FIRST EDITION

THE LAW OF MUSIC IN UGANDA

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Music and the Law in Uganda

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Dedication

Oh God, Even my God my Hish Tower, my refuge, my Redemeer, my only source of hope. This and many more is for you Oh God of the mighty universe.

About the book

Music law is important to creating and performing music. Music lawyers do their part to help their clients understand the laws and protect their interests. While the music industry primarily involves licensing and contract law, music law may involve a number of different types of law that are all a part of creating and performing music so the question therefore is

What is Music Law?

Music law is the law that affects the music industry. Music is commercially bought and sold in the Uganda and around the world. Any law that impacts how the music industry does business is part of music law. Music law includes any laws of any kind that apply to the business of creating, selling, performing and listening to music. Music law is a part of entertainment law.

Music lawyers are entertainment lawyers, are primarily contract lawyers, but they also work in all of the fields of law that music law may involve. Music lawyers also handle dispute resolution that may include formal litigation. While music lawyers work throughout the world, they may concentrate in areas where musicians need their services. Some music lawyers may function as an all-purpose agent for their clients. Other music lawyers work only on legal issues that arise for their clients. music law may be a good fit. A lawyer who advises their client in all areas of music law may have a well-rounded practice.

Lawyers who enjoy music may enjoy working on behalf of those in the music industry. Music law can be academically challenging, and it can involve many different types of law. A music lawyer can tailor their practice to meet their interests.

And whom does music law impact? Music laws impact most people in society in one way or another. Music law impacts the people who write music and the distributors who purchase the rights to perform and sell music. Music law also impacts performers who must have a legal right to perform music. Businesses that seemingly have no relation to music law like restaurants must ensure that they comply with music laws when they conduct business. Even consumers must follow music laws.

Music law governs the activities of musicians, record producers, and those working on behalf of recording companies. A number of legal issues often occur during the execution of entertainment deals and other business transactions. These issues include recording contracts, copyright issues, royalties, compulsory cover licensing, and more. Understanding copyright is one of the foundational aspects of music law.

The right of anybody over his/her creative output is an exclusive one. Artistes encounter various kinds of encumbrances in their bid to make a living out of their creative abilities as a result of infringement and some other ugly practices which undercut the economic benefit of the intellectual property of these talented artistes. There is no doubt that the copyright law has been developed and established in Uganda, but the strategies that have been put in place to ensure its effective implementation and the opportunities provided for the copyright owners to maximally exploit their rights are in question. This book seeks to address the need for the Uganda's Copyright Neighboring Act to undergo reformation in order to enhance the protection which the law purports to afford the owners or authors of the copyrighted works in the music industry. The book also critically examined the strategies already in place and what needs to be done towards making the Copyright Act more acceptable and beneficial to all intellectual property owners which invariably will encourage the spirit of creativity and productivity in the music industry. The investigation applied historical and other related resource materials as working tools. The book concludes by suggesting that Uganda government should form a formidable force through public enlightenment, collaboration among agencies, and with the copyrights owners' cooperation in order to

enhance effective enforcement of intellectual property rights which will go a long way in boosting the music industry in Uganda

A copyright is a legal instrument that protects original works of authorship. These works include any type of artistic, literary, musical, or dramatic creation such as books, poetry, movies, music, lyrics, computer software, and architecture. After writing music or lyrics, a composer or songwriter can register a copyright that will protect this intellectual property. The copyright remains in effect for 50 years after the death of the artist. When a copyright lists more than one creating artist, the protection lasts for 50 years from the date of death of the last surviving person. The question therefore is whether the present Copyright and neighboring law has any rules that pertain directly to music law and copyright. According to certain laws, music and songs published prior to 1923 are considered to be part of the public domain. This means that these artistic works are no longer protected by copyright. I guess then the magic question is, could this be the state of music law in Uganda, this book no doubts give the answers to such many questions welcome to understanding the law of music.

While music law focuses primarily on copyright law and licensing, music law also involves other areas of law in the music business. Other types of law that are part of music law include:

Contract law

Contracts are at the heart of the music business. Artists, song writers, producers, distributors and even consumers rely on contracts to create, sell and listen to music. Many performers and event producers are independent contractors, and music producers rely on distributors to sell their work. For all of these people in the music industry, contracts are important to make sure that everyone involved has clear expectations. Even consumers use contract law in the music industry. Anyone who buys a subscription to a music

service or even buys a concert ticket has some interaction with music-related contract law.

Copyright infringement is the unauthorized or prohibited use of protected material. Songwriters and composers are common victims of copyright infringement. The artist with a copyright can seeks monetary damages and associated expenses from anyone who uses the protected work in an unauthorized or prohibited fashion. Proving copyright infringement involves showing direct evidence of the duplication of protected material. Indirect evidence may also be admissible, such as showing that someone had access to protected material before producing a work that is identical or similar.

The field of music publication is vast, including the development of new music, protection of this music, and promotion of it. Music publishers invest in artists and the music they will produce in the future. Thus, music publishers monitor copyrights carefully to make sure that infringements do not occur. Someone working in the field of music publishing will often assist composers and songwriters with protection and promotion of their music, freeing the artists to create more music. Music publishers may actively register copyrights for new creative works, grant licenses for reproduction of musical scores, negotiate and arrange commissions for artists, watch for copyright infringement, arrange royalties for artists, and move forward with legal action if a copyright is violated.

Everyone who works in the music industry is subject to laws that govern their rights and actions. Music publishers must abide by these laws, as must artists, producers, promoters, and executives. These laws pertain to the terms of record deals, print licensing for sheet music, royalties for artists' public performances, and more. Anyone who fails to fulfill terms of a contract could be sued for breach of contract, which might involve a lawsuit in which the other party tries to recover damages. Discrimination and wrongful termination are other common issues that can arise.

Attorneys can specialize in entertainment law, which means that these professionals have special expertise in entertainment industry issues such as copyrights, royalties, and licensing. Hiring an entertainment lawyer is helpful for contract negotiations, copyrights, trademarks, labor disputes, and even tax filings. The specific state of residence will determine the laws that must be followed. Uganda has not enacted specific entertainment laws. Hence the reason for it to unlearn, learn and relearn from other jurisdictions, music law is a ground breaking phenomenon in our country thus the need to take it very seriously, there is more need of entertainment regulation, so specific laws are in place in Uganda. Such novel areas include the following:

Copyrights Concerns

- Copyright and the Public Domain
- Copyright Basics for Musicians
- Copyright Registrations for Musical Compositions
- Copyright Law: What Music Teachers Need to Know
- Music Copyright Law in the Uganda.
- Most Commonly Misunderstood Music Copyright Laws
- Uganda Copyright Law
- About Piracy
- Parody: Fair Use or Copyright Infringement?
- How Are Copyright Laws Enforced?
- Music Copyrights

Publishing Concerns

- Songs on Trial: Landmark Music Copyright Cases
- Is it a “Sound Recording” or a “Composition”?
- Music Publishing Laws and Regulations
- Who Owns Your Music Publishing Rights and How Does the Money Get Split?
- What Are Music Publishing Rights?
- The Three Types of Music Publishing Agreements (and Why They’re Important)
- Distinguishing Publishing from Producing in the Music Industry
- Music Publishing
- Musical Arrangements and Copyright Law
- Copyright Law, Treaties, and Advice
- Music Law and Business
- Music Publishing and You
- Music Recording, Publishing, and Compulsory Licenses

CHAPTER ONE

Introduction

Music Law refers to legal aspects of the music industry, and certain legal aspects in other sectors of the entertainment industry. The music industry includes record labels, music publishers, distributors, merchandisers, the live events sector and of course performers and artists.

Uganda, is now ranked number three in Africa as far as music and entertainment is concerned. Uganda is home to over 65 different ethnic groups and tribes, and they form the basis of all indigenous music. The Baganda, being the most musically vibrant nationality in the country, has defined what constitutes culture and music of Uganda over the last two centuries.

The first form of popular music to arise out of traditional music was the Kadongo Kamu style of music, which arose out of traditional Kiganda music. From the 80s till early 90s, Kadongo Kamu was influenced by musicians such as Peterson Mutebi, Dan Mugula, Sebadduka Toffa, Fred Ssonko, Livingstone Kasozi, Fred Masagazi, Baligidde, Abuman Mukungu, Gerald Mukasa, Sauda Nakakaawa, Matia Luyima, Herman Basudde, and Paulo Kafeero music genres drew from Kadongo Kamu, making it the most influential style of music in Uganda. In the late 80s, the late Philly Lutaaya released his "Born In Africa' album that would later dominate the air waves. Lutaaya also released his "Merry Christmas" that consisted of 8 songs. This

album is still popular to date, all Philly Lutaaya's songs are now anthems amongst Ugandan music lovers. In the early 1990s, a new music genre afro ragga locally called *Kidandali* formed by Rasta Rob, Kid Fox, Ras Khan, Messe, Shanks Vivid, Menton Summer, Ragga Dee, Bebe Cool and Jose Chameleone Bobi Wine and Steve Jean - who would later produce their songs. In 1997, Emperor Orlandoh and Menton Summer were the darlings after their "Sirikawo Baby" song becoming a national hit. In the year 1998, Red Banton rose to fame with his "Noonya Money" album. He became the first Ugandan artist to travel to UK on an Artist Visa. Because of the effects of globalization, Uganda, like most African countries, has seen a growth in modern audio production. This has led to the adoption of western music styles like Dancehall and Hip Hop.

Uganda's most travelled and popular DJ, Erycom, real names Mutebi Erycom, was the first Ugandan to own a Youtube channel and he's among the first two Ugandans to make Ugandan music circulate online digitally.

DJ Erycom has used the availability of internet to promote Ugandan music and Ugandan artists, hence the reason as to why Ugandan music has reached every corner of this digital world.A number of performing artists have joined the Uganda Performing Rights Society which has further more improved Uganda artists music and benefits through its roles as copyright administrators.

Traditional music from different regions of Uganda

Uganda is divided into 4 regions namely; Central, Northern, Eastern and Western. Each region has distinct traditional music as per the tribes and ethnicities. Uganda's nationalities are diverse and spread evenly throughout the country. Native music in Uganda, like in most African regions, is mainly functional. This means that most music and music activities usually have

specific functions related to specific festivities like marriage, initiation, royal festivals, harvests and war among others. The music is performed by skilled tribesmen and women who are good at playing various traditional instruments, folk songs and traditional dances.

Central

The Baganda are found in Buganda in the central region; they are the largest native nationality in the country. The kingdom is ruled by a king, known as a Kabaka. The kabaka has traditionally been the main patron of the music of Buganda. Musical instruments include various forms of drums, making percussion an integral part of the music). The massive and sacred royal drums are just one of the many drum types. The engalabi is another common drum and it is a long round shaped drum.

The drums are used in unison with various other melodic musical instruments ranging from chordophones like the ennanga harp and the entongoli lyre, lamellophones, aerophones, and idiophones and the locally made fiddle called kadingidi. Music is played for dancing in the community, Call and response style of singing is common with the Bantu[8] from the 19th century.[9] The Baganda have a variety of vibrant dances that go along with the elaborate instrumentation. The bakisimba dance is the most common and most performed. There are others categorised and the amaggunju. The amaggunju is an exclusive dance developed in the palace for the Kabaka. Northern Uganda in particularly Acholi had a powerful Vocalist name Ojara Eddy in the late 80's.

Eastern

To differentiate Eastern region from other regions. This region has several tribes namely Bagwere, basoga, banyoli, bagisu, jopadhola, iteso, sabin,

basamya and each tribe has its kind of music. In the 90s these tribes used to produce music using their own made instruments like the Bagwere had an instrument called kongo, Basoga had xylophones (mbeire), Jopadhola and banyoli had fumbo, iteso had adungu so during that time their music was different in production and composition according to which tribe was singing. In the 20th century, many tribes have tried to adopt to modern production and still they make their songs in their native languages according to their tribes. There are many artist from several tribes like bagwere have waisana, benenego, rapper sky dee,area b, waikere ,bluzman etc, Bagisu have san sea, ben,nutty neithan etc, Basoga have crazy mc,racheal magola,maro etc. Most of these tribes have kings that have helped in the promotion of culture and music at large, the Bagwere king is called ikumbania, the Bagisu king is called omukuka, the Basoga king is called chabazinga, the iteso king is called emorimori. Lastly eastern region has several districts.

Western

Talents have developed from ages of Sister Charity, Chance Kahindo and Rasta Charz to the years of Ray G, Jolow, Allan Toniks, Seyo, T Bro, Emily Kikazi, Muzz Joe, T Paul, Rachael T, Mat Henry, CJ Champion to Penny Patra, Amani Amaniga, Carol Kay, Prettie Immaq and more of the new guys on block. After the success of a one "Omusheshe" song of Ray G & Spice Diana, Runyankole was embraced in major parts of Uganda. Central artists too teaming up with western Uganda's artists on songs like "True man hood" Allstars ft T Bro, "Tikikushemerire" of Gen Geeon ft Jose Chameleon, "Yeele" Geosteady ft Ray G, "Ninkukunda" Ray G ft Voltage music, "Mbarara boy" Mc Kacheche ft John Blaq, "Elevate" Rachael T ft Colifixe, "Sagala" T Paul ft Cosign. These too have boosted the industry to the national level.

The growth of deejaying industry that saw the coming in of DJs Alberto 43, Dj Mats, DJ Sky, Riddim Selecta, Starcent Dj, Jahlive, DJ Emma, DJ Bristol

and deejays labels like XL Deejayz Street Deejays, Massive effect Deejays, 43 Effect Deejays among a few.

Music promoters' impact. From Online and Offline, including Feezah music uganda Alpha Promotions, Bantu Hits,[12] Uganda Djs Online Radio Karen Promotions, D3 Promotions, Lala Promotions, Patra Promotions, JKG Promotions, MOK Alozius Promotions, individuals like Dely Derick, Mc Katala, Mr vybs live among many. Radio and Television are supporting talent too. The development of radio from the regions first radio "Voice of Tooro" to Radio West, Messiah Radio in Kasese, Voice of Kigezi to Endigyito, Voice of Kamwenge, Kasese Guide Radio, Rwenzori FM, BFM, Hits FM, and urban radios like Crooze FM, Boona FM, K Town Radio, Ngabu FM and Street Deejays Radio (Online Radio) has seen western Uganda's music grow fast. Television development has been slow thou the coming of TV West, and Bunyoro TV has also developed western Ugandas music. The two TVs have given platforms to the artists through playing their videos on visuals and bringing them to the public eye. Through radios and TVs, we saw the coming of Mc Kacheche, Kunana MC, Lithan MC, Mr Jay among others. Kacheche's coming is one of the reasons Western Uganda's music has been embraced in the central. The growth in music events, especially in bars of Mbarara, Rukungiri, Kabale, Fort Portal, Ishaka, Kasese and Kamwenge gives platforms to the starting artists to be heard of.

Popular music

Because of Uganda's turbulent political history, there was never enough time for there to be a thriving pop music industry until relative peace was restored in the late 1980s. By then, musicians like Philly Lutaaya, Afrigo Band, and Elly Wamala were the few Ugandan acts to have had mainstream music success. Jimmy Katumba and his music group the Ebonies were also popular at this time, especially towards the 1990s.

Musicians like, Carol Nakimera, Kezia Nambi, Fred Maiso, Kads Band, Rasta Rob, Menton Summer were on top of the Ugandan music game between 1990 and 1997. Artists like, Livingstone Kasozi, Herman Basudde and Paulo Kafeero also played a great role in bringing live music near to the fans.

According to popular music promoter and legendary DJ Erycom, In the year 1998, Uganda experienced the biggest change musically. Thanks to musician Red Banton (the Five star general) who rose to fame with his Noonya Money hit song that played country wide. Red Banton ruled the Ugandan music scene until the year 2000 when Jose Chameleone returned from Kenya with his "Mama Mia" song that turned into a National anthem in Uganda and East Africa at large.

The 1990s saw Uganda's love affair with Jamaican music begin when artists like Shanks Vivi Dee, Ragga Dee, and others were influenced by Jamaican superstars like Shabba Ranks. They imported the Ragga music culture into Uganda and, although they faced stiff competition from other African music styles and musicians at the time, in particular Soukous from Congo and Kwaito from South Africa, they formed the foundation of the pop music industry. But it was not until the 21st century when musicians like Chameleone emerged that a pop music scene really began.

By around 2007, there were a number of musicians practicing varied styles of music, and the role of western and Congolese/South African music had greatly diminished. Today, musicians like Iryn Namubiru and King Saha are just a few of the many pop musicians in a thriving and vibrant pop music scene. The pop music duo of Radio & Weasel, the Goodlyfe Crew, is well known around Africa, being nominated in the continental MTV Base awards in 2010 and BET awards in 2013. In June 2015, Eddy Kenzo won the award for "Best new international artist" at the 2015 BET music awards.

Kadongo Kamu

The word "Kadongo Kamu" is a term in the Luganda language that means "one guitar". The music is given this name because of the role played by the bass guitar, which most times is the solo instrument used in creation of the music. Perhaps the first well known artist of the genre was Fred Masagazi in the 1960s.

The late Elly Wamala contributed a lot in making urban Kadongo Kamu style. Christopher Sebadduka popularised the genre and perhaps this is why he is considered by many to be the God father of kadongo kamu. Elly Wamala abandoned this genre because it was also instrumented by non-elite like Christopher Sebadduka. His brand of educative singing won him many fans and he is one of the few musicians who was involved with Uganda's independence in 1962. They were followed by a number of musicians who kept true to the style and sound of the music.

Herman Basudde was a very popular kadongo kamu musician in the 1980s and 1990s. So was Bernard Kabanda. Dan Mugula is one of the few surviving pioneers of the genre. Fred Sebatta and Paulo Kafeero made their mark in the 1990s. Today, the genre is marginalized in favor of more recent styles of music. But because the music is loved by cultural loyalists in the buganda region, it is certain that there will always be an audience for kadongo kamu.

Kidandali

Kidandali is a music genre that currently is arguably the most popular genre of music in Uganda. However, the term "kidandali" is not universally agreed on as the name of this genre with some local sources preferring instead to use the very simplistic term "Band Music" while others prefer the term Afrobeat, even though the music shares no similarities with Afrobeat. The roots of this genre can be traced back to the bands that sprung up after Uganda got independence in 1962.

The Cranes Band, which later gave birth to Afrigo Band, can be regarded as the first group in the evolution process of this genre. At the very outset, their music was heavily influenced by Soukous and congolese artists like Franco were notable influences at the time. Jazz was also a notable influence. Along the way there were other bands like Rwenzori Band, Big Five Band and Simba Ngoma Band. But Afrigo Band was the most prominent and most enduring, especially throughout the political unrest of the 1970s to 1990s.

By the mid-1990s Afrigo Band was still heavily influenced by Soukous music, which by then was dominant all over the African continent. Artists like Joanita Kawalya and Rachael Magoola were part of Afrigo Band and helped lay the foundation for modern day Kidandali, alongside other bands like Kaads Band. The turning point, however, came with the formation of the record label Eagles Production which was responsible for producing artists like Mesach Semakula, Geoffrey Lutaaya, Ronald Mayinja and Haruna Mubiru. These artists took the mantle from Afrigo Band and further developed the genre after the turn of the century.

In the 2000s, the genre became identified with the Eagles Production label. The label continued to produce more talent, especially female artists like Ronald Mayinja, Geoffrey Lutaaya, Mesach Semakula, Roy Kapale, Mariam Ndagire, Phionah Mukasa, Mariam Mulinde, Queen Florence, The late Harriet Kisaakye Cathy Kusasira, Irene Namatovu and Stecia Mayanja. Another turning point was in 2008 when David Lutalo broke through with the hit song Kapapaala creating the way for the Urban Band genre to move beyond a genre that had for long been dominated by Eagles Production, Diamond Production, Kads Band, Backeys Band, Kats Production, The Hommies among others.

In the year 2003, Uganda witnessed the birth of a new kind on the block, Abdu Mulaasi. With his mega country wide hit "Omusono Gwa Mungu", Abdu Mulaasi became a house hold name creating himself a place amongst the top artists in the country. Abdu Mulaasi went to release hits like: Swimming Pool, Njagal Ebbere, Ekyaapa, Obuffumbo Bwa Liizi, Ngenda

Kusiba Farm and Omuchaina. Enkulu Tenywa was another big song that kept Abdu Mulaasi on top of his game. By the end of the year 2010, Abdu Mulaasi had changed the sound of KadongoKamu hence introducing Urban Kadongo Kamu.

DJ Erycom, one of Uganda's legendary Deejays was the first deejay to play, promote and popularize Kadongokamu music across bars and happening places in and outside Uganda.

About the same time, technology in audio production had enabled the genre to be reproduced digitally using Audio Workstations and the "band" element had all but disappeared. Recording studios like Kann, Dream Studios, Mozart and Paddyman took center stage. Many other independent solo artists started to practice the genre. Artists like Dr Tee, Martin Angume and even Chameleone achieved success with this genre. The genre is currently at the peak of its evolution with newer artists like Papa Cidy and Chris Evans helping create a dominant force that, alongside Dancehall, is the most popular stylistic genre in Uganda.

Dancehall

Dancehall music in Uganda is modeled after Jamaican Dancehall. It is among the most influential styles of music in the Ugandan pop music industry. The style of music is very similar to the Jamaican style and so like all imported genres, the only major difference is in language used. Although most dancehall artists will perform in their local language, in this case Luganda, many of them will every now and then try to mimic Jamaican patois. During the early to mid-1990s when Uganda's pop industry was just beginning to be formed, the first international music to make an impression on Ugandan artists was the Raggamuffin music in Jamaica at the time. Artists like Shabba Ranks and Buju Banton became the inspiration for Ugandan artists like Shanks Vivi D, Ragga Dee, Menton Krono and Rasta Rob. The predominant beat that was used by these artists was the Dem Bow beat which was created

by Shabba Ranks. This beat became the foundation on which all of Ugandan dancehall was to be built on later, just like it did with Reggaeton. In the late 1990s new artists like Mega Dee and Emperor Orlando joined the fray.

By the turn of the century, dancehall, or ragga as it was/is commonly called, was already the most popular music genre. New artists like Chameleone, Bebe Cool and Bobi Wine joined the scene and consolidated it. But they didn't create any marked improvement in the quality and sound of the music they found, as it remained pretty simplistic and heavily based on Dem Bow. From then on, the quality of music became commensurate with the quality of production available. Chameleone was the first dancehall artist to try to fuse this ragga sound with other genres like Soukous and Kadongo Kamu. By around 2006, there were a variety of musicians practicing the genre but also without much advancement in style or sound.

By this time, Jamaican dancehall had already taken a sharp turn away from the harsh "ragga" sound based on chatting over simplistic riddims and there was a new wave of dancehall deejays like Vybz Kartel and Busy Signal who were deejaying over more advanced riddims. Artists like Dr Hilderman came into the scene with new words like Double bed Mazongoto and have continued to grow. It is not until very recently that we have begun to also see new Ugandan artists like Rabadaba, Sizza and Fidempa create a more modern version of dancehall. Ugandan dancehall artists have reaped big from the industry, many are industrious and live luxurious lives.

Hip Hop/R&B

Hip Hop music in Uganda is modeled after American Hip Hop. There is really not much difference stylistically between Ugandan hip hop and the American version. Because of the digital revolution, there is access to modern production technologies in Uganda hence the "beats" that current local producers are creating are high quality and not far behind the American ones.

The fundamental difference between the two genres is that in Uganda, as in most African countries, most artists will rap in their local language. In Uganda's case, the language is Luganda. This has created the synonym "Lugaflow" to further define Ugandan rap music.

Hip hop is one of the newer genres to be widely practiced in Uganda. The two music groups, l Klear Kut and Bataka Squad were the first musical acts to do hip hop back in the late 1990s. Mainstream acceptance for the music genre was almost nonexistent by then. However, a number of the members of the aforementioned groups persisted with the genre, especially Navio (rapper) and Babaluku. Others like Sylvester & Abramz also kept creating rap music, focusing on socially conscious themes and topics.

