

**A LEGAL ANALYSIS OF THE CYBER REVOLUTION AND COPYRIGHT  
INFRINGEMENT IN UGANDA.**

**BY**

**JOSEPH PAUL EKEMU**

**LLB/37272/122/DU**

**SUPERVISOR: MRS. MARY FOLUKE DARE**

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW  
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR  
THE AWARD OF A BACHELORS DEGREE OF LAWS  
OF KAMPALA INTERNATIONAL UNIVERSITY.**

**OCTOBER 2016**

## DECLARATION

I, Ekemu Joseph Paul declare that this dissertation entitled "A Legal Analysis of the Cyber Revolution and Copyright Infringement in Uganda", is entirely my own effort and has never been submitted to any institution for any academic award whatsoever.

**Student's Name:** Ekemu Joseph Paul

**REG No:** LLB/37272/122/DU

**Signature:** .....  ..... **Date:** ..... 15<sup>th</sup> / OCT / 2016 .....

**APPROVAL BY SUPERVISOR**

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 quantity as a dissertation in partial fulfillment for the award of Degree of Bachelor of Laws of Kampala International university.

Signature.....

Date..... 15<sup>th</sup> OCTOBER - 2016

## **DEDICATION**

I dedicate this piece of work to my parents, my father Joseph K. Ekemu and mother Mary F. Ekemu for their great contribution in my academic career.

## ACKNOWLEDGEMENT

Firstly am greatly indebted to my supervisor, Mrs Mary Foluke Dare who tirelessly perused through this work to guide and correct me. I appreciate your effort. Not forgetting my lecturers from the Faculty of Law for their scholarly contribution.

I greatly appreciate my parents Mr and Mrs Ekemu for their parental love and support. To my wife and child, Madrine and Jordan for all the patience and love. To my sisters and brother, Rebecca, Patricia, Doreen, Bernard, Gloria and Jane, I do appreciate the encouragement and your patience.

Am indebted to the Law Development Center, Kampala International University, Makerere University for their great library contribution in this work.

I am also indebted to my fellow friends Mariam, Ocitti Samuel, Hon. Princess Kabakumba Matsiko, Ann, Vicent, Mellisa, for their great support and encouragement, it was great studying with you all.

Lastly, I would like to convey my sincere thanks to the organizations that participated in the interviews that enabled me to write this research paper. Thanks go to Dri-prints Uganda Limited, Organic Line Produce Limited and all the individuals that supported me during the collection of the data.

## TABLE OF CONTENTS

DECLARATION.....	i
APPROVAL.....	ii
DEDICATION.....	iii
ACKNOWLEDGEMENT.....	iv
TABLE OF CONTENTS.....	v
LIST OF ACRONYMS.....	,ix
ABSTRACT.....	,x
LIST OF LEGISLATIONS.....	xi
LIST OF CASES.....	xii
<b>CHAPTER ONE.....</b>	<b>1</b>
1.0 INTRODUCTION AND BACKGROUND OF STUDY .....	1
1.1 Statement of problem.....	1
1.2 Objective of Study.....	2
1.2.1 General Objective of the Study.....	3
1.2.2 Specific Objectives of the Study.....	3
1.3 Research Questions.....	4
1.4 Significance of the Study.....	4
1.5 Scope of the Study .....	5
1.5.1 Geographical Scope.....	5
1.5.2 Content Scope.....	5

1.5.3	Periodic Scope.....	6
1.6	Literature Review .....	6
1.7	Research Methodology.....	12
1.7.1	Research Design .....	12
1.7.2	Research Tools .....	13
1.8	Anticipated Limitations .....	13
1.9	Synopsis of the Study .....	14
<b>CHAPTER TWO .....</b>		<b>15</b>
<b>THE COPYRIGHT REGIME AND THE CYBER REVOLUTION IN UGANDA .....</b>		<b>15</b>
2.0	The era of copyright law in Uganda.....	15
2.1	What amounts to a copyrightable work? .....	18
2.2	The development of copyright law in the internet revolution.....	20
2.3	What is the cyber revolution? .....	22
2.4	The challenge of copyright protection in the cyber space.....	23
<b>CHAPTER THREE.....</b>		<b>26</b>
<b>THE ESCALATION OF COPYRIGHT INFRINGEMENT; AN ATTRIBUTE TO THE CYBER REVOLUTION IN UGANDA .....</b>		<b>26</b>
3.0	What amounts to copyright infringement? .....	26
3.1	Types of copyright infringement. ....	28

3.1.1	Direct or primary infringement .....	28
3.1.2	Indirect or secondary infringement.....	32
3.1.2.1.	Contributory infringement.....	33
3.1.2.2.	Vicarious copyright infringement.....	35
3.2	The legality of the cyber revolution in increasing copyright infringement.....	38
3.3	Loopholes in the Ugandan Copyright law as regards internet related infringements...39	
3.4	Comparative analysis of copyright law and the cyber revolution between Uganda and other jurisdictions.....	42
3.4.1	Copyright law in the U.S System.....	43
3.4.2	Copyright law in the Philippines Jurisprudence.....	45
3.4.3	Copyright law in the Australian Jurisprudence.....	46
<b>CHAPTER FOUR.....</b>		<b>48</b>
<b>FINDS, RECOMMENDATIONS AND CONCLUSIONS.....</b>		<b>48</b>
4.0	Findings.....	49
4.1	Recommendations.....	50
4.1.1	Enactment of a law to regulate circulation of CD's and CD burning software in Uganda.....	50
4.1.2	Use of Authentication Generative codes or keys.....	52
4.1.3	Trial versions.....	53
4.1.4	Technical Measures.....	54
4.1.5	Encryption.....	58
4.2	Conclusion.....	59

REFERENCES .....61

Textbooks.....61

Journals and Reports.....61

Websites.....61

## LIST OF ACRONYMS

MTN:	Multinational Mobile Telecommunications Company
UTL:	Uganda Telecom
WIPO:	World Intellectual Property Organization
BERNE:	Berne Convention for the Protection of Literary and Artistic Works
WTO:	World Trade Organization
TRIPS:	Trade-Related Aspects of Intellectual Property Rights.
UCC:	The Universal Copyright Convention
CD:	Compact Disc
DVD:	Digital Versatile Disc or Digital Video Disc
SDVD:	Speed Decrease Valve Drive
UNBS:	Uganda National Bureau of Standards
USA:	United States of America
CSS:	Content Scrambling System
CD-ROM:	Compact Disc-Read Only Memory
ICT:	Information and Communications Technology
iPod:	Portable Media Player and Multi Purpose Pocket Computer
VCR:	Video Cassette Recorder

## ABSTRACT

This study is an exploratory design carried out in Uganda which sought to; analyze effectiveness of the law governing copyright in protecting authors of a particular work; looking at the effect of the cyber revolution in leading to the abuse of this effort and establishing the circumstances that lead to the abuse of copyrights; to examine the legal challenges experienced in addressing copyright infringement; to suggest ways to counter the weaknesses and excesses in addressing copyright infringement. The study relied in qualitative methods of data collection and analysis to generate data.

The findings reflect that much as the Copyright and Neighboring Rights Act, Act No. 19, 2006, TRIPS, WIPO have been instrumental in covering the rights of authors at all levels, they still leave a lot to be desired, with internet users exploiting the gap of availability of a wide cyber space to violate and infringe upon the rights of authors, moreover with a failure to compensate them.

The intention of which Copyright and Neighboring Rights Act, Act No. 19, 2006, TRIPS, WIPO were formed was to address and outline obligations of both authors and end users of an authors product. The law has minimized copyright infringement but is still with gaps which can be addressed to extend to cyber space and save authors from infringement of their copyright.

The study recommended that; enactment of a law to regulate circulation of CDs and CD burning software, use of authentication generative codes or keys, trial versions, technical measures, and encryption in Uganda.

## LIST OF LEGISLATIONS

### **International Instruments**

- The World Intellectual Property Organization Copyright Treaty (1996)
- The Statute of Anne (1709)
- The Berne Convention (1886)
- The Universal Copyright Convention (1971)
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (1995)
- The Doha Declaration (2001)
- The Digital Millennium Copyright Act (1998)

### **National Instruments**

- The Constitution of the Republic of Uganda (1995) as at 15<sup>th</sup> February 2006
- Copyright and Neighboring Rights Act, Act No. 19, 2006
- Copyright Act, Cap 215, Laws of Uganda
- The Uganda National Bureau of Standards Act, Cap 327, Laws of Uganda

## LIST OF CASES

- Nyali v Attorney General (1956) 1 QB at pg 16 and 17.
- University of London Press Ltd v University Tutorial Press Ltd [1916] 2 Ch 601.
- Wheaton v Peters (1834) 33 U.S. (8 Pet) 591.
- Sony v Universal City Studios, 464 U.S. 417 (1984).
- White-Smith v Apollo, 209 U.S. 1 (1908).
- Kelly v Arriba Soft Corp, 336 F. 3d 811, 817 (9<sup>th</sup> Cir. 2003).
- LGS Architects, Inc. v. Concordia Homes of Nev, 434 F. 3d 1150, 1156 (9<sup>th</sup> Cir. 1996).
- Francis Day and Hunter v Bron [1963] Ch 587.
- Austin v Columbia Gramophone Co. Ltd (1917-23) Mac Cop Cas 398.
- John Murray (Publishers) Ltd and Others v George William Senkindu and Another HCCS 1018 of 1997 (unreported).
- Playboy Enterprises, Inc. v George Frena, d/b/a Techs Warehouse BBS Systems and Consulting, and Mark Dyess, 839 F. Supp. 1552 (M.D. Fla. 1993)
- Cable /Home Communication Corp. v Network Prods., Inc. 902 F. 2d 829 (11<sup>th</sup> Cir.) 1990
- Fonovisa, Inc. v Cherry Auction
- AM Records Inc. et al v Napster, Inc. 239 F. 3d 1004 (9<sup>th</sup> Cir. 2001)
- Ashdown v Telegraph Group Ltd. [2001] EWCA Civ 1142
- Norwich Pharmacal v Customs and Excise Commissioners (1974) AC 133 at 137 to 152

## **CHAPTER ONE**

### **1.0 INTRODUCTION AND BACKGROUND**

With continued advancement of globalization our world has greatly turned into a global village and as such, intellectual property rights have started taking root into Uganda. People are increasingly becoming aware of their intellectual property rights that accrue due to their creative effort, commercial reputation and goodwill, as opposed to other types of rights<sup>1</sup>. As a result of fast paced globalization, the cyber revolution has come into play in Uganda leading to an increase in access to intellectual property rights and information as well as stepping up the infringement of these rights.

This research will therefore, aim at investigating and assessing the role played by this cyber revolution in increasing the magnitude of the infringement of copyright property rights in Uganda.

#### **1.1. STATEMENT OF PROBLEM.**

Uganda is a developing economy and as such like most developing economies, there has been an outburst of intellectual property rights, mainly dealing with the creation of the mind. Out of a commercial initiative, people are transforming their minds into formulating of expression of ideas that are covered under copyright law. Copyright is, in essence, a right given to authors or creators of works, such as books, films or computer programs, to control the copying or other exploitation of such works<sup>2</sup>. Literary works, artistic works, musical works, sound recordings, films and broadcasts have become a viable economic boost for most people in Uganda and thus

---

<sup>1</sup> Bainbridge, Intellectual Property law. Pearson Education Limited, 2002.Pg 3

<sup>2</sup> Chris Reed and John Angel, Computer Law, 5<sup>th</sup> Edition, Oxford University Press, 2003. pg 184.

the government has come up with mechanisms of protecting the owners or authors of such works<sup>3</sup>.

However, in Uganda, there remains a challenge which arises out of promotional rights, *vis-à-vis* the legal rights of the author or holder of the copyright. A music artist for example may not mind about how his music got into the public domain, because what drives him is the need for publicity, yet anyone who uses his work without his permission infringes his copyright and may be subject to legal action by the artist for that infringement<sup>4</sup>. This problem has been escalated by the internet and cyber revolution where copyrighted works are illegally copied and uploaded by anyone, without the author's permission, and then downloaded by anyone accessing the web browser anywhere around the world, at any time<sup>5</sup>. The public has turned this into an illegal business venture where people today have opened up booming businesses, dealing in supply and sale of illegally obtained copyrighted works.

## 1.2. OBJECTIVES

Copyright law is the law which subsists in various works.<sup>6</sup> It is the law that does not afford protection to ideas but protects only expressions of these ideas, that is the tangible forms of these ideas.<sup>7</sup> It is the law that gives rise to both economic and moral rights in respect of copyrightable work.<sup>8</sup> It is in the interest of this research:

---

<sup>3</sup> *Ibid*, pg 184

<sup>4</sup> Chris Reed and John Angel, *Computer Law*, 5<sup>th</sup> Edition, Oxford University Press, 2003. pg 184.

<sup>5</sup> *Ibid*, pg 184

<sup>6</sup> Section 5, Copyright and Neighboring rights Act, Act no. 19 of 2006.

### 1.2.1. General Objective

To explore the concept of copyright protection by analyzing how it can be applied in the arena of the cyber environment, and thus explore the anticipated and actual results that establish the cyber revolution as an avenue for stepping up copyright infringement in Uganda.

### 1.2.2. Specific objectives

- To examine the developments that have taken place in the field of copyright, as a result of the cyber revolution.
- To identify the various statutory provisions in the **Copyright and Neighboring Rights Act**,<sup>9</sup> and other legislations and ascertain the extent to which these provisions enhance protection of copyright property rights and especially protection from infringements through the use of Internet.
- To assess the various ways how Internet technology has increased the infringement of copyright law.
- To trace the loopholes in the Ugandan copyright system especially as regards illegally obtained copyrighted information on Internet and other related media and explore ways in which such loopholes can be reduced.

---

<sup>7</sup> Bainbridge, supra, pg 5

<sup>8</sup> Bainbridge, supra, pg 5 and 6

<sup>9</sup> Copyright and Neighboring rights Act, Act no 19 of 2006

### **1.3 RESEARCH QUESTIONS.**

- i. What is copyright law and what amounts to a copyrighted work?
- ii. What is cyber revolution?
- iii. How has the cyber revolution impacted the day to day activities of Ugandan copyright owners?
- iv. Are there any ways the cyber revolution has increased the infringement of copyright law in Uganda?
- v. What policy changes would one recommend to ensure that copyrights are protected despite the increasing infringements arising as a result of the cyber revolution in Uganda?

### **1.4 SIGNIFICANCE OF THE STUDY.**

Uganda has overtime developed into a cyber economy which has boosted its information and technology sector. This has further facilitated the increase of the scale of copyrights where more people can easily and freely express their ideas in the cyber space through the Internet, rather than long ago where they had to spend long days of using elementary tools to express their ideas to the outside environment.

