neighboring rights act of 200

<sup>64</sup> Held at Victoria café on 14<sup>th</sup> of June in kamala

<sup>65</sup> Geneva Switzerland in 2004

<sup>66</sup> 46 of the copyright and neighboring rights Act ,

rights of the copyright owners. Infringement includes use of a work in a manner prejudicial to the honor and respect of the authors<sup>67</sup>.

That infringement is not actionable unless it involves the taking of a piece of work or a substantial part of the work,<sup>68</sup> he also narrated the test of substantiality in the cases of <sup>69</sup> that test of substantiality is done by determining whether there is a substantial similarity between the plaintiff and the defendants works used had a relationship with that of the claimant. Also in the case of <sup>70</sup> it was held that works are sufficiently /objectively similar where there is a casual connection between the original and the infringed items otherwise coincidental copying is not sufficient to constitute infringement, copying also extends to partial copying in relation to the substantive part.

**In an interview with counsel Kamara Muhumuza,**<sup>71</sup> who has dealt with cases involving infringement of musical rights in Uganda when asked about copyright, responded by citing the following case Uganda Performing Rights society limited vs Fred mukubira,<sup>72</sup> that the applicant, as the assignee of copyright in the musical works of various local artists in Uganda, filed the 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 part for a temporary injunction to restrain the respondent from further infringement of the copyright .The application also sought orders to search the respondents premises and seize all materials relating to the copyright infringement .The main issue at hearing of the application

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<sup>67</sup> Section 46(2) of the copyright and neighboring Rights act,2006

<sup>68</sup> Sections 45(5) of the copyright and neighboring rights act

<sup>69</sup> Plix products vs frank

<sup>70</sup> Frank day and hunter ltd vs baron, (1998)

<sup>71</sup> At padrpio building level 3 on 15<sup>th</sup> June  
e in kamala

<sup>72</sup> Misc. Application 818 of 2003(arising from high court civil suit 842of 2003)

was whether the court had authority to grant the temporary injunction, whether the applicant satisfied the conditions for grant of an order and whether the suit was properly brought under.<sup>73</sup>

It was held that section<sup>74</sup> provided a remedy of direct 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<sup>75</sup> alone, the court did not have sufficient legal authority to grant order:

He father narrated the conditions for grant of search and seizure orders to include the following;

1 there must be an extremely strong prima facie case,

2 The potential or actual damages to the application must be serious and,

9 There must be clear evidence that the respondents have in their possession incriminating materials which they may destroy before any application inter partes can be made.

In the above case (supra), the application satisfied all the conditions for grant of the order and as a result, the application was granted. It should be noted that, unlike the recent changes by the 2006, the 1964 copyright act did not observe several authors rights including Economic rights of authors, moral rights of authors and co-authors rights/Neighboring rights.

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<sup>73</sup> Section 38 of the 1964 copyright Act.

<sup>74</sup> 13 of the 1964 copyright act

<sup>75</sup> Sections 38 and 39 (2) of the judicature act cap 14, laws of Uganda



Also in the case of Attorney General vs Sanyu Television,<sup>76</sup> , the Attorney general , as a representative of Uganda television , a public television station , filed the suit against the respondent /defendant for infringement of broadcasting rights . It was the plaintiff / applicants 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, Sanyo TV. The applicant made the present application for an injunction restraining the respondent from further broadcasting the application arguing that the suit and application had been made against the wrong party, which was a non – legal entity.

**James googol, j,** held that the respondent infringed the plaintiffs copyright. The respondent admitted having infringed the copyright and apologized for the act. As a result, the application was allowed and an injunction granted.

**In an interview with the registrar Uganda Registration services bureau<sup>77</sup>** when asked on issues of Copyright law in Uganda , He quoted section 41 of the <sup>78</sup>, this section provides for a registrar of copyright and other officers. This Registrar's office shall be the national copyright information center .The registrar shall process application for licenses, register works and productions to be registered under this Act, register collecting 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

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<sup>76</sup> High court suit No.614 of 1998, reported in Uganda commercial law report 1997-2001

<sup>77</sup> At hotel diplomat in Muyenga on 15<sup>th</sup> of June 2019

<sup>78</sup> Copyright and neighboring rights ACT OF 2006

Neighboring Rights information service to the public and users of copyright works, in collaboration with the collecting societies, advise Government , on matter relating to copyright and Neighboring rights and collecting societies as may be necessary for the better functioning of this Act or as the minister may by regulating 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.. To him ignorance of artists about their rights is the major problem which has hindered the protection of musical rights in Uganda.