Around the middle of the previous decade, more acts started joining the fray, with Rocky Giant being one of the first rappers to be embraced in the mainstream. But it was not until GNL broke through circa 2008 that the genre really gained steam. GNL made hip hop more acceptable and accessible and many "lugaflow" rappers began to emerge. Since then there has been a flurry of activity on the scene with a sizable number of rappers enjoying relative success in the music industry and on the radio circuit. Musicians like Jay-P and keko are among a new breed of Ugandan hip hop acts appealing to a broader audience, with their music featuring on international platforms like MTV.

As with Hip Hop, R&B in Uganda is modeled after American R&B. There is not much history in Ugandan R&B, with Steve Jean being the first artist to practice the genre around the turn of the century. But it was Michael Ross who really begun the trend circa 2002 with songs like How Do You Love and Sinorita. It was not until circa 2008 that a number of musicians started to embrace the style, with Myco Chris and Baby Joe among those in Diaspora that must be credited. Blu 3 and Aziz Azion are notable practitioners. Recently, artists like Nick Nola, Richy, Pallaso, Woodz and Yoyo have spread the appeal of the genre further.

Gospel

Early Gospel music in Uganda was modeled mainly after praise and worship music practiced by church choirs and bands. This was particularly true for the Pentecostal /Born Again movement, locally referred to as Balokole.

Artists like Fiona Mukasa in the mid-1990s were responsible for taking praise and worship music out of the churches and onto the streets. Because of the influence of Soukous music at the time, this early gospel had a Soukous sound. Limit X were another gospel group that gained popularity during the 1990s, although the group had formed years earlier, in the late 1970s.

Just after the turn of the century, the styles in gospel became more diverse, with various groups like Sauti, and First Love adding to the urban sound created by Limit X. Others like George Okudi and Father Musaala had hits on the radio circuit and internationally.

Gospel, however, started having a notable impact on the music industry when Judith Babirye broke through circa 2007. Babirye, whose music was similar to Mukasa's, was an instant hit and her song "Beera Nange" was among the songs of the year in its year of release.

She was followed by Wilson Bugembe, another musician who was readily embraced by the listening public with his songs becoming national hits, cutting across all demographics.

They have since been joined by various new artists like Levixone whose song "mbeera" turned into a hit song in year 2021 and others who are spanning various genres.

Note; There are other music types that are created each and every day a for example bax reggae this was natured by a popular musician known as Aziz Azion followed by others NB:

There are a few music schools in a conservatoire model in Uganda, most of them in the capital Kampala. The music schools in Kampala include Kampala Music School, MusiConnexions Uganda and Esom Music School. "Even though they are not very well equipped as a result of small budgets, they offer appropriate music training to many people. To date more young people and adults alike appreciate classical music better and as such they engage in taking private music lessons, attending classical music concerts and several take part in actual performances. There are a few Western music education stems way back to missionary times. Before the missionaries arrived in Uganda does not mean that music education was not in existence, but rather that it was different from what was introduced by missionaries. Classical music in Uganda is developing and growing little by little.

Uganda has a vibrant music industry that plays a fundamental role in the social and economic lives of many. Musicians are the main celebrities in Uganda, and all entertainment content from the mainstream media will most times be about music or musicians. The private lives of musicians are closely followed by many Ugandans. Music concerts, most times called album launches, are very popular. Many companies spend huge amounts of money on sponsoring these music concerts, and advertisements for the concerts are very common on radio and television.

The emphasis on music concerts comes from the fact that very few music artists make a worthwhile income from sales of their music on physical media. The lack of any distribution structure means that there is little to no incentive for capital investment in artist development or music sales. There are no genuine record labels, with most of the companies that are referred to as labels being merely artist management companies. Because of these inadequacies, there is a severe strain placed upon musicians to find profitability and sustainability in making music.

There have also been efforts at organizing the music industry, with the Uganda Performing Rights Society (UPRS), Bryan Morel Publications and Uganda Musicians Association being prime examples alongside a number

of awards organizations like AFRIMA Awards, PAM Awards and more recently Hip pop Music Awards. Attempts by some of these organizations to make use of an under-utilized and largely ignored copyright law to generate revenue from music distribution have proved fruitless. These are some of the challenges facing the music industry in the country and indeed are very similar to the ones facing most music industries around the world.

Music industry seems to be the most widely practiced and most accessible of all the arts in the entertainment industry. It forms an important part of many cultural and social activities. Music plays a major role in other arts considering the fact that people use music for several purposes. [1]illustrated this clearly and wrote "Where there are great artistes of popular music, the entertainment industry, film management services, public relations and advertisement services naturally function actively"[2] early in time stated that: Opera combines singing and orchestral music with drama. Ballet and other forms of dancing need music to help the dancers with their steps and evoke the atmosphere. Film and TV drama use music to help set the mood and emphasise the action.

Music industry and whatever that comes under it cannot operate outside the control of individuals. It is being produced by human intelligence. The efforts of these great intellectuals are being exploited, frustrated, and deprived of their entitlements due to the activities of infringers who rip them off their benefits, thereby, preventing the industry from rapid financial growth and development.

The right of anybody over his/her creative output is an exclusive one. Artistes encounter various kinds of encumbrances in their bid to make a living out of their creative abilities as a result of infringement and some other ugly practices which undercut the economic benefit of the intellectual property of these

[1] R. C. Okafor and C. U. Okafor(2009)

[2] (p. 20). Walter (1996) (as cited in Okwilagwe, 2002)

talented artistes. There is no doubt that the copyright law has been developed and established in Uganda, but the strategies that have been put in place to ensure its effective implementation and the opportunities provided for the copyright owners to maximally exploit their rights are in question. the need for the Uganda's Copyright and Neighboring Rights Act to undergo reformation in order to enhance the protection which the law purports to afford the owners or authors of the copyrighted works in the music industry. The investigation applied historical and other related resource materials as working tools. This book concludes by suggesting that Uganda government should form a formidable force through public enlightenment, collaboration among agencies, and with the copyrights owners' cooperation in order to enhance effective enforcement of intellectual property rights which will go a long way in boosting the music industry in Uganda

A copyright is a legal instrument that protects original works of authorship. These works include any type of artistic, literary, musical, or dramatic creation such as books, poetry, movies, music, lyrics, computer software, and architecture.

"Kiri Dance (War Dance)"

This dance was historically performed when people prepared for war or after victory in war. The instruments used included drums, two-edged spears, shields, two-edged knives held by women, horns (small and big), leopard or spotted wildcat skin, cowhide sandals and bird feathers. In performing this dance, the dancers move in straight lines while shaking their bodies. They later move into a cow-horned formation while the instruments play. After dancing in a group, each person dances alone showing off their skills and styles. Later, the dancers disperse. The dance is choreographed to display the military might of the great people of Lango. In its movements, it exhibits aspects of Lango society like preparation for revenge against enemies, the importance of courage among youths, jubilation after military victory, and

the continuity of culture. This dance exists to preserve the cultural elements mentioned above; it is a form of geographical identity for the people of Lango. recommends the formation of organizations that will facilitate the people to promote culture since most people are poor and cannot afford to get that instrument. Modernized dressing has also been suggested as a means of encouraging youths to join the traditional dance. Traditionally, the dances were full of nudity so people were afraid to engage in them. The men were embarrassed to take part in the bare-chested dance. Sensitizing youths about the importance of culture and teaching them how to play instruments and dance is therefore a necessary measure to promote African culture. Similarly, it is necessary to create archives to keep cultural regalia for future use. Efforts to promote culture should pay special attention to the young generations, although the primitive behavior which promoted nudity should be abolished[3].

In Ngono (2016), the author notes that in both Uganda and Kenya, different communities and cultures use distinctive categories of musical instruments, but that the following mostly cut across; drums, wind, self-sounding and string instruments. The African drum usually referred to as the heart of the community is the most significant instrument as it reflects people's moods and emotions, and its rhythm holds dancers together. The author also notes that Tswana music is one of Botswana's most popular forms of folk music. She describes it as a showcase of voice without drums that differs from a typical African tribal song, but that the main component of the rhythmic portion is clapping hands. Occasionally wind instruments, including whistles

[3] BREAKING THE LINE, COMPARATIVELY RE-THINKING WRITIVISM, MUSIC AND DANCE AS FORMS OF GEOGRAPHICAL IDENTITY AND CULTURAL EXPRESSION TOOL IN AFRICA: A FOCUS ON KENYA AND UGANDA. By Mulalira Faisal Umar at Page 5

and lepatata (made from Kudu horn), especially in male groups, are used to enhance their performances[4].

Both countries in fulfilment of their international obligations under international, regional and municipal treaties2 have come up with domestic legislations to address the various copyrights issues arising within their jurisdictions. According to Section 22 (2) and (3) (a) and (b) of the Copyright Act of Kenya, a broadcast cannot be eligible for copyright until it is broadcasted. In case work is literary, musical or artistic, protection is only provided if a substantial effort has been incurred on making the work to provide it with its original character. Section 22(4) of the same Act also notes that protection may also be provided if the work has been transformed from a mere idea and written, recorded or reduced into a form that makes it material. Conversely, in Uganda, Section 4(1), 6 and 7 respectively of the Copyright and Neighbouring Rights Act states that protecting one's work depends on how original work is reduced to material form irrespective of method and quality of the work, or purpose for which it is created and such work is not subjected to formality. This, therefore, excludes protection of ideas, concepts, procedures, method and public benefit works[5].

Characteristics of Uganda's Music

The context of Uganda is not different either. In reality, different regions are established to have their musical styling that traces back from culture, the

[4] ibid

[5] BREAKING THE LINE, COMPARATIVELY RE-THINKING WRITIVISM, MUSIC AND DANCE AS FORMS OF GEOGRAPHICAL IDENTITY AND CULTURAL EXPRESSION TOOL IN AFRICA: A FOCUS ON KENYA AND UGANDA. By Mulalira Faisal Umar

patterns of which have been adopted and somehow incorporated by the musical artists in their creations. Indeed, according to Ekdale, "the struggles, fantasies and aspirations of the youth in the informal economy have bred a self-fashioning music styling that is neoliberal and ignores the reality of the interconnectedness of their creations with popular culture."

Uganda is categorized into five different musical regions each of which has its musical styling. The music played in the Northeastern part of Uganda hardly relies on instruments; it is characterized by handclaps. Their syllabic rhythm dictates their musical syllabic rhythm for the Nilotics in particular. With the Acholis, polyphony is commonly active and usually have their musical choruses sung by over 15-20 people led by one soloist. But these will use Agwara during their group instrumental performances,3 with the Adungu instrument played like a guitar with hocketing commonly demonstrated. The Adungu has recently become popularized and incorporated into contemporary music. This makes Ugandan dance and music highly cosmopolitan and adaptive to the evolving contemporary instrumental evolution. Uganda can thus be seen as undergoing a remix within its cultural dance expressions and music identity within its indigenous communities with its melting point because of so many mixed up cross cutting cultures.

In the northwestern part of Uganda, choral songs are commonly played with Odi lyres using convoluted rhythms and straightforward melodies. In the Kwaka music a downward pitch glide is traced as escorted with long single-headed drums with concentrated beginning pitches; they also use trumpets and practice hocketing. Unfortunately, as is shown in Bigwala (2018) , hocketing is also today showed in the Busoga Kingdom, implying that claims on copyright in the future may strictly necessitate bringing all different stakeholders onboard for their contributions. This is because copyright covers proof of origin in tangible form. It goes on to state that the Basoga are commonly known for Xylophones, panpipes, tube fiddles, fourholed flutes, and lamellophones with large instruments occasionally played by several people at a time.

The adaptive nature of technological sound engineered instruments within the music industry without newly written cultural rhythms and songs has made it impossible for artists to record and release entirely new songs. All new music bears a resemblance to existing cultural songs that have been sung for generations. Filmmakers and creators of the videos are in a better position to create new scenes and often record changes in existing cultural dances and songs. In light of the above, there is a high potential of plagiarism and founded fears of copyright infringements. This limits the way artists make their songs; an environment that is further barring innovation in the entire entertainment industry. In Key (2016), the author asserts that music is part of a culture that has specific styles and welldeveloped techniques that fit into certain genres. He further maintains, which argument I agree with, that musicians usually like to build a brand through consistent sounds. As such they create works which are similar in sound and rhythm to previous works for their listeners to associate familiar tunes with memories. Many people argue that listening to a familiar sound brings back a good memory or takes the listener back to an experience or event in his journal of earthly life, which enables a person to connect with a particular artist.

In central and eastern Uganda, Bantu music demonstrates concurrent syllabic rhythms with polyrhythmic patterns in all their regional music as played through the Xylophone. Cooke (2001) further highlighted that in Uganda all the musical regions, a pentatonic pattern is followed unlike with the Konzo and Masaba groups. The Konzo advance heptatonic styles while the Masaba advance hexatonic styles but both groups play their music with a triple rhythmic style and a percussion demonstrated at the third beat. As reflected in the now taking root and ever-changing melodies, rhythms, pitch and other components mainly used during electioneering, political rallies and campaigning periods to pull mass crowds for politicians in Uganda across the divide and in all the other parts of Uganda.

Western Uganda originally played Banyoro and Batooro music, but when the Bito invaded the west, this increased the populace of Nilotic music in Western Uganda. This type demonstrates duple meter rhythms with tonal

characteristics. They commonly use hand drums and leg rattles. The Banyankole, on the other hand, developed the Esheegu practice with slow beats; they also use rattles, pots and drums. The Hima tribe of Western Uganda also commonly uses handclaps. To them, music is a communicative and social activity. Their music is built on storytelling. Though not formally archived anywhere, it has been preserved from one generation to another through its cultural appeal to the realities within their communities as a pastoral corridor; however, it has been modified by artists like Lady Mariam (2006) a Ugandan artiste, in her song Tindatine to fit the times, evolving cultures and aspirations of the present Ankole people, most whom are elites, educated and scattered all over Uganda and beyond.

Instruments also followed the status quo of culture with particular tribes playing specific instruments. Though formally used to play Christian hymns, today, the Adungu(Harp) is popularly included in modern songs as an accompaniment to the guitar. Trumpets and drums were core in the calling of assemblies. The amadinda or entaala were played at functions in royal homes and school musical programs whereas the entenga (drum-chime) graced functions in which the Kabaka appreciated chiefs. The Endingidi on the other hand, was the preferred instrument at wedding ceremonies and during the recitation of poems. The ntongooli (bowl lyre) originated from Busoga and spread to the Nile region first before spreading to the entire country.

Modern music has adopted various instruments from the traditional form like the Adungu; however, troupes continue to play their patterns traditionally at functions, a style which is directly identifiable and familiar with a village pattern[6]CHAPTER TWO

[6] BREAKING THE LINE, COMPARATIVELY RE-THINKING WRITIVISM, MUSIC AND DANCE AS FORMS OF GEOGRAPHICAL IDENTITY AND

Legal aspects of the Music Industry

Music Copyrights

What is a copyright?

Copyright is a form of legal protection given to many kinds of created works such as musical compositions or songs, lyrics, records (CDs, LPs, singles, 45s, cassettes, DAT, etc.) poems, books, films, TV shows, computer software and even commercials. In Uganda, the Uganda communication and the Uganda Registration Service Beural are the main Policy stake holders responsible for organizing the copyright law. The law that governs copyright in Uganda is the Copyright and Neigbouring rights Act No 19 of 2006 (CNRA) (which repealed and replaced the copyright Act Cap 215 of 1964), as well as the copyright and Neighboring Rights Regulations 2010. The Act applies to works created by Uganda irrespective of author's national or resident of any member state to WIPO, ARIPO and UNESCO (sec 3, 81 and the 1st schedule of the Act), or a work first published in a member state to the TRIPS. In British Northerop v Texteam, it was held that publication takes place wherever the publisher invites the public to acquire copies not where the copies are received. Subsistence of copyright has two concerning facts; Personal and Territorial criterion. The personal criterion is based on the nationally or residence of the author or maker (qualified person). It does not

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matter where the work as published or made. Territorial criterion is based on the place of publication or making of the work. It must have been first published or made in the territory. The status of the author or maker is irrelevant. (see s.3, 81 and II CNRA). There has been a commendable effort by government exhibited in the enactment of the Copyrights and Neighboring Right Act 2006 and Copyright and Neighboring Rights Regulations 2010 for prior to that; the old law had been overtaken by modern circumstances. The principle of copyright and content is that you cannot use content without getting authorization from the owner. Author entitled to copyright protection. Under section 4 of the Copyright and Neigbouring Rights Act 2006, the author of any work specified in section 5 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. The protection of the author's work is not subjected to any formality. It should be noted that a work is original if it is the product of the independent efforts of the author. In Atal v Kiruta t/a 97 Africa Arts & Crafts (Civil Suit 967 of 2007) [2009] court adopted the case of Bristish Northrop Ltd v Texteam Blackburn Ltd [1974] RPC 57 at 68 principles was conveniently summarized by Megarry J as follows:

'copyright is concerned not with any originality of ideas but with their form of expression, and it is in that expression that originality is requisite. That expression need not be original or novel in form, but it must originate with the author and not be copied from another work...'

The same is reflected under Section 6 of the Copyright and Neighbouring Rights Act which is to the effect that Ideas not protected. Ideas, concepts, procedures, methods or other things of a similar nature shall not be protected by copyright under this Act. Copyright deals with the rights of intellectual creators in their creation.[7] Copyright has also been defined as the right given against the copying of defined types of cultural, informational and

[7] WIPO Intellectual Property Handbook, 2004

entertainment productions[8]. Prof G Kakoma versus Attorney General HCCS No 197 of 2008, it was held that copyright in the commissioned work belongs to the author in the absence of an express or implied term to the contrary. Section 8 (1) (b) cited clearly provides that the Commissioner's right to the works can only be vitiated by a specific contract to this effect Generally, Copyright is a set of exclusive rights granted by a state to the creator of an original work or their assignee for a limited period of time in exchange for public disclosure of the work. This includes the right to copy, distribute and adopt the work. The Under section 13(1) & (2) of the Copyright and Neighbouring Rights Act 2006, copyright remains in effect for 50 years after the death of the artist. When a copyright lists more than one creating artist, the protection lasts for 50 years from the date of death of the last surviving person.

An infringement of copyright occurs when any other person without authorization does anything which only the owner of the creative work has the right to do. What amounts to infringement of a copyright in music? This is laid down in the Copyright and Neighboring Rights Act, 2006 Section 46 of the Act defines what amounts to copyright infringement.

In Hawks & son Ltd v Paramount Field Services Ltd [1934] Ch 593. Court observed that even when a person uses content a little over 30 seconds out of a 4minutes recording was found to amount to infringement. The artist with a copyright can seeks monetary damages and associated expenses from anyone who uses the protected work in an unauthorized or prohibited fashion. Reference should be drawn to the case of Sutherland Publishing Company Limited v Caxton Publishing Company Limited [1936] where Lord Wright held "...the measure of damage is the depreciation caused by the infringement to the Value of the Copyright, as a chose in action." In Frank Music

[8] Cornish, Llewelyn and Aplin, Intellectual Property: Patents, Copyright, Trademarks and Allied Rights

Corporation versus Metro Goldwin- Mayer IMC (1985) American Casebook Series page 1137 the trial court declined to award damages because it was unconvinced that the market value of the Plaintiffs work was in any way diminished by the Defendant's infringement. The appellate court upheld the decision and held that in a copyright action, a trial court is entitled to reject a proffered measure of damages if it is speculative. In Stroms versus Hutchinson [1905] AC 515 general damages under cited law is presumed to be the direct natural or probable consequence of the act complained of. This is in line with section 45 (3) of the Copyright and Neighbouring Rights Act 2006.

It is an indispensable factor for the existence of the music industry in any organized society. It is indeed a cornerstone and one major pillar in the sustenance of the entertainment industry in general. Intellectual property infringement should be seen from a moral background for one to fully understand the magnitude of damage and injustice being melted out to intellectual property owners in the Uganda music industry is plagued with abusers of the copyright law. It is important to note that ignorance is immaterial and does not amount to a defence to the Plaintiff's case. Counsel further relied on a textbook by Copinger and Skone James on COPYRIGHT between pages 176 and 177 paragraphs 410 to 412. In Nince Henry V Nakumatt & X-Zone International Court emphasized that the person providing a platform for copyright infringement can also be liable as that one who made the actual infringement. Infringement of Copyright amounts to an offence under the law.

According to Lord Macnaughten in Stroms v Hutchinson [1905] Ac 515, Court observed that general damages under cited law is presumed to be the direct natural or probable consequence of the act complained of. This is in line with section 45 (3) of the Copyright and Neighbouring Rights Act. Consequently, the general damages should be a result of the direct infringement if any of the Copyright in this song.

However, a fair use of the protected work cannot amount to infringement of copyright. This is pursuant to section 15 (1) (f) and section 15(2) of the Copyright and Neighbouring Rights Act 2006. In Hubbard versus Vosper [1972] 2 QB 84 Lord Denning MR at page 1027 considered the definition of "fair dealing" in the context of a defence to copyright infringement through publication of the work. He said:

"It is impossible to define what is 'fair dealing'. It must be a question of degree. You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be a fair dealing.

In Hyde Park Residence Ltd versus Yelland & Ors [2000]one of the first principles to determine whether a Defendant could fall within the fair dealing exception requires a two-stage test. The first task was to ascertain whether the publication was for a purpose within the fair dealing permitted acts. In Uganda this is under section 15 (1) of the Copyright and Neighbouring Rights Act. The second question to be asked is subsidiary to the first task. Where it does not fall within permitted acts prescribed by the statute, there is no need to establish whether the dealing was fair i.e. to apply the principles under section 15 (2) of the Copyright and Neighbouring Rights Act.

Secondly, In the case of Hon. Paddy Ashdown versus the Telegraph Group Limited Case No A3/2001/0213 cited as [2001] EWCA Civ 1142 being an appeal to the Supreme Court of Judicature Court of Appeal (Civil Division) from the Queen's Bench Division/Chancery Division, the issue concerned a suit brought against the publication of confidential information. The court attempted to balance between two conflicting rights namely the right to copyright as well as the right to freedom of expression. The court further considered restrictions on copyright including the fair dealing exception for the purpose of reporting current events and which does not infringe any copyright in the work. Particularly the court considered the fact that the

defence for breach of copyright can be mounted on the basis of "public interest".

It's prudent to note that where a producer or an author is under a duty as per a contract, he cannot here claim an infringement. It is settled law in a Latin Maxim Ex turpi causa non oritur action.

According Mulalira Faisal Umar1, Determinants of Copyright. The right to copyright is determined depending on the work in question, with the first author identified as the owner. Copyright for authorship of literary and dramatic works differs from that of musical works, cinematography and sound recording, as well as computer-generated works reflected hereunder.

In a musical sound recorded work, the composer becomes the author. However, this depends on the originality and role played, for example, the lyricist, the composer who set the music, the singer who sang the song, the musician(s) who performed the background music and the person or company who produced the sound recording.

In cinematography and sound recording, the producer is the author.

In computer sounds generated works the person who directs or causes the creation of the work, owns the copyright.

The industry is now synonymous with piracy and intellectual property infringement. Artistes in Uganda have resorted to stage performances in big cities of the nation as their main source of income since little or no income is realized from the sale of music compact discs. This in turn can be blamed on the widespread and uncontrolled use of the Internet as a medium for data exchange. An album can be released in the morning at Kampala and downloaded in Mbale by evening. Noteworthy also is the fact that the widespread use of the Internet and the increasingly sophisticated technology synonymous to it has made it very difficult for regulatory bodies to make tangible impact. These violations neither respect national borders nor geographical boundaries. While it might be seriously enforced in developed

countries, it is still treated with a *laizzez-faire* attitude in developing countries, while it is severely punished in Europe, it would seem that nobody cares about who downloads what in many countries in Africa. The Uganda music industry produces an average of 200 albums of different types of music annually, and an estimated 1100 concerts and musical shows that take place every year which account for a combined annual turnover of US$75.5 million. Although statistics on the pirated amount of materials are not very clear, a visit to any popular market in the country will reveal its parasitic effect on the music industry and the Uganda economy at large.