However, with this increase, copyright law has faced a big blow. Computer technology has increased the illegal access to copyrighted works, especially, literary works, music and films. Once such are uploaded by an individual on to the Internet broad band, everyone who accesses the engine will be able to manipulate the copyright material, yet without the original author's or copyright holder's consent.

This research is therefore intended to benefit owners of copyrights<sup>10</sup>, academicians and other policy makers who have found a challenge arising out of uncontrollable infringements of copyrights due to lack of a specific legal framework to protect copyrights in the cyber revolution era.

## **1.5 SCOPE OF THE STUDY**

### **1.5.1 Geographical scope**

The scope of the study will cover the copyright system in Uganda. Copyright is not a right that is selective, but applies to the author of any work specified in section 5, Copyright and Neighboring rights Act, Act no 19 of 2006. Such a person shall have a right of protection of the work, where work is original and is reduced to material form in whatever method irrespective of quality of the work or the purpose for which it is created.<sup>11</sup>

### **1.5.2 Content scope**

Uganda is classified as a developing country. This makes Uganda susceptible to the developments arising as a result of globalization. A remarkable development of this nature is the cyber revolution. With this revolution, a variety of copyrights have been developed, and as well, a number of them have been infringed. The study comes in to address the various ways how this has been done, and in particular, to explore how protection of one's copyright as a result of the evolvement of Internet technology can be effected.

---

<sup>10</sup> Supra 8, Section 4.

<sup>11</sup> *Ibid*

### 1.5.3. Periodic scope

Basically, the study will explore the development of the concept of protection of copyright law in Uganda in this current era of the Cyber revolution.

## 1.6 LITERATURE REVIEW

Several authors have laid down the principles of the law concerning Copyrights. Copyright is one of the branches of Intellectual Property law. Bainbridge<sup>12</sup> defines Intellectual Property law<sup>13</sup> as the area of law which concerns legal rights associated with creative effort or commercial reputation and goodwill.<sup>14</sup> Bainbridge, Cornish and other intellectual property scholars have greatly contributed to the development of Copyright Law, especially through publication of literature in form of their textbooks. This literature has upheld the understanding of Copyright Law on the international plane, as well as on the local Ugandan scene.

However, the locality, setting and publication of these books, including the standards on which these authors based their knowledge and understanding of Copyright Law is alien to Uganda. Indeed, Lord Denning in *Nyali v Attorney General*<sup>15</sup> explained that such common law<sup>16</sup> cannot

---

<sup>12</sup>Supra 1.

<sup>13</sup> *Ibid*, pg 3

<sup>14</sup> Bainbridge notes that there are different forms of rights or areas of law which give rights that together make up intellectual property law. These include among others, copyrights, rights in performances, the law of confidence, patents, and registered designs, design right, trademarks, passing off and trade libel.

<sup>15</sup> (1956) 1 QB 1 at pg 16 and 17

<sup>16</sup> Bryan A Garner defines Common Law as the body of law derived from judicial decisions, rather than statutes or constitutions. Bryan A Garner, *Black's Law Dictionary*. 8<sup>th</sup> Edition, pg 293.

be applied in a foreign land without considerable qualification.<sup>17</sup> Thus, consideration should be given to the fact that Prof. Bainbridge, Cornish and other English Intellectual Property scholars, cannot effectively tackle the issues of the Ugandan Copyright Law unless considerable qualification is made to suit the principles developed by these authors to the Ugandan copyright situation.

In January 1953, a replica of the United Kingdom Copyright Act which commenced its operation in Uganda on 20<sup>th</sup> July 1964<sup>18</sup> was enacted in Uganda. No valuable reforms were made to tackle the propensity of the growing copyright system in Uganda until 2006<sup>19</sup> when the Copyright and Neighboring Rights Act was enacted. The Copyright and Neighboring Rights Act made valuable reforms in the Copyright system of Uganda. For example, it defined what amounts to an infringement of a copyright<sup>20</sup> and set out the penal sanctions<sup>21</sup> as well as civil remedies<sup>22</sup> towards any person who infringes another's copyright, thus filling the missing gap in the Copyright Act.<sup>23</sup> However, despite such reforms, there is still a missing link in the implementation of such penalties especially as regards infringements resulting from the use of computer and internet based technology.

---

<sup>17</sup> "Just as with an English oak, so with the English common law. You cannot transplant it to the African continent and expect it to retain the tough character which it has in England. It will flourish indeed, but it needs careful tending... In these far-off lands the people must have a law which they understand and which they will respect. The common law cannot fulfill this role except with considerable qualifications." Lord Denning in *Nyali Ltd V A.G.*, (1956)1 QB 1

<sup>18</sup> The Copyright Act, Commencement: 20 July, 1964.

<sup>19</sup> Act no, 19 of 2006.

<sup>20</sup> *Supra* 8, Section 46.

<sup>21</sup> *Supra* 8, Section 47.

<sup>22</sup> *Supra* 8, Section 50.

<sup>23</sup> The copyright Act does not provide for any penal sanctions for any one who infringes another person's copyright.

Thus, there is need for a modification in the law to cope up with the increasing global changes. The provisions should be clearly posited and offences and remedies explained<sup>24</sup>, to guarantee minimal interferences to one's right to own property<sup>25</sup> that has continuously been infringed by illegitimate personnel<sup>26</sup>. Thus, a person who unlawfully uploads a copyrighted work without the author's knowledge or consent for the purpose of an economic gain, or a person who duplicates a copyrighted material like music, literary or artistic work, through any computer process and writes or copies it for the purpose of an economic gain, should face Ugandan law, rather than relying on borrowed ideas from jurisdictions that have regulations pertaining copyright protection from such offenders.

It should be noted that much of the copyright law provisions are adopted by the law makers to address social policies. Its evolution should however be adapted to promote present day social priorities.<sup>27</sup> Traditional issues of trying to balance private property rights of individuals and the social need for access to information as a precondition for development and technology is still shallow and needs to be addressed by stakeholders of copyright law.

---

<sup>24</sup> This is in accordance with the constitutional right of a fair hearing stated under Article 28 of the Constitution. Thus, Article 28(12) of the Constitution states that except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law.

<sup>25</sup> Article 26(1) of the Constitution of Uganda as amended, provides that every person has a right to own property either individually or in association with others.

<sup>26</sup> According to Article 26(2) of the constitution, the infringement can only be justified where the taking of possession or acquisition is necessary for public use or in the interest of defense, public safety, public order, public morality or public health; and the compulsory taking of possession or acquisition of property is made under a law which makes provision for prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and a right of access to a court of law by any person who has an interest or right over the property.

<sup>27</sup> Edgar Tabaro, Copyright Law Reform in Uganda, Addressing International Standards at the expense of Domestic Objectives. ACOE Policy Briefing Paper, no 10 of 2005.

**Christopher Millard in Reed and Angel's Computer Law**<sup>28</sup> projects the concept of protection as well as infringement of copyright law in the cyber space. In his writings, he notes that the only prerequisite for protection, which applies to all works are that the work must be of a type in which copyright can subsist and that either the author is a "qualifying person" or the work has been published or broadcast in an appropriate manner. In the case of certain types of works, including literary works such as books and computer programs, the work must be original and it must be recorded in some form, for example, it must be written down or stored in the computer memory.<sup>29</sup> He observes that the owner of copyright in a work has the exclusive right to control publication, performance, broadcasting and the making of adaptations of the work.<sup>30</sup> In Uganda, this is easily said than done. In as much as the author or owner of a copyright has an exclusive right to control the work, this right is limited when it comes to publications, performances and broadcasts of this copyrighted work. This is due to the fact that most copyright holders in Uganda are ignorant about their rights.

Christopher suggests a remedy to this. He states that where any of the various exclusive rights that collectively make up copyright in a work have been exercised without permission, civil remedies<sup>31</sup> should be availed to the owner or author.<sup>32</sup> Never the less the enforcement of these civil remedies is still lacking in the Ugandan legal system since almost no case has been prosecuted by the courts in the Ugandan jurisdiction.

---

<sup>28</sup> Chris Reed and John Angel, *Computer Law*, 5<sup>th</sup> Edition (Indian Edition) Oxford University Press, Oxford, New York.

<sup>29</sup> *Ibid*, pg 184.

<sup>30</sup> *Ibid*.

<sup>31</sup> Civil remedies are provided for under the Copyright and Neighboring rights Act. Thus, Section 50 provides that a person convicted of an offence under this Act, for which no other punishment is provided, is liable to a fine not exceeding fifty currency points or imprisonment not exceeding one year or both.

<sup>32</sup> *Ibid*.

Another writer, Yee Fen Lim, *Cyberspace Law, Commentaries and Materials*<sup>33</sup> tries to deal with the intricacies brought out by the cyber revolution in as regards copyright infringement. Lim divides copyright infringement into two types, namely, Direct or primary infringement, and Indirect or secondary infringement. Thus, anything that interferes with the exclusive right of an author or holder of a copyright is a direct infringement of his or her copyright.<sup>34</sup> Indeed, Infringement of copyright or neighboring right occurs where, without a valid transfer, license, assignment or other authorization under this Act<sup>35</sup> 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; distribute in Uganda by way of sale, hire, rental or like manner; or exhibit to the public for commercial purposes by way of broadcast, public performance or otherwise.<sup>36</sup>

Lim notes however that this is not the only kind of infringement. In some cases, there may be a secondary infringement that comes as a result of a third party aiding and abetting the primary infringement. This comes mostly when liability for copyright infringement is extended to internet service providers. Thus, it is very possible to be liable for secondary or indirect infringement as the exclusive rights of a copyright owner also include the exclusive right to authorize a person to do any of the exclusive acts.<sup>37</sup> Therefore, internet service providers like

---

<sup>33</sup> Yee Fen Lim, *Cyberspace Law, Commentaries and Materials*, Oxford University Press, 253 Normanby Road, South Melbourne, Victoria 3205, Australia, 2002

<sup>34</sup> *Ibid*, pg 410

<sup>35</sup> *Supra* 8.

<sup>36</sup> *Supra* 8, Section 46.

<sup>37</sup> *Supra* 32, pg 427

MTN Company, and UTL in Uganda can be found liable for copyright infringement if they contributed to the infringement<sup>38</sup> or liable under vicarious infringement.<sup>39</sup> However, this kind of infringement might not be workable in Uganda where there is little regard to internet based infringements and especially since the government has not yet come up with a strict policy for protecting the copyright holders and authors from cyber related infringements.

In Uganda, some profound writers have come up to give their views about Copyright and the cyber revolution. Amongst these is **Edgar Tabaro**<sup>40</sup> who observes<sup>41</sup> that the major role of copyright should be to serve that instrumentalist function of satisfying social goals and values as well as creating, spreading and sharing knowledge and information for public use and access.<sup>42</sup> It should however be noted that a copyright owner deserves a monopoly for his copyright and should therefore be protected from public exploitation. Tabaro notes that the development of the internet and other similar forms of transmission has had implications for copyright law, which go beyond its abilities to regulate the phenomenon. He suggests that Uganda should implement the new WIPO treaties<sup>43</sup> to respond to the existing difficulties caused by the internet revolution in stepping up copyright infringement in Uganda. **The WIPO Copyright Treaty** gives exclusive rights in respect of diffusion of literary and artistic works by wire and also in respect to communication to the public of text and images. It further brings within the notion of

---

<sup>38</sup> Otherwise known as the doctrine of Contributory infringement. Supra 32, pg 428

<sup>39</sup> Supra 32, pg 434

<sup>40</sup> Business Development Partner at Karuhanga, Tabaro & Associates and Assistant Professor at Uganda Christian University

<sup>41</sup> [www.acode-u.org/documents/PBP%2010.pdf](http://www.acode-u.org/documents/PBP%2010.pdf) accessed on 23<sup>rd</sup> July 2016 at 11:05 am

<sup>42</sup> *Ibid.* pg 1.

<sup>43</sup> An example of such treaties is the WIPO Copyright Treaty of 1996 and the WIPO Performers and Phonograms Treaty of 1996.

communication to the public the making available of literary and artistic works so that they may be accessed at any time by individual members.<sup>44</sup> Thus, if this is implemented in Uganda, it would have an impact of aggravating the already existing copyright infringements, since the internet acts as the best avenue of disseminating such works freely and within the shortest possible time.

Tabaro also notes that Internet has not only made the copyrightable works extremely cheap, easy and quick to make but Internet has increased the unauthorized copies to be reproduced and disseminated freely, leading to an economic loss, both for the government and the copyright owner as well.<sup>45</sup> This therefore is an area that needs reform in Uganda, especially through finding out the possible measures to ensure that the copyright owner is protected from such economic losses.

It is therefore clear from the above that the cyber revolution has presented a big challenge in faithfully keeping the owner of a copyright protected from infringement. This research is aimed at critically analyzing the standard to which the impact of the infringement as escalated by the cyber revolution can be reduced in the Uganda jurisdiction.

## **1.7 RESEARCH METHODOLOGY**

### **1.7.1 Research design.**

---

<sup>44</sup>Article 8, WIPO Copyright Treaty of 1996.

<sup>45</sup>Edgar Tabaro, *Multimedia Convergence and the Future of Copyright in Broadcasts*. Uganda Living Law Journal. Volume 1, no. 2, December 2003.

The study in the course of material and information will basically entail qualitative and quantitative research. Basically, use of library information and materials there in will be a useful source of my research. This will review the literature of various authors in the subject of copyright. In addition, reference will be made to some web sources that will also be part of the whole methodology of the research. Further still, I will undertake interviews with re-known copyright stakeholders and re-known internet service providers to discover the impact of the cyber revolution on the copyright system of Uganda and gauge the liability that accrues as a result of copyright infringement in this cyber age.

### **1.7.2 Research tools**

The research tools for this study includes, publications from re-known authors of the subject,<sup>46</sup> the Copyright and neighboring rights Act 2006<sup>47</sup> and other related statutes. The internet websites shall also be an important tool for this research, the leading website being [www.lexisnexis.com/lawschool](http://www.lexisnexis.com/lawschool).

Interviews with re-known copyright stakeholders will also be carried out by the researcher as a tool for creating a nexus between the ideas enhanced by the publications and what is clearly on ground in regard to copyright protection in Uganda.

## **1.8 ANTICIPATED LIMITATIONS**

The study as it stands in Uganda today is a new innovation that has emerged as a result of advanced technology. Being a new system, law makers and stakeholders in the Ugandan

---

<sup>46</sup> Regard shall be given to Bainbridge, Intellectual Property, 5<sup>th</sup> Edition, and Cornish, Cases and Materials on Intellectual Property, 4<sup>th</sup> Edition, Reed and Angel, Computer Law, 5<sup>th</sup> Edition and other related textbooks.