**In an interview with John Wamala Kk,**<sup>79</sup> a music producer in Kampala city when asked about copyright laws , said that it is only a law in papers but in real practice nothing is seen to be a contribution of the copyright law as stipulated in books, he further narrated how many people in Uganda today are benefiting from other peoples works in form of burning CDs by many vendors in Kampala city which greatly causes loss to the authors of the same works .To him enforcers of these laws like the police should be enlightened about copyright since many of them thinks that there is no way how one can still something which is intangible , in his story at Kampala metropolitan station (CPS) When they had gone to report about the infringers of some song (obwavu buruma) which was owned by his friend mukuru commonly known as mafia , the police scared them that they don't know what they were claiming as there was no way how road side CD vendors could steal their music without breaking their premises. Therefor according to him the most obstacle they are facing in the music industry is the

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<sup>79</sup> At wave plaza on 16<sup>th</sup> of June of 2019 in Kampala

ignorance of the law enforcement agents about copyright as to many of them is it still very hard for them to believe that copyright is an intangible property.

**In an interview with muzafaru suffu<sup>80</sup>** a street CD vendor when asked about copyright laws , said that to him it's something he hears of but he is not familiar with it, then when asked whether what he does is illegal as he was selling CDs he said that it is not , that he started selling CDs in 2013 and that he has managed to buy a plot of land in wakiso and he also married his wife nakyemuri (a munyoro).To him there is nothing like illegality in his job as they also invest a lot of money to buy the CDs from the CD burners in town and that they are working under hard conditions pulling ropes with KCCA men who normally take their CDs due to trading on streets without a license.

To him the major cause of this, is unemployment in Uganda commonly among the youth which leaves them with no option but to do what they do in order to earn a living that even diploma holders are competing with them in the same employment which is becoming hard for them to compete favorably as uneducated people. He concluded by saying that musicians are so they should leave them to earn a living since they all invest some money to get what they get from their job.

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<sup>80</sup> At Kampala road street in kamala on 12<sup>th</sup> of June of 2019

## CHAPTER FIVE

### 5.1 Conclusions.

In my conclusion, I do blame the current ineffectiveness of the Copyright and Neighboring Rights Act on the failure to provide adequate enforcement by clearly demarcating, user's rights and holder rights. My belief remains that with widespread infringement, our Uganda 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 holder's rights and user's rights, and creating greater opportunity for non-commercial user's access for private and educational purposes.

### 5.2 Observations

I observed that, the biggest challenge in the fight against the copyright plague is the ignorance about copyright and the law followed by the apathy that is watered by this status quo. Many artists who do not care to maximize their income opportunities never give the word a second or a third thought. This absence of vigilance in the two most important parties in the production and consumption of music fuels the other factors that enhance copyright theft in the music industry.

Another observation was the failure of enforcement agencies when it comes to matters of infringement, many of them are relaxed and they don't take matters of infringement serious which has caused losses too many artists in the music industry.

Another observation is the problem of unemployment, in Uganda today many people over 60% of Ugandans are unemployed and thus leaving them with no options but to do any job like

burning CDs with or without the consent of the music owners which make them lose a lot of money.

### **5.3 Recommendations**

With an existing Copyright law the process would work this way. The author (lyricist, composers or record/production company that commissioned the work through funding for it to be produced) of the work would initially have to prove that it is his, hers or their original work , Ownership and originality are most important .After ascertaining this, the work has to be documented (preserved) in a tangible form. This means the artists has to present the work as an audio or visual recording on tape or any other medium that is available.

Another way of declaring this work may be in form of musical notation and then the work is registered, this stage of copyright is called “statement of owners copyright.” On the piece of work there is then written symbol(C) which reserves the right of all forms of public performance, reproduction or dissemination without authorization from the author of the work. This includes transcribing (written down the music from audio form) for commercial purposes.

In many countries, these works have to be deposited at a registry or public preservation center like an archive. Therefore I recommend that there is need for action by the authorities to ensure that:

- a) The general public is sensitized through serious campaigns, on their intellectual property rights and how they should guard their interests vis a vis the interest of others.
- b) Uganda’s laws, policies and regulations address copyright offences by imposing strong sanctions to offenders as this will enhance the author’s efforts to advance in

their field given the guarantee that the general public will not duplicate their original works.

- c) All victims of copyright infringement are charged seriously as if they have committed any other tort like trespass.
- d) The Uganda Broadcasting council and the Uganda communications commission need to strengthen the laws on broadcasting and media houses to ensure that all broadcasts are authorized by the authors and artists before they can be made available to consumers in the general public . This will be one way of honoring their efforts and talents which may generate them the benefits of their sweat.
- e) Place / offices for registration of copyrights should be expanded to various districts and town country – wide as this will enhance quick and efficient registration of artists, authors and any producers of literally or musical works.
- f) Artists through their unions like Uganda Performing Management (UPM) ensure stability and adequate consultations in order to know their rights in as far as copyright is concerned.

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