Copyright abuse does not just happen in Uganda, as a matter of fact, it happens all over the world for example US heavy metal band “Metallica” sued the Internet company “Napster” for allowing unrestricted distribution of their song “I Disappear” over their online network. The band won the law suit while Napster was ordered to keep track of the activities on its network and to restrict infringing materials. Napster was not able to comply with these directives and thus had to close down its services in July 2001. The company later became bankrupt and was sold to a third party (Napster, n.d.). Dua Lipa v. Artikal Sound System

In March of 2022, Artikal Sound System filed a lawsuit against Dua Lipa over her song "Levitating." The reggae band claims it is infringement on their 2017 song "Live Your Life." Hear musicologists' takes on the case from an article by Rolling Stone. The reggae hit reached number 2 on the Billboard Reggae charts, so it seems possible that Lipa had access to the music. Intention, however, is always difficult to prove. For more information, you can see this article from Music Business Worldwide. (Note: Live Your Life is not available on Spotify. Listen to it on Youtube.)

Childish Gambino (Donald Glover) v. Kidd Wes (Emelike Nwosuocha) In May of 2021, Kidd Wes claimed that Childish Gambino's song "This is America" (2017) was "substantially similar" to the rapper's song "Made in America" (2016). Specifically, he claims that the “the lyrical theme, content,

and structure of the identically-performed choruses" are virtually identical. The case is not yet resolved. Source take from here.

BTS & Big Hit Entertainment (HYBE) v. Bryan Kahn

BTS appeared as guests on a television series I-Land back in 2020. Bryan Kahn, a resident of Florida and proclaims himself to be "engaged in the business of creating and producing television series and audio music," claims his idea for a similar show was stolen. The show, which was called "Island Hip Hopping" was registered with the Writers Guild of America back in 2013. To prep for the show, he moved around different countries in Asia to learn more about the culture and was apparently set to being production in 2020. Whether the idea for a reality show can be protected by copyright, seems to be the main question. You can read more about this here.

Lizzo (Melissa Jefferson) v. Justin Raisen, Jeremiah Raisen, & Justin 'Yves' Rothman

Raisen, Raisen, and Rothman claimed to have come up with the idea for the lyrics "I just took a DNA test, turns out, I'm 100% That Bitch," for Lizzo's song "Truth Hurts" during a writing session with Lizzo. They also created the song "Healthy," with the same lyrics. They claim that "Truth Hurts" is a derivative of their song and that therefore, they are entitled to the profits. However, since Raisen, Raisen, and Rothman did not claim authorship or co-creatorship of "Truth Hurts," the work cannot be deemed derivative, and therefore the case was dismissed in August of 2020. Several countersuits have followed. You can read more about these cases here. (Note: Cannot locate a recording for "Healthy.")

The Estate of Randy Wolfe (AKA Randy California) v. Led Zeppelin

The Estate of Randy Wolfe, the late-guitarist for the band Spirit, alleged copyright infringement. They claimed that Led Zeppelin's "Stairway to Heaven" copied a musical motif from Spirit's "Taurus." The case began in 2014 and was originally in favor of Randy Wolfe's Estate, however appeals in the 9th Circuit were just released in March 2020 in favor of Led Zeppelin. This case somewhat contradicts the ruling in the Thicke/Pharrell v. Gaye case (see below). For more information, read the news articles on the outcome.

The Estate of Jimmy Smith v. Drake

Similar to some of the landmark cases below, Drake licensed a part of a song called "Jimmy Smith Rap" in his song "Pound Cake/Paris Morton Music 2." They claimed that Drake did not license the composition (though he licensed the master). After several years of back and forth, the court of appeals ruled that Drake's use of the sample is fair use as it is transformative. For more information about this case read this article from the Hollywood Reporter.

Lana del Rey v. Radiohead

Lawyers representing the music publishers for Radiohead claimed that Lana Del Rey used the same chord progression and other musical elements from "Creep" in her song "Get Free." While it never went to trial, Lana Del Rey claimed that they settled, though no settlement has been announced. Interestingly, Radiohead had been sued by another band over "Creep" and they also settled out of court.

Ed Sheeran v. Marvin Gaye

Ed Townsend, who is the beneficiary of some of Gaye's copyrights and a co-creator, is arguing that Sheeran's song "Thinking Out Loud" is infringing on

Gaye's "Let's Get It On" as it takes from the melody, harmony, and rhythm of Gaye' song. The case has yet to go to trial, but stay tuned in!

Vanilla Ice V. Queen and David Bowie

Queen and David Bowie sued Vanilla Ice claiming that the bass line in "Ice Ice Baby" was a direct copy of "Under Pressure." Vanilla Ice argued that they weren't the same because he added an extra beat. The court ruled in Queen and Bowie's favor and Vanilla Ice had to pay an undisclosed sum.

Robin Thicke & Pharrell Williams v. Marvin Gaye

The estate of Marvin Gaye argued that Thicke and Williams stole the "general vibe" and certain percussive elements of "Got to Give It Up" for their song "Blurred Lines." The court ruled in Gaye' favor. Thicke and Williams paid $5.3 million in damages and will pay a 50% royalty fee making this one of the biggest payouts in music copyright history.

John Fogerty v. John Fogerty

One of the strangest cases ever conducted. Fogerty used to be part of a band called Creedence Clearwater Revival, or CCR, and wrote the song "Run Through the Jungle." 15 years later, Fogerty was no longer part of the band and he released the song "The Old Man Down the Road." The label for CCR sued him for copyright infringement. After one of the most interesting arguments in legal history, where Fogerty brought his guitar to court and demonstrated how the songs were different, the court rule they weren't the same song. He then countersued the label, which went all the way to the Supreme Court and he won, creating a legal precedent!

Roy Orbison v. 2 Live Crew

Roy Orbison sued 2 Live Crew saying that their use of his song "Oh Pretty Woman" in their song just called "Pretty Woman" was infringement. 2 Live Crew did use the full recording of his song, but they rapped over it, changing the meaning to something humorous. This is another case that went all the way to the Supreme Court. The court ruled that, while it is the same song, it was not infringement because it was a parody, which is transformative and often a form of criticism, therefore a fair use. This decision is a precedent that protects all other parody artists like Weird Al Yankovic

The Verve vs. The Rolling Stones

The Rolling Stones sued the Verve for their song "Bittersweet Symphony" which contained a sample from "The Last Time." Originally, the Verve had licensed the use of 5 notes from their song in exchange for 50% of their royalties. The Rolling Stones claimed that they used a larger portion than was agreed upon. The court ruled in their favor. As a result, they forfeited all of their royalties and publishing rights. They were sued again later for their mechanical rights. Verve had to give up all their rights to the song until May of 2019, when the Rolling Stones signed over all their publishing rights for that song to the Verve. Read more about that here.

This is just out of many cases where the law prevails. The Uganda Copyright Commission (UCC) recommended that there was an improved international rating of Uganda in the global fight against piracy. It was also revealed that 98 copyright cases have been prosecuted in 2017and that the commission also destroyed by public burning 722 million units of various categories of copyright infringing products impounded between 2015 and 2016, All these recorded feats notwithstanding, the rate of piracy in Uganda is still on the high side.

This book seeks to address the place of the Copyright and neighboring Act in the bid of protecting the rights of all groups involved in enhancing the music industry in Uganda. For the purpose of this paper, intellectual property right, though broader than copyright in terms of application, may be used interchangeably and still connoting the same meaning.

The intellectual property right is an umbrella term for various legal entitlements, which attach to certain names, written and recorded media, and inventions. It refers broadly to the creation of the human mind and it is assuming increasing importance in every facet of life today unlike what it used to be before the advent of modern science and technology. There are two branches of intellectual property, namely, copyright and industrial property. Copyright deals primarily with literary, musical, and artistic creations while industrial property right deals with patents, trademarks, and industrial designs. Intellectual property is an intangible form of property, as opposed to personal property or real property, which is concrete and much more easily defined. It is the result of the creation of the brain or the mind, which is then manifested or interpreted in a form that has a physical dimension and possesses exclusive property right. Examples include images, symbols, names, designs, and literary and music works. Intellectual property broadly includes such areas as copyright, trademarks, patents, and industrial designs.

Chandra (2004) defined intellectual property as "property from original thought protected by law: Original creative work manifested in a tangible form that can be legally protected, example by a patent, trademark or copyright" (p. viii). Adeleye (2013) further noted that intellectual property "is an intangible asset because it has no physical form; it is a category of intangible right protecting commercially valuable works, products and services of the human intellect" (p. 2). The area of law that deals with and oversees the creation of intellectual property patents, copyrights, trademarks and trade secret laws, the protection of intellectual property rights; and the legal pursuit of those who infringe on another's right to his/her intellectual property is known as Intellectual Property Law.

Copyright is defined as "the exclusive and assignable legal right, given to the originator for a fixed number of years, to print, publish, perform, film or record literary, artistic or musical material" .[9]It also refers to the reserved or exclusive right given by law to the creator of a literary work as regards the use, reproduction, and exploitation of his/her created works for economic or commercial purpose. Okafor (2002) opined that "Copyright is the moral and financial rights creators have over their works" (p. 114). The New International Webster's Comprehensive Dictionary of the English Language (2010) defines copyright as "the exclusive statutory right of authors, composers, playwrights, artists, publishers, or distributors to publish and dispose of their works for a limited time" (p. 288).

[9] (Retrieved from http://www.oxforddictionaries.com/definition/english/copyright).

CHAPTER THREE

Music Industry

An industry consists of various specialists who make up that industry. “Music industry involves the production, distribution, and sale of music in a variety of forms as well as the promotion of life musical performance”. The industry connotes several activities and organizations by different artistes working towards specific ends but united in the common objective of processing and distributing musical product to the consumer for the purpose of profit-making. The business and creative sides of the music business are inextricably linked—no matter how proficient one is creatively, he/she needs to think and operate like a business in order to remain successful.

Music industry is essential to the life of or existence of social life of any country. It situates at the heart of the country’s entertainment industry. The industry, therefore, becomes a fertile ground for tapping and distributing the talents and creativity of the musicians. Music industry is the totality of the several groups involved in music production that work together towards a common objective of making money through music distribution.

Of recent even minors have joined the music industry and as so, many question have been tabled. Minors like Fresh kid, Felista da super, Triplet, Ghetto Kids among others. These have been seen performing and the question that has been viral in the country is whether they should perform music or they should first reach majority age?

Fresh kid: A seven-year-old rapper Patrick Ssenyonjo emerged out of nowhere and took the music industry by storm under the alias Fresh Kid. What this new kid brings to the become the talk of town, even catching the attention of the Minister of State for Youth and Children Affairs, Florence Nakiwala Kiyingi. The minister cautioned the rapper and even threatened to arrest him for various alleged crimes, causing public uproar. Lawrence Ogwal talked to a few people about what they think of Fresh Kid and the minister's concerns.

Phiona Munezero, Geo information officer, Ubos I hear about Fresh Kid, I read about him in the papers and I think it is a great thing that he is making money at just seven years, especially in this Uganda where many people are jobless. I heard that at just a tender age, he provides for his father and mother, which is no harm. He should continue doing music but also he has to be guided by his management. The minister intervening in his career is not so good because there are many children even younger than Fresh Kid who are doing other kinds of odd jobs such as selling maize and eggs even late into the night. However, he should be at shows during the day or evening, not at night, and the language he uses also is too much.

Dauda Kavuma, Founder Triplet, Ghetto Kids I do not have a problem with Fresh Kid singing but he should be under guidance. The minister intervened because of the fact that the boy sings in bars late in the night, the way he answers questions during media interviews and his heavy lyrics, which are not supposed to be sung by a boy of his age. Such lyrics from Fresh Kid cannot inspire fellow young ones because the lyrics are meant for old people like me. He should be singing about topics that inspire his age mates.

I have been with the Ghetto Kids for years now and they have grown. When I am supposed to perform at night, I make sure it is not a bar but rather places such as Freedom City, Cricket Oval and Kyadondo. While at the events, I make sure my group performs latest 10pm and we leave. It is what Fresh Kid should be doing because bars will create a bad image for him.

The other thing I distance myself from are events posters that are sponsored by alcohol brands. However much they are willing to pay, I tell them off because my group is made up of young members.

The minister was right to question whether Fresh Kid goes to school. If he wants to succeed in Uganda, he should stay in school and also learn English because his management should be looking beyond Uganda. I can give you an example of Making, one of our members who did not want to go to school but when I told him the group was going to travel abroad and we would not travel with someone who did not know English, he joined school. Today, he is in the US on a bursary and still raps. I cannot consider taking Fresh Kid under my management because I only work with dancers. I believe his management understands him and he also understands them, but I love his dress code because I have never seen him with sagging pants. The ministry should support young talent and also create a foundation that can nurture talent because young people do not sign agreements but rather guardianship. The minister should set up platforms such as America Has Got Talent then draft rules that will govern young performers.

Those where some of the opinions from the country men within the music industry but the question that lies is, what is the position of the law concerning music when it comes to minors in Uganda. Well, it should be understood that the law strongly protects minors who enter into contracts save for necessaries. One would ask what are necessaries but before I ask that question, it's important to ascertain the reason as to why the minor entered into a contract maybe to perform on a given music show among other. In case the reason was for the betterment of the minor having regard to his station in life, then the contract must be suitable to the condition in life of the infant to his actual requirement at the time. Therefore, necessaries are not restricted to things which but may include articles which are reasonably necessary to the infant like food, education among others. Refers can be drawn to the case of Nash v Inman (1908) ALL ER REP.317

The other question is, should their works be protected under the copyright law? My answer would be yes in case the permits the to perform. Why say? Because it would be legal since the law authorizes the same. But in Uganda, a minor has to be placed under trust-ship of his or her management for them to be eligible to enter into contracts and where they have been placed under trust-ship, then copyright and neighbouring rights if taken into consideration by the management, thrive

Copyright owners can a license or permanently transfer or assign their exclusive rights to others

Neighbouring Rights are rights that in certain respects resemble Copyright. Neighbouring Rights are also called related rights in other jurisdictions. They are not copyright but are closely associated with it. They include rights of performing artists in their performances, rights of producers and music publishers and rights of producers and music publishers and rights of broadcasting companies in their programs as provided under part IV of the Copyright and Neighbouring Rights Act, 2006.[10]

Neighbouring rights are derived from a work protected by Copyright. They are rights of performers such as singers or actors, producers of phonograms and broadcasting organizations to protect their funds, labor and knowledge used to deliver works to the public

The purpose of neighbouring rights is to protect the legal interests of certain persons and legal entities who contribute to making works available to the public.

Obvious examples are the singer or musician that performs a composer's work to the public; performers (such as actors and musicians) in their performances; producers of sound recording (for example, cassette

[10] Section 2 of the Copyright and Neighbouring Rights Act, 2006

recordings and compact disks) in their recordings; and broadcasting organization in their radio and television programs.

The purpose of these neighbouring rights is to protect those people or organizations that add substantial creative, technical or organizational skill in the process of bringing a work to the public.

Copyright law protects owners of rights in artistic works against those who 'copy'. Copyright protection in Uganda is governed by Copyright and Neighbouring Rights Act, 2006 and the Copyright and Neighbouring Rights Regulations of 2010.

The Act provides for the protection of literary, scientific and artistic intellectual works and their neighbouring rights and provide for other related matt

The Regulations provide for procedures, forms and fees payable.

Copyright does not cover ideas and information itself, but only the form or the manner in which they are expressed. Therefore ideas, concepts, procedures, methods, public benefit works or other things of a similar nature are not protected by Copyright law.[11]

The law provides for works eligible for copyright and the following literary, scientific and artistic works are eligible for Copyright: articles, books, pamphlets, lectures, addresses, sermons and other works of a similar nature; dramatic, dramatic-musical and musical works; audio-visual works and sound recording, including cinematographic works and other work of a similar nature; choreographic works and pantomimes; computer programmes and electronic data banks and other accompanying materials; works of drawing, painting,

[11] Section 6

photography, typography, mosaic, architecture, sculpture, engraving, lithography and tapestry; works of applied art, whether handicraft or produced on industrial scale, and works of all types of designing; illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science; derivative work which by selection and arrangement of its content, constitute original work; any other work in the field of literature, traditional folklore and knowledge, science and art in whatever manner delivered, known or to be known in the future.[12]Copyright is protected by the fact of its creation. A created work is automatically protected by copyright as soon as it exists. However, the work must be original (it must have been developed independently by its creator) and it must be expressed. Artistic works are protected irrespective of their quality. The author of the work specified above has a right of protection where work is original and has been reduced in material form in whatever method irrespective of the quality and purpose of that work.[13] And originality in copyright law does not require that the work to be unique and novel but means that the author must have exercised some level of sufficient, skill and labour.[14] A work is original if it is the product of independent efforts of the author. Derivative works such as translations, adaptations and other transformations of pre-existing works and collections of pre-existing works like encyclopedia and anthologies; which by selection and arrangement of their contents constitute original works are protected under the Copyright Law as original works.[15]

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[12] Section 5 (1) of the Copyright and Neighbouring Rights Act, 2006

[13] Section 4

[14] University of London Press Ltd Vs University Tutorial Press Ltd [1916] 2 Ch 601 UK; Gormely Vs. EMI Records (Ire) Ltd (2000) 1 IR 74

[15] Section 5 (2)

Derivative works are works that are derived from other existing.

sources. Examples of derivative works include; translations of works into a different language; adaptations of a musical composition initially written for piano; other alterations of works and compilations of literary and artistic works such as encyclopedias and anthologies.

In such a case, the originality resides in the choice and arrangement of the material. However, the rights of the author of the initial work must be respected.

The owner of the copyright in a protected work may use the work as he/she wishes, and may prevent others from using it without his/her authorization.

Thus, the rights granted under the national laws to the owner of a Copyright in a protected work are normally 'exclusive rights' to use the work or to authorize others to use the work, subject to the legally recognized rights and interests of others.

Whereas copyright grants exclusive rights to the author, there are exceptions to the exclusive rights of copyright ownership, based on the belief that the public is entitled to freely use portions of the copyrighted materials for purposes of commentary, criticism, private purposes, reporting news, research and related matters.

Therefore, if the work is for personal, private and non-commercial use and does not exploit and unreasonably prejudice the legitimate interests of the author, then the exceptions to the exclusive rights will apply. The concept of fair use or fair dealing will apply.

There are two types of rights under copyright and these are; economic and moral rights. Economic rights allow the owner of rights to derive financial reward from the use of his/her works by others and Moral rights allow the author to take certain actions to preserve the personal link between him/herself and the work.

Other rights that a copyright holder has are the right of reproduction, right of performance, rights of broadcasting, the right of communication and rights of translation and adaptation. These rights can be transferred or assigned. These rights can be managed individually or collectively through a collective management organization.

While registration isn't needed to exercise copyright, in jurisdictions like Uganda, where the law provides for registration, it serves as *prima facie* evidence of valid copyright and enables the rights holders to transact using the registered documents among others.

The Law provides that the owner of a copyright and neighboring right may register the right with the registrar for the purposes of keeping evidence of ownership of right, identification of works and authors and maintenance of record of the rights.[16]

The procedure for registering a copyright involves an application for registration that must be made to the Registrar of copyrights and an application fee paid. The work applied for must be published in the Uganda Gazette for 60 days. If no objection is made to the registration of the said right within 60 days, then a certificate of registration will be issued to the applicant. Copyright protection generally lasts for the life of the creator and an additional period of 50 years after the creator's death.[17] This means that it is not only the creators that benefit from their works, but also their heirs.

Generally copyright in a work initially belongs to the creator/author of the work.[18] The exceptions are; if the creator works with other people on a joint project, then all creators are co- owners of the copyright; if a creator creates work on behalf of or for someone else (e.g. a specially commissioned work though there is need for a written agreement); if an employee creates work on

[16] Section 43, Copyright and Neighbouring Rights Act,2006

[17] Section 13

[18] Section 4(1)

behalf of the employer, then the employer will generally be the copyright owner, a purchaser for value/Assignee.[19]

The copyright industry has been faced with a lot of infringement. Copyright in a work is infringed when someone, without permission of the owner of the copyright, exercises one or more exclusive rights of the copyright owner over that work and when moral rights are violated.

It also occurs where there is no valid transfer, license, assignment or other authorization by the creator or any authorized person. Note that infringement is not actionable unless it involves the whole piece of work or a substantial part of the work. Copyright law was created to encourage creativity and innovation and therefore making copies of copyrighted works would not only cause financial detriment to the authors but also discourage the- would -be creators of works because of lack of financial benefit/compensation and recognition among others.

Rights provided for under copyright and neighbouring rights laws can be enforced through civil, criminal and administrative measures by right holders through a variety of methods including instituting Civil actions, pursing administrative remedies, and through criminal prosecutions. Injunctions, orders requiring destruction of infringing items, inspection orders, boarder measures etc, are also used to enforce rights.

Protection of Copyright and Neighbouring rights comes with many benefits.

These include Fostering and promotion of human creativity and innovation; giving authors, artists and creators incentives in the form of recognition and fair economic rewards increases their activities and outputs and often enhances the incomes; ensuring existence and enforceability of rights, creators, enterprises and companies can more easily invest in creation,

[19] Section 8

development, and global dissemination of works. This helps increase access to, and enhances the enjoyment of, culture, knowledge, and entertainment all over the world, as well as stimulating economic and social development.

The Uganda Registration Services Bureau is the National Copyright Regulation office. The Registrar of Copyright charged with the processing of applications for licences, registration of works and productions, registration of collecting

management organizations/societies, giving legal advice and guidance on copyright and neighbouring rights issues, registration of assignments, licences and transfers, Copyright contracts and providing general information relating to copyright matters.

Uganda has a proper legal and institutional framework that supports the creation, protection and promotion of copyright though like in many other nations, it has been affected by piracy and infringement of intellectual property law.

Legal and administrative measures have been put in place to combat piracy and protect copyright. Copyright is a private right and the holders of such rights are advised to always report to the authorities for redress where there has been a violation and or abuse of their rights.

Requirements for a work to be protected under copyright.

It must be;

1) “original” which means that it was not copied from any other source;

2)“fixed in a tangible medium of expression” which means that it exists in some reasonably permanent or stable form so that a person can perceive it and reproduce it; and

3) have a minimum degree of creativity. For the musician, copyrights can protect both songs (which usually consists of a melody and includes lyrics if the song has words) and recordings (CDs, mp3s, LPs, cassettes, DAT, and any other recording).

The “fixed” requirement means that there is no protection for a song that is only in your head. A song may be "fixed" by writing it down, recording it (even on a handheld recorder), or saving it to a hard drive on a computer.

Playing a song live does not meet the “fixed” requirement. But, if you record the live performance, you have now "fixed" the song.

Once an original work is fixed in a tangible medium, the creator has copyright protection automatically. Though registering the work with the Copyright Office may be desirable, it is not required to obtain copyright protection.

The rights of the copyright owner

The owner of a copyright has the exclusive rights to do the following:

1) Reproduce the Work: The rights to make copies of the work, such as the right to manufacture compact discs containing copyrighted sound recordings.

2) Distribute Copies of the Work: The right to distribute and sell copies of the work to the public.

3) Perform Works Publicly: Copyright owners of songs (but not owners of sound recording copyrights) control the rights to have their song performed publicly.

Performance of a song generally means playing it in a nightclub or live venue, on the radio, on television, in commercial establishments, elevators or anywhere else where music is publicly heard.

4) Make Derivative Works: A derivative work is a work that is based on another work such as a remix of a previous song or a parody lyric set to a well-known song (a classic example being Weird Al Yankovic's song "Eat It" which combines Michael Jackson's copyrighted original work "Beat It" with a parody lyric "Eat It").

5) Perform Copyrighted Sound Recordings by Means of a Digital Audio Transmission: This is a right recently added by Congress that gives copyright owners in sound recordings the rights to perform a work by means of a digital audio transmission. Examples of digital audio transmissions include the performance of a song on Internet or satellite radio stations (such as XM or Sirius).

6) Display the Work: Although this right is rarely applicable to music, one example would be displaying the lyrics and musical notation to a song on a karaoke machine.

No one can do any of the above without the permission or authorization (usually given in a license) of the owner of the copyright.

The copyright term

Section 13 of the copyrights and Neighbouring Rights Act 2006 provides for the Duration of copyright protection as follows;

The economic rights of an author in relation to a work are protected during the life of the author and fifty years after the death of the author.

The economic rights of the author where the work is of joint authorship, are protected during the life of the last surviving author and fifty years after the death of the last surviving author.