<sup>47</sup> Supra 8.

Copyright system have fewer records on the study area and little local explanations may be cited for the steps taken in reducing copyright infringement in this computer driven era. Little or no case law is available as of late as courts of Uganda have not yet dealt with the intricacies associated with internet related crimes, especially, infringement of copyrights. Thus, this study will call for an application of existing examples from other jurisdictions, as long as it concerns the same area of study at hand.

## **1.9 SYNOPSIS OF THE STUDY**

The study is made up of four chapters.

**Chapter one** gives the introduction of the study, definitions, background to the study, statement of the problem, objectives of the study, literature review, scope of the study, significance of the study, justification of the study, methodology, limitations and synopsis.

**Chapter two** identifies what a copyright is and analyzes the developments that have taken place in the field of copyright as a result of the cyber revolution.

**Chapter three** discusses the role that the cyber revolution has played in increasing the infringement of copyright law in Uganda, pointing out the loopholes in the Copyright system of Uganda and how protection of owners of copyrights can be increased despite the ever increasing cyber technology. A comparative analysis of the role of the cyber revolution and copyright law between Uganda and other jurisdictions shall also be illustrated at this point.

**Chapter four** draws conclusions and make recommendations arising from the study.

## CHAPTER TWO

### THE COPYRIGHT REGIME AND THE CYBER REVOLUTION IN UGANDA

Copyright literally means a right to copy.<sup>48</sup> Section 2 of the Copyright and Neighboring Rights Act defines “copy” to mean a production of a work in a written, recorded or fixation form or in any other material form. The law protects copyrights both under common law<sup>49</sup> and also under statute.<sup>50</sup> As I have already noted, Uganda’s copyright law is a new phenomenon that is receiving a boost due to the current copyright reforms.

This chapter is meant to assess the effectiveness of copyright law in Uganda and especially in this cyber space age. Thus, an assessment of the evolution of the copyright law in Uganda, as well as the internet revolution and how the two have aided copyright creation in Uganda will be the major emphasis in this chapter.

#### 2.0. THE ERA OF COPYRIGHT LAW IN UGANDA.

Historically, copyright<sup>51</sup> was invented after the advent of the printing press and subsequent widening of public literacy. As a legal concept, its origins in Britain were from a reaction to printers' monopolies at the beginning of the eighteenth century. In Britain the King of England and Scotland was concerned about the unregulated copying of books. He thus used the royal

---

<sup>48</sup><http://www.copyright.gov/circs/circ1a.html> Accessed on 17th April, 2016 at 5:30am.

<sup>49</sup> Under the Copyright and Neighboring Rights Act, The protection of the author’s work under subsection (1) of Section 4 shall not be subject to any formality. This means that an author of a copyright may still be protected even in the absence of the formality of registration.

<sup>50</sup> Under Section 43 of the copyright and Neighboring Rights Act, the owner of a copyright or a neighboring right may register the right with the Registrar.

<sup>51</sup> The Oxford pocket dictionary defines a copyright as an exclusive legal right to print, publish, perform, film, or record material.

prerogative to pass the Licensing Act<sup>52</sup> which established a register of licensed books and required a copy to be deposited with the Stationers Company, essentially continuing the licensing of material for the benefit of printers that had long been in effect.

**The Statute of Anne**<sup>53</sup> was the first real copyright act. This statute gave 14 years' sole right of printing to authors of new books. At the end of the 14 years, the right returned to the author and, if still alive, he was granted another 14 years to enjoy the right.<sup>54</sup> It gave the author in the new state of Britain rights for a fixed period, after which the copyright expired.<sup>55</sup> Internationally, the **Berne Convention** of 9<sup>th</sup> September 1886 was the first international instrument to set out the scope of copyright protection, and is still in force to this day.

Copyright has grown from a legal concept regulating copying rights in the publishing of books and maps to one with a significant effect on nearly every modern industry, covering such items as sound recordings, films, photographs and architectural works.<sup>56</sup> Today, it covers a wide range of expressions including computer programmes and software.

The concept of copyright is ancient on the international scene. However, in Uganda, it is not a very ancient idea. It was developed after the British colonial rule and emerged from the

---

<sup>52</sup> The Licensing Act passed in 1662. The rationale for its promulgation came as a result of the ability to print books easily and cheaply which raised the issue of piracy. As the number of printers increased in England, the King exercised the royal prerogative to regulate the book trade and protect printers against piracy. This was the first of many decrees to control what was being printed. However, by 1681 the Licensing Act had been repealed and the Stationers' Company had passed a by-law that established rights of ownership for books registered to a number of its members so as to continue regulating the printing trade themselves. <http://www.ipo.gov.uk/types/copy/c-about/c-history/c-history-1662.htm>. Accessed on 15th May 2016 at 10:45pm.

<sup>53</sup> The Statute of Anne was promulgated into law in 1709.

<sup>54</sup> Bainbridge, supra. Pg 30.

<sup>55</sup> In Uganda, this was incorporated in Section 13 of the Copyright and Neighboring Rights Act, Act no. 19 of 2006.

<sup>56</sup> Section 5. Copyright and Neighboring Rights Act, Supra.

**Universal Copyright Convention.**<sup>57</sup> In 1964, Uganda adopted the **British Copyright Act**<sup>58</sup> that was in application until it was repealed by the **Copyright and Neighboring Rights Act**.<sup>59</sup>

At independence, Uganda inherited the then existing British copyright system. This continued until the late 1980s and the early 1990s when changes began to occur, the major change being the enactment and passing into law of the **Copyright and Neighboring Rights Act**<sup>60</sup>. The period 1990 to-date has been marked by changes in the copyright legal system, mainly as a consequence of international obligations that were themselves a result of Uganda being signatory to a number of international treaties, conventions and agreements.<sup>61</sup> One such agreement is the **TRIPS Agreement**, which was signed by the founder members of the **World Trade Organization**.<sup>62</sup>

By virtue of being a signatory to the **World Trade Organization**, the country is bound to fulfill specific obligations that have a bearing on its domestic legislation. Thus the legal regime with regards to commercial laws is affected and, in particular, legislation pertaining to **Trade-Related Aspects of Intellectual Property Rights (TRIPS)**. The basic objective of the TRIPS agreement is to confer adequate and effective protection to intellectual property rights so that the owner of

---

<sup>57</sup> **The Universal Copyright Convention (UCC)**, is one of the principal international conventions protecting copyright. Adopted at Geneva in 1952 it was amended in Paris in 1971. <http://www.ipo.gov.uk/types/copy/c-about/c-history/c-history-ucc.htm>

<sup>58</sup> Supra 19.

<sup>59</sup> Section 84(1), **Copyright and Neighboring Rights Act**, Supra.

<sup>60</sup> Act no. 19 of 2006.

<sup>61</sup> Samuel Wangwe et al, Commission on Intellectual Property Rights Country Case Study for Study 9: *Institutional Issues for Developing Countries in IP Policy-Making, Administration and Enforcement Uganda*. Economic and Social Research Foundation Dar es Salaam Tanzania. Institutional Capacity In Intellectual Property Policy, Administration And Enforcement – The Case Of Uganda. Pg 3

<sup>62</sup> In April 1994, Uganda signed the agreement establishing WTO and ratified the same in October 1994. By 31<sup>st</sup> December 1994, the country had fulfilled all the conditions necessary to become a founder member of the WTO.

the rights receives the benefits of creativity and inventiveness. Although it has not been fully codified in Uganda, the TRIPS agreement serves the purpose of obligating the member states to domesticate the provisions of the TRIPS into their local legislations.

## 2.1. What amounts to a copyrightable work?

Before I decipher what amounts to a copyrightable work, it is incumbent that one should understand what copyright law does not protect. Copyright does not protect mere ideas as distinguished from expressions of ideas.<sup>63</sup> It does not protect discoveries or principles, methods of operation and ways of doing things, mere information or facts, trivialities as defined by things such as slogans or titles; and anything that is not in a material form.<sup>64</sup>

Copyright law protects all “original works of authorship fixed in any tangible medium of expression.”<sup>65</sup> The author of any work shall have a right of protection where the work is original and is reduced to material form in whatever method irrespective of quality of the work or the purpose for which it was created.<sup>66</sup> Copyright<sup>67</sup> is the legal protection given to the creator of an original work.<sup>68</sup> It is the legal term used to describe the rights given to creators for their literary and artistic works.<sup>69</sup> It must be noted that originality in the sense of copyright law does not

---

<sup>63</sup>Section 6. Copyright and neighboring Rights Act, supra.

<sup>64</sup>Yee Fen Lim, Supra. Pg 404.

<sup>65</sup>Criminal Copyright Infringement—17 U.S.C. § 506 and 18 U.S.C. § 2319

<sup>66</sup>Supra 5. Section 4(1)

<sup>67</sup> “Copyright” literally means the right to copy. <http://www.copyright.gov/circs/circ1a.html> Accessed on 17th May, 2016 at 4:50pm.

<sup>68</sup> Collective Management of Copyright and Related Rights, WIPO, 1.

<sup>69</sup> What is copyright?, World Intellectual Property Organization, 1

denote the work as “preceding all others in time or being as first made or performed.” It simply denotes the work as a product of the independent efforts of the author.<sup>70</sup>

The fundamental principle behind copyright law is to prevent other people from taking unfair advantage of one’s creative efforts.<sup>71</sup> **Peterson J** in University of London Press Ltd v University Tutorial Press Ltd<sup>72</sup> noted that there remains the rough practical test that what is worth copying is prima facie worth protecting. Copyright is therefore the exclusive right granted by the law to the creator of an original work or his or her assignee such as a publisher to do, authorize, or prohibit certain acts in relation to such work. Such a creator is also known as the author or the owner of the rights. An original work is protected by copyright from the moment it is created, thus, formalities such as registration or deposit are not required for copyright protection.<sup>73</sup>

As already stated above, mere ideas do not qualify for copyright protection.<sup>74</sup> For an idea to be protected, it must be expressed.<sup>75</sup> A work is protected by copyright law from the moment it is created, even if it is not registered. However, in Wheaton v. Peters,<sup>76</sup> court held that there is no such thing as common law copyright. For one to be protected by the provisions of the Copyright and Neighboring Rights Act, one must observe all the formalities to secure a copyright.

---

<sup>70</sup> Section 4(3), Copyright and Neighboring Rights Act, supra.

<sup>71</sup> Bainbridge, supra, pg 35.

<sup>72</sup> [1916] 2 Ch 601

<sup>73</sup> Collective Management of Copyright and Related Rights, supra, 1 and Section 4(2), The Copyright and Neighboring Rights Act, 2006 (CNRA)

<sup>74</sup> *Ibid.*

<sup>75</sup> Under Section 6 of the Copyright and Neighboring Act, Ideas, concepts, procedures, methods or other things of a similar nature shall not be protected by copyright under this Act.

<sup>76</sup>(1834) 33 U.S. (8 Pet.) 591

Copyright protects the people who create, produce or invest in creative work. It enables them to decide how their work can be used by others. If you own the copyright in a piece of music or a song it means you are the only person who can adapt, reproduce, distribute, perform or broadcast, for example, on the Internet, the work without permission. If someone else wants to do any of these things to your piece of work then they have to obtain permission from you.

Thus, works eligible for copyright<sup>77</sup> include literary works, musical works, artistic works, cinematography films, gramophone records and broadcasts.<sup>78</sup> For such works to become eligible for copyright, sufficient effort must have been expended to make the work original in character and the work must have been written down, recorded or otherwise reduced to material form with or without consent or be a work which is intended to be used by the author as a model or pattern to be multiplied by any industrial process.<sup>79</sup>

## **2.2. The development of copyright law in the internet revolution.**

One of the major ways creation of copyrightable material has been aided today is through the cyber space and especially through the internet. Internet has made creation and global distribution of content easier than ever before. As a result of this, producers can now produce

---

<sup>77</sup>INTELLECTUAL PROPERTY RIGHTS IN UGANDA: REFORM AND INSTITUTIONAL MANAGEMENT POLICY FORMULATION. Paper delivered at the Network of Academies of Sciences in Organization of Islamic Countries (NASIC), International Seminar on "Intellectual property and Innovation: Value Creation in the Knowledge Economy" held in Islamabad, Pakistan, 12-14 December 2006 By David J. Bakibinga.

<sup>78</sup> Copyright Act, S.3 (1).

<sup>79</sup> *Ibid* S. 3(2)

freely copyrightable works, just like consumers too can now get access to the copyrighted content without even paying for it.<sup>80</sup>

Copyright law has two major goals: to protect the rights of authors, and, thereby, to foster development of more creative works for the benefit of the public.<sup>81</sup> Copyright law protects all “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”<sup>82</sup> Creation of such works has been made possible through the cyber mechanisms for example the World Wide Web, a consortium that develops interoperable technologies for the internet to reach its full potential as a communication medium and tool.<sup>83</sup> It is out of this that a number of software have been developed, which enable people with copyrightable ideas to put them into expressions hence guaranteeing protection under the copyright law. Thus, work, for example of developing a music piece, that used to take many months to be perfected, recorded and published can now take a few hours, saving both time and money, and being easily published through internet. It is as a result of this that such expressions need to be protected by copyright law.

Thus, it should be noted that a great deal of copyrighted material is placed on the internet freely by the copyright owners with the intention that it be accessed and reproduced without cost or license as a mode of marketing. However, such copyrighted works are easily downloaded by

---

<sup>80</sup> INTRODUCTION TO DIGITAL PIRACY. Presentation made at the “IPR Training for Judges and the Judicial Staff” Workshop held at Serena Hotel, Kampala. September 29<sup>th</sup>, 2006. James Wasula. General Secretary, Uganda Performing Rights Society.

<sup>81</sup> Supra 57.

<sup>82</sup> *Ibid.*

<sup>83</sup> Yee Fen Lim, Supra 32 at pg 3

anyone without the permission or consent of the copyright owner, which makes it a copyright infringement.<sup>84</sup>

### **2.3. What is the cyber revolution?**

The cyber revolution is a term that is used to refer to the development that has accrued in today's world as a result of embracing internet<sup>85</sup> technology. Specific references of what constitutes the cyber revolution include the emergence of computers, internet enabled phones, Compact Discs, Video Compact Discs, Digital Video Discs, iPods and any other computer enabled technology that makes the expression of copyrightable ideas technologically easier, as well as escalate copyright infringement through peer to peer transmission. The basis of this research is made on computer and internet as a mechanism that people have maximized to infringe copyright law.