Where the economic rights in a work are owned by a corporation or other body, the term of protection shall be fifty years from the date of the first publication of the work.

Where the work is published anonymously or under a pseudonym, the economic rights of the author are protected for a term of fifty years from the date of its first publication; but where before the expiration of the fifty years the identity of the author is known or is no longer in doubt the economic right shall be protected during the life time of the author and fifty years after the death of that author.

In the case of audio-visual work, sound recording or broadcast, the economic rights of the author are protected until the expiration of fifty years commencing from the date of making the work or from the date the work is made available to the public with the consent of the author.

In the case of a computer program the economic right of the author are protected for fifty years from the date of making the program available to the public.

In the case of photographic work, the economic rights of the author are protected for fifty years from the date of making the work.

The moral rights of an author exist in perpetuity whether the economic rights are still protected or not and that moral right is enforceable by the author or after death his or her successors.

The two kinds of music copyrights

There are two different kinds of music copyrights:

Sound recordings:

A sound recording is a simply a work comprised of recorded sounds. For example, the recorded performance of a song that appears on a compact disc is a sound recording.

Musical Works (that is, “Musical Compositions” or "Songs"): Both the music and the lyrics to a song, or each of them separately, can constitute a copyrightable musical work.

Distinguishing Between Copyrights in Sound Recordings and Musical Works:

Sound recordings and musical works are separately copyrightable works that can be owned by one or more authors. It is important to be able to distinguish between the two:

A musical work, or a song, usually means a melody and often (but not always) lyrics; a sound recording is the actual recorded performance of that song.

For example, if a songwriter composes and writes the lyrics to a song and Madonna records a version of the song and includes it on her new album, the songwriter owns the copyrights in the musical work (because she wrote the music and lyrics) and Madonna, or more likely her record label, owns the copyrights in her recorded version of the song (the sound recording) which is contained on a compact disc sold in record stores.

The copyrights in sound recordings and musical works create two different revenue streams for their owner(s) in the form or royalties from record sales and music publishing royalties.

In the above example, the songwriter would be entitled to the publishing royalties resulting from any performances of Madonna’s version of her song on the radio while Madonna would get the royalties from the actual sales of the compact disc containing her recorded version of the song.

Registering your copyright

Although an author obtains copyright protection the moment the work is written down or recorded, an author can get important additional benefits and protections for his work by registering it with the URSB Office.

Copyright registration enables an author to take legal action if someone uses their work without their permission and also makes them eligible to receive statutory damages and attorneys' fees under certain circumstances.

The "Poor Man's Copyright": The practice of mailing a copy of one's own work to one's self is sometimes referred to as a "poor man's copyright." There is no provision in the Copyright Act that offers protection for the "poor man's copyright" and it is not a substitute for registration.

There is no value to this because it only proves that an envelope has a postmark.

Copyright notice:

Although music copyright owners are not required to place copyright notices on their releases, it is highly recommended that they do so because:

1) You want fans of the music to be able to contact you with any inquiries regarding licensing, live performances etc.;

2) By placing a copyright notice on the album you prevent anyone who has illegally copied the work from claiming that they did so innocently which would enable them to pay reduced damages should a court determine that they have infringed your copyrights.

Copyright notices for musical works should include the copyright symbol © (the letter C enclosed in a circle) or 4 the word "copyright" followed by the year of publication and the name of the copyright claimant (ex: © 2005 Acme Music Publishing).

The notice for sound recording copyrights includes a different copyright symbol ℗ (the letter P enclosed in a circle) followed by the year of publication and the name of the company releasing the record (ex: ℗ 2005 John Doe Record Company).

Copyright ownership

The copyright in the work is owned by the author, who can transfer it to anyone else, but the transfer must be in writing. The owner can also license the work, which means giving someone certain rights to use their music without giving them actual ownership of the copyrights.

The exception to this is a "Work Made for Hire." If the author creates a work of music while an employee of an employer, and as an integral part of the employment (i.e. it is his job to create the music) then it will be considered a "Work Made for Hire."

The copyright in a "Work Made for Hire" is owned by the employer and will last for 120 years from creation or 95 years from publication, whichever comes first.

The second kind of "Work Made for Hire" is a work that is specially ordered or commissioned for use as one of nine types of works identified in the Copyright Act.

For musicians, a song that is recorded specifically for inclusion on a compilation or in a motion picture or other audiovisual work may under certain circumstances be considered a "Work Made for Hire."

Note: The intellectual property right is an umbrella term for various legal entitlements, which attach to certain names, written and recorded media, and inventions. It refers broadly to the creation of the human mind and it is assuming increasing importance in every facet of life today unlike what it used to be before the advent of modern science and technology. There are two

branches of intellectual property, namely, copyright and industrial property. Copyright deals primarily with literary, musical, and artistic creations while industrial property right deals with patents, trademarks, and industrial designs. Intellectual property is an intangible form of property, as opposed to personal property or real property, which is concrete and much more easily defined. It is the result of the creation of the brain or the mind, which is then manifested or interpreted in a form that has a physical dimension and possesses exclusive property right. Examples include images, symbols, names, designs, and literary and music works. Intellectual property broadly includes such areas as copyright, trademarks, patents, and industrial designs.

Chandra (2004) defined intellectual property as "property from original thought protected by law: Original creative work manifested in a tangible form that can be legally protected, example by a patent, trademark or copyright" further noted that intellectual property "is an intangible asset because it has no physical form; it is a category of intangible right protecting commercially valuable works, products and services of the human intellect" .The area of law that deals with and oversees the creation of intellectual property patents, copyrights, trademarks and trade secret laws, the protection of intellectual property rights; and the legal pursuit of those who infringe on another's right to his/her intellectual property is known as Intellectual Property Law.

Copyright is defined as "the exclusive and assignable legal right, given to the originator for a fixed number of years, to print, publish, perform, film or record literary, artistic or musical material" (Retrieved from http://www.oxforddictionaries.com/definition/english/copyright). It also refers to the reserved or exclusive right given by law to the creator of a literary work as regards the use, reproduction, and exploitation of his/her created works for economic or commercial purpose.

Factors militating against an effective enforcement of copyrights in Uganda

Piracy, which is the illegal reproduction of another person's work of art for one's economic gain is the most formidable force which the music industry in the Uganda's economy is contending with. Piracy has threatened the existence of the music industry. The music industry, according to Miller (2003), "has met with an ineffective strategy based around copyright enforcement, the revenues of the record labels have fallen by more than 60 percent, yet there was nothing inevitable about this tale of decline". Nowadays, too many gramophone records are put on audio cassettes and either sold or played even in public much against the Copyright regulations in force in the country and much against the International Mechanical Copyright Laws. Several efforts have been made by different agencies towards fighting the menace of piracy in Uganda. Both the government through its agency and the property owners themselves through their organization have put in a lot of energy in the fight, but due to the fact that piracy like a cankerworm has eaten deep into the vast areas of the country, much still need to be done. The WIPO in their WIPO Magazine (2015) gave a detailed account of the strategic action of the UCC war against piracy in Uganda. The commission's anti-piracy initiative was implemented on three strategic platforms, namely: (a) public enlightenment and education; (b) enforcement; and (c) rights administration.

Strategies for making the copyright system more beneficial in the music industry

Tackling the problem of piracy in any nation especially in Uganda has to start with enabling law by the National Assembly who will spell out the composition of the copyright commission and the punishment to be melted

out to the offenders. It seems that the best strategy so far to be adopted in respect to curbing the menace of piracy in Uganda is through massive morality education which will be geared towards promoting change of attitude in the citizens from childhood to adulthood. Ugandans should be made to understand that piracy is an offence and that no one has the moral justification to indulge in it. This can be achieved through the following agencies: home (parents to children), government (formal school, workshops, seminars, organizations, and public enlightenment), and other advisory channels.

The fight would have to start from the grassroot of the society; the family. Parents need to teach their children that it is morally wrong to download music illicitly or purchase pirated works. The children have to grow up with this notion. Intellectual property education content should be incorporated in the civic education and social studies curriculum right from the primary level to the secondary level of Uganda's education system. Copyright law should be made a compulsory course for certain departments in the Uganda's universities

The UCC must cultivate the members of the public to give information to them. Schools too have a responsibility to control the use of their Internet facilities. The government perhaps has the most important role to play here. The government will have to spend more money in the fight, campaigns against illicit or "free" downloads will have to be carried out, arrests will have to be made, and the message will have to be loud and clear. Internet service providers will have to monitor their subscribers and also block Websites that allow illegal redistribution of copyright materials. A good example is the recent Internet censorship promulgated by the Chinese government which gives the government more control of materials circulating on the Internet and keeps tabs on them. There is a serious need for the UCC to step up its public enlightenment and right owner education programme in other to sensitize stake holders on their right and the best methods of addressing the copyright piracy.

To serve as a deterrent to violators, the following are suggested:

The UCC in company with armed security agents should ensure regular raids to the markets (such as Alaba International Market, Lagos, Iweka Road Electronic Market, Onitsha, to mention but a few) and factories or buildings where the pirated works are produced seizing and destroying pirated works;

The judiciary must cooperate with the UCC and security agents, so that if an offender is arrested, he/she must not be let off the hook-on technicalities; maximum punishment must be melted out;

Defaulters must be prosecuted, ensuring they go to jail for their actions or pay heavy fine as an alternative.

Having looked at the copyright problem from all facets, the fight to stop it should be fought on a rather moral ground. The Internet has come with its good and bad. It has evolved into something we cannot do without, something we cannot do away with. A fight for reinstitution and proper enforcement of the copyright law in the music industry must be fought while being armed with the technological backup to control music transfer over the Internet. Uganda has a pretty good copyright law but the non-evolving natures of our laws tend to militate against the fight. Most of these laws were made at a time when current day developments were not very familiar to our legislators. Our laws are in dire need of amendments. Having identified the main factors militating against the fight as lack of public awareness, shortage of funds/computer facilities, etc., it is worthwhile to note that regulatory bodies should stand at the battlefront: The UCC is a good example of such body; its functions include carrying out raids, seizing items established to be pirated, and arresting and arraigning perpetrators. The government should also be prepared to dish out tough sentences to those convicted. The judiciary should also sit up; cases pertaining to copyright abuse should not be delayed as it frustrates those that were offended.

We believe that if the ideas generated in this book would translate into actions and results, the music industry in Uganda will reap its harvest.

CHAPTER FOUR

Sampling

What is Sampling? Sampling occurs when a portion of a prior recording is incorporated into a new recording.

Is sampling legal?

When an existing recording is sampled without permission, copyright infringement of both the sound recording (usually owned by the record company) and the song itself (usually owned by the songwriter or the songwriter's publishing company) occurs.

In order to legally use a sample, permission is required from both the copyright owner of the sound recording and the copyright owner of the underlying musical work.

In sound and music, **sampling** is the reuse of a portion (or **sample**) of a sound recording in another recording. Samples may comprise elements such as rhythm, melody, speech, sounds or entire bars of music, and may be layered, equalized, sped up or slowed down, repitched, looped, or otherwise manipulated. They are usually integrated using hardware (samplers) or software such as digital audio workstations.

A process similar to sampling originated in the 1940s with musique concrète, experimental music created by splicing and looping tape. The mid-20th

century saw the introduction of keyboard instruments that played sounds recorded on tape, such as the Mellotron. The term *sampling* was coined in the late 1970s by the creators of the Fairlight CMI, a synthesizer with the ability to record and play back short sounds. As technology improved, cheaper standalone samplers with more memory emerged, such as the E-mu Emulator, Akai S950 and Akai MPC.

Sampling is a foundation of hip hop music, which emerged when producers in the 1980s began sampling funk and soul records, particularly drum breaks. It has influenced many genres of music, particularly electronic music and pop. Samples such as the Amen break, the "Funky Drummer" drum break and the orchestra hit have been used in thousands of recordings; James Brown, Loleatta Holloway, Fab Five Freddy and Led Zeppelin are among the most sampled artists. The first album created entirely from samples, Endtroducing by DJ Shadow, was released in 1996.

Sampling without permission can infringe copyright or may be fair use. **Clearance**, the process of acquiring permission to use a sample, can be complex and costly; samples from well known sources may be prohibitively expensive. Courts have taken different positions on whether sampling without permission is permitted. In Grand Upright Music, Ltd. v. Warner Bros. Records Inc (1991) and Bridgeport Music, Inc. v. Dimension Films (2005), the courts ruled that unlicensed sampling constitutes copyright infringement; however, VMG Salsoul v Ciccone (2016) found that unlicensed samples constituted de minimis copying, and did not infringe copyright. Though some artists sampled by others have complained of plagiarism or lack of creativity, many commentators have argued that sampling is a creative act.

License fees for sampling vary greatly depending on:

How much of the music is sampled;

The popularity of the music you intend to sample; and

The intended use of the sample in your song (if your entire song is based upon a sample, it will be costlier than a minor use of the sample).

License fees for samples can be granted for free, for a percentage of the royalties (i.e., a few cents for each record pressed or sold) or for a flat fee. Because there are no statutory royalty rates for samples, the copyright owner can charge the artist whatever he wants for the use of the sample and can refuse to grant permission to other artists to sample his work.

What are the Penalties for Sampling Another Artist's Song Without Permission?

If an artist uses samples without the copyright owner's permission, a court can force the artist or the artist's record label to recall and destroy all of the records containing the samples and to pay damages to the copyright owner in an amount for each act of infringement.

In addition to copyright infringement, artists who sample may also be in violation of their recording contracts.

Most recording contracts contain provisions called "Warranties" "Representations" and "Indemnification" in which the artist promises that all of the material on his album is original, and agrees to reimburse the record label for all of its court costs, legal expenses, and attorneys' fees if the label is sued for copyright infringement.

Before sampling, no matter how small a portion of the recording is used, permission from the copyright owners of both the recording and the song is required.

Do not rely on the myth that you can use a certain number of seconds or bars of someone's song without penalty. Get permission first!

What Exactly is Sampling and At what Point does it become illegal?

Sampling is the process of taking a piece of music, whether an instrumental riff or a vocal line, and using it in your own compositions. Some people might insist that the act of sampling is entirely legal under the fair-use doctrine. Others might contend, under the same doctrine, that there is a predetermined limit of how much you can sample from a work, such as four notes or three seconds of a song. In reality, you cannot sample a song at all without the permission of the song's copyright owner (i.e. the songwriter or music publishing company). Additionally, licensing is required if the sample is at a "level of legally cognizable appropriation" or as long as the sample would not be considered de minimis, i.e. of minimal infringement. In some cases, you might need the permission of the sound recording copyright holder, generally the record label. In return for permission to use the sample, the copyright owner(s) would be paid a sampling license fee, which can vary greatly depending on how much of the song you want to use and how successful that song has been. Fees are typically paid in one of two ways: A flat-fee buyout or by agreeing to give a percent of the mechanical royalty rate of your new work. Generally speaking, sampling is a violation of copyright law. Recent court decisions have ruled that even the de minimis defense does not protect samplers from copyright infringement. In sum, sampling becomes illegal when, for commercial use (not a non-commercial "fair use"), the sample is used without the copyright owner's permission.

CHAPTER FIVE

Music Publishing

What is Music Publishing?

Music publishing is simply the business of exploiting a song – that is, finding uses for the song, such as cover versions, film, TV and video games, ringtones, greeting cards and even karaoke machines – and collecting money for such uses, usually in the form of a license fee. Songwriters typically own the copyrights in the music and lyrics to the songs they write and earn money, usually from license fees or royalties from the commercial use of their songs. Publishing income does not come from copyright ownership in sound recordings. It comes from ownership of the copyrights in the songs. The copyright owner of a song is entitled to certain exclusive rights under the Uganda Copyright and Neighboring Act 2006 (see section on the "Rights of the Copyright Owner"). If someone wants to use the song in any way, they must get permission from the copyright owner in the form of a license. Money generated from such licenses is called "publishing income".

What is a Publishing Company?

Because it can be very difficult to keep track of and collect the publishing monies, many songwriters engage or contract with music publishing companies.

A publishing company's job is to find uses for a songwriter's music such as issuing licenses, collecting income generated from the licenses and paying all monies due to the songwriter after deducting an agreed-upon fee or percentage of the revenues for the performance of these services.

These arrangements between the publisher and the musician are called "publishing agreements."

There are several different types of publishing agreements, including: "co-publishing agreements" (where the songwriter or the songwriter's publisher and an administrative publisher jointly own the copyrights in the song), "songwriter agreements" (where the songwriter transfers the copyrights to the publisher) and "administration agreements" (where the songwriter retains the copyrights in their song).

If offered a publishing contract, an artist should consult an attorney to review the agreement, explain its terms and negotiate with the publisher to get the fairest possible deal for the artist.

Sources of Publishing Income:

There are four main sources of publishing income: Public Performance Royalties: If a song gets played in public (in nightclubs, at live concerts, on the radio, on television, etc.) the copyright owner of the musical work is entitled to payment for the performance of that song.

However, in order to collect performance royalties, the songwriter usually needs to register as a member of a performance rights society, which will collect all royalties from the radio and television stations, nightclubs, live venues and other commercial establishments playing the songwriter's music.

Songwriters can register with a performance rights society as soon as one of their songs is commercially recorded, offered for sale, or publicly performed.

Performance rights organizations are not traditional music publishers and are only involved in the collection of performance royalties.

Mechanical Royalties:

Mechanical royalties are fees paid to the copyright owner of a song (usually the songwriter and/or the music publisher) for the right to reproduce the song on a recording.

The Uganda Copyright and Neighbouring Right Act provides that once a song has been commercially released, any other artist can record and release their own version of that song in an audio-only format (CD, cassette tape, vinyl, digital download etc.) without the copyright owner's permission so long as they pay the copyright owner or the copyright owner's publisher the minimum statutory royalty rate for every copy of their version of the song that is pressed and distributed.

The minimum statutory ("mechanical") royalty rate is currently 8.5 cents for each copy of the song that is pressed and distributed but that amount increases periodically and is computed differently if a song is more than five minutes long.

Usually, the record label releasing the recorded version of a copyrighted song pays mechanical royalties to the publisher or songwriter according to the terms of a contract called a "mechanical license agreement".

Mechanical licenses can be obtained through the Harry Fox Agency (www.harryfox.com) or can be negotiated directly with the publisher or copyright owner of the song. Mechanical licenses do not apply to dramatic works such as operas, ballet scores, and Broadway musicals.

In the music and record business, the terms statutory or compulsory license refer to a mechanical license obtained under the provisions of the Copyright Act.

Synchronization License Fees:

A synchronization license is required any time the performance of a song is accompanied by visual images.

Synchronization licenses are issued when songs are included in audiovisual works such as movies, television shows, TV advertisements, video games, etc.

The fees paid for synchronization licenses vary according to the usage and the importance of the song. While a ten-second background use of an unknown instrumental song in a television show may generate a fee of only a few hundred dollars, the fee for the use of a full-length performance of a hit song in a major motion picture or national advertising campaign can be in excess of $100,000.

Print License Fees: While performance, mechanical and synchronization royalties are the main sources of publishing income, revenues from the sale of printed music can also be substantial.

A songwriter receives royalties from a print license any time sheet music of his song or a folio or collection of his songs is sold. The royalties received from print licensing are usually a few cents per copy printed.

Internal Band Agreements:

In order to avoid future misunderstandings, a band should have an internal agreement between all of the band members, which sets out how the band is going to conduct business together.

This agreement should be created as soon as possible after the band's formation when the band members are on friendly terms and can negotiate in a levelheaded manner.

One of the first decisions to be made is whether the band will create a corporation or a limited liability company to operate their business.

If so, an internal band agreement will still be required, but it will be described as a "Shareholder Agreement" or "Members Agreement." The agreement should be in writing and cover topics such as:

Ownership of the band name, who owns and controls copyrights, the division of the bands assets and income (from live performances, touring, record contacts, publishing deals etc), who, if anyone, is to act as the band's leader, what are the responsibilities of each band member and what happens when there are disputes, someone leaves the band or the band breaks up.

A band should consult an attorney to draft a contract reflecting all of the terms agreed upon by the band members and assist with the registration of the business entity if the band elects to form a corporation or limited liability company.

CHAPTER SIX

Infringements of Copyright

Section 46 of the Act provides that Infringement of copyright or neighboring right 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 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.

The use of a piece of work in a manner prejudicial to the honor or reputation. The copyright industry has been faced with a lot of infringement. Copyright in a work is infringed when someone, without permission of the owner of the copyright, exercises one or more exclusive rights of the copyright owner over that work and when moral rights are violated. It also occurs where there is no valid transfer, license, assignment or other authorization by the creator or any authorized person. Author shall be deemed an infringement of the right of the owner of the right.

Copyright infringement is the act of violating any of copyrights owners' exclusive rights granted by the government.[20] Infringement occurs when a

[20] Black's law dictionary 8th edition pg. 796

person without a valid transfer, license, assignment or other authorization deals with the mark or does any act falling within the exclusive rights of a copyright owner[21] hence infringement includes use of works in a manner prejudicial to the honor and reputation of the author.

Such infringement can either be direct or indirect as seen below.

Direct infringement occurs when a defendant without any valid transfer, license, assignment or any form of authorization deals with another's protected work as the real of the work.

Indirect infringement is whether defendant(s) authorizes a 3'd party to use copyrighted material without any authority to do so[22]

In **University of New South Wales Vs Moorhouse**[23]the issue before court was whether the university had authorized infringement by placing photocopying machines in the library available for students. Court held inter alia that the university by doing so had authorized the act of making copies which did amount to infringement.

Particularly where a person does or causes or permits another to;

Reproduce, fix, duplicate, extract or import into Uganda otherwise than for his/her own use.

Distribute in Uganda by way of sale, hire, rental or like manner, or

[21] Section 46 Copyrights And Neighboring Rights Act

[22] Section 46(2) Copyrights And Neighboring Rights Act

[23] [1975] HCA 26;133 CLR 1

Exhibit to the public for commercial purposes by way of broadcast, public performance or otherwise.

For one to allege or claim that there has been infringement, the substantiality often arises, that is to say, exactly what amount of work should be copied, courts will consider;

The part taken in comparison to the copyrighted materials.

The courts use a qualitative assessment not a quantitative one.

Further on substantial taking, Lord Reid in **Landbroke Vs William Hill**[24] the question whether the defendant has copied a substantial part depends much more on the quality of what he has taken. In **Coffey Vs Warner Chappell Music**[25] a song writer performer could not sue in respect of the vocal inflections in single phase transferred from one of her songs into another co-written and sung by the pop star Madonna.

Therefore, where the above is established, then a person can claim that there has been infringement.

Forms of Copyright Infringement

Photocopying and reproduction of musical work, audio visual work, books, a common vice in Uganda seen in institutions like universities. Photocopy operators are very free to obtain a textbook, and reproduce the same book without seeking any authority from the author which amounts to infringement.

[24] [1964]1 WLR 273

[25] [2005] FSR-34

Take an instance where students are allowed to takeout books from libraries and they will be able to deal with such a book in any manner by photocopy and reproducing the book, however students have defended this that this is done for educational purposes. On the same note it is established that such photocopying should be done with the consent of the author of the book.

Plagiarism, this is the deliberate and knowing presentation of another person's original ideas or creative expressions as one's own[26] therefore one cannot use another's work/material without citing the source.

Note that infringement is not actionable unless it involves the whole piece of work or a substantial part of the work. Copyright law was created to encourage creativity and innovation and therefore making copies of copyrighted works would not only cause financial detriment to the authors but also discourage the- would -be creators of works because of lack of financial benefit/compensation and recognition among others.

Rights provided for under copyright and Neighbouring Rights laws can been forced through civil, criminal and administrative measures by right holders through a variety of methods including instituting Civil actions, pursing administrative remedies, and through criminal prosecutions. Injunctions, orders requiring destruction of infringing items, inspection orders, boarder measures etc., are also used to enforce rights. Protection of Copyright and Neighbouring rights comes with many benefits. These include Fostering and promotion of human creativity and innovation ; giving authors, artists and creators incentives in the form of recognition and fair economic rewards increases their activities anoutputs and often the incomes; ensuring existence and enforceability of rights, creators, enterprises and companies can more easily invest in creation, development, and global dissemination of works. This helps increase access to, and

[26] Black law dictionary '" edition pg. 1187

enhances the enjoyment of, culture, knowledge, and entertainment all over the world, as well as stimulating economic and social development.

Uganda Registration Services Bureau is theNational Copyright Regulation office.

The Registrar of Copyright charged with the processing of applications for licenses, registration of works and productions, registration of collecting management organizations/societies, giving legal advice and guidance on Copyright and Neighbouring Rights issues, registration of assignments, licenses and transfers, Copyright contracts and providing general information relating to copyright matters.

Uganda a proper legal and institutional framework that supports the creation, protection and promotion of copyright though like in many other nations, it has been affected by piracy and infringement of intellectual property law.

Legal and administrative measures have been put in place to combat piracy and protect copyright. Copyright is a private right and the holders of such rights are advised to always report to the authorities for redress where there has been a violation and or abuse of their rights.

Causes of Copyright Infringement

Uganda Registration Services Bureau (URSB), noted that there is no need for artistes to follow up issues of infringement if they have entrusted their copyright with a collecting management organization.

Currently, the country has three collecting management organizations; Uganda Performing Rights Society (UPRS) for musicians, Uganda Federation of Movie Industry (UFMI) for filmmakers and Uganda Reproduction Rights Organization (URRO) for writers and publishers.

The three collect loyalties on behalf of registered members. According to James Wasula, UPRS General Secretary, broadcasters alone play 1. 7 million songs 41 million times a year. And if all the broadcasters were to pay Shillings 750,000 required of them annually, it would offer reasonable compensation to artistes.

UPRS has also licensed music distributors to sell original music CDs. An original music CD must be well labeled with the address of the publisher and a UPRS security logo.

"Piracy not only deprives the copyright holder of income, but taxes to government". said Arthur Mpeirwe, UPRS' Legal Counsel.[27] Ignorance of stakeholders like musicians, authors and the public at large about copyright hence the public will reproduce works protected under copyrights without hesitation.

This is seen people are able to download music and movies from various sites considered as illegal on the internet, an example is being able to reproduce or copy compact discs on movies and music without authority from owners.

Inadequate enforcement mechanisms, apart from a legal regime being in place concerning copyrights, insufficiency in physical means inform of collective management societies, a different police branch well equipped to trace all forms of copyright where it is highly detected. Example in schools especially university and tertiary institutions where there is rampant copyright infringement. Technological backlog, the different copyright enforcement agencies lack technological manpower and skills to be able to cope with the level of development of technology used by infringers.

[27] Simon Musasizi 'Copyright Law; Getting police on board' the observer (Kampala 28th February

This has resulted into more and more instances of copyright infringement though there is a legal regime in place to curb such infringement, especially such forms of infringement that takes place on the internet. Need of the public to opt for cheaper market products, hence they will consume infringed material. Take an example buying music and movies online on platforms like Google play store, ITunes, where generally a song costs about 1.29 dollars and an album costs 9.99 dollars' people would opt for free music downloaded from sites include; qbittorent, mp3jam.com,tubidy.com, this has increased infringement of copyrights.

Ineffectiveness in law making and delayed law reforms, this has given advantage to fraudsters who take advantage of the loopholes in copyright laws like the non-recognition of plagiarism as an offense under Ugandan laws hence causing persistent infringement. This can also be attributed to legislators with insufficient knowledge regarding the copyright field.

High rate of youth unemployment which has led to the youth to illegally reproduce people's works in order to get quick money as a result they infringe on others copyrights.

More and more young people have entitlement attitude that if its posted on the internet it's free hence they will by all means illegally access others work without authority leading to infringement of copyrights. People feel it's ok to steal from big corporations having a mentality that such wealthy companies cannot financially feel the impact of these infringement yet in reality this also affects the small companies.

Possible Measures of Curbing Copyright Infringement.

This section explores both the enforcement of copyright law in Uganda and Kenya, as well as the gaps that paved the way for the abuse of copyright law

in the two countries. The Uganda Performing Right Society organization (UPRS) offers blanket licenses to licensed users to enable upcoming Ugandan musicians to earn from their works, although Muheebwa (2018) clarifies that percentage payments on royalties are however case sensitive. However, it has been ascertained that artists expose their holders' rights to abuse either ignorantly or adamantly, in exchange for simple returns and have little if any room for their licensing authorities. This observation is further made by Mr Kato Lubwama, a local Ugandan musician who noted that the music industry in Uganda is on the verge of collapsing because most upcoming artists have not acknowledged the merits of copyright; they ignorantly adopt the faster, cheaper method of marketing through third-party managers and social media avenues while compromising the long term benefits of copyright. As highlighted above, plagiarism has therefore fast become a threat to Uganda's music and dance as a form of cultural expression and geographical identity.

Various gaps were identified during interviews carried out with Ugandan artists. In these interviews, it became clear that when upcoming musicians venture into the entertainment industry, they do so with unreasonably high expectations. It was noted that these emulate role models upon whose fame and achievements they set their aspirations for success. Forgetting the requirements and conditions for joining the industry, they are determined to achieve their ambitious ends by all means necessary. It was reported that some of these young artists adamantly refuse to register under their respective collective societies. Others simply evade these conditions to minimize delaying protocol and production costs. These actions, unfortunately, sabotage their efforts to succeed in the music industry and those of collective societies alike. According to Kamala, this is done in the hope of a huge upfront payment and expectations to venture into more musical compositions, leading to the frustration of the young artists and to greater convenience and benefit of their managers who are more conversant with the dynamics of the industry. Following this context, it is clear that registration of interest and guidance on the demands of the industry is not sought from the respective collective societies by the majority if not all of the young artists.

It was clarified that due to insufficient funds in meeting production needs, young artists a) forego membership with collective societies, just like they do not register their creations to secure ownership, b) earn quick returns from their works, and c) seek sponsorship from prominent companies and from individual economic and political heavyweights in the country through middlemen with whom they signup secretive but exploitative contracts. However, to their disappointment, they end up reaping too little from their sweat because the contracts are in most cases irreversibly signed with unchallengeable disparities. To make matters worse, legal intervention cannot be pursued as they are desperate and without sufficient funds left to pursue their exploiters.

In the case of Kenya just like in Uganda, it is noted that much as copyright is very much adhered to, experiences of denied royalties also exist in Kenya. The ignorance of IP rights and how these can be patented is what affects them in agreement. Agreements that have granted third-party IP rights have seen many Kenyan artists and innovators denied royalties because they did not understand the terms of the legal agreement.

Rights are at times unknowingly surrendered in perpetuity or relinquished forever without ascertaining commercial benefits. This may be through an assignment where a person that receives IP rights can, upon payment gain, full ownership of the IP as soon as he pays the owner the amount agreed. This may also be through a license. The license allows owners to determine what kind of rights they are offering to a third party and for how long. The owner is in a position to determine where his IP can be used, how it can be used and for how long it can be used by the third party.

I wish to argue that when sponsorship is sought, the artists usually do this through third parties, who in turn gain the entitlements of either "Manager or Producer." Subject to Section 21 of the Copyright and Neighbouring Rights Act, an auxiliary role becomes attached in the due course, which cannot be easily dispensed or waived especially if the art piece gains a high public appeal in the market. The way the contracts are entered into and

signed is what betrays the expectations of youngest, upcoming and off fame struggling artists. By entering into these contracts, they are bound by deals they cannot disengage from, rendering the collective society useless in its cause. Indeed, according to Wasula, by the time they seek UPRS support, it is already too late and costlier to manage and rectify the situation; some of them have been kicked out by the system itself because they did not appropriately utilize the system when they still had the opportunity.

During my LLM research, I found out that some artists sign contracts that reflect that they were hired by managers to produce work on their behalf, yet in actual sense, they are seeking sponsorship to publish or produce their work. Imposing liability on rights abusers becomes challenging. The ability to meet the legal costs is also very low among artistes, especially the upcoming ones. It was further established that the manpower regarding copyright infringement and licensing in the movie industry, for example, is limited by number to sufficiently serve across the country in the case of Uganda. For example, by the year 2014, UMFI only had 15 inspectors and 8 copyright coordinators serving the entire country. UMFI had 87 fully registered production members and 2000 individual members by the year 2014. According to Nsenga and Mugabo, there is limited human capacity with experience to handle copyright administration and litigation. According to Kawooya (2008), most of the cases lodged before the Commercial court lack sufficient pre-trial well gathered evidence and investigations to prove the claims of infringement. To Wasula, while the institutions have limited manpower, their work is even more difficult when there is very limited compliance by the artists to meet their royalties. With limited resources in the pool, it is equally hard to support the young artists, especially in cases where they deliberately refuse to pay their royalties and also in tracking down the unlicensed artists in the music production industry.

Indeed, according to Rukidi, it was noted that although compliance measures have been taken to harmonize policies with internationally accepted Intellectual Property norms, capacity is still lacking to effectively execute and control copyright norm development due to the limited knowledge to come

up with appropriate protection systems. Besides this, Kawooya notes that the administrators of copyright in Uganda have previously been uncoordinated and hopefully under the URBS the situation will improve. This has for a long time been different from the situation in Kenya where copyright issues were under a central mandate of the Copyright Board as endorsed by the Copyright Act. In Uganda, there has been a general lack of coordination among established organizations such as Uganda Performing Rights Society (UPRS) and Uganda Federation of Movie Industry (UFMI), regarding how copyright issues and piracy should be handled.

Needful to mention is the fact that much as there is better coordination in Kenya, elements of misrepresentation and mismanagement have been traced especially with the most influential collective management society Music Copyright Society of Kenya (MCSK). The organization has been plagued with inefficiencies and corruption as is highlighted in Mbuya (2017).

In line with the above, ignorance of both users and artists was revealed as supreme in the understanding of copyright benefits as well as to the enforcement of copyright law. This is clear in the 2015 case filed by Angella Katatumba against the Anti-Corruption Coalition of Uganda (ACCU) for infringing her copyright in its advertisement campaign on forest conservation. Court held that the use of her song could not amount to fair use exception but to the benefit of ACCU, hence amounting to infringement. Consequently, 30 million Uganda Shillings was ordered to be given to Ms. Katatumba in compensation. From the proceedings of the case, it is portrayed that copyrighted works, even if not commercially used, require prior consent before use. In an Interview, Mr. Rukidi commented on the same case arguing that had Angella not secured the copyright, it would not have been easy to place a claim for compensation for infringement in the public space.

There is a widespread lack of knowledge of copyright laws, for the educated and uneducated alike. Indeed, according to Tebusweke (2017), in Uganda today there are low levels of IP awareness, particularly in the informal sector.

According to Kamala, most artists talk about copyright without understanding its implicit meaning. Parties who allege infringement end up in a state where they ignorantly signed away their rights, thus no copyright was secured and any use by third parties does not amount to infringement at all.

Enforcement teams, including individuals and agencies, are still ignorant about the concept of copyright and what it entails and yet the struggle to sensitize the public is entirely being shouldered by underfunded collective societies with limited external support. Uganda has experienced over 40 years of insufficient administration of copyright due to inadequate structuring. Copyright is a recent development in Uganda, with an ignorant society ranging from ambitious artists, implementers and policymakers, just like managers and producers; all these stakeholders make creative rights enforcement difficult in the country.

Most artists will storm the market without consulting or seeking guidance from their respective collective societies regarding the conditions and status of the industry they have joined. Most of the key informants mentioned this as common among the overambitious young artists who are not ready to heed advice yet are ignorant of the dynamics of the industry. Unbelievably, they have the determination to seek sponsors or benefactors zealously after diligently organizing their pieces; they will disgracefully roam the streets seeking sponsors and begging from individuals. Young artist's brave door-to-door visits to big companies, television and radio stations without having the right contact persons to meet. They go as far as appealing to small microphone-street broadcasters for cheap broadcasting or advertising. Whereas the right holders have cited too much piracy, they have a low degree of control. Groups of young musicians have, for instance, through piracy, gained quick exposure in the competitive industry by evading the collective society groups in charge of creative rights protection. This study revealed that high profile names in the music and creative works industry are very significant in advancing the affinity of big audiences during public performances.

However, this costs both the government and the music industry. For example, in a study conducted by UPRS in 2009 it is noted that the valid music industry loses as much as $320,000 per month to pirates, the impact of which has reduced the ability of publishers to proportionately pay musicians. Musicians are therefore suspicious and have also resorted to self-producing as they believe that they are simply being exploited by the publishers. In this aspect, both the entertainment industry and government lose greatly. Similarly, as was reported in the Daily Monitor (2016), pirates within the movie industry have robbed producers of revenue while the viewers consume poor quality products without performance guarantees. Universities were also criticized for not being aware of the significance of registering a copyright. According to Ndagire and Kato, it was revealed that the movie industry is losing huge sums of money due to high-level piracy during production and at distribution and sale of copyrighted works. The producers declare a few copies out of the total number produced and the pirated copies are sold cheaply to the detriment of the copyright owners; they recommended that the government should ban the importation of duplicating machines that mostly burn CDs.

Copyright adherence in Kenya was noted to be far better compared to the situation in Uganda. Copyright revenue is greatly higher than that of Uganda. Whereas Uganda was only able to collect only over $40,000 in 2012, Kenya collected $2 million in the same year. Additionally, information from the Uganda Registration Services Bureau (URSB) indicated that about eight patents were granted in 2015 in Uganda compared to 207 granted by Kenya in the same period. Despite the low numbers, officials say the figure does not reflect the rate at which innovations are being churned out, and the research being undertaken.

Nevertheless, as ignorance remains at its peak in matters of copyright in Uganda, there is a positive step in the right direction concerning the registration of works under copyright. Individual artists, producers, policymakers and implementers can now file for copyright violation and seek

redress in court; the commercial court itself manifested the powers of collecting societies to demand royalties.

In the context of Kenya, copyright suits have been filed, as was the case in 2015 by artists against the MCSK, the Copyright Board, and other organizations claiming the right to collect royalties for their works. The society was accused of using artists' royalties on administrative expenses when some musicians with 2 other companies sought an interpretation of Section 30A of the Copyright Act of Kenya under which a dispute arose on the collection of royalties.

Little can be blamed on the artists given the socio-economic environment in which they operate, which is not favorable for strict enforcement and observation of ownership rights in artistic pieces. It was noted that, much as good laws are in place, the environment in which they are applied is non-compliant and influenced by the socio-economic conditions of both right holders and the users. This is particularly true for users of literal pieces and where the laws and policy are geared to promote and create information-rich societies. According to Mukasa, whereas it is acceptable to utilize extracts from texts for educational purposes, this right is also being abused. The challenge lies in the fact that there are many photocopying points. In Kampala, upon purchase of one textbook, copies are made and sold cheaply to numerous buyers. The buyers are hard to trace according to Mukasa, and their infringement goes unreported.

In both Uganda and Kenya, it is notable that the state of economic scarcity is what motivates piracy and photocopying of learning materials. While rights holders have the right to fight for their rights, they need to bear the socio-economic aspects in mind. Apart from this, it was also established that some of the claimants are mere publishers of indigenous local content on which they have no upper entitlement or claim. In this context, it would require them to have all shareholders on board, which environment directly drives artists out of business.

Furthermore, Uganda as a country was first exposed to socialistic market ideologies and later on the free market industry. On the other hand, in line with this, the dual report that Uganda's white paper on education is structured through UPE and USE to support the poor to acquire education. The government then spares the few resources to support the students at tertiary institutions. There is a growing population of UPE/USE poor students at universities who also need to gain access to information just like other rich students. Their only option is to pirate and photocopy information because the ability of the government to avail free information is very low. The government itself is also fully supporting and promoting an informed society through encouraging a reading culture. In its preparations to take advantage of the information era in respect to Vision 2035, with no effort spared in creating a rich informed society, emphasizing the enforcement of copyright law would simply be a cornerstone to the national development goals of Vision 2035. According to Mukasa, the national development goals of an information-rich society should be planned carefully without compromising copyright law and undermining the effort and interest of producers. He warns that creating an open-access arrangement is likely to derail inventors and IPRS owners from engaging in further research and publication.

To make matters worse for the entertainment industry, though it benefits those in search of knowledge, the government recognizes ICT as central in pursuing productivity-driven growth. Indeed, according to Wabala, the massive storage of artistic and literary works on electronic and digital media creates inevitable problems for the administration of copyright law. This is epitomized by the case lodged by Byamugisha Daniel, an innovator, against Bank of Uganda and MTN Uganda, who claims infringed his patented mobile wallet innovation i.e. the MTN Mokash product and Commercial Bank of Africa were running the same systems as his innovation. It was argued that the initiatives being pushed in policy already existed and that the policy would not change what is happening in the film and music industry.

Copyright can only be claimed if such information cannot be held in common. Under the quality of confidence, information is expected not to be common knowledge to a class of persons for example computer analysts and programmers as well as the public. In computer creations, the matters relevant for confidence include the ideas for a new or improved system (program or database) with research and development work; company's strategy for future research and development, production and marketing; details of existing computer systems known by analyst/programmers; lists of customers and sub-contractors. The source code programs are also viewed as confidential. However, in Byamugisha Daniel's case, the knowledge commodity was ignored as tradable, although enforcement mechanisms are in place. The problem remains their enforcement and administration raising a dire need to strengthen the system of justice in enforcement of litigation and regulations. This is true with the advancing technology levels towards cyberspace adoption, most especially with the support of Article 15 of the WIPO Directive which relieves service providers of the general responsibility to monitor the information they transmit or store and the responsibility to seek to prove circumstances of illegal activity. Besides this government of Uganda through Vision 2035 goes ahead to envisage equal opportunities to all groups in information access. Coming up to put up strict enforcement on copyright would simply be a boomerang in its development plans[28].

Sensitization and educating of copyright stakeholders from copyright owners, enforcers of copyrights law to the public at large concerning the availability of a rich copyrights legal cover which if enforced will reduce the rate of infringement of copyrights.

[28] BREAKING THE LINE, COMPARATIVELY RE-THINKING WRITIVISM, MUSIC AND DANCE AS FORMS OF GEOGRAPHICAL IDENTITY AND CULTURAL EXPRESSION TOOL IN AFRICA: A FOCUS ON KENYA AND UGANDA. By Mulalira Faisal Umar Page 9-20

Creation of a well-equipped branch under the police to only handle copy rights law enforcement which in turn will reduce the level of infringement of copyrights.

Technological upgrade, the fact that copyright infringement today involves use of computers and technology especially with the wide spread internet all over the country where many people access copyrighted content illegally like music online but where there is developed soft wares to monitor such illegal activities, this would reduce copyright infringement.

Establishing well cooperating collective management societies which would enable corporation between copyrights owners and consumers of such content and a result to support such copyright owners in monitoring where and how such content is used.

This reduces illegal reproduction of copyrights protected content

The Strategies So Far in Place

The UCC is the body responsible for administering, regulating, and enforcing copyright in UGANDA. It operates under the supervision of Ministry of Culture and Tourism. The body has its work cut out to gradually overcome attitudes ingrained in society from youth to policy-makers themselves. The UCC regulation was the first indigenous legal institution regulating issues relating to copyright in Uganda. These regulations were because of the salient provisions in the law did not foresee the rapid socio-economic development, as well as influx of product of advanced technology upsurge (UCC, n.d.).

Copyright law went on to state in the part one of the copyright that: subject to the section, the following shall be eligible for copyright: literary works; musical works; artistic works; cinematograph works; sound recording; and

broadcasts. Furthermore, a literary, musical, or artistic work shall not be eligible for copyright unless:

Sufficient effort has been expended on making the work to give it an original character;

The work has been fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced, or otherwise communicated either directly or with the aid of any machine or devise. (FRN, 1990)

Music industry is affected by piracy matters on a regular basis; from artist contracts, recording and music publishing agreements to copyright law, name protection, and business organization. After the intellect demanding task of making music, it is not only modest but also legal that the music person gets all the benefits associated with his/her musical work. Legal aspects of the music business examine all the legal issues artists, musicians, engineers, and producers encounter when building their careers, and present a focused look at the important legal changes that have evolved as a result of the shift in the music business landscape. Okafor (2002) grouped the operational environment of the copyright law into three, namely: (a) legal environment; (b) social environment; and (c) administrative environment.

In the legal environment, the main provision of the Copyright Act is concerned with the expression of ideas as in literary, artistic, musical, cinematographic films, sound recordings/films and scientific creation and the legal protection of the expression from unauthorised use (Asein, 1994). Copyright is usually indicted with the international agreed letter "C" in a circle on the title page or at the end. Ekpo (1994) opined that the details of the bundle of rights contained in any particular copyright depend on whether the work is a literary or musical work, an artistic work, a cinematography film, or a sound recording or broadcast. The right to control covers the whole, whether substantial part of the work in its original form or any form recognisable derived from the original.

Throughout the century, the intellectual property owners as well as the government have put several strategies in place to ensure the protection and promote the careers of the right owners. The war has been fought at both national and international levels. Though some of these strategies yielded good results, but they are not quite encouraging compared with the height of piracy in the country today. Professional Musicians Association of Uganda (PMAN) members and other artists and artistes cannot keep track of the sale and circulation of their works. Broadcast media on their part cannot monitor their compliance with copying and performing rights. At the international level, the World International Property Organization (WIPO) stipulated the provisions of the copyright laws in order to bring them to bear with the day-to-day processes of the different areas of their relevance. All these notwithstanding, the copyright enforcement faces several administrative hurdles in Nigeria. It requires more effort to extract their genuine and beneficial collaboration due to insufficient data base with which to operate.

Factors Militating Against an Effective Enforcement of Copyrights in Uganda

Piracy, which is the illegal reproduction of another person's work of art for one's economic gain is the most formidable force which the music industry in the Uganda's economy is contending with. Piracy has threatened the existence of the music industry. The music industry, according to Miller (2003), "has met with an ineffective strategy based around copyright enforcement, the revenues of the record labels have fallen by more than 60 percent, yet there was nothing inevitable about this tale of decline".

Several efforts have been made by different agencies towards fighting the menace of piracy in Uganda. Both the government through its agency and the property owners themselves through their organization have put in a lot of energy in the fight, but due to the fact that piracy like a cankerworm has eaten

deep into the vast areas of the country, much still need to be done. The WIPO in their *WIPO Magazine* (Sylvie, 2008) gave a detailed account of the strategic action of the UCC war against piracy in Uganda. The commission's anti-piracy initiative was implemented on three strategic platforms, namely: (a) public enlightenment and education; (b) enforcement; and (c) rights administration. The attack of the UCC no doubt made some progress in their Strategic Action Against Piracy (STRAP) and the Copyright Litigation and Mediation Programme (CLAMP) action, but it was noted that the problems caused by the vastness and informality of Uganda's internal market place are not the only complications when it comes to fighting piracy. Other factors against ineffectiveness of enforcement can be attributed to lack of human resources; funding and practical experience in intellectual property enforcement of relevant officials; insufficient knowledge on the side of right holders and the general public concerning their rights and remedies; and systemic problems resulting from insufficient national and international coordination, including lack of transparency (Adeleye, 2013).

The commission enumerated other problem areas as follows:

Cross-borders issues arise with Nigeria's four neighbours: Benin, Chad, Cameroon, and Niger;

Limited resources must be optimized and field work targeted for the best results;

There is a general lack of awareness of intellectual property laws and regulations. (Sylvie, 2008)

It is disheartening that despite all the efforts and several attacks made by the UCC anti-piracy initiatives with STRAP and CLAMP and other agencies in Uganda towards waging war against piracy, the level of piracy is still high, up to "58% of all copyrighted works in Uganda" (Sylvie, 2008). Poverty, high cost of originals, greed and profitability, and weak law enforcement have been

enumerated as the causes. Others include high level of ignorance about the copyright system amongst right owners, enforcement agencies, and other officials who were hitherto presumed to be sufficiently informed.

Strategies for Making the Copyright System More Beneficial in The Music Industry

Tackling the problem of piracy in any nation especially in Uganda has to start with enabling law by the National Assembly who will spell out the composition of the copyright commission and the punishment to be melted out to the offenders. It seems that the best strategy so far to be adopted in respect to curbing the menace of piracy in Uganda is through massive morality education which will be geared towards promoting change of attitude in the citizens from childhood to adulthood. Uganda should be made to understand that piracy is an offence and that no one has the moral justification to indulge in it. This can be achieved through the following agencies: home (parents to children), government (formal school, workshops, seminars, organizations, and public enlightenment), and other advisory channels.