Internet has its origins and roots from the Cold War.<sup>86</sup> Internet was founded in 1969 by the United States Department of Defense. It has since grown into a global web of computer networks, commonly known as the Information Super Highway, or the Global Information Infrastructure due to the enormous volumes of information that is shared through it by its worldwide users.<sup>87</sup> In its early days, it was very much designed as a network through which information could flow quickly and unhindered between individuals.<sup>88</sup> Copyright wasn't a

---

<sup>84</sup> Yee Fen Lim, *Supra*. Pg 396.

<sup>85</sup> Internet simply means a network of interconnected networks. World Book Encyclopedia, 2001, volume 10, World Book, Inc. Scott Fetzer Company, Chicago. Pg350

<sup>86</sup> 'Queen Anne and Anarchists: can Copyright survive in the Digital Age?' Anthony Murphy (Director of Copyright, UK Patent Office) OXFORD IP RESEARCH CENTRE SEMINAR Tuesday 26 February 2002

<sup>87</sup> *Supra* 74.

<sup>88</sup> Currently called peer-to-peer or P2P computing.

consideration for the scientists logging on to the forerunner of the Internet a generation ago. Thus, one shouldn't be surprised that since 1990 copyright policy-makers haven't found it easy to adapt international copyright rules to a phenomenon which was never designed to be regulated.<sup>89</sup>

#### **2.4. The challenge of copyright protection in the cyber space.**

The challenge posed by the cyber revolution is that it has eroded the traditional mechanisms of controlling the content of copyright, making enforcement of copyright law near impossible.<sup>90</sup> Copyright law entails that every owner or author of a copyrightable work ought to have his rights protected.

**Copyright and Neighboring Rights Act**<sup>91</sup> recognizes two kinds of rights that a copyright owner may enjoy. One is the moral right<sup>92</sup> and the other is the economic right.<sup>93</sup> These rights have been affected greatly by the cyber revolution. Due to the large number of people accessing internet today, it is quite impossible to accurately estimate who has access to it at a material time.<sup>94</sup> This has therefore led to an increase in the derogation of these rights, which initially are exclusively supposed to be enjoyed by the copyright owner.

---

<sup>89</sup> Supra 79.

<sup>90</sup> Supra 44.

<sup>91</sup> Supra

<sup>92</sup> Section 2 of the **Copyright and Neighboring Rights Act** interprets a moral right as a right to claim authorship or performance as provided in sections 10 and 23.

<sup>93</sup> Section 2 further interprets an economic right to mean a right that grants the owner of a protected work to do or to authorize another person to do any of the acts under section 9 of the **Copyright and Neighboring Rights Act**.

<sup>94</sup> Yee Fen Lim, **Supra 32 at pg 1**.

In Uganda today, authors of literary works as well as musicians and all other holders of copyright and related rights are very vulnerable to economic exploitation by users, in spite of the new **Copyright and Neighboring Rights Act**.<sup>95</sup> This susceptibility is a result of a long history of non-enforcement of Copyright, creating the impression that copyright is not a protectable property, and infringement is a "legitimate" way to promote Authors. Rights owners, particularly in the music sub-sector, tend to believe that broadcasters are doing them a favor to play their music kind of advertising and promoting them; and unauthorized CD burners helping to distribute their music works. Whereas these arguments may have some credence, the irony is that the unauthorized users make lots of money out of the works without remunerating the creator!<sup>96</sup>

This situation has been fully utilized by the public to grow its business at the expense of the unsuspecting and uninformed public. An example is **Mr. Komakech Geoffrey**, most popularly known as **DJ Languna**. Komakech is an example of a Ugandan musician whose music copyright has not made any difference to his bank account, unlike his music superstar counterparts in the western world.<sup>97</sup> In 2006, 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 over five years for it to be recognized. Ironically, Languna got only One Hundred Thousand Uganda Shillings (100,000shs.) even though it cost Three Million Five Hundred Thousand Uganda shillings (3,500,000shs.) to

---

<sup>95</sup> Act no. 19 of 2006.

<sup>96</sup> CHALLENGES FACED BY COLLECTIVE MANAGEMENT ORGANISATIONS IN UGANDA. BY James Wasula (General Secretary, Uganda Performing Right Society) [http://www.uprs.biz/challenges\\_faced.html](http://www.uprs.biz/challenges_faced.html) Accessed on 18th March, 2016 at 2:00pm

<sup>97</sup> Halimah Abdallah Kisule, Uganda's Copyright Law gives hope to Artists. September 14<sup>th</sup>, 2007. Adopted from <http://www.thewip.net> . Accessed on 19<sup>th</sup> March, 2016 at 8:30am.

produce. When interviewed, he noted that he was conned. "I did not know how to sell music. The conman was in the music industry - he told me he would make tapes for my music, sell them and then bring me the money. I never saw him again."<sup>98</sup>

Such scenarios are common in the cyberspace. Due to the vast number of people using the internet, it is quite hard to regulate information that is fed on the internet servers, thus, protection of the copyright has become a myth so hard to enforce in cyberspace.

Today copyright law affords to creators not only of most literary, musical and artistic works, but also of architectural works and computer software and databases, a limited monopoly on the use of the products of their minds a powerful incentive to create.<sup>99</sup> The foundational decision was Wheaton v. Peters<sup>100</sup>, in which the United States Supreme Court, denying claimed ownership of its opinions by the Court's own Reporters of Decisions, held that copyright exists primarily to benefit the public rather than authors or assigns. Today, the Court struggles when asked to extend copyright protection to new technologies, for example, piano rolls<sup>101</sup> and VCRs<sup>102</sup>. The risk of failing to provide protection in such instances, as was observed by **Justice Oliver**

---

<sup>98</sup> *Ibid.*

<sup>99</sup> <http://www.answers.com/topic/copyright> Accessed on 15th March, 2016 at 10:40pm

<sup>100</sup> *Supra* 70

<sup>101</sup> As was in *White-Smith v. Apollo*, 209 U.S. 1 (1908) where the Supreme Court of the United States ruled that manufacturers of music rolls for player pianos did not have to pay royalties to the composers. The ruling was based on a holding that the piano rolls were not copies of the plaintiffs' copyrighted sheet music, but were instead parts of the machine that reproduced the music.

<sup>102</sup> *Sony v. Universal City Studios*, 464 U.S. 417 (1984), also known as the "**Betamax case**", is a decision by the Supreme Court of the United States which ruled that the making of individual copies of complete television shows for purposes of time-shifting does not constitute copyright infringement, but is fair use. The Court also ruled that the manufacturers of home video recording devices, such as Betamax or other VCRs, cannot be liable for infringement. The case was a boon to the home video market as it created a legal safe haven for the technology, which also significantly benefited the entertainment industry through the sale of pre-recorded movies.

Wendell Holmes, Jr. in Sony v Universal City Studios,<sup>103</sup> is that the result may accord copyright “less scope than its rational significance and the ground on which it is granted seem ... to demand”

## CHAPTER THREE

### THE ESCALATION OF COPYRIGHT INFRINGEMENT; AN ATTRIBUTE TO THE CYBER REVOLUTION IN UGANDA

#### 3.0 What amounts to copyright infringement?

The concept of copyright infringement is an ancient concept. Under the *Statute of Anne*,<sup>104</sup> copyright infringement was penalized. Infringers of Copyright were required to pay a fine of one penny for every sheet of the infringing book, one moiety of which went to the author, the other to the crown.<sup>105</sup> Infringement refers to the violation of one or more of the exclusive rights granted to a copyright owner.<sup>106</sup>

The goal of lawmakers is to protect copyright owners against unauthorized reproduction, dissemination, or exploitation of their works. Simultaneously, it seeks to ensure that the public is neither denied the opportunity to enjoy others’ creative output nor unfairly by the proliferation of exclusive rights and a consequent necessity to seek a large number of licenses to use copyright material.<sup>107</sup> To this end therefore, the regime of copyright gives a number of exclusive rights to

---

<sup>103</sup> *Ibid*, pg 19

<sup>104</sup> It was enacted in 1709 and entered into force on 10 April 1710.

<sup>105</sup> Bainbridge, *supra*. Pg 30.

<sup>106</sup> Bryan A Garner, *Supra* pg 796

<sup>107</sup> Yee Fen Lim, *Supra*. Pg 408

the owner of the copyright. These include, a right to reproduce the work, to prepare derivative works based on the work, distribute the copies of the work, perform the work publicly, and display the work publicly and a right to import the work into Uganda's jurisdiction.<sup>108</sup>

It is an infringing act for a person other than the copyright owner to do or authorize the doing of any of these acts without the license of the copyright owner.<sup>109</sup> Any use of copyrighted work without the permission of the author constitutes an infringement unless it falls into a legal exception or is otherwise excused.<sup>110</sup> Copyright infringement involves the use of all or part of a work of another person without first obtaining permission or where a person appropriates a work and adapts it in some manner without first obtaining permission.

Under **Section 46 of the Copyright and Neighboring Rights Act**,<sup>111</sup> infringement of copyright and neighboring occurs where, without a valid transfer, license, assignment or other authorization under this Act, a person deals with any work or performance contrary to the permitted free use and in particular where that person causes or permits another person to reproduce, fix, duplicate, extract, imitate or import into Uganda otherwise than for his own private use, distribute in Uganda by way of sale, hire, rental or like manner, or exhibit to the public for commercial purposes by way of broadcast, public performance or otherwise. In addition, 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.<sup>112</sup> It is therefore a

---

<sup>108</sup> Bryan A Garner, *Ibid*.

<sup>109</sup> Yee Fin Lim, *Ibid*.

<sup>110</sup> Jeroline Akubu, An Overview of the Copyright Law in Uganda [February, 2008] Adopted from <http://www.nabotu.or.ug/papers/jeroline.pdf> Accessed on 18th June, 2016 at 8:30am

<sup>111</sup> *Supra*.

<sup>112</sup> Section 46(2), Copyright and Neighboring Rights Act, *Supra*.

copyright infringement for a person to illegally perform, copy, distribute and sale any copyrighted material. With regard to music, this is termed as music piracy. Performers and songwriters see people who take their music without permission or paying royalties as cheats. One example of music piracy these days is music downloaded from the internet.<sup>113</sup>

In determining whether infringement has taken place or not, the courts will consider three main things:<sup>114</sup>

- (a) Whether the work is subject to copyright;
- (b) Whether the alleged infringer had access to the original work; and
- (c) Whether there is substantial similarity between the works.

### **3.1 Types of copyright infringement.**

Copyright infringement is divided into two types.

#### **3.1.1 Direct or primary infringement.**

Under this kind of infringement, copyright is infringed by a person who, without the license of the copyright owner, does any of the acts<sup>115</sup> restricted by copyright law.<sup>116</sup> To prove direct infringement, a plaintiff must first prove that the defendant copied the protected work. In Kelly

---

<sup>113</sup>Jamelia Music copyright case study.

<sup>114</sup> Jeroline Akubu, *ibid.*

<sup>115</sup>These acts include doing or authorizing any person to reproduce, fix, duplicate, extract, imitate or import into Uganda otherwise than for his or her own private use; distribute in Uganda by way of sale, hire, rental or like manner; or exhibit to the public for commercial purposes by way of broadcast, public performance or otherwise, without the consent or authority of the copyright owner. Section 46, Copyright and Neighboring Rights Act, Supra.

<sup>116</sup> Catherine Colston, *Principles of Intellectual Property Law*. Cavendish Publishing Company LTD, London, 1999. Pg 219.

**v. Arriba Soft Corp.**<sup>117</sup> court stated that the plaintiff must show ownership of the copyright and copying by the defendant. In addition, in **LGS Architects, Inc. v. Concordia Homes of Nev.**<sup>118</sup> court held that the plaintiff must meet two requirements to establish a prima facie case of copyright infringement: ownership of the allegedly infringed material and violation by the alleged infringer of at least one of the exclusive rights granted to copyright holders. Copying may be proven by either direct evidence, which is rare, or by indirect evidence that shows the defendant had access to plaintiff's work, and the defendant's work has probative similarity. This was illustrated in **Francis Day and Hunter v Bron,**<sup>119</sup> where the court of appeal formulated a two pronged test for direct infringement in light of reproduction. Thus, in order to constitute a reproduction, there must be a sufficient degree of objective similarity between the two works; and some causal connection between the plaintiffs and defendant's work. There must also be copying of a substantial part of the copyright work.

Objective similarity does not insinuate that the works must be identical. In **Austin v Columbia Gramophone co. Ltd.**<sup>120</sup> court held that infringement of copyright in Music is not a question of note-for-note comparison, but whether the substance of the original copyright is taken out or not. Thus in determining whether there is an objective similarity, court should first inquire as to the presence of similarity between the two works from which copying may be inferred; and secondly, whether the extent of similarities identified amount to a substantial part of the

---

<sup>117</sup> 336 F.3d 811, 817 (9th Cir. 2003)

<sup>118</sup> 434 F.3d 1150, 1156 (9th Cir. 1996)

<sup>119</sup> [1963]Ch 587

<sup>120</sup> (1917-23)Mac Cop Cas 398

copyright work.<sup>121</sup> Where these are satisfied, then the party will be said to have copied the copyrightable work, a condition amounting to copyright infringement. On the other hand, the plaintiff must satisfy that the defendant's work has originated in his (the Plaintiff's) work.<sup>122</sup> Similarity alone will not suffice to constitute a reproduction.<sup>123</sup>

Thus, to sustain a case of direct copyright infringement, a plaintiff must initially show proof of ownership of a valid copyright and copying by the defendant.<sup>124</sup> The copying requirement is satisfied by either direct evidence of copying or by showing that the defendant had access to the copyrighted work and that the works in question are substantially similar to the originally copyrighted work. Once these initial requirements are satisfied, the plaintiff must prove that the defendant used the copyrighted work in a way that violated one of the copyright owner's exclusive rights. The plaintiff also must show that those elements of a work that have been copied are protected expression and of such importance to the copied work that the appropriation of these protected elements is actionable.<sup>125</sup> A finding of direct copyright infringement does not require proof of knowledge or intent to infringe, but only proof that the defendant's activities violated one of the copyright holder's exclusive rights.<sup>126</sup> In Uganda, direct infringement has been held to occur even in the absence of the copyright owner's knowledge. Thus, it is

---

<sup>121</sup> Colston, *Ibid*, pg 220.

<sup>122</sup> *Ibid*.

<sup>123</sup> In **LB Plastics v Swish (1979) RPC 551**, court held that a striking similarity combined with proof of access raised a prima facie case of infringement that the defendant had to answer.