The fight would have to start from the grass root of the society; the family. Parents need to teach their children that it is morally wrong to download music illicitly or purchase pirated works. The children have to grow up with this notion. Intellectual property education content should be incorporated in the civic education and social studies curriculum right from the primary level to the secondary level of Uganda education system. Copyright law should be made a compulsory course for certain departments in the Uganda universities. Copyright clubs should be created in schools to "provide students with bite-size bits of information at a time on copyright and dangers of infringement, so that they feel concerned with copyright issues" (Sylvie,

2008). The UCC must cultivate the members of the public to give information to them. Schools too have a responsibility to control the use of their Internet facilities. The government perhaps has the most important role to play here. The government will have to spend more money in the fight, campaigns against illicit or "free" downloads will have to be carried out, arrests will have to be made, and the message will have to be loud and clear. Internet service providers will have to monitor their subscribers and also block Websites that allow illegal redistribution of copyright materials. A good example is the recent Internet censorship promulgated by the Chinese government which gives the government more control of materials circulating on the Internet and keeps tabs on them. There is a serious need for the UCC to step up its public enlightenment and right owner education programme in other to sensitize stake holders on their right and the best methods of addressing the copyright piracy.

To serve as a deterrent to violators, the following are suggested:

The judiciary must cooperate with the UCC and security agents, so that if an offender is arrested, he/she must not be let off the hook on technicalities; maximum punishment must be melted out;

Defaulters must be prosecuted, ensuring they go to jail for their actions or pay heavy fine as an alternative.

Having looked at the copyright problem from all facets, the fight to stop it should be fought on a rather moral ground. The Internet has come with its good and bad. It has evolved into something we cannot do without, something we cannot do away with. A fight for reinstitution and proper enforcement of the copyright law in the music industry must be fought while being armed with the technological backup to control music transfer over the Internet. Uganda has a pretty good copyright law but the non-evolving natures of our laws tend to militate against the fight. Most of these laws were made at a time when current day developments were not very familiar to our

legislators. Our laws are in dire need of amendments. Having identified the main factors militating against the fight as lack of public awareness, shortage of funds/computer facilities, etc., it is worthwhile to note that regulatory bodies should stand at the battlefront: The UCC is a good example of such body; its functions include carrying out raids, seizing items established to be pirated, and arresting and arraigning perpetrators. The government should also be prepared to dish out tough sentences to those convicted. The judiciary should also sit up; cases pertaining to copyright abuse should not be delayed as it frustrates those that were offended.

We believe that if the ideas generated in this book would translate into actions and results, the music industry in UGANDA will reap its harvest.

CHAPTER SEVEN

Trademarks

What is a Trademark?

A trademark is a word, name, symbol or device, or combination of them, used by a business in commerce to identify its goods and services and to distinguish them from others.

Trademark rights may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark.

Service Marks: A service mark is a trademark that is used in connection with services. For example, a band can obtain a service mark in its name to be used in connection with its live performances (entertainment services) and can also obtain trademarks in its name in connection with the sale of its CDs, t-shirts, posters etc. (goods).

Trademark Registration: A business can obtain trademark rights in the geographic area of use simply by using the mark in the ordinary course of trade or in connection with the sale of goods or services.

However, in order to obtain national trademark rights, which serve as evidence of ownership of the mark and enable the owner to sue for infringement in federal court, the owner must first apply to register the mark with the United States Patent and Trademark Office (USPTO).

Trademark registration applications can be obtained from the USPTO website (www.uspto.gov) and the applicant must pay a separate filing fee for each class of goods and services for which the applicant wishes to use the mark.

For example, if a band wants to obtain a service mark in its name for live performances and a trademark in its name for CD sales the band only has to file a single application but would be required to pay two separate fees.

Once a trademark is registered by the USPTO, the owner is entitled to use the mark forever provided that the owner continues to use the mark, satisfies the renewal requirements and pays the appropriate renewal fees.

Use of the ™ or SM Symbols: Use of the symbols "TM" or "SM" (for trademark and service mark, respectively) usually indicate that a party is claiming "common law" rights in the mark.

These symbols are often used before federal registration is obtained.

Proper Use of the Federal Registration Symbol ®: The federal registration symbol may only be used once the mark has been registered by the USPTO.

While an application is pending, the ® symbol cannot be used until a federal registration has been obtained.

Trademarking Your Band's Name: Before deciding on a particular brand name, it is important to determine whether anyone else is already using that name.

A band's rights in its name depend on a few key factors:

(1) Whether the band used the name first;

(2) The geographic area (city, state, region, etc) where the band uses the name; and

(3) Whether the band actually performs under the name. If the band used the name first it may be able to stop other acts from using the same or a similar name. However, unless the band has obtained a federal trademark registration giving it an exclusive right to use the name throughout the United States, the band would only have the rights to use the name exclusively in the areas where it was the first to use the name.

For example, if a local band performed live or sold its CDs only in Chicago, it could not prevent a band in California from using the same name, but could stop the other band from using the name in Chicago if the Chicago band was the first to use the name in that area.

Additionally, if a band applied for a federal trademark registration for it's name in 2005, it could not prevent another band that started using the name in 2001 from using the name in the geographic area(s) where that band performs or sells its music.

Researching Band Names:

Prior to choosing a band name, artists should conduct a thorough trademark search to ensure that the name they have selected is not being used by another band. A reasonably complete, and free, trademark search can be conducted independently utilizing online resources such as the USPTO website (www.uspto.gov), search engines like Google, Yahoo etc, sites dedicated to listing band names including the Ultimate Band List (www.ubl.com) and Bandname.com (www.bandname.com) and various online music retail sites (Amazon, I-Tunes, Napster, MSN etc).

Although these are good starting points, to be as careful as possible not to infringe on another band's name, artists may want to hire an attorney specializing in these matters or a trademark search company to conduct a more comprehensive trademark search.

Protecting your Band Name:

If a thorough trademark search reveals that their chosen band name is not in use, artists should apply for a federal trademark registration for the band name and consult an attorney to assist them with the registration process, which can involve complex negotiations and correspondence with the staff attorneys at the USPTO.

Prior to securing federal registration, artists can protect their band name by keeping records of where and when they perform and sell CDs and any publicity or advertisements including the band's name that establish priority of use of the name in various geographic areas.

Artists should also try and register the domain name for their band to secure it for future use as the address for the band's website.

You can search available domain names and obtain domain name registrations through www.networksolutions.com. [Note: having a trademark does not necessarily mean that you have the rights to the domain name, and visa versa

CHAPTER EIGHT

Entertainment Industry

Record Labels

Record Labels and Recording Agreements

The main function of a record label, or recording company, is to manufacture, distribute, market, promote and sell an artist's music. The artist and the record label enter into a written "recording agreement" which governs their relationship. Some of the key provisions in recording agreements include: the term or duration the agreement, the number of songs or albums to be recorded, the royalties to be paid to the artist, the territory (the countries where the record label can release or sell the album), the budget for recording, marketing and promotion and the general rights that the artist grants to the record label.

Recording agreements are often 50 to 80 pages long and contain complex language and terms that are not only difficult to understand but can significantly impact the artist's rights, obligations, and compensation. Accordingly, any time an artist gets offered a recording contract they should consult an attorney to review the agreement, explain its terms to them and negotiate with the record label to get the fairest possible deal for them.

Music Publishers

Publisher of audio/audiovisual work is a person having acquired the contractual rights to publish the work

Requirements for publishers of Ugandan audio/audiovisual work

Publishers of Ugandan audio/audiovisual works shall label the original medium of the work, and on the label shall be included the following:

a) title of the work;

b) titles of individual tracks with respective full names or pseudonyms of author(s) or singer(s) and if different respective composer and singer (if more than one track is published [fixed] on the medium);

c) Full name of the director and/or producer;

d) The publisher either by trade name, trade mark or full name;

e) Year of production of the work;

f) The circled letter C (©) for copyright and the similarly circled letter P for publisher along with the year of publication;

g) The age limit of access, where such notification is necessary to guide the user/consumer;

h) marking of all promotion and information materials relating to the distribution of AUDIO/Audiovisual work with the information related on its contextual characteristics, primarily on the presence of violence, brutality, pornography or similar contents potentially damaging in the psychical or moral sense, by adding the text "Potentially damaging for the human psyche

or morality." Clearly indicate the words L for bad language, S (Sex), N (Nudity), V(violence);

I) copyright warnings;

j) affixing an approved banderole for authenticity of original work; and

k) publishers shall add at the end of each advert precautionary warning statements in all adverts relating to products harmful to human health, environment, moral.

CHAPTER NINE

Music Publishing

What is Music Publishing?

Music publishing is simply the business of exploiting a song – that is, finding uses for the song, such as cover versions, film, TV and video games, ringtones, greeting cards and even karaoke machines – and collecting money for such uses, usually in the form of a license fee. Songwriters typically own the copyrights in the music and lyrics to the songs they write and earn money, usually from license fees or royalties from the commercial use of their songs. Publishing income does not come from copyright ownership in sound recordings. It comes from ownership of the copyrights in the songs. The copyright owner of a song is entitled to certain exclusive rights under the U.S. Copyright Act (see section on the "Rights of the Copyright Owner"). If someone wants to use the song in any way, they must get permission from the copyright owner in the form of a license. Money generated from such licenses is called "publishing income". What is a Publishing Company? Because it can be very difficult to keep track of and collect the publishing monies, many songwriters engage or contract with music publishing companies. A publishing company's job is to find uses for a songwriter's music such as issuing licenses, collecting income generated from the licenses and paying all monies due to the songwriter after deducting an agreed-upon fee or percentage of the revenues for the performance of these services. These arrangements between the publisher and the musician are called "publishing agreements." There are several different types of publishing agreements,

including: “co-publishing agreements” (where the songwriter or the songwriter’s publisher and an administrative publisher jointly own the copyrights in the song), “songwriter agreements” (where the songwriter transfers the copyrights to the publisher) and “administration agreements” (where the songwriter retains the copyrights in their song). If offered a publishing contract, an artist should consult an attorney to review the agreement, explain its terms and negotiate with the publisher to get the fairest possible deal for the artist.

Sources of publishing income:

There are four main sources of publishing income: Public Performance Royalties: If a song gets played in public (in nightclubs, at live concerts, on the radio, on television, etc.) the copyright owner of the musical work is entitled to payment for the performance of that song. However, in order to collect performance royalties, the songwriter usually needs to register as a member of a performance rights society, which will collect all royalties from the radio and television stations, nightclubs, live venues and other commercial establishments playing the songwriter’s music. There are three performance rights societies in the United States that collect performance royalties on behalf of songwriters: ASCAP (www.ascap.com), BMI (www.bmi.com) and SESAC (www.sesac.com). Songwriters can register with a performance rights society as soon as one of their songs is commercially recorded, offered for sale, or publicly performed. Performance rights organizations are not traditional music publishers and are only involved in the collection of performance royalties.

Mechanical royalties:

Mechanical royalties are fees paid to the copyright owner of a song (usually the songwriter and/or the music publisher) for the right to reproduce the

song on a recording. The U.S. Copyright Act provides that once a song has been commercially released, any other artist can record and release their own version of that song in an audio-only format (CD, cassette tape, vinyl, digital download etc) without the copyright owner's permission so long as they pay the copyright owner or the copyright owner's publisher the minimum statutory royalty rate for every copy of their version of the song that is pressed and distributed. The minimum statutory ("mechanical") royalty rate is currently 8.5 cents for each copy of the song that is pressed and distributed but that amount increases periodically and is computed differently if a song is more than five minutes long. Usually, the record label releasing the recorded version of a copyrighted song pays mechanical royalties to the publisher or songwriter according to the terms of a contract called a "mechanical license agreement". Mechanical licenses can be obtained through the Harry Fox Agency (www.harryfox.com) or can be negotiated directly with the publisher or copyright owner of the song. Mechanical licenses do not apply to dramatic works such as operas, ballet scores, and Broadway musicals. In the music and record business, the terms statutory or compulsory license refer to a mechanical license obtained under the provisions of the Copyright Act.

Synchronization license fees:

A synchronization license is required any time the performance of a song is accompanied by visual images. Synchronization licenses are issued when songs are included in audiovisual works such as movies, television shows, TV advertisements, video games, etc. The fees paid for synchronization licenses vary according to the usage and the importance of the song. While a ten-second background use of an unknown instrumental song in a television show may generate a fee of only a few hundred dollars, the fee for the use of a full-length performance of a hit song in a major motion picture or national advertising campaign can be in excess of $100,000. Print License Fees: While performance, mechanical and synchronization royalties are the main sources

of publishing income, revenues from the sale of printed music can also be substantial. A songwriter receives royalties from a print license any time sheet music of his song or a folio or collection of his songs is sold. The royalties received from print licensing are usually a few cents per copy printed.

Music Merchandise

Live Events

Public Performance Royalties

Then, we have public performance royalties, compensating composition owners for the "perform or display the musical work publically" subset of their copyright. Performance royalties are a bit easier to grasp. Every time a composition is publicly performed, the rights owners get paid — whether it's a radio broadcast, a background playlist at a restaurant, or a digital stream. Yes, if you're streaming a song into your headphones, that's considered a public performance too.

Public performance royalties are managed, collected and distributed by performance rights organizations, or PROs (ASCAP, BMI, and SESAC in the US, PRS in the UK, etc.). The entire landscape of public performance can be separated into two parts: royalties paid by streaming services, and royalties paid by conventional public "broadcasters". In the first case, the DSPs will pay out a share of their revenue to the PROs, split between all right owners on the platform — in the same manner as streaming royalties on the sound recording side are calculated. As we've mentioned in the previous section, that share is a subject of negotiation (and re-negotiated) between streaming services and PROs. Based on the quotes available, it should fall somewhere close to 6-7% of the service's total revenue, deducted from the All-In Royalty Pool.

Then, there are all the public performance users: venues, clubs, restaurants, TV channels, radio stations and so on. To get a right to publicly perform music, broadcasters acquire what is known as a blanket license from PROs. The blanket license allows broadcasters to play any music they want, with the overall cost depending on the potential audience of the platform. Users regularly report their playlists to the PROs through cue sheets, broadcast logs and so forth. You'd be surprised, but even buskers, playing in the designated areas on the subway, have to provide records of all the songs they've performed. Put simply, if you hear music playing in a public space, 99,99% of the time, there's a blanket license behind it. The PROs then use that data to calculate royalties due to rights owners, factoring in an extremely wide range of variables, unique to the public performance medium. Going through all the details of public performance royalty calculation would take an article of its own, but at the end of the day, every calculation system aims to link the royalties due to the scope of the performance. So, a song played in primetime on national TV will earn much more than a song played in the middle of the night on a non-commercial college radio station — makes sense, right?

The Role of Music Publishers

On paper, a music publisher is a person or an organization that is authorized to license the copyrighted use of a particular musical work. Publishers sign contracts with songwriters to manage their composition rights and maximize the cash flows mentioned above — and the first step is registering the copyright with CMOs.

1. Publishing Administration: Registration, Collection and Audit

It's not that hard to register your composition with your local PRO and MRO — just go to ASCAP/BMI and the HFA (or your country's equivalent), sign up, and wait for the paycheck. That should cover both

mechanical and performance royalties, leaving only sync licensing fees on the table — but those are a direct deal type of thing. So, you should be good to go, right?

Well, not really. There are a couple of reasons why songwriters actually need a dedicated publishing representative to manage, collect, and claim their royalties. You see, collective management organizations like ASCAP or the HFA are not incentivized to **distribute the money to a particular songwriter**. Their primary job is to collect royalties from music users, and that's what they focus on — but they won't go over their head to make sure that the songwriters get ALL the royalties due.

So, without proper control from the songwriter's representative side, a sizable portion of royalties gets lost in the publishing "black box" — a pile of unclaimed or wrongly attributed payments. There are a bunch of reasons for that, from music metadata issues and human errors to disorganization, disputed claims, and straight-up fraudulently assumed royalties. In our time working directly with artists, we've stumbled upon thousands of examples of publishing chaos — something like four companies trying to claim 35% of the song on a streaming service each. Well, guess what a streaming platform is going to answer if you try to claim 140% of the song. Correct — no one gets paid.

Then, there are international royalties generated outside of your domestic market. On paper, CMOs across the globe work together and exchange royalties — but in reality (due to the same publishing chaos), this process doesn't work that great. That means that songwriters have to register with all the CMOs across the globe to get 100% of their royalties.

Unfortunately, that's the state of the business. **Songwriters need a dedicated publishing administration rep to get anywhere near claiming 100% of the royalties due**. They need someone who will register, audit, claim, and dispute other's claims on their behalf. In other words,

someone who will fight for their money. That is the essence of publishing administration.

Due to the intricacies of international royalty collection, the publisher needs to cover all the markets across the globe to claim effectively. That means that the publishing administration is done best by massive global companies. Oftentimes, smaller publishing will delegate their catalog to international players for worldwide representation. That is generally known as sub-publishing. Usually, an independent publishing company will claim and audit royalties in its domestic market, while "outsourcing" the rest of the world to huge players, like Sony ATV, Warner Chappell, BMG, UMG, Peermusic, Downtown Music Publishing (the company behind Songtrust) or Kobalt in exchange for a small share of the royalties.

Publishing A&R: Scouting for Talent and Developing Songwriters' Careers

The degree of the publisher's involvement in the artist's career depends on the type of artist we're talking about. For some acts, publishing is just a side revenue stream — think of a band that both writes and records their own music. Most of their revenue will be made on records, merch, ticket sales, and everything in between. Sure, the publishing royalties are a nice additional revenue source for recording artists — but it won't ever be a priority. For recording-first artists, 99% of the time, publishers will play a purely administrative role.

However, that's not always the case. A lot of the artists out there have two lives — both recording their own music and writing music for other recording artists (or TV shows, movies, and video games). Take Ed Sheeran, for example. Everyone knows him for "Shape of You" and "Perfect". However, even some of his most dedicated fans don't know that Sheeran also writes songs for the biggest names in the business, from Justin Bieber to Major Lazor.

Furthermore, there are songwriters who don't perform their own music at all, focusing entirely on writing for other people and making publishing their bread and butter. Those are the writers and composers at the backline of the music industry — and while they are a lot less visible, compared to the people they write for, they have a huge impact on the music industry.

Take Max Martin, for instance. Chances are the general public will never know his name — yet almost everyone knows the songs that he's written and produced, from Katty Perry "I Kissed a Girl" to Backstreet Boys' "Everybody" and back (alright!). Top songwriters generate millions in royalties every month — but how do you go from writing for your local band to writing for the Drakes of the world? Here's where publishing A&R comes in. For songwriters and producers who focus on writing for other artists, publishes becomes an instrumental partner — and not because of the administration services they offer. From a certain perspective, publishing and recording A&R are not that different.

Along both of the verticals, the role of an A&R rep is to find and sign music talent, and develop the artist's career by putting them in touch with music professionals across the industry. However, there's one crucial distinction. The goal of the A&R is to maximize the long-term revenue generated by talents. Now, when Ed Sheeran wrote "Love Yourself" for Justin Bieber, his label hasn't made a single penny. His publisher, on the other hand, made millions in royalties and sync fees.

So, if the recording A&R cares about the monetary success of the sound recording featuring the artist, their publishing peers are solely concerned with the success of the underlying composition. While publishing and recording A&Rs have similar roles, their priorities (and, accordingly, their day-to-day work) end up being very different. To illustrate, let's compare the jobs of two A&Rs: one is working with a beatmaker/producer (songwriter of the rap world), the other — with a rapper (performing artist). Now, imagine that these two artists work together. Here's how the splits are going to be structured:

Beatmaker/producer's share:

- The beat, or the instrumental part of the composition, **50% of the publishing copyright**
- The producer's share of sound recording, usually about **2-3% of the master rights**

Rapper's share:

- The lyrics, making up another **50% of the publishing copyright**
- The lion's share of the **master** (split between the rapper and his label)

Accordingly, for those two artists, the scales are tipped in different directions. Beatmaker will make money mainly on publishing royalties, while the rapper will rely on recording revenues. So, the goal of the rapper and, by extension, his A&R rep is to make the most successful sound recording.

The rapper's A&R will oversee the recording process, build their image, "lay the ground" for the future release promotion, and so on — more on this in the Mechanics of Recording. The role of the beatmaker's A&R, on the other hand, is to make the most successful composition — which basically means getting the hottest rapper on the beat.

The bigger the performing artist, the better, and if you manage to get Drake — consider your work done. It's now the label's job to promote the song. That makes publishing A&R perhaps the most connection-dependent job across the music industry. Songwriters have to collaborate — and the only way to grow the songwriter's career is to build their name across the music industry and write for the most prominent recording artists.

Negotiating the Music Rights

The third key function of the music publisher is to defend the interest of the songwriters and maximize their share of the rights whenever they participate in the creation of music. Let me explain.

The easy example is when multiple songwriters are working on the same song — whether it's a couple of "guest songwriters" or a 4-piece band coming up with a composition. So, who owns which portion of the copyright for the resulting songs? Well, the commonly accepted practice is for all songwriters to get the same share of the copyright in equal parts — regardless of their respective contributions. However, that is not always the case. Sometimes, publishers will enter the negotiation on behalf of songwriters to establish the final splits.

The songwriting process behind some of the pop-hits can get very complicated. Songwriters are sometimes contracted to work on a specific part of the song, like chorus melody or guitar solo (I know, those are not that widespread anymore, but you get the point). A specific producer might be dedicated to programming the drums — but what happens if he also comes up with the line that makes it to the song's hook. So, who owns what? Songwriters representatives will often have to enter fierce negotiation and fight over those percentages, especially if we're talking about a song that is an unexpected success. You've probably heard about the "Truth Hurts" copyright drama — that's precisely the type of thing I'm talking about.

Then there's also a sort of "indirect collaboration". You see, we live in an age where music (and musical ideas) or continuously repurposed and re-recorded. Sampling is a widespread technique nowadays — spreading far beyond electronic music and hip-hop. Well, from the copyright standpoint, if the composition features a sample, the author of the original song, in a way, becomes one of the songwriters for the new composition. Besides, it doesn't even have to be an actual sample of the recording — just adopting a famous line from another song will do the trick.

As you might've guessed, the "let's split everything equally" rule doesn't really apply here. Instead, sample users will negotiate the license with the publisher of the original catalog, defining the share of copyright due to the sample's author. In some cases, the author won't actually ask for anything and authorise the sample pro-bono. But be sure, if your sampling Notorious BIG, you'll have to part with a portion of copyright. Depending on the scope of the sample's use in the new composition, the publisher can end up claiming anywhere from 5 to 100 percent of the copyright.

The sampling negotiations can get extremely messy — but in any case, if you want to monetize the music that utilizes other composition, you have to go through the corresponding publisher — or risk losing 100% of your copyright.

Promoting the Compositions

Does this song sound familiar?

The chances are that you're more acquainted with the version of this song popularized by Frank Sinatra — but in fact, the original composition was written by Claude Francois long before "My Way" has entered the Billboard charts. Back in 1969, Canadian songwriter Paul Anka bought the entire song copyright, including publishing, recording, and adaptation rights for a symbolic 1$ — with one condition. The authors of the original melody, Claude Francois and Jacques Revaux, retained their original royalty share for whatever version Anka would create. Up to that day, whenever you hear My Way on the radio — whether it's performed by Frank Sinatra or Sid Vicious — it's the original song's authors who cash in on those sweet performance royalties. And believe me, that is like sitting on a goldmine.

That's another integral part of the publisher's job is to make sure that the catalog it represents lives on through the cover versions, samples, and interpretations. The publisher, maximizing the revenues of the composition,

will continuously work to ensure that the composition continues to be performed, or used as a basis for other compositions. That's not just about processing incoming sampling requests but actively reaching out to music professionals and artists to encourage them to create adaptations of the composition.