<sup>124</sup> **Howard v. Sterchi**, 974 F.2d 1272, 1275 (11th Cir 1992)

<sup>125</sup> **Engineering Dynamics, Inc. v. Structural Software, Inc.**, 26 F.3d 1335, 1341 (5th Cir. 1994).

<sup>126</sup> [http://www.bc.edu/bc\\_org/avp/law/st\\_org/iptf/articles/content/1999060401.html](http://www.bc.edu/bc_org/avp/law/st_org/iptf/articles/content/1999060401.html) Accessed on 18 August, 2016 at 10:30am.

immaterial to say that there is no infringement simply because the copyright owner is not aware of the infringing act.

**In John Murray (Publishers) Ltd and Others v George William Senkindu and**

**Another**,<sup>127</sup> the plaintiffs brought an action against the defendants for infringement of copyright in the book 'Introduction to Biology' alleging, among other things, that the first defendant was selling counterfeit copies of the book in his Kampala New styles bookshop, thus causing a decline in the plaintiff's sales. **Ntagoba J.** found that the books sold by the first defendant were counterfeit. Relying on Section 2(a) of the Copyright Act<sup>128</sup>, it was found that the plaintiffs had copyright protection in Uganda and the judge went to great length to explain the significance of the Universal Copyright Convention of 1952 (as amended). Further it was stated that under Section 11(1) of the Copyright Act, the plaintiff did not have to prove 'knowledge' of the infringement by the defendant, and hence, under that Section, strict liability was imposed on the defendant with no burden on the plaintiff to prove the knowledge of infringement on the part of the defendant. Accordingly, the plaintiffs were awarded UGX 10, 710,000 Uganda shillings in lieu of actual loss incurred by the plaintiffs, considering that each of the 765 copies sold had been sold at UGX 14,000. In addition, they were awarded UGX 6,000,000 as further damages. Finally, the court granted the plaintiffs a permanent injunction restraining the defendant, his/her agents or servants from committing further infringement against the plaintiff's copyright in the 'Introduction to Biology – Third Tropical Edition.'

Direct infringement is the most common kind of copyright infringement. In light of the cyber revolution, there is little doubt that capturing copyrighted videos, CDs, works of art, and books

---

<sup>127</sup> HCCS 1018 of 1997 (unreported).

<sup>128</sup> Cap. 81 Laws of Uganda

to digital files constitutes the fixing of those works in a tangible medium of expression which can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. There is equally little doubt that Peer to Peer sharing of these files over the internet, without the owner's consent or otherwise permitted under copyright law, constitutes a copyright infringement by those directly involved.<sup>129</sup> In Playboy Enterprises, Inc. v. George Frena, d/b/a/ Techs Warehouse BBS Systems and Consulting, and Mark Dyess,<sup>130</sup> the court granted summary judgment for direct copyright infringement against a bulletin board service ("BBS") which allegedly did not have any prior knowledge that its users uploaded and downloaded files to its server containing Playboy Enterprises, Inc.'s pictures without plaintiff's consent or other justification. Defendant BBS allegedly removed all infringing files when it was notified and subsequently monitored the server, but the court held lack of knowledge was not a defense. The court also found no merit to the defendant's affirmative defenses of fair use.

Thus, if a person uploads any copyrightable material onto the internet without the consent or authorization of the copyright owner, and does this for an economic gain, and this act is not covered under the doctrine of fair use,<sup>131</sup> then such a party will be deemed to have directly infringed the copyright of the copyright owner.

### 3.1.2 Indirect or secondary infringement.

---

<sup>129</sup> <http://cc.bingj.com/cache.aspx?q=direct+copyright+infringement&d=4935252499170732&mkt=en-US&setlang=en-US&w=53157ebe.c4b682e9> Accessed on 19<sup>th</sup> June 2016 at 7:00 am

<sup>130</sup> 839 F. Supp.1552 (M.D. Fla. 1993)

<sup>131</sup> Under this doctrine, there will be no copyright infringement where the copyrighted work is used for private use, a quotation from a published work is used in another work and is acknowledged, a published work is used for education purposes, the work is reproduced, broadcast or communicated to the public with acknowledgement of the work, in any article printed in a news paper, periodical or work broadcast on current economic, social, political or religious topic unless the article or work expressly prohibits its reproduction, broadcast or communication to the public, or where the work can be seen or heard and is reproduced or communicated to the public by means of photograph, audio-visual work or broadcast to the extent justified for the purpose when reporting on current events. Section 15, Copyright and Neighboring Rights Act, Supra.

Secondary or indirect copyright infringement is applied in instances in which the defendant did not personally engage in the violating activity but still bears some responsibility for the infringement.<sup>132</sup> As noted in direct infringements of copyright, it is possible to be liable for secondary infringements, as the exclusive rights also include the exclusive right to authorize a person to do any of the exclusive rights.<sup>133</sup> In the light of the cyber revolution, this kind of infringement has become a remarkable as concerns Internet Service Provider liability.

There are two categories of secondary copyright infringement:<sup>134</sup> Contributory infringement, and vicarious infringement of copyright law.

### 3.1.2.1 Contributory infringement.

In Cable/Home Communication Corp. v. Network Prods., Inc.<sup>135</sup> court held that a defendant is liable for contributory copyright infringement if with knowledge of the infringing activity, he induces, causes or materially contributes to the infringing conduct of another.<sup>136</sup> For a party to be held liable as a contributory infringer of copyright, a primary infringement<sup>137</sup> must first be established.<sup>138</sup>

---

<sup>132</sup> *Shapiro, Bernstein & Co. V. H.L. Green Co.*, 316 F.2d 304, 308 (2d Cir. 1963).

<sup>133</sup> Yee fen Lim. Supra. Pg 427.

<sup>134</sup> *Gershwin Publishing Corp. v. Columbia Artists* , 443 F2d 1159, 1162 (2d Cir 1971).

<sup>135</sup> 902 F. 2d 829 (11th Cir. 1990)

<sup>136</sup> [http://www.bc.edu/bc\\_org/avp/law/st\\_org/iptf/articles/content/1999060401.html](http://www.bc.edu/bc_org/avp/law/st_org/iptf/articles/content/1999060401.html) Accessed on 19<sup>th</sup> June 2016 at 10:00 am

<sup>137</sup> A primary infringer is one who infringes any one of the exclusive rights of the copyright owner.

<sup>138</sup> Yee Fen Lim, *the Application of the doctrines of Contributory infringement and Vicarious liability to internet Service Providers*. 3 West Virginia Journal of Law and Technology 2.3 (15<sup>th</sup> March, 1999)

In Cable/Home Communication Corp. supra,<sup>139</sup> the defendants committed contributory copyright infringement by helping to create, promote, distribute, and import for financial gain various pirate computer software chips and devices, which enabled display of plaintiffs' programming intended for their paying subscribers by disrupting the functioning of their copyrighted computer program designed to scramble satellite transmissions. The court stated, as a fundamental element of contributory copyright infringement that Contributory infringement must necessarily follow a finding of direct or primary infringement. Furthermore, court explicated that the standard of knowledge is objective.<sup>140</sup>

For there to be Contributory copyright infringement a causal relationship between the plaintiff and the defendant is all that is required.<sup>141</sup> For one to say that a causal relationship subsists, one must put into consideration the standard for direct infringement, type of conduct and the necessary fault standard and whether the owner of the copyright has extended the monopoly granted beyond the scope of the grant. One must also consider the nature of the article being sold for use in direct infringement and whether the accused contributory infringer has a duty to the owner of the copyright.<sup>142</sup>

Contributory conduct can be personal conduct that forms part of or furthers the infringement, or conduct that induces causes or materially contributes to the infringing conduct of another.<sup>143</sup>

---

<sup>139</sup> *Cable/Home Communication Corp. v. Network Prods., Inc.*, 902 F. 2d 829 (11th Cir. 1990)

<sup>140</sup> <http://cc.bingj.com/cache.aspx?q=direct+copyright+infringement&d=4935252499170732&mkt=en-US&setlang=en-US&w=53157ebe.c4b682e9> Accessed on 19<sup>th</sup> June 2016 at 4:00 pm

<sup>141</sup> Yee Fen Lim, *Supra* 32, at pg 429.

<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

Conduct may also take the form of contribution of items or machinery that provides the means to infringe a copyright owner's copyright. Courts have held that the services offered by Internet Service Providers are included in this category of contributory infringement.<sup>144</sup> Without access to online services, the illegal copying and mass distribution of copyrighted work through the use of online services cannot take place.

Therefore, where a service provider in Uganda, for example MTN offers machinery and services which the public utilizes to infringe a copyright owner's copyright, and the copyright owner establishes a primary infringement, this infringement will be imputed on the service provider, and in the absence of any defenses, will be held liable for copyright infringement.

### **3.1.2.2 Vicarious copyright infringement.**

Vicarious liability concerns the relationship between the direct infringer and the secondary infringer.<sup>145</sup> A defendant is liable for vicarious copyright infringement where the defendant has the right and ability to control or police the infringer's acts and receives a direct financial benefit from the infringement.<sup>146</sup> To be successful in a claim for vicarious infringement, the plaintiff must show that the defendant not only had a right and ability to supervise or control the actions of the primary infringer, but also had a direct financial interest in the exploitation of the material.<sup>147</sup>

---

<sup>144</sup> *Ibid.*

<sup>145</sup> Yee Fen Lim, *Supra*, pg 434.

<sup>146</sup> *Supra*. 129.

<sup>147</sup> Yee Fen Lim, *Supra*.

To have or not to have the ability to supervise depends on the kind of power that the service provider has over the direct infringer. In Fonovisa, Inc v Cherry Auction<sup>148</sup> the district court held that if the defendants have a general power to supervise or control the primary infringer in the general course of business, then the defendant possesses an a priori supervisory power, which is the type of power necessary to ground a finding of vicarious infringement. On the other hand, in Shapiro's case,<sup>149</sup> court held that if the defendants only have the power to stop the primary infringer by not renting the booth to the primary infringer, then there is an a posteriori supervisory power and it is not sufficient to satisfy the control element.

All internet service providers possess the right and ability to supervise and control their systems. However, the question of whether they receive direct financial benefits from the infringement is not straightforward. Although non-commercial Internet Service Providers do not receive direct financial benefits from infringements, it may be possible to show that commercial Internet Service Providers do receive such benefits. If it is shown that a commercial Internet Service Provider satisfies the direct financial benefit element, then it can be held liable for the infringing activities of their users.<sup>150</sup> This was the case in AM Records Inc, et al v Napster, Inc.<sup>151</sup>

---

<sup>148</sup> <http://www.benedict.com/Digital/Internet/Fonovisa/Fonovisa.aspx> accessed on 25th June, 2016 at 10:00am.

<sup>149</sup>In Shapiro, the operator received a cut of the gross sales. The financial benefit to the operator was pretty direct; the more bootlegs the vendor sold, the more money flowed to the operator. In Fonovisa, the financial benefit to the operator is much more indirect, and include; payment of a daily rental fee by each of the infringing vendors; an admission fee paid by patrons seeking bootlegs; and incidental payments for parking, food and other services by customers.

<http://www.benedict.com/Digital/Internet/Fonovisa/Fonovisa.aspx> *ibid.*

<sup>150</sup> Yee Fen Lim, *Supra*. Pg 440.

<sup>151</sup> 239 F.3d 1004 (9th Cir. 2001)

The **Napster**<sup>152</sup> decision forms the basis of Internet Service Provider Liability in today's modern world. Napster was started in 1999 by Shawn Fanning, then an 18-year-old freshman computer science student at Boston's Northeastern University. It provided a platform for users to access and download compressed digital music files, specifically MP3s, from other users' machines. Unlike many peer-to-peer services, however, Napster included a central server that indexed connected users and files available on their machines, creating a searchable list of music available across Napster's network. Napster's ease of use compared to other peer-to-peer services quickly made it a popular service for music enthusiasts to find and download digital song files for free.

The court, while addressing the vicarious infringement claim, considered the necessary factors for vicarious infringement, that is, whether Napster benefited financially from the infringement and whether they were capable of supervising and controlling infringing conduct. The Ninth Circuit sided with the District Court, who held that the infringing activity was a draw to potential users and that, since and Napster's future business model was predicated on expanding the number of users, Napster stood to benefit financially from the infringing activity. As for supervision, the Circuit court agreed in part with the District Court's finding that Napster had "the right and ability to supervise its users' conduct." However, the Ninth Circuit felt that Napster's ability to patrol and enforce infringing use was limited by the design of the system itself. The system was not designed to read the contents of MP3s or check for copyright ownership or permissions, only to index by name and ensure they are valid MP3 files. Despite this departure from the District Court's reasoning, they argued that these indices and infringing

---

<sup>152</sup> *A&M Records, Inc. v. Napster, Inc, Ibid*

files were just as searchable by Napster as they were by the plaintiffs in locating infringing files for evidence in the case. Because of Napster's failure to police within its means combined with the financial interest factor, the Ninth Circuit affirmed the District Court's finding of vicarious infringement.<sup>153</sup>

The decision in Napster leaves a lot for Uganda to consider. Uganda is a developing country that has opened up its technology to the cyber revolution. Many people are utilizing this revolution to enrich themselves at the expense of the copyright owners. It is sad to note that Uganda today does not have a special mechanism of combating Internet Service Provider liability, though it has made attempts through the **Electronic Signatures Act of 2004**. This Act makes provision for and regulates use of electronic signatures and other related matters.<sup>154</sup> There has not been any case law handling Internet Service Provider copyright infringement, yet there are several instances that would justify Internet Service Providers being held liable under both contributory and vicarious infringement as explained above.

### **3.2 The legality of the cyber revolution in increasing copyright infringement.**

The legality of the cyber revolution in increasing copyright infringement is based on the elements relating to burden of proof. It should be noted that proof of infringement of copyright works uploaded on the internet is still a challenge due to the complexity of the burden of proof that is placed on the plaintiff. According to the **Ugandan Evidence Act**<sup>155</sup> whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which

---

<sup>153</sup> Napster, supra,

<sup>154</sup> The Electronic Signatures Bill, 2004. A bill for an act entitled the Electronic Signatures Act, 2004

<sup>155</sup> Chapter 6, Laws of Uganda, 2000

he or she asserts must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.<sup>156</sup> In civil proceedings, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon that person.<sup>157</sup> Thus, it might be in the knowledge of the copyright owner, or the plaintiff at the material time that his or her copyright has been infringed through publication on the internet. However, it is hard to prove who published it on the internet, since internet is predominantly considered to form a public place or part of the public.<sup>158</sup> It is not a misdirection therefore that Uganda, though is one of the largest economies that have embraced the cyber revolution, has faced a problem in administering justice to the copyright owners, whose copyrights have been infringed due to the use of internet and computer related technologies. The reality is that though the aggrieved would love as much as possible to seek judicial remedies as established by **part VI of the Copyright and Neighboring Rights Act**, the element of evidence to be adduced in court defeats them. This contention has made the cyber revolution an active agent in stepping up the infringement of copyright law.