All this makes publishing an integral partner in any songwriter's career — but not all of the songwriters need the same from their publisher. Accordingly, there are few types of common publishing deals that have become industry standards throughout the years. Here's what you need to know:

Music Publishing Deals Explained

Generally speaking, any publishing deal involves transferring a part of your copyright to a publisher (allowing them to license the use of the composition). In exchange, you will get a share of royalties collected by the publisher. Wait, though — it gets more complicated:

Writer's Share vs. Publisher's Share

Whenever the song is created, there are two equal shares of royalties attached to it. So, even if there's just a single writer working on a song, the composition will be split into two parts: the writer's share and the publisher's share, each worth 50% of the composition. So, if you're credited as a writer on a song (i.e. it wasn't a work-for-hire situation), whatever you do, you will always own the writer's share of your copyright. The ownership of the writer's share can't be assigned to a publisher — it's paid directly to the songwriter by PROs.

Contractually, the role of a publisher is to collect and maximize the publisher's share on behalf of the songwriter in exchange for a percentage of those royalties. That also means that without a publisher (or a self-established publishing company) songwriters get only the writer's share — 50% of their

royalties. Thankfully, it's relatively easy to get your micro-publishing company started, as both the PROs (collecting public performance royalties) and MROs (collecting mechanicals) have developed solutions that allow songwriters to self-publish their work. Besides, as a songwriter, you will have to establish your publishing micro-company anyway — unless you want to give out 100% of your publisher's share and go for a full-publishing deal.

Types of Music Publishing Deals

The split between the publisher and the songwriter — and the nature of the work the publisher will do on the author's behalf — depends on the type of publishing deal. There are few common publishing scenarios that became industry standards throughout the years — so let's through them one by one.

1. Full-Publishing Deals

The full-publishing deals used to be the standard of the industry back in the day. A fully published songwriter assigns 100% of their rights to the publisher. The full-publishing deal covers all the material songwriters will create during the duration of the contract — usually with some kind of contractual obligation for a minimum of number of songs written. For all the compositions written, the songwriter will assign lifetime copyright to the publisher — **the publisher will own his share forever.**

In exchange, the publisher will provide full-circle services to the songwriters, proactively promoting the published material, pitching the songwriter across the industry and so on. In addition, the publisher will put forward an advance, recouped by the writer's share until made whole.

Even though full-publishing deals are less common than they were 20 years ago, they still have a place in today's industry. As it usually is in the music

industry, the share of revenue assigned to the company is a function of the total investment into the artist's career and the risk taken on by the partner.

Accordingly, full-publishing deals are more common if the publisher signs with a perspective, yet unknown songwriter, implying that the company will dedicate a lot of resources into developing the artist's career, while the songwriter doesn't have a sufficient track record. Risky investment more return for the publisher. That's the essence of the deal.

Co-Publishing Deals

Co-Publishing deal is the most common contract in the publishing industry nowadays. Under the co-publishing, the songwriter's micro company and the publishing company put the composition out together — hence the "co-" part — divvying up the publisher's share 50/50. So, the songwriter ends up getting 75% of the royalties: the writer's 50% and half of the publishing share, or the other 25% of the overall copyright, owned by songwriter's micro-company.

Co-Publishing deals are commonplace for the mid-level songwriters, that are still in need of the promotional support from the publisher but have enough negotiating power to skew the deal in their favor (compared to the full-publishing agreement). The co-publishing deals also have some "duration of rights" to them, meaning that eventually, the songwriter will get the entirety of their rights back. It might take a while, though — the duration of rights is set up on a case by case basis, ranging from 2 years to 20 and more.

Otherwise, the co-publishing deals are a lot like traditional full-publishing. Publisher will provide an advance (recouped by the songwriter's share until made whole) and actively work the writer's career — pitching the compositions, maximizing sync opportunities, financing the recording of demo material, setting the songwriter up to write for prominent recording

artists and so forth. The songwriters, in their turn, will commit to the minimum number of songs deliverable under the contract duration.

For both co-pub and full-pub deals, the sync fees splits will be defined on a case by case basis. Essentially, the publisher will maximise and collect all the sync revenues, and distribute it according to whatever the individual deal is — once again, it will come down to the negotiating power of the songwriter.

Administration Deals

Administration deals are a whole other breed of publishing services. Essentially, under the admin deal, the publisher has only one role — collecting and auditing the royalties on behalf of the artist. In that case, the songwriter keeps full control over the copyright, paying the publisher 10-25% of the publisher's share in the form of an "administration fee". Accordingly, the publisher earns a percentage of the revenue only while the deal is still in place, without any sort of "duration of rights". For that reason, the admin deals are usually longer than the co-publishing once, stretching up to 5 years.

Administration deals are commonplace for the well-established songwriters and recording artists writing their own compositions. Put simply, Jake Gosling and Max Martin don't need the publisher to promote their compositions and get them in touch with performing artists. They're already big enough to get all the representation they need from their publishing "already-not-so-micro-company". They do, however, need someone to register their work with all the CMOs around the globe, audit and claim their royalties, look over (and renew) countless sync, and so on.

So, the triple-A songwriters usually go for administration deals — keeping full control over their music, while maximizing the incoming royalties. The same generally goes for the artists that write music for themselves, focusing entirely on the recording side of the business. If the only person you're

writing for is yourself, and plan for it to stay that way, there's no point in getting a full-blown publishing representation. That is precisely why most of the distribution aggregators, like TuneCore and CDBaby, offer publishing administration deals in addition to distributing their music to the likes of Spotify.

What Does the Future of the Music Publishing Industry Hold?

Without a doubt, publishing is an integral part of any songwriter's career. But what does the future hold for the industry? One could argue that the trends we see today across the publishing business are not that different from what we see on the recording label side. 20 years ago, "artist" deals were a norm across both recording and publishing.

Record labels would sign an artist, take a massive stake in the master, and invest heavily in costly recording process and release promotion. A successful musician without a label was, basically, unimaginable. Songwriters, in their turn, would sign a full-publishing deal in the hopes of getting their songs on the radio — there's where the money was.

Nowadays, the power has shifted from the label/publisher to the artist/songwriters. The new digital music industry is a place of self-promotion and self-production. The success story in the music industry used to be about 10 songwriters carefully engineering a top-40 song in the major-run studio. Now, it's a bedroom producer/rapper duo coming up with a viral hit in their home studio.

A&R-focused co-publishing deals are still widespread, but more and more songwriters are shifting to pure administration deals — mirroring the "distribution-only" trend of the recording business. The "think like a start-up" approach is becoming more and more popular across both publishing and recording, pushing creators to consider the long term value of staying independent as opposed to signing their catalog off to the corporates.

However, even the most independent of songwriters can't do without publishing administration — just like the most independent of the recording artists can't do without a distribution deal.

The new generation of administration-first publishing companies (like Kobalt or Downtown Music Publishing's Songtrust) have scaled thanks to this shift. This new breed of publishing companies is a lot like distributors on the recording side, building their services around a well-oiled, automated collection pipeline.

Now, the distributor's shift to label services is a hot topic across the recording industry. In a way, you could see the same thing happening in the publishing business. I wouldn't be surprised to see a company like Songtrust making a move into publishing promotion space, or a new type of songwriter management companies popping up to mirror growing artist management operation.

Performing arts

Section 22 of the copyrights and neighboring Act 2006 provides for the rights of a performer as follows

Rights of a performer

A performer shall have the right to authorize the fixation of his or her live performance not previously fixed on a physical medium;

the broadcasting or communication to the public of his or her unfixed performance except where—

it is made from a previously authorized fixation;

the transmission has been authorized by a broadcasting company that transmitted the first performer;

the direct or indirect reproduction of a fixation of his or her performance in manner or form;

The distribution or making available to the public of the original or copies of the fixation of his or her performance through sale or other transfer of ownership.

A performer has the right to enter into contract on terms and conditions that the performer may wish for the use of the performance or fixation by another person.

A performer shall have the right to authorize the commercial rental to the public of the original or copies of the fixation of his or her performance even after the distribution or making available to the public of the original or copies of the fixation by the performer.

A performer shall have the right to authorize the making available to the public of the fixation of his or her performance by wire or wireless means or internet, in such a way that members of the public may access it from a place and at a time individually chosen by them.

Another important area of music law is the law that applies to broadcasting and the live performance of music. There are many entities that broadcast music. Radio stations, television stations, bars, restaurants and even schools broadcast music or perform it live. There are music laws that determine what a person or group must do in order to broadcast or perform music.

Because the creator of a musical work gets a copyright for the work, people who want to broadcast a work or perform it live usually must have a license from the owner. There are some important exemptions. Music attorneys may advise their clients as to whether they need a license for what they want to do.

For example, a radio or television station typically pays the music owner for non-exclusive rights to the work. The cost of a radio station's license depends on the size of its audience, the station's revenues and how often the station plays the music. A music owner may ask for reports on when the station plays the work.

Even if a television station buys broadcasting rights to a musical work, the broadcasting rights alone may not cover the right to publish the song on a DVD. When a television show moves to DVD, the publishers of the television show may need to re-negotiate licensing for the music to appear on the DVD. It's not uncommon for television shows to have to change their sound if music owners aren't able to agree on terms for the music's inclusion in a DVD release.

Live performance

Buying the sheet music alone doesn't give a consumer the right to perform a musical work. Instead, the purchaser needs a license to perform the work live. Exceptions to licensing requirements are called Fair Use. The courts look at fair use exceptions on a case-by-case basis in order to determine whether the performer violates licensing laws by performing the work without a license. Some fair use exceptions include:

Criticism of the work which may include praise as well as negative comments

- ✓ Satire
- ✓ Commenting on the work
- ✓ News reporting
- ✓ Non-profit, educational teaching
- ✓ Academic research

- ✓ Small businesses
- ✓ Certain religious performances

The Musical Licensing Act of 1997 addresses exemptions that exist to licensing requirements for radio, television and certain types of businesses. Small businesses like bars, cafes and restaurants can play the radio or a television in the background of their business without violating licensing requirements. While they can play a broadcast on radio or television, they can't play a recording of the music without a license. They also can't arrange for a live performance without paying for a license.

Music attorneys help their clients understand what licenses they need. Music lawyers can help their clients secure the licenses they need in order to operate lawfully. If a copyright holder accuses a business of a copyright violation, music law may involve negotiating a resolution or bringing the matter to formal litigation.

Artist Representation in The Music Industry

There are four different kinds of representatives that may represent recording artists, performers, and songwriters in the music industry: personal managers, agents, business managers, and attorneys.

Personal Managers: Personal Managers advice and counsel the artist on virtually all aspects of the artist's career. The duties of a personal manager may include:

dealing with the artist's publicity, public relations and advertising assisting in the selection of the artist's material devising plans for the artist's long term career development choosing the artist's booking agent, road manager, lawyer, accountant et al and overseeing the artist's relations with each of them

counseling the artist on what types of employment to accept in some instances, acting as a liaison between the artist and the artist's record company

Personal managers are usually paid a commission of 15% to 25% of the artist's gross receipts from all of the artist's activities in the entertainment industry (recording contacts, publishing contracts, endorsements, television and movie work, etc). This commission, which may increase depending upon the artist's success, is in addition to reimbursement of the personal manager's travel and out-of-pocket expenses incurred in representing the artist. In certain states, such as California, a manager may not seek or procure employment for artists, as the artist's agent typically performs this job.

Agents: An employment or booking agent's job is to find work for the artist in the music industry. As compensation for their services, an agent typically receives between 5% and 15% of the artist's gross earnings from any bookings, engagements, or employment secured by the agent. The agent's commission percentage may vary depending on a number of factors, including state laws, the type of work, the length of time and/or the popularity of the artist. The laws in many states (including Illinois) require agents and talent agencies to obtain licenses before they can collect commissions. and, in some states, such as New York, agents can only charge artists a maximum of 10% for securing engagements.

Business Managers: Business managers, who are often Certified Public Accountants, look after the financial aspects of an artist's career. A business manager's responsibilities can include providing accounting services, paying the artist's bills, advising the artist on investments, helping form corporations etc. As compensation, business managers typically receive anywhere from 2% to 5% of the artist's gross receipts or may get paid an hourly rate for their services.

Caution: Before managers and agents will represent an artist, they usually require signed contracts. If approached by a manager or agent, an artist should consult an attorney to advise them and to handle any contractual

negotiations on their behalf. You will need professional help before signing any agreement to be sure that the terms of the agreement (such as the fees, duration etc.) are fair to the musician.

Lawyers: In addition to reviewing, negotiating and drafting contracts and advising clients about the law, entertainment attorneys also often perform many of the same duties as personal managers, business managers, and agents.

Attorneys have to be licensed by the state(s) in which they practice and are either paid an hourly rate for their services or receive a percentage of the deals they negotiate on behalf of their clients.

The Strategies So Far in Place

The UCC is the body responsible for administering, regulating, and enforcing copyright in UGANDA. It operates under the supervision of Ministry of Culture and Tourism. The body has its work cut out to gradually overcome attitudes ingrained in society from youth to policy-makers themselves. The UCC regulation was the first indigenous legal institution regulating issues relating to copyright in Uganda. These regulations were because of the salient provisions in the law did not foresee the rapid socio-economic development, as well as influx of product of advanced technology upsurge (UCC, n.d.)

Copyright law went on to state in the part one of the copyright that: subject to the section, the following shall be eligible for copyright: literary works; musical works; artistic works; cinematograph works; sound recording; and broadcasts. Furthermore, a literary, musical, or artistic work shall not be eligible for copyright unless:

Sufficient effort has been expended on making the work to give it an original character;

The work has been fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced, or otherwise communicated either directly or with the aid of any machine or devise. (FRN, 1990)

Music industry is affected by piracy matters on a regular basis; from artist contracts, recording and music publishing agreements to copyright law, name protection, and business organization. After the intellect demanding task of making music, it is not only modest but also legal that the music person gets all the benefits associated with his/her musical work. Legal aspects of the music business examine all the legal issues artists, musicians, engineers, and producers encounter when building their careers, and present a focused look at the important legal changes that have evolved as a result of the shift in the music business landscape. Okafor (2002) grouped the operational environment of the copyright law into three, namely: (a) legal environment; (b) social environment; and (c) administrative environment.

In the legal environment, the main provision of the Copyright Act is concerned with the expression of ideas as in literary, artistic, musical, cinematographic films, sound recordings/films and scientific creation and the legal protection of the expression from unauthorized use (Asein, 1994). Copyright is usually indicted with the international agreed letter "C" in a circle on the title page or at the end. Ekpo (1994) opined that the details of the bundle of rights contained in any particular copyright depend on whether the work is a literary or musical work, an artistic work, a cinematography film, or a sound recording or broadcast. The right to control covers the whole, whether substantial part of the work in its original form or any form recognizable derived from the original.

Throughout the century, the intellectual property owners as well as the government have put several strategies in place to ensure the protection and promote the careers of the right owners. The war has been fought at both national and international levels. Though some of these strategies yielded good results, but they are not quite encouraging compared with the height of

piracy in the country today. Professional Musicians Association of Nigeria (PMAN) members and other artists and artistes cannot keep track of the sale and circulation of their works. Broadcast media on their part cannot monitor their compliance with copying and performing rights. At the international level, the World International Property Organization (WIPO) stipulated the provisions of the copyright laws in order to bring them to bear with the day-to-day processes of the different areas of their relevance. All these notwithstanding, the copyright enforcement faces several administrative hurdles in Nigeria. It requires more effort to extract their genuine and beneficial collaboration due to insufficient data base with which to operate.

Factors militating against an effective enforcement of copyrights in Uganda.

Piracy, which is the illegal reproduction of another person's work of art for one's economic gain is the most formidable force which the music industry in the Uganda's economy is contending with. Piracy has threatened the existence of the music industry. The music industry, according to Miller (2003), "has met with an ineffective strategy based around copyright enforcement, the revenues of the record labels have fallen by more than 60 percent, yet there was nothing inevitable about this tale of decline". Several efforts have been made by different agencies towards fighting the menace of piracy in Uganda. Both the government through its agency and the property owners themselves through their organization have put in a lot of energy in the fight, but due to the fact that piracy like a cankerworm has eaten deep into the vast areas of the country, much still need to be done. The WIPO in their *WIPO Magazine* (Sylvie, 2008) gave a detailed account of the strategic action of the UCC war against piracy in Uganda. The commission's anti-piracy initiative was implemented on three strategic platforms, namely: (a) public enlightenment and education; (b) enforcement; and (c) rights administration. The attack of the UCC no doubt made some progress in their

Strategic Action Against Piracy (STRAP) and the Copyright Litigation and Mediation Programme (CLAMP) action, but it was noted that the problems caused by the vastness and informality of Uganda's internal market place are not the only complications when it comes to fighting piracy. Other factors against ineffectiveness of enforcement can be attributed to lack of human resources; funding and practical experience in intellectual property enforcement of relevant officials; insufficient knowledge on the side of right holders and the general public concerning their rights and remedies; and systemic problems resulting from insufficient national and international coordination, including lack of transparency (Adeleye, 2013). The commission enumerated other problem areas as follows:

Cross-borders issues arise with Nigeria's four neighbours: Benin, Chad, Cameroon, and Niger; Limited resources must be optimised and field work targeted for the best results; There is a general lack of awareness of intellectual property laws and regulations. (Sylvie, 2008). It is disheartening that despite all the efforts and several attacks made by the UCC anti-piracy initiatives with STRAP and CLAMP and other agencies in Uganda towards waging war against piracy, the level of piracy is still high, up to "58% of all copyrighted works in Uganda" (Sylvie, 2008). Poverty, high cost of originals, greed and profitability, and weak law enforcement have been enumerated as the causes. Others include high level of ignorance about the copyright system amongst right owners, enforcement agencies, and other officials who were hitherto presumed to be sufficiently informed.

Strategies for making the copyright system more beneficial in the music industry

Tackling the problem of piracy in any nation especially in Uganda has to start with enabling law by the National Assembly who will spell out the

composition of the copyright commission and the punishment to be melted out to the offenders. It seems that the best strategy so far to be adopted in respect to curbing the menace of piracy in Uganda is through massive morality education which will be geared towards promoting change of attitude in the citizens from childhood to adulthood. Uganda should be made to understand that piracy is an offence and that no one has the moral justification to indulge in it. This can be achieved through the following agencies: home (parents to children), government (formal school, workshops, seminars, organizations, and public enlightenment), and other advisory channels.

The fight would have to start from the grassroot of the society; the family. Parents need to teach their children that it is morally wrong to download music illicitly or purchase pirated works. The children have to grow up with this notion. Intellectual property education content should be incorporated in the civic education and social studies curriculum right from the primary level to the secondary level of Uganda education system. Copyright law should be made a compulsory course for certain departments in the Uganda universities. Copyright clubs should be created in schools to "provide students with bite-size bits of information at a time on copyright and dangers of infringement, so that they feel concerned with copyright issues" (Sylvie, 2008). The UCC must cultivate the members of the public to give information to them. Schools too have a responsibility to control the use of their Internet facilities. The government perhaps has the most important role to play here. The government will have to spend more money in the fight, campaigns against illicit or "free" downloads will have to be carried out, arrests will have to be made, and the message will have to be loud and clear. Internet service providers will have to monitor their subscribers and also block Websites that allow illegal redistribution of copyright materials. A good example is the recent Internet censorship promulgated by the Chinese government which gives the government more control of materials circulating on the Internet and keeps tabs on them. There is a serious need for the UCC to step up its public enlightenment and right owner education

programme in other to sensitize stake holders on their right and the best methods of addressing the copyright piracy.

To serve as a deterrent to violators, the following are suggested

The judiciary must cooperate with the UCC and security agents, so that if an offender is arrested, he/she must not be let off the hook-on technicalities; maximum punishment must be melted out;

Defaulters must be prosecuted, ensuring they go to jail for their actions or pay heavy fine as an alternative.

Having looked at the copyright problem from all facets, the fight to stop it should be fought on a rather moral ground. The Internet has come with its good and bad. It has evolved into something we cannot do without, something we cannot do away with. A fight for reinstitution and proper enforcement of the copyright law in the music industry must be fought while being armed with the technological backup to control music transfer over the Internet. Uganda has a pretty good copyright law but the non-evolving natures of our laws tend to militate against the fight. Most of these laws were made at a time when current day developments were not very familiar to our legislators. Our laws are in dire need of amendments. Having identified the main factors militating against the fight as lack of public awareness, shortage of funds/computer facilities, etc., it is worthwhile to note that regulatory bodies should stand at the battlefront: The UCC is a good example of such body; its functions include carrying out raids, seizing items established to be pirated, and arresting and arraigning perpetrators. The government should also be prepared to dish out tough sentences to those convicted. The judiciary should also sit up; cases pertaining to copyright abuse should not be delayed as it frustrates those that were offended.

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against ineffectiveness of enforcement can be attributed to lack of human resources; funding and practical experience in intellectual property enforcement of relevant officials; insufficient knowledge on the side of right holders and the general public concerning their rights and remedies; and systemic problems resulting from insufficient national and international coordination, including lack of transparency (Adeleye, 2013). The commission enumerated other problem areas as follows:

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We believe that if the ideas generated in this paper would translate into actions and results, the music industry in UGANDA will reap its harvest.

Protecting your musical copyrights

What is a musical composition? A series of notes and chords? Words, Fand melody? Poetry and rhythm? A musical composition may mean different things to different people, but according to United States copyright law a musical composition is an original work of authorship fixed in a tangible medium of expression.1 Compositions are a type of intellectual property, protected by copyright. Copyright protection extends to the musical work, including both music and lyrics, but not to the idea that gives rise to or is expressed by the composition. A copyright in a musical composition vest in the owner a myriad of privileges and protections codified in the copyright laws of individual countries as well as international treaties and conventions. This publication focuses primarily on those sections of the United States Copyright Act (the "Copyright Act") most relevant to authors, owners, and licensees of musical compositions.

United States copyright law can be extremely complex; however, it is important that those with an interest in a musical composition, including authors, heirs, music publishers, and administrators, have a basic understanding of the key aspects of the law in order to effectively protect and exploit their musical property. This handbook sets forth fundamental guidelines for the safeguarding of your copyrights from creation until the date each composition enters the public domain. The handbook is intended as an overview. For a specific understanding of the application of the principles contained herein to your own catalogue, you should consult with a copyright attorney and review the more detailed information available from the Copyright Office.

CHAPTER TEN

Copyright

Subject matter of copyright

The Copyright Act grants copyright protection to 8 categories of "original works of authorship" including:

1. literary works;
2. musical works, including any accompanying words;
3. dramatic works, including any accompanying music;
4. pantomimes and choreographic works;
5. pictorial, graphic, and sculptural works;
6. motion pictures and other audiovisual works;
7. sound recordings; and
8. architectural works.

Sound Recordings

Sound recordings created before February 15, 1972 are not subject to federal copyright protection. Pre-February 15, 1972 sound recordings are typically

protected under state statutes and common law. Sound recordings fixed on or after February 15, 1972 are protected under the Copyright Act. These sound recordings enjoy copyright protection that is distinct from the protection accorded to the individual compositions embodied in the sound recording. A transfer of rights in a sound recording does not convey rights in the compositions or other copyrighted works embodied in the sound recording.

Authors of copyrighted works

The term "author" is not expressly defined in the Copyright Act, other than with respect to works made for hire (where the employer is deemed to be the author). While it is generally understood that the author of a book is a person or persons who wrote the words and/or illustrated the book, and the author of a composition is the person or persons who wrote the music and/or lyrics, there is debate over who constitutes the author(s) of a sound recording.

Copyright Ownership

Copyright ownership of a work vests in the author or authors of the work upon its creation. Authors of joint works are co-owners of the copyright. Authors of works contributed to collective works own the copyright only in their contribution, which is distinct from the copyright in the collective work as a whole. In the case of a work made for hire, absent an agreement to the contrary, the employer will own all rights in the work. In Uganda there are approximately 25 music licensing societies that collected € 2 billion in 2020 on behalf of authors, composers, publishers, performers and record companies. Collecting societies in music representing authors, composers and performers count around 300, 000 members in the music societies (the definition of members includes: authors, composers, music publishers,

musicians and performers). This study examines the legal framework governing collective management in the field of copyright and Neighbouring rights in the Ugandan musician Union, with a particular emphasis on musical works.