### **3.3 Loopholes in the Ugandan Copyright law as regards internet related infringements.**

**The Copyright and Neighboring Rights Act** is the guiding law on copyright in Uganda. Credit is accorded to it for having repealed the Copyright Act<sup>159</sup> and established a judicial framework

---

<sup>156</sup> Section 101 of the Evidence Act.

<sup>157</sup> Section 106, *ibid*.

<sup>158</sup> Yee Fen Lim, *Supra*, at pg 421.

<sup>159</sup> Chapter 215, *Laws of Uganda, Supra*

for limiting copyright infringement in Uganda.<sup>160</sup> However, this framework was meant to deal with copyright infringement generally and not copyright infringement with specific attention to the cyber revolution.

One of the major loopholes in the current copyright law in Uganda is that infringement of copyright invites no criminal sanctions. The Penal Code Act provides criminal sanctions for counterfeiting trademarks. Nothing is given concerning Copyright infringement.<sup>161</sup> Only a civil action can be filed in order to obtain damages or an injunction.<sup>162</sup>

Where as a person who directly infringes another's copyright, for example, a person who sells a copyrighted book without the license or authority of the copyright owner and with a view to gain economically can be sued by the copyright owner for copyright infringement and the Copyright and Neighboring Rights Act covers him, this might not be the case with a person who infringes the same copyright through publishing the same book on the internet without the authority and license of the owner.

The major loophole in the Ugandan system is that electronic evidence has not yet been fully demarcated. Thus, as a result of the complexity of the cyber revolution, it is so absurd that a copyright infringer can walk free, as well as gain economically out of the infringing activity, simply because the owner of the copyright has failed to discharge the onus of proof placed on him because of his failure to satisfy the court that the defendant is liable for infringing his

---

<sup>160</sup> It should be recalled that the Copyright Act did not provide for remedies, penalties and offences for copyright infringement. This means that in Uganda, copyright infringement was seen as a "legal" act that was not punishable by law. However, the Copyright and Neighboring Rights Act established this Judicial framework in Sections 45, 47,49 and 50.

<sup>161</sup> Sections 377 to 380 of the Penal Code Act, Cap 120.

<sup>162</sup> Sections 45 to 50, Copyright and Neighboring Rights Act provides only civil remedies for any infringement of copyright.

copyright. It is as result of this that commentators like **John Perry Barlow** from the “**Grateful Dead**”<sup>163</sup> have proclaimed the death of copyright in this digital era, suggesting that value from music and other related copyrightable works will come from the provisions of services, rather than provision of copies of the products.<sup>164</sup> Thus, to some people, if you can download digital quality recordings from the internet, there will be no need to buy the copyrighted work.

In Uganda, such scenarios are rampant and have increased the erosion copyright law. Some people have even suggest that by putting measures aimed at regulating copyright infringement, the state is infringing on the right to access to information,<sup>165</sup> as well as freedom of expression<sup>166</sup> as guaranteed under Chapter 4 of the Constitution of Uganda. It is not a mistake therefore that the people whom copyright law is supposed to protect have shown loss of confidence in the legislative system of Uganda. Though there is no case law in Uganda to illustrate this, the UK court of Appeal pronounced itself on this point in **Ashdown v Telegraph Group Ltd.**<sup>167</sup> In that case, the U.K Court of Appeal observed that though the rights of copyright owners have been dramatically enhanced, however, the legislature appears to have lost confidence in its ability to secure the public interest in access to information contained in copyright works. Part of the problem lies in the treatment of copyright as a property interest. Part lies in the Courts' attempts,

---

<sup>163</sup>[http://www.bing.com/reference/semhtml/Grateful\\_Dead?src=mtoc&fwd=1&q=grateful+dead&qvvt=grateful+dead](http://www.bing.com/reference/semhtml/Grateful_Dead?src=mtoc&fwd=1&q=grateful+dead&qvvt=grateful+dead) accessed on 25th June, 2016 at 4:00pm.

<sup>164</sup> LexisNexis™ Academic 2004. College of William & Mary. Law Review December, 2004 46 Wm and Mary L. Rev. 951 <http://gunkelweb.com/coms465/articles/amateur2amateur.html>. Accessed on 2nd March, 2010 at 8:07am.

<sup>165</sup> Article 41 of the Constitution of Uganda, Supra.

<sup>166</sup> Article 29 of the Constitution of Uganda, Supra.

<sup>167</sup> [2001] EWCA Civ 1142

as in the *Ashdown* case, to accommodate the human right of freedom of expression to the existing structure of copyright law with as little inconvenience as possible.<sup>168</sup>

Therefore, for Uganda to move swiftly like the rest of the cyber revolutionized countries, it has to ensure that it creates a mechanism of combating copyright infringement on the cyber space. Admissibility of electronic evidence should be emphasized in the courts of law and proper mechanisms of addressing primary as well as secondary infringement of copyright law devised.

Thus, reliance on the Norwich Pharmacal principles<sup>169</sup> can save the day. Under these principles, a discovery procedure may be instituted by court demanding disclosure from the relevant Internet Service Provider when it is the only practicable source of information. The rationale behind this procedure is that for many copyright infringements carried out on the internet, the identity of the online infringer will often be unknown to the copyright owner. Thus unless the copyright owner cooperates with the relevant internet service provider to disclose who at the material time infringed the copyright, the copyright owner will always lie on the losing end. Thus, in order to save the copyright owner from continuous loss out of infringement, the government of Uganda should adopt such procedures.

### **3.4 Comparative analysis of copyright law and the cyber revolution between Uganda and other jurisdictions.**

---

<sup>168</sup>PTC FORUM: Online Journal of the Patent, Trademark and Copyright Research Foundation UK / COPYRIGHT / HUMAN RIGHTS Copyright Law after *Ashdown*: Time to deal fairly with the Public Jonathan Griffiths Intellectual Property Quarterly, Issue 3, 2002. <http://www.ptcforum.org/ARTICLE%2020076.htm> Accessed on 27th June, 2016 at 10:00pm.

<sup>169</sup>*Norwich Pharmacal v. Customs and Excise Commissioners* (1974) AC 133 at 137 to 152. In this case, Law Lords ruled that the interests of justice militated in favor of disclosure under the circumstances of the case. Lord Reid explained that the general common law principle that a "mere witness" is under no duty to help can be overruled where the witness was somehow causally linked to the alleged wrong. Thus, If through no fault of his own a person gets mixed up in the tortuous acts of others so as to facilitate their wrong-doing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers . . . Justice requires that he should co-operate in righting the wrong if he unwittingly facilitated its perpetration. In addition, Lord Reid held that there was "nothing secret or confidential in the information sought or in the documents which came into the hands of the respondents. Thus, forced disclosure of confidential information would not run against public interest.

This analysis will entail copyright and the cyber revolution from other jurisdictions. Many states have come up with specific procedures aimed at stepping down copyright infringement as a result of the cyber revolution. Profound, though is the United States of America, Philippines and Australia.

#### 3.4.1 Copyright law in the U.S System.

The U.S. copyright law is similar to the Ugandan copyright law in some circumstances. Both jurisdictions recognize the rights that accrue to a person who expresses his ideas in a material form. Thus, in both jurisdictions, copyright protection is enhanced.

In both systems, mechanisms aimed at reducing copyright infringement have been posited down in their copyright legislations. Means and methods of penalizing infringers of copyright are the core of the legislations in both jurisdictions.<sup>170</sup> Under both jurisdictions, to succeed on a claim for direct copyright infringement, a plaintiff must prove two elements; ownership of the copyrighted material, and violating of one of the exclusive rights of the copyright owner by the defendant.<sup>171</sup> In addition, under both systems, secondary infringement does not accrue independently. For there to arise a suit for secondary infringement, as a general rule of copyright law, one must first establish that there was a primary infringement.

However, there is a remarkable difference between the two systems. This concerns the attitude of the state towards copyright infringement on the cyber space. The US has come up with

---

<sup>170</sup> In Uganda, the leading legislation on Copyright Law is the Copyright and Neighboring Rights Act. Likewise, the United States has promulgated the Digital Millennium Copyright Act, which mainly handles cyberspace infringements.

<sup>171</sup> [http://itlaw.wikia.com/wiki/Direct\\_copyright\\_infringement](http://itlaw.wikia.com/wiki/Direct_copyright_infringement) Accessed on 28th July, 2016 at 10:00am.

guidelines towards internet service provider infringement, a development that is alien to the Ugandan jurisprudence. In 1998, the **United States Congress** passed the **Digital Millennium Copyright Act**,<sup>172</sup> a legislation that implements the two 1996 World Intellectual Property Organization (WIPO) treaties: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty and also addresses a number of other significant copyright-related issues. This Act was passed hand in hand with the **On-Line Copyright Infringement Liability Limitation Act**<sup>173</sup> in an effort to protect service providers on the Internet from liability for the activities of its users. Codified as section 512 of the Digital Millennium Copyright Act, this new law exempts on-line service providers that meet the criteria set forth in the safe harbor provisions<sup>174</sup> from claims of copyright infringement made against them that result from the conduct of their customers. These safe harbor provisions are designed to shelter service providers from the infringing activities of their customers. If a service provider qualifies for the safe harbor exemption, only the individual infringing customers are liable for monetary damages; the service provider's network through which they engaged in the alleged activities is not liable.<sup>175</sup> These provisions therefore limit the extent of secondary liability to only the service providers that are not covered under the exception. Liability for copyright infringement is strict liability it does not require intent or any particular state of mind, although willfulness is relevant to the award of

---

<sup>172</sup> The Digital Millennium Copyright Act (DMCA) was signed into law by President Clinton on October 28, 1998.

<sup>173</sup> The Online Copyright Infringement Liability Limitation Act is also known as the Digital Millennium Copyright Act (DMCA). It is a complex set of legislation that amends federal copyright law to reflect the digital environment. [http://dmca.ucr.edu/dmca\\_policy.html](http://dmca.ucr.edu/dmca_policy.html). Accessed on 30th July, 2016 at 7:00am.

<sup>174</sup> These safe harbor provisions set out limitations or exemptions from online liability for service providers based on the following four categories of conduct by a service Provider; Transitory communications; System caching; Storage of information on systems or networks at direction of users; and Information location tools. [www.copyright.gov/legislation/dmca.pdf](http://www.copyright.gov/legislation/dmca.pdf) Accessed on 31st July, 2016 at 9:00am.

<sup>175</sup> <http://www.chillingeffects.org/dmca512/faq.cgi> *ibid*

statutory damages.<sup>176</sup> In Uganda however, the extent of service provider liability and their protection warrants a lot of reform. Some scholars believe that the reason for low or almost no service provider liability is because internet is a new phenomenon in Uganda. This has become a loophole that many service providers are utilizing to trample upon many copyrights without any remedies being rendered to the copyright owners.

### 3.4.2 Copyright law in the Philippines Jurisprudence.

Another jurisdiction that leaves a lot of lessons for Uganda is Philippines. Philippines has established the copyright regime by ensuring protection of copyright owners from infringement through the president's office. Philippines is one of the few states in the world that has an established anti-piracy board under the president's office. This is called the **Optical Media Board**<sup>177</sup> and has been posited under the **REPUBLIC ACT NO. 9239**.<sup>178</sup> This has been influential in curbing down cases of copyright infringement from around 70% in the mid 1980's to around 20% today.

Working hand in hand with Pilipinas Anti-Piracy Team that is composed of the National Bureau of Investigation (NBI) and the Philippine National Police, the Optical Media Board has reported a successful campaign against software piracy.<sup>179</sup> The board instituted "**The don't Wait Until it's Too Late!** Campaign which has given a new opportunity to educate businesses on the proper

<sup>176</sup><http://www.chillingeffects.org/dmca512/faq.cgi>, *Ibid*.

<sup>177</sup> The Optical Media Board was created by Presidential Decree No. 1987 On October 5, 1985; President Ferdinand Marcos created the Videogram Regulatory Board by virtue of Presidential Decree No. 1987. The law was created mainly to address two problems: (1) the regulation of the content of videograms; and (2) the imposition of taxes on the video industry. <http://www.omb.gov.ph/aboutus.html> Accessed on 4th August, 2016 at 7:00am.

<sup>178</sup> An Act Regulating Optical Media, reorganizing for this purpose The Videogram Regulatory Board, providing penalties therefore, and for other purposes <http://www.papt.org.ph/uploads/file/RA9239%20Optical%20Media%20Act.pdf> *ibid*

<sup>179</sup> [http://www.papt.org.ph/news.aspx?id=2&news\\_id=104&paging=1](http://www.papt.org.ph/news.aspx?id=2&news_id=104&paging=1) *ibid*

and legal use of software, and at the same time, send a strong message that doing otherwise exposes the company to legal risks. Business owners, if found guilty of using pirated software, must be ready to face stiff penalties, and even imprisonment.”<sup>180</sup> In Uganda, this has not been given a critical attention. There is no intellectual property office under the office of the president and there is no massive public campaign that is aimed at combating copyright infringement. Uganda should emulate the example of Philippine in order to combat copyright infringement.

### 3.4.3 Copyright law in the Australian Jurisprudence.

Another jurisdiction that has emerged as an advocate for copyright protection is the Australian Jurisdiction. This has mostly been illustrated under the **Australian Copyright Amendment Act of 2006**.<sup>181</sup> The Act introduced a series of new exceptions into Australian copyright law. The most well known are the private copying exceptions, which follow on from proposals by former **Attorney-General Philip Ruddock** to allow people to record most television or radio program at home to watch at a later time with family or friends, and to 'format-shift' their music and make copies from CDs onto personal computers and portable music players such as iPods. Unlike some countries in Europe, or Canada, there is no fee or license paid on players to compensate copyright owners for these private copies, although the exceptions are narrowly defined, and do not allow, for example, making copies for friends or family. The Act also introduced a copyright exception allowing parody and satire, and an exception to allow certain non-commercial use by public sector institutions like universities, schools, art galleries, and archives, provided that an

---

<sup>180</sup>*Ibid.*

<sup>181</sup>COPYRIGHT AMENDMENT ACT 2006 (NO. 158, 2006) [http://www.austlii.edu.au/au/legis/cth/num\\_act/caa2006213/](http://www.austlii.edu.au/au/legis/cth/num_act/caa2006213/)  
Accessed on 4th August, 2016 at 12:00am.