The Collective Management of Rights in Uganda:

The quest for efficiency

There are different types of collecting society dealing with different rights. This study will concentrate on the management of copyright linked to the commercial exploitation of musical works. The focus on music rather than other works collectively licensed reflects the fact that it is the "content" sector which makes the most use of collective management mechanism and which drive consumers to new delivery platforms (Internet, mobile). The particular concern about musical works and not sound recordings is linked to the priority given by the Uganda right Commission to the licensing of authors' rights in music, which is perceived as more problematic. The issue of rights management is extremely complex. It requires a basic understanding of the nature of copyright and its exercise. The relationship between the different stakeholders also needs to be understood – they are dependent on each other for their activities. In addition, users for some activities are right holders for others. report wishes to avoid as much as possible legal technicalities and aims as a priority to highlight policy issues linked to rights management.

The management of copyright and related issues

This chapter aims to highlight the main issues linked to the consideration of collective rights manage- ment of musical works. Its intention is to present

the structural, business and policy imperatives surrounding collective rights management, in a simple and accessible way.

The issues relate to:

1. the place of songwriters and composers
2. the characteristics of collecting societies
3. the trigger for changes – the new digital economy
4. the stakeholders and their positioning in a commercial battle
5. the notion of efficiency in rights management
6. copyright management as a bottleneck
7. rights management as a cultural issue.

What is music copyright?

Music copyright designates legal ownership of a musical composition or sound recording. This ownership includes exclusive rights to redistribute and reproduce the work, as well as licensing rights that enable the copyright holder to earn royalties.

Two types of music copyright: master and composition

When you hear a song play on the radio, you might think that there's only one copyright for that song, owned by the artist whose voice you hear. But, in fact, that is not the case. In fact, in some parts of the world, it might be that the recording artist hasn't earned a single cent on that radio spin.

The reason is that each piece of recorded music that has two sets of copyrights: one for the musical composition, and one for the actual sound recording.

Composition

The compositional copyright covers an underlying musical composition: the arrangement of notes, melodies, and chords in a specific order. It is held by songwriters, lyricists, and composers, and managed by their music publishers (who also partially own the copyright).

Master Recording

The master copyright covers the specific sound recording, or "master recording," that contains a particular expression of the underlying musical composition created by performing or recording artists. This copyright is held by the performing artists and, typically, their label.

Now, sometimes, the songwriter and the artists might be the same person — if we're talking about a band that both writes and records their own music. However, even in that case, the music industry will treat the songwriter and the recording artists as two separate entities. Besides, it's never that simple — think cover versions, samples, quoted lyrics, external producers, assisting lyricists, and so on. The structure of the music copyright behind the given song can get complicated — and quick.

When are copyrights created?

The simple answer is: copyright protection begins when music is fixed in a tangible form... However, depending on the type of music copyright, that can mean very different things.

For compositions, the copyright is automatically created when music or lyrics are recorded, put on paper, or otherwise written down in a document — even if it's a simple tweet or a crumpled napkin.

For master recordings, on the other hand, according to the US Copyright Office, the copyright is created as soon as "a sound recording is fixed, meaning that the sounds must be captured in a medium from which they can be perceived, reproduced, or otherwise communicated". This may be "in a digital track, disk, tape, or other formats".

However, while the initial copyright is created as soon as the musical work is fixed, you may need to take extra steps to ensure that the copyright is actually enforced. This depends on where you live: in Europe, no additional registration of the copyright is needed to enforce copyright protections, but in the US, you'll need to register the copyright with the Copyright Office to get full copyright protections.

Exclusive rights held by copyright owners

Royalties are generated when these exclusive rights are licensed over to other parties, so these rights are what allow music professionals to make money (and also how they protect their original work):

Reproduce the copyrighted work

The first right held by copyright owners is to reproduce the copyrighted work via printing CDs or vinyl, and make the work publicly available via streaming services. Technically, every time a listener presses play on a specific song on a

streaming service, they are triggering a reproduction of the sound recording (aka the master) AND the underlying musical work (the composition).

So, streaming services must have licenses from copyright owners to reproduce any songs in their catalog. Master copyright owners receive compensation via streaming payouts, while composition owners receive mechanical royalties.

Prepare derivative works based upon the copyrighted work

Only the copyright holder of the musical composition can legally create a derivative version of that work (or permit others to do so). A derivative work is any musical work that includes major copyrightable components of previous, original work.

If a third party wants to create a derivative work of a composition or master recording, they will require either a synchronization license (on the composition side) or a master use license (on the master side). Most commonly, derivative works are audio-visual combinations that incorporate songs as part of a larger work: advertisements, TV shows, movies, and video games, to name a few.

But derivative *musical* works (think remixes or cover versions) are a bit more complicated: for the work to be considered derivative, it needs to incorporate some aspect of the underlying work to create a new, separate copyrighted work. So, for example, remixes and samples of a song require both master use and sync licenses (since they use the underlying master and composition to create new copyrighted works).

Generally, sync and master use licenses are negotiated one-on-one between the copyright holders and the licensing parties (or their respective representatives).

Distribute copies of the copyrighted work to the public

Just as copyright protects the author's right to create new copies of the composition or recording, it also gives copyright holders (or authorized parties) the right to sell these created copies to the public.

In the modern age, the right to distribute the sound recording is covered by streaming payouts. At the same time, the distribution of compositions occurs only if the composition itself is distributed and sold (e.g., sheet music sales).

Perform the work publicly

The copyright provides the author an exclusive right to perform the work publicly. That doesn't mean that a living person has to "perform" it — any kind of an audio broadcast in a public space will qualify. Live shows, performances, music playing in public spaces like bars or clubs, radio/TV broadcasts, and even audio-streaming on Spotify are all considered public performances. Performance rights are one of the biggest sources of revenue for songwriters and publishers, though whether or not recording artists receive performance royalties depends on the country.

In most of the world, performance rights exist for both the composition owners and master copyright holders (the performance rights for recording artists are also known as "neighbouring rights" or "related rights"). The neighbouring rights are eligible for all performances in signatory countries of Rome Convention of 1961, if the recording artist is a resident of one of those countries.

The US, however, is not one of them, which has two implications. First, the public performances in the US don't generate royalties for master owners.

Second, the recording created by US residents doesn't generate neighbouring royalties — even if they are played on the radio in the UK.

Perform the copyrighted work publicly by means of a digital audio transmission

This right, known as "digital performance rights," is specific to the US and few other countries, and is designed to counterweight the lack of neighbouring rights when it comes to digital radio.

Basically, digital performance rights function like neighboring rights in the US, but they ONLY apply to digital services like Pandora and SiriusXM or webcasts — not to traditional radio (or any other type of public performance). This means that recording artists in the US will only earn performance royalties when their music is played on digital radio.

Display the work publicly

Another less used right conferred by copyright ownership is the right to display the work publicly. That right is more applicable to works of visual art or literature — in music, it accounts for a minuscule part of the actual royalties generated. First of all, the "print rights" don't apply to sound recordings, which can't really be "displayed". However, it can be relevant if, for instance, a label wants to print out a song's lyrics (i.e., a part of a composition) on a CD, or when a music streaming service wants to display lyrics to its users. In this scenario, a print license must be acquired (which is typically inexpensive).

Basically, every type of royalty in the music industry — whether it's on composition or master side of things — can be traced back to one of the

exclusive rights listed above. Public performance royalties are compensating composition owners for right #4, the mechanical royalties are generated by right #1, sync licensing and master use fees compensate both sides for the #2, and so on. Whenever an artist gets paid, copyright is operating behind the scenes to make that happen.

The 6 basics of music copyright law

Now that you understand the protections that come with music copyright, the question is: how does copyright law work? We lay out the basic rules of music copyright law below.

1. Copyrighted work must be original

The bedrock of music copyright is that it's a unique result of the author's creative process: it doesn't have to be novel or revolutionary — the Copyright Office isn't going to be your critic — but it has to be original.

So, what determines originality? When push comes to shove, this is determined in a court of law. Claiming that the underlying work isn't original and thus is not protected by copyright is the most common defense in music copyright infringement lawsuits. If multiple works are borrowing from the same source (let's say both use the same idiom in the lyrics), the copyright owners of one can't claim the infringement by the second and vice versa.

2. Violation of Copyright Law must be established in court

Now, as we've discussed earlier, the copyright owner holds several exclusive rights — and so anyone who violates those rights is considered a copyright infringer. If a copyright infringement is proven in the court of law, the offender will have to compensate the owner — in most cases, by paying a LOT of money.

However, copyright infringement must be established first. That means proving that:

1. The copyrighted work has been copied
2. The copy is "sustainably similar" to the original work

The second point is usually examined through a mix of quantitative and qualitative analysis, which means that the court will have to bring external experts to establish the amount and the extent to which the work has been copied — and if it makes the work similar enough to the source. The extent is usually more important than the amount — the court can rule copyright infringement for samples that are less than 2 seconds long, given that the "character" of the original composition has been copied.

Proving that the copyrighted work has been copied is a bit more interesting. First of all, **copyright infringement doesn't have to be intentional.** Let's say you've used a sample from a pack you found on the internet, which stated that all the samples were licensed under creative commons, and thus free to use. However, if it turns out that the sample that you used was, in fact, a part of a copyrighted work, you will still be liable for copyright infringement — even though you had no intent to do so.

However, the court has to also establish that the potential infringer had **access,** or, in other words, **the ability to see or obtain** the copyrighted material. On paper, two different people can come up with the exact same material, independently. So, if neither of them had access to the other's work — let's say it was stored in a bunker and never published — they will both end up owning legitimate copyrights, even if the work they've created is 100% identical. That is, of course, a completely unrealistic scenario — but in the eyes of copyright law, it is, in fact, possible.

But be mindful — the concept of access doesn't mean that the prosecution has to prove that the infringer has actually accessed the copywriter material.

Instead, it has to establish that the **infringer had an ability to do so** — if, for example, the work has been hosted on an open platform like YouTube.

Master recording copyrights are administered (and, often, owned) by record labels

Depending on the type of recording deal in place, the label is either a primary owner or just a party, acquiring the rights to exploit the master copyright on behalf of the artists (and retaining a portion of the revenue). As a general rule, the record label that footed the bill for the recording will handle the copyrights and royalties on a work.

A classic "artist deal" works like this: the label signs the artists before the recording is produced (recording) and pays for the recording process, thus becoming the primary owner of the master copyright. The label then shares a portion of the revenue with the artist, as dictated by the recording contract.

Lately, however, a new kind of "licensing" deal that empowers the artist is becoming more and more popular. In these deals, the artists create a recording by themselves (thus obtaining the master copyright) and then licenses that existing recording to the label for a fixed period of time. Thus, the artist retains the master rights as well as the ultimate control over their music.

Compositional copyrights are administered by publishers

In the same way that master copyrights are typically managed by labels, the compositional copyright is usually administered by publishers.

However, compositional copyrights work differently from masters. First and foremost, there's a share of copyright that is always reserved to the author (or authors) of the composition, known as a writer's share. Usually, it's 50% of the copyright — though this can differ depending on the country or even a type of royalty.

The other 50% of the copyright is allotted to the publisher, though a portion of *this* share goes to the songwriter as well. It works like this: when a songwriter signs a publishing deal, they transfer a percentage of their publisher's share to the publisher in exchange for their services. That split can fall from 10 to 100% of the publisher's share and either, with the rights duration ranging from entire copyright duration to a couple of years. It all depends on the type of publishing deal.

Copyrights last 70 years past the owner's lifetime

Typically, copyright protections last for 70 years after the end of the calendar year in which the last surviving writer dies. In some cases, this period can be as long as 95 years from publication or 120 years from creation. After this, it becomes public domain.

Cover versions require only a mechanical license and only in the US

Covers don't require sync or master use licenses, but in some countries, you'll have to clear a mechanical license if you want to release them commercially.

Simple covers are NOT derivative works — they don't borrow any components of the master recording (thus, no master use license needed), and

they copy the composition **in its entirety** (which is covered by mechanical license instead of a sync license).

No further licenses are required — and if you just plan to perform covers as a part of the live show, you don't need any permits.

The 2 main benefits of registering your music copyright

While copyright is automatically created when a work is fixed in a tangible form, that's not the same as the copyright actually being registered. And if you want full copyright protections, then registering your copyright is a must (at least in the US).

Create a public record of your copyright

The first benefit of registering your copyright is that it's now in the public record. You may have heard of the "poor man's copyright," where you mail a dated version of the copyrighted work to yourself to "prove" it's your creation, but, tough luck: that won't hold up in a court of law, the work must actually be registered with the US Copyright Office.

Sue for copyright infringement

The other, related benefit is that once your copyright is registered and in the public record, you can sue for copyright infringement. In other words, to actually enforce the rights conferred by music copyright, it must be registered.

How to copyright a song?

If you're a little overwhelmed with the complexity of music copyright law, here's the good news: registering musical copyright is actually quite simple. Here's how you do it in 4 steps.

Make sure the song is fixed in a tangible form

If the song is just in your head, then you can't copyright it: it has to be written down or recorded in some form that can be sent into the US Copyright Office.

Fill out an application form with the US Copyright Office

There are two different forms for compositional copyrights and master copyrights:

- For a composition, use the form PA
- For a sound recording, use the form SR

Pay the filing fee

Submitting an online application costs $35, while a physical application costs $65.

Submit copies of the work

For musical compositions, this will be a copy of sheet music. For audio recordings, it will typically be an audio file or a physical copy of the sound recording like a CD.

Ways to maximize your rights

How you earn the most royalties will depend on which side of the copyright you're trying to maximize: composition or master recording. For master recordings, it's pretty straightforward: put your music out on streaming platforms through a distributor and grow your music sales (via streams). The composition copyright, however, is a bit trickier.

The songwriters and composers

This study relates to the management of copyrights in musical works belonging to individual authors and composers. At the heart of collective management lie the creators of songs and compositions. The creativity of individual authors and composers is the origin of the value chain from production to distribution of works of arts in the music field.

There are more than 1, 000 authors/composers in the Ugandan Music associations. Collecting societies working for owners of neighboring rights (performers and record producers) collected around € 223 million in 2015.

The study will concentrate on collecting societies representing authors, composers and music publishers.

Authors and composers are the original right owners – their contractual relationship with a music publisher will determine the extent of latter's rights in controlling the commercial exploitation of the work. In effect in relation to the total amount collected on their behalf by the societies in general – and in accordance to complex distribution rules – a third will go to the music publisher. This assignment or right transfer will exclude the rights already assigned directly by the author to the society as well as the authors' moral rights.

Complex contractual relationships between author/composers and the collecting societies as well as music publishers. Some authors take the view that a music publisher is not in position to centralize all the rights, in particular in authors' rights countries. This would limit the ability of collecting societies to license repertoire held by virtue of transfer from music publishers only. The authorization of the author/ composer would still be required.

Authors argue that a collective management system needs to take this contractual situation into account as it introduces legal insecurity on the scope of the rights licensed to users. The latter might still need to clear individual rights that have not been assigned to the publisher.

One composer interviewed put it this way: "The majority of authors and composers are not in a position to take a stance on the current debate – they are happy that there is a mechanism close to them that enables them to get regular cheques to pay their bills".

Another offered: "the debate on rights management touches on the relationship between individuals and their publishing house; it is not simply a debate on the efficiency of collective management".

Joint works

In the United States, a composition written by two or more authors is generally deemed to be a "joint work," which is defined as "a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." Ownership of joint works is presumed to be shared equally by the authors, absent an agreement to the contrary. Each author of a joint work is free to enter into a nonexclusive license for the entire work, provided that the author issuing the license accounts to his or her co- author(s). In some cases, co-authors enter into an agreement among themselves, agreeing to work cooperatively in

issuing licenses. As a practical matter, licensees of music publishing rights often insist on obtaining approval on behalf of each author of a work even if the grant of rights is non-exclusive.

Scope of copyright ownership

They are six exclusive rights of the copyright owner, which include the rights:

to reproduce the copyrighted work in copies or phono records;

to prepare derivative works based upon the copyrighted work;

to distribute copies or phono records of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

in the case of literary, musical, dramatic, and choreographic works, to perform the copyrighted work publicly;

in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Transfer of copyrights

Copyright ownership may be transferred through assignments and contracts made by the original or subsequent copyright owner, or may be bequeathed by will. If an author or current copyright owner passes away leaving an estate that includes works under copyright, ownership will pass either to the

beneficiary designated in the author/owner's will or, if there is no will, to the author/owner's legal heirs.

Works Made for Hire

What are works made for hire?

Works made for hire are works of authorship that are deemed to be created by an employer (who may be an individual or an entity) although the actual act of creation is done by one or more other individuals. According to case law, pre-1978 works made for hire are works prepared by an employee within the scope of his or her employment.

The work made for hire status of works created on or after January 1, 1978 is determined based on the two-prong test outlined in order to qualify as a work made for hire, the work must:

1. be a work prepared by an employee within the scope of his or her employment; OR
2. be a work specially commissioned for use as a contribution to one of nine enumerated categories where the parties expressly agree in writing that the work shall be considered a work made for hire.

Works Prepared by an Employee Within the Scope of Employment

The first prong of the work made for hire test has been the subject of judicial review. The case law indicates that the courts will evaluate "the hiring party's right to control the manner and means by which the product is

accomplished." In undertaking such an examination, the United States Supreme Court cited the following general agency criteria:

- The skill required;
- The source of the instrumentalities and tools;
- The location of the work;
- The duration of the relationship between the parties;
- Whether the hiring party has the right to assign additional projects to the hired party;
- The extent of the hired party's discretion over when and how long to work;
- The method of payment;
- The hired party's role in hiring and paying assistants;
- Whether the work is part of the regular business of the hiring party;
- Whether the hiring party is in business;
- The provision of employee benefits; and
- The tax treatment of the hired party.

Works Specially Ordered or Commissioned

Under the second prong of the work made for hire test, a work specially commissioned for one of the following uses will be deemed a work made for

hire provided that the parties agree in writing that the work is being prepared as such:

- As a contribution to a collective work;
- As part of a motion picture or other audiovisual work;
- As a translation;
- As a supplementary work;
- As a compilation;
- As an instructional text;
- As a test;
- As answer material for a test; or
- As an atlas.

Music Publishing Rights

What Are Music Publishing Rights?

The broad bundle of rights that are associated with a musical copyright are known as "music publishing rights." These rights are not defined by statute but rather are terms recognized in the music industry. Similarly, the concept of the "writer's share" versus the "publisher's share" is based in practice, not law. Traditionally, 50% of the income derived from the exploitation of a composition is deemed to constitute the publisher's share and 50% the writer's share. Where the author assigns the copyright in the composition to the publisher, the publisher generally collects 100% of the income and, after deducting costs, remits the balance to the author. Other typical types of arrangements between authors and music publishers include co-publishing

agreements, under which the copyright ownership is shared by the author (or heir) and publisher; administration agreements, under which the author (or heir) retains the copyright ownership and the publisher administers the rights; and co-administration agreements under which the author retains the copyright ownership and co-administers the rights with the publisher. The performing rights societies have subscribed to the distinction between writer and publisher shares and allocate monies accordingly, usually paying the writer's share directly to the author or his/her heirs.

Music publishing rights are generally understood to include the following:

Non-dramatic or "Small" Performance Rights

Non-dramatic or "small" performance rights include the rights to authorize non-dramatic performances of compositions over television, radio, and other

electronic devices; online transmissions; and non-dramatic live performances.

Small performance rights are administered by the performing rights societies.

In the United States, these societies are ASCAP, BMI, and SESAC.

Small performance royalties are divided equally between the writer and publisher. Royalties derived from the exercise of small performance rights are determined by a formula established by the performing rights society. Traditionally, authors were precluded from assigning or selling their writer's share of small performance rights. This is no longer the case, and in recent years a number of authors and heirs have included the writer's share of income, including public performance income, in the sale of their catalogues.

Dramatic or "grand" rights

Dramatic or "grand" rights refer to the use of a song in a dramatic context (whether or not the song is originally written for a dramatic musical

production). Note that there is no statutory definition of grand rights, and an issue may arise as to whether a particular usage constitutes the exercise of a grand, versus small, right.

Grand rights are often withheld from grants of rights to the music publisher and are controlled directly by the author or his/her representatives. The royalties derived from the exploitation of grand rights are typically in the form of a percentage of gross weekly box-office receipts or a flat per performance fee.

Synchronization rights

Synchronization ("synch") rights are the rights to include the composition in an audio-visual production, such as a motion picture, television program, television commercial, home video, and DVD.

Fees are generally in the form of one-time payments, although the arrangement can be a "stepped" deal (e.g., one fee for motion picture use and an additional payment for video rights). In addition, mechanical royalties will be payable if the song is included in a soundtrack album.

Mechanical rights

Mechanical rights are the rights to include a composition in a sound recording. Once a song has been published, anyone can record it as long as the statutory mechanical license is obtained and the statutory fee paid.

In the United States, many copyright owners authorize the Harry Fox Agency to issue mechanical rights licenses on their behalf.

As of January 1, 2012, the statutory rate is 9.1 cents per composition or 1.75 cents per minute for songs over 5 minutes. This rate is subject to adjustments by the Copyright Royalty Board.

Despite the statutory minimum, record companies will often insist on paying a rate that is less than the full statutory rate. A rate equal to 75% of the statutory rate is customary. This is true regardless of whether or not the songwriter has written all the songs on the album. Another common practice of the record companies is to limit the number of songs on a particular album for which the author is paid mechanical license fees even if the album contains a greater number of songs. Both the reduction in the mechanical rate and the limitation on the number of songs respecting which the record company will pay royalties is subject to negotiation.

Print rights

Print rights are the rights to issue licenses for printed versions of the compositions, including single-song sheet music and folios.

Print rights may be included in a general grant of rights to a third-party music publisher or may be licensed separately to a company whose primary business is the printing and sale of music.

The fees payable to the songwriters for the exercise of print rights are typically based on a percentage of retail list price (12.5% is customary).

Concert rental rights

Concert rental rights are the rights to perform works in public. Concert performance rights are generally covered by licenses issued by the performing rights societies. However, the rental of full orchestral scores and parts are

typically handled by a concert rental agent. It is customary for the concert rental agent to retain between 25% and 50% of the rental fees and remit the balance to the writer. Concert rental rights may be included in a general grant of rights to a third- party music publisher or may be licensed directly to a concert rental agent.

New media rights

New Media" is an evolving category of exploitation of musical copyrights.

New Media rights include all rights not covered by the traditional modes of exploitation. New Media rights include digital performance and digital transmission of musical compositions by a variety of means, including digital downloads, ringtones, and interactive streaming. The use of a composition in a permanent digital download is recognized as a mechanical right. The Copyright Royalty Board has established that the current statutory rate for the mechanical reproduction of a composition in a permanent digital download is 9.1 cents per composition or 1.75 cents per minute for compositions over 5 minutes in length (the same statutory rate that applies to mechanical reproduction in physical phono records). The use of a composition in a ringtone is recognized as a mechanical right. The Copyright Royalty Board has established that the current statutory rate for the mechanical reproduction of a composition in a ringtone is 24 cents.

Termination rights and sound recordings

Since the enactment of the Copyright Act, many songwriters, composers and heirs have successfully invoked the statutory termination provisions. However, due to the fact that sound recordings did not come within the scope of federal copyright laws until February 15, 1972, until recently there

has been little consideration of the application of the termination provisions to grants of rights in sound recordings.

Which Termination Provisions Are Available for Sound Recordings?

Pre-1978 grants of rights in sound recordings fixed on or after February 15, 1972 but before January 1, 1978 may be subject to termination under Section 304(c), provided the sound recording was not created as a work made for hire. Post-1977 grants of rights in sound recordings fixed on or after February 15, 1972 may be subject to termination under Section 203 provided (i) the grant was executed by the author of the sound recording and (ii) the author did not create the sound recording as a work made for hire.

Who Is Entitled to Terminate a Grant of Rights in a Sound Recording?

As discussed above, the termination right is owned by the author of a work, or the statutory heirs of a deceased author. However, the identity of the author of a sound recording is not defined in the Copyright Act, nor has it been the subject of judicial interpretation. Several different approaches have been posed for identifying the

author(s) of a sound recording. One position is that the "author" of a sound recording is the artist or artists whose performance is featured thereon, or, in the absence of a featured artist, the producer of the sound recording. A second opinion is that the authors of a sound recording include both the featured artist(s) and the featured producer. A third theory is