Australian court decides an exception would be consistent with the Berne three-step test as postulated in **Article 13 of TRIPS**.<sup>182</sup>

The other notable change made by the Act was to expand the provisions concerning criminal copyright infringement. The Act introduced strict liability offences for some copyright infringements, and a system of 'Infringement Notices' (on the spot fines). The stated aim of these provisions is to make copyright easier to enforce, particularly against commercial infringers. After concerns from user groups and a Senate Committee, many strict liability offences that would have applied to non-commercial acts were removed from the final bill.

This Act seems to enact the same provisions like **The Ugandan Copyright and Neighbouring Rights Act**<sup>183</sup> though with a fundamental difference, arising out of strict liability for the offence of copyright infringement. Thus, under the **Australian Copyright Amendment Act of 2006**<sup>184</sup> a person who sells or hires out an infringing copy is strictly liable for the infringement.<sup>185</sup> **Subsection 5** states that a person commits an offence if he sells an article or lets an article for hire; and the article is an infringing copy of a work or other subject matter; and copyright subsists in the work or other subject matter at the time of the sale or letting. The Penalty for such an infringement is sixty penalty units. Subsection 6 augments that the offence under

---

<sup>182</sup>This Article states that Members shall confine limitations and exceptions to exclusive rights to **certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rights holder**. (The three steps are in bold for emphasis.)

<sup>183</sup> Supra.

<sup>184</sup><http://www.comlaw.gov.au/> Accessed on 4th August, 2016 at 12:40am.

<sup>185</sup><http://www.comlaw.gov.au/comlaw/Legislation/Act1.nsf/0/C8E557D7AAAED1F2CA257242000CE35D?OpenDocument> Copyright Tribunal: amendments commencing first. **Schedule 10** Tribunal name **Part 3, 132AE**, selling or Hiring out infringing copy, Section 5. Accessed on 4th August, 2016 at 4:40pm.

Subsection (5) is an offence of strict liability. Strict liability is the kind of liability that is imposed without a finding of fault as negligence or intent.<sup>186</sup>

Under the Ugandan Act, a copyright infringer is not strictly liable to the copyright owner for the infringement. **Section 33 of the Copyright and Neighboring Rights Regulations; 2010**<sup>187</sup> states that a person who contravenes the regulations that is, one who commits a copyright infringement, commits an offence, and is liable to a fine not exceeding twenty currency points<sup>188</sup>, or to imprisonment not exceeding six months, or both. Where as in Australia, the imposition of strict liability upon copyright infringement seems to be a deterrent to any person against an intention to or actual infringement of a copyright owner's copyright, this does not seem to be deterrent enough to stem pervasive infringement of copyrighted works in Uganda.<sup>189</sup>

Uganda should therefore emulate the copyright reforms that other jurisdictions have established so as to keep its copyright banner high. Otherwise, the use of the cyberspace and internet coupled with the low copyright reforms in the country is likely to leave little or no protection at all especially to our gallant copyright owners.

## CHAPTER FOUR.

### 4.0 FINDINGS, RECOMMENDATIONS AND CONCLUSIONS.

---

<sup>186</sup> <http://dictionary.reference.com/browse/Liability> Accessed on 5th August, 2016 at 8:40am.

<sup>187</sup> Statutory Instrument No 1 of 2010, 15<sup>th</sup> January 2010.

<sup>188</sup> A currency point is equivalent to twenty thousand shillings. Schedule 1, Regulation 2, Copyright and Neighboring Rights Regulations, 2010.

<sup>189</sup> <http://afro-ip.blogspot.com/search/label/Uganda%20copyright%20regulations%202010> Accessed on 5th August, 2016 at 10:00am.

#### 4.1 Findings

In the Intellectual Property system in Uganda, there exists two kinds of copyright law scholars. The first category, are those that advocate for a system of ensuring that the copyright owner is protected against any copyright infringements. The second are those that propound that the law against copyright infringement should be relaxed to enhance corporate development for every person in Uganda, and not for the chosen few who are able to express their ideas into copyrightable forms.

The issue of copyright infringement has raised a lot of concern for most copyright owners and for many advocates of copyright protection, for example, the Uganda Performing Rights Society. However, some of the scholars advocate for relaxation of laws. One of these is Edgar Tabaro.<sup>190</sup> Tabaro propounds that the law against copyright infringement should be relaxed to aid development of Uganda. Through advancement of the right to fair use<sup>191</sup> of peoples' copyrights, governments such as Sweden were able to develop and thus, Uganda should follow their example. This will be advanced through encouraging Ugandans to express their ideas through copyrightable form, and freely be accessible to everyone for easy access to development, rather than crippling development because of strict copyright policies. He observes that the reason why some people in Uganda cannot access educational material necessary for realization of Uganda's Millennium goal of Universal Education<sup>192</sup> as well as the constitutional right to education<sup>193</sup> is

---

<sup>190</sup> Edgar Tabaro is a lecturer at Uganda Christian University, Faculty of Law, as well as an Advocate in the High Court of Uganda. He is a Business Development Partner at Karuhanga, Tabaro & Associates.

<sup>191</sup> Section 15, Copyright and Neighboring Rights Act, *Supra*.

<sup>192</sup> Goal no. 2, Uganda Millennium Development Goals. <http://www.undp.or.ug/mdgs/25> Accessed on 6th September, 2016 at 8:00am.

<sup>193</sup> Article 30, Constitution of Uganda, 1995. All persons have a right to education.

because educational material such as text books, which is essentially supposed to be cheap, has been made very expensive because it is copyrighted.

However, if this argument is followed, it will be to the detriment of the copyright owner. Thus, the law against copyright infringement enhances copyright protection and if it is relaxed, then, development of copyrightable works will be hindered. This is because there will be no basis of protection to an individual who takes time and effort to formulate and express an idea that is copyrightable. This has been made worse by the escalation of the cyber revolution that has made it almost impossible to identify and prosecute an infringer of copyright especially over the internet.

#### **4.1.2 Recommendations.**

##### **4.1.2.1 Enactment of a law to regulate circulation of CD's and CD burning software in Uganda.**

The state of Uganda's copyright industry, especially the music industry has been assessed by some leading copyright owners in the country.<sup>194</sup> According to Mr. Kyagulanyi Silver, "the pirates make Two Hundred and Twenty Eight Million Shillings (UGX 280million) per month an approximate Eighty One Thousand US Dollars (US\$81,200) on pirated music. Duplication has made music so hard to sell. An empty CD is now selling at only five hundred Ugandan Shillings (500shs). With the current easy computer access everyone almost owns a computer and it is no doubt that someone can duplicate over a hundred songs in a day. We need discipline to end such

---

<sup>194</sup> [http://dmca.ucr.edu/dmca\\_policy.html](http://dmca.ucr.edu/dmca_policy.html), Accessed on 6th September, 2016 at 9:00am.

behavior.... stealing music has become a culture; nobody feels guilty that they are stealing music...What happens here, I mean Uganda the only way the artists can raise the money is through stage performances. That is why you keep seeing musicians soliciting for cheap popularity in order to keep surviving. If I told you that in my latest album of 'Olunaku Luno' I wasn't paid a penny and believe me because you're getting it from the horse's mouth. I must also note that the CD reproduction is too much, and this obviously promotes poor music. A thief is not sorry that he is a thief but he is only sorry that he has been caught." According to him, the escalation of music piracy is attributed to some artists who encourage the pirates to sell around their music so that they can acquire cheap popularity; all this is done so as to attract fans to their concerts. It takes, or will rather take, a lot of training for the artists to appreciate the need to respect copyright law.

The only way to stop this vice from spreading in Uganda is to attack it by the head. Thus, music piracy and generally computer related copyright infringements have been escalated by the uncontrolled access of CD's and CD burning software in the public domain. It must be noted that CD sale and distribution has become a viable business in Uganda. The reason is because any one with a CD Rom or CD Re-writable hardware fixed on thier computer can by a click, install a CD burning software for example Nero, and burn any amount of copyrighted works without any license and at a free cost. In such ways, protection of the copyright owner is not guaranteed since there is no absolute way one can tell who is infringing his copyright at a given time.

The only way the government of Uganda can regulate such tendencies is through illegalizing sale and distribution of CD's. Thus, if the government imposed a compulsory license for the chosen CD outlets and for example introduced a system that would track the CD's sold like through

issue of generative codes, this issue would be solved. I therefore recommend that CD licenses be levied upon the outlets to reduce the tendencies of their easy access by the public.

#### 4.1.2.2 Use of Authentication Generative Codes or Keys

Over the internet, one way of reducing copyright infringement is through authentication generative codes. These are codes that cannot be duplicated by anyone, minus the author. These may work perfectly well in Computer software copyrights. Under these, a copyright owner makes a parent key that enables the public to access his copyright, and subsequently makes generative<sup>195</sup> codes, which can be used only once and by only one person.

An Authentication key is a digital electronic key employed to ensure that data exchanged during an electronic transaction remains unchanged and cannot be interfered with by any unauthorized third party and it consists of a set of digital electronic code which is based on some unique information, that is, amount, date and time, of the transaction it authenticates and secures.<sup>196</sup>

Key authentication is a problem that arises when using public key cryptography.<sup>197</sup> It is the process of assuring that the public key of "person A" held by "person B" does in fact belong to "person A". The simplest solution for this problem is for the two users concerned to meet face-to-face and exchange keys. However, for systems in which there are a large number of users or

---

<sup>195</sup> This refers to the ability to produce or originate from something already in existence or involving the ability to produce or originate something. <http://www.bing.com/Dictionary/search?q=define+generative&FORM=DTPDIA>. Accessed on 10th August, 2016 at 10:00am.

<sup>196</sup> <http://www.businessdictionary.com/definition/authentication-key.html> *ibid*

<sup>197</sup> This is the science of analyzing and deciphering codes and ciphers and cryptograms. A cryptogram is a piece of writing in code or cipher. Accessed on word web e-dictionary on 10<sup>th</sup> August, 2016 at 11.00am

in which the users do not personally know each other for example, internet shopping, this is not practicable.

The most common solution to this problem is the use of key certificates and certificate authorities for them in a public key infrastructure system, The certificate authority acts as a 'trusted third party' for the communicating users and, using cryptographic binding methods for example, digital signatures, represents to both parties involved that the public keys each holds which allegedly belong to the other, actually do so. However, in a significant sense, this merely moves the key authentication problem back one level for any one may make a good faith certification of some key but, through error or malice, be mistaken. Any reliance on a defective key certificate 'authenticating' a public key will cause problems.

Generative authentication keys may solve the prevalent problem of copyright infringement on the cyber space. This is because the copyright owner will make an initial key that will be availed to the public but will not be reproduced since it is generative in nature. Thus, any other person who needs to access the copyrighted material of the owner, will have to purchase the code, and as a result will be able to acknowledge the rights that copyright law renders to the copyright owner<sup>198</sup> and this will in effect render maximum protection to the copyright owner.

#### **4.1.2.3 Trial Versions**

In some jurisdictions, this concept has been developed that has enhanced copyright protection. The Copyright and Neighboring Rights Act recognizes the right to fair use of the copyrightable work.<sup>199</sup> This means that copyright unlike other intellectual property rights has no monopolistic

---

<sup>198</sup> Section 9 and 10 of the Copyright and Neighboring Rights Act, Supra.

<sup>199</sup> Section 15, Copyright and Neighboring Rights Act, Supra.

right but is supposed to be used by the public, provided the rights that the copyright owner enjoys, arising from the copyright are recognized.

The leading problem that the cyber revolution has created is the fact that there is no limit to the right of reproduction on the cyber space, take an example where an individual publishes his copyright on to the internet, this will be reproduced by anyone who accesses it without any limitation and provided he has the required software installed on his computer. This can be limited through trial versions.

A trial version simply means the act of testing a copyright. Under this, the copyright owner waives his rights towards the copyright for the public to utilize until a specified time when the person using it decides whether to keep using the copyright or revert the rights back to the original copyright owner.

This entails that members of the public will have to buy the copyright upon the expiry of the trial version and thus fulfilling the notion that the economic rights of the owner must be recognized by the user under **Section 9 of The Copyright and Neighboring Rights Act**. If he does not do so, the limited license to use the copyright will be terminated.

This method has become successful both in advertising and protecting the copyright owner from any infringing acts carried out as a result of publications on the internet. If this could be adopted in the Ugandan copyright jurisprudence, a lot of infringements would be dealt away with.

#### **4.1.2.4 Technical Measures**

There are two main types of technical measures that can be employed to combat copyright infringement in the face of the cyber revolution. The first is the Copy protection measures to

limit access to copyrighted material or to inhibit the copy process itself. To be fully effective these require the protection measures to be included not only in the media that is, CDs, DVDs, and SDVDs, but also in the devices that read them such as players and computer drives.<sup>200</sup>

Another measure of Copyright protection is through inserting copyright information into digital media. This information can be extracted to identify the rightful owner. Such a system can only track unauthorized copying.<sup>201</sup>

One of the major ways to enforce these technical measures is through the **Uganda National Bureau of Standards (UNBS)**.<sup>202</sup> UNBS should be empowered to undertake on copyright protection reforms, with a clear vision of being a leading institution of international repute in the provision of standardization services and a mission of enhancing national development through the application of standards in trade, industry and consumer protection,<sup>203</sup> UNBS ensures that certain products comply with certain standards in manufacture, composition, treatment or performance and to prohibit substandard goods where necessary<sup>204</sup> and provides an avenue for the testing of locally manufactured or imported commodities with a view to determining whether the commodities conform to the standard specification declared under the Act.<sup>205</sup>

Whereas this has been applied to most commodities and products in Uganda, little or almost no step has been made on copyright-related works especially those relating to the enhancement of

---

<sup>200</sup> Copyright and the internet. Parliamentary office of Science and Technology, Postnote. October 2002. No 185. <http://www.parliament.uk/post/pn185.pdf> accessed on 10th September, 2016 at 8:30am.

<sup>201</sup> *ibid*

<sup>202</sup> Uganda National Bureau of Standards (UNBS) is a statutory organization established by an Act of Parliament of June 1983 and became operational in 1989. The UNBS Headquarters is located in Nakawa Industrial Area with regional offices in Lira, Mbale, Jinja, Kampala and Mbarara. <http://www.unbs.go.ug/> Accessed on 10<sup>th</sup> September, 2016 at 12:46am.

<sup>203</sup> <http://www.unbs.go.ug/> *Ibid*.

<sup>204</sup> Section 3(e) The Uganda National Bureau Of Standards Act, Chapter 327 Laws of Uganda.

<sup>205</sup> Section 3(h), *Ibid*

internet and the cyberspace. Thus, the Standards Development Department<sup>206</sup> especially in engineering division, management services division and the editing section should be improved. One of the ways to improve this is through empowering Standard Inspectors a provision under the law as per **Section 13 of the UNBS Act**. Thus, every inspector should be furnished with a certificate of authority signed by the director stating that he or she is authorized to act as a standards inspector for the purposes of this Act.<sup>207</sup> A standards inspector may at all reasonable times upon identifying himself or herself to the person in charge, enter any premises where goods are kept, manufactured, produced, processed or treated; inspect and take reasonable samples of any commodity or any material, component, or substance thereof used or likely to be or capable of being used in the manufacture, production, processing or treatment of any commodity; inspect and test any process, treatment, or other operation which is or appears likely to be carried out on the premises in connection with the manufacture, production, processing or treatment of any commodity in relation to the quality of which any investigation is necessary; require any person to produce any book, record or other document in his or her possession, custody or control; examine and if necessary carry away any commodity, ingredient, material, component or substance, book, record or other document which appears to him or her relevant to any investigation; require information relevant to his or her inquiry from any person who is reasonably believed to possess such information as may assist in any investigation made under this Act; require any person in charge of any commodity, material, ingredient, component or substance to carry out such demonstration, test or analysis as he or she is able to do, or to give

---

<sup>206</sup> A Uganda Standard is a document declared as such by the National Standards Council. It may either be a specification, a code of practice or specifically other aspects such as terms and definitions, symbols, sampling and test methods and quality systems. <http://www.unbs.go.ug/main.php?menuid=20> Accessed on 18<sup>th</sup> September, 2016 at 8:00am

<sup>207</sup> Section 13(2), UNBS Act

such assistance as the inspector may require in any investigation required under this Act; require any person to report to his or her office or to any other place within such time as he or she may specify for the purpose of obtaining the information the inspector may require from that person.<sup>208</sup>

Pertaining to curbing copyright infringement as a result of the cyber revolution, such standard inspectors should be empowered to enter and search any household or premise where it is reasonably believed that an infringing activity is taking place.<sup>209</sup> This will therefore enable protect copyright owners from infringements arising out of reproductions carried out in home settings.

Furthermore, the **Copyright and Neighboring Rights Regulations**<sup>210</sup> establish a new method of protection of sound recordings and audio visual recordings, which method can be adopted and used by the standard inspectors to enhance copyright protection. According to section 19,<sup>211</sup> a security device shall be affixed to each and every sound recording or audio visual recording which is distributed or otherwise exposed to the public for sale, hire or rental within Uganda. This will have an impact of identifying which copyrighted CD's for example, are original or which CD's are duplicates, since a security mark will only be issued after certification of the copyright owner's copyright. Thus, where a sound recording or audio visual recording does not bear a security device, which is either imported or distributed or offered or exposed to the public for distribution by way of sale, hire or rental within Uganda, it shall be considered as infringing

---

<sup>208</sup> Section 14, UNBS Act.

<sup>209</sup> Interview with Mr. Matovu Dick, a member of the Uganda Performing Rights Society. The interview was held on 5<sup>th</sup> June, 2016, at 2:30pm at UPRS offices in Kampala.

<sup>210</sup> Statutory Instrument Supplement no,1 of January 15<sup>th</sup>, 2010

<sup>211</sup> *Ibid.*

copyright and may be seized by an inspector, police officer or an officer of customs and excise.<sup>212</sup>

#### 4.1.2.5 Encryption

In other jurisdictions, especially in USA and the Western countries, copyright protection has been encouraged in the cyber space through use of encryption. Encryption is the conversion of data into a form, called a cipher text that cannot be easily understood by unauthorized people.<sup>213</sup>

Under encryption, digital content is encoded to prevent it from being viewed until it reaches a user possessing a decryption key. Decryption is the process of converting encrypted data back into its original form, so it can be understood.<sup>214</sup> Encryption does not prevent an authorized user from making unauthorized copies. Content Scrambling System (CSS) is an example of an encryption system that uses a series of different keys to prevent DVDs from being copied and to enforce region-specific coding.<sup>215</sup> Underlying encryption is the concept of Copy Control Flags. This augments digital flags inserted into content that indicate whether copying is authorized, how many copies can be made and the duration of viewing. Encryption can be enforced through CD Copy Protection. Under this, an additional track is inserted into an audio CD to prevent it from being played or copied on a CDROM. Early versions were relatively easy to circumvent.

---

<sup>212</sup> Regulation 22 of the copyright and Neighboring Rights regulation 2010.

<sup>213</sup> [http://searchsecurity.techtarget.com/sDefinition/0,,sid14\\_gci212062,00.html](http://searchsecurity.techtarget.com/sDefinition/0,,sid14_gci212062,00.html) Accessed on 10<sup>th</sup> September, 2016 at 8:30am.

<sup>214</sup> *Ibid.*

<sup>215</sup> This means that DVDs bought in one world region will play only on players bought in that region.

Thus, with the process of encryption, a copyrighted work will be able to be published on the internet without any fear<sup>216</sup> of infringement since the only authorized person to use the copyright will be that individual that has the decrypting key. Thus, Ugandan copyright owners should adopt such methods and skills in computer literacy to enhance such copyright protection through encryption and decryption mechanisms.

## 4.2 CONCLUSION

Copyright infringement especially piracy has been cited by many copyright-holders as being rampant, uncontrolled and in urgent need of attention. However, not all rights-holders agree on the importance of mechanisms for dealing with infringement in the cyberspace. For some musicians, piracy is considered a necessary evil, a means through which young musicians gain publicity to establish themselves in a very competitive industry. Name recognition is essential in attracting audiences for public performances, the main source of income for most musicians.<sup>217</sup> In learning environments, piracy which at times is confused with legitimate copying is a primary vehicle for accessing highly priced learning materials, or materials that are simply unavailable. High cost and unavailability are both real challenges in a country such as Uganda with a publishing industry still so limited. Poverty is so rampant that some users, among who include students, find it difficult to afford even cheap photocopying. Rights-holders in the literary world, while decrying piracy, at the same time acknowledged the high prices of learning materials as fuelling the demand for pirated materials.

---

<sup>216</sup> However, this does not mean that an encrypted copyright is free from infringement. Some computer wizards can infringe such works through hacking, which is illegal.

<sup>217</sup> African Copyright and Access to Knowledge (ACA2K) Project. Country Report UGANDA MAY 2009. Dick Kawooya, Ronald Kakungulu and Jeroline Akubu. [www.aca2k.org](http://www.aca2k.org)

Uganda has a relatively vibrant information sector, including a small but fast-growing publishing industry. Furthermore, Uganda has a liberalized telecommunications industry which has contributed tremendously to growth of the country's ICT sector. Given this infrastructure, education and research institutions are making increasing use of digital technology for both instruction and research.

Furtherstill, Ugandans whose livelihoods depend on copyright laws have wanted a law with both criminal and civil remedies, with minimal interference with the rights that are granted to legitimate users. Ugandan and foreign writers, artists, performers, continue to be robbed, contrary to the provisions found in the law under **Article 26 of the 1995 Constitution of the Republic of Uganda.**

Thus, mechanisms should be undertaken to ensure that copyrights are easily accessed by the public as well as ensuring that the copyright owners are protected against any infringements arising as a result of reproductions carried out on the internet. It has been argued by some scholars that publication on the internet amounts to placing one's copyright in the public domain.<sup>218</sup> However, this is not the case where copyrights are placed on the internet and still protected through encryption and trial version or evaluation copies.

In my final analysis therefore, though the cyber revolution has increasingly stepped up copyright infringement, yet it is true that new methods are being developed to try and protect copyright owners from such infringements and as such, I recommend that these methods be not only developed but also adopted to enhance the future of copyright law in Uganda.

---

<sup>218</sup> Proff. Bainbridge, *supra*.

## REFERENCES

### Textbooks

1. Bainbridge David, *Intellectual Property Law*, 5<sup>th</sup> ed. Edinburg, Pearson Education Limited, 2002.
2. Bryan A Garner, *Black's Law Dictionary*, 8<sup>th</sup> ed. Thomson West Publishing Company, West Group, USA.
3. Chris Reed and John Angel, *Computer Law*, 5<sup>th</sup> ed. (Indian Edition), New York, Oxford University Press, 2003.
4. Cornish, *Cases and Materials on Intellectual Property*, 5<sup>th</sup> ed. London, Sweet and Maxwell, 2006.
5. Yee Fen Lim, *Cyberspace Law, Commentaries and Materials*, South Melbourne, Oxford University Press, Australia, 2002.
6. *World Book Encyclopedia*, 2001, Volume 10, World Book, Inc. Scott Fetzer Company, Chicago

### Journals and Reports

1. Edgar Tabaro, "Copyright Law Reform in Uganda, Addressing International Standards at the expense of Domestic Objectives." ACODE Policy Briefing Paper, No. 10 of 2005.
2. Edgar Tabaro, *Multimedia Convergence and the Future of Copyright in Broadcasts*. Uganda Living Law Journal, Volume 1, No. 2 of December 2003.

### Websites

1. [www.acode-u.org/documents/PBP%2010.pdf](http://www.acode-u.org/documents/PBP%2010.pdf) Accessed on 23<sup>rd</sup> July 2016 at 11:05 am
2. <http://www.copyright.gov/circs/circ1a.html> Accessed on 17th April, 2016 at 5:30am.
3. <http://www.ipo.gov.uk/types/copy/c-about/c-history/c-history-1662.htm>. Accessed on 15th May 2016 at 10:45pm.

4. <http://www.ipo.gov.uk/types/copy/c-about/c-history/c-history-ucc.htm>
5. <http://www.copyright.gov/circs/circ1a.html> Accessed on 17th May, 2016 at 4:50pm.
6. [http://www.uprs.biz/challenges\\_faced.html](http://www.uprs.biz/challenges_faced.html). Accessed on 18th March, 2016 at 2:00pm
7. <http://www.thewip.net> . Accessed on 19<sup>th</sup> March, 2016 at 8:30am.
8. <http://www.answers.com/topic/copyright> Accessed on 15th March, 2016 at 10:40pm
9. <http://www.nabotu.or.ug/papers/jeroline.pdf> Accessed on 18th June, 2016 at 8:30am
10. [http://www.bc.edu/bc\\_org/avp/law/st\\_org/iptf/articles/content/1999060401.html](http://www.bc.edu/bc_org/avp/law/st_org/iptf/articles/content/1999060401.html)  
Accessed on 18 August, 2016 at 10:30am.
11. <http://cc.bingj.com/cache.aspx?q=direct+copyright+infringement&d=4935252499170732&mkt=en-US&setlang=en-US&w=53157ebe.c4b682e9> Accessed on 19<sup>th</sup> June 2016 at 7:00 am
12. [http://www.bc.edu/bc\\_org/avp/law/st\\_org/iptf/articles/content/1999060401.html](http://www.bc.edu/bc_org/avp/law/st_org/iptf/articles/content/1999060401.html)  
Accessed on 19<sup>th</sup> June 2016 at 10:00 am
13. <http://cc.bingj.com/cache.aspx?q=direct+copyright+infringement&d=4935252499170732&mkt=en-US&setlang=en-US&w=53157ebe.c4b682e9> Accessed on 19<sup>th</sup> June 2016 at 4:00 pm
14. <http://www.benedict.com/Digital/Internet/Fonovisa/Fonovisa.aspx> Accessed on 25th June, 2016 at 10:00am.
15. [http://www.bing.com/reference/semhtml/Grateful\\_Dead?src=mtoc&fwd=1&q=grateful+dead&qpvt=grateful+dead](http://www.bing.com/reference/semhtml/Grateful_Dead?src=mtoc&fwd=1&q=grateful+dead&qpvt=grateful+dead) Accessed on 25th June, 2016 at 4:00pm.
16. <http://gunkelweb.com/coms465/articles/amateur2amateur.html>. Accessed on 2nd March, 2010 at 8:07am.
17. <http://www.ptcforum.org/ARTICLE%2020076.htm> Accessed on 27th June, 2016 at 10:00pm.
18. [http://itlaw.wikia.com/wiki/Direct\\_copyright\\_infringement](http://itlaw.wikia.com/wiki/Direct_copyright_infringement) Accessed on 28th July, 2016 at 10:00am.
19. [http://dmca.ucr.edu/dmca\\_policy.html](http://dmca.ucr.edu/dmca_policy.html). Accessed on 30th July, 2016 at 7:00am.
20. [www.copyright.gov/legislation/dmca.pdf](http://www.copyright.gov/legislation/dmca.pdf) Accessed on 31st July, 2016 at 9:00am.
21. <http://www.omb.gov.ph/aboutus.html> Accessed on 4th August, 2016 at 7:00am.

22. [http://www.austlii.edu.au/au/legis/cth/num\\_act/caa2006213/](http://www.austlii.edu.au/au/legis/cth/num_act/caa2006213/) Accessed on 4th August, 2016 at 12:00am.
23. <http://www.comlaw.gov.au/> Accessed on 4th August, 2016 at 12:40am.
24. [http://www.comlaw.gov.au/comlaw/Legislation/Act1\\_nsf/0/C8E557D7AAAED1F2CA257242000CE35D?OpenDocument](http://www.comlaw.gov.au/comlaw/Legislation/Act1_nsf/0/C8E557D7AAAED1F2CA257242000CE35D?OpenDocument) Accessed on 4th August, 2016 at 4:40pm.
25. <http://dictionary.reference.com/browse/Liability> Accessed on 5th August, 2016 at 8:40am.
26. <http://afro-ip.blogspot.com/search/label/Uganda%20copyright%20regulations%202010> Accessed on 5th August, 2016 at 10:00am.
27. <http://www.undp.or.ug/mdgs/25> Accessed on 6th September, 2016 at 8:00am.
28. [http://dmca.ucr.edu/dmca\\_policy.html](http://dmca.ucr.edu/dmca_policy.html), Accessed on 6th September, 2016 at 9:00am.
29. <http://www.bing.com/Dictionary/search?q=define+generative&FORM=DTPDIA>. Accessed on 10th August, 2016 at 10:00am.
30. <http://www.parliament.uk/post/pr185.pdf> Accessed on 10th September, 2016 at 8:30am.
31. <http://www.unbs.go.ug/> Accessed on 10<sup>th</sup> September, 2016 at 12:46am.
32. [http://searchsecurity.techtarget.com/sDefinition/0,,sid14\\_gci212062,00.html](http://searchsecurity.techtarget.com/sDefinition/0,,sid14_gci212062,00.html) Accessed on 10<sup>th</sup> September, 2016 at 8:30am.
33. [www.aca2k.org](http://www.aca2k.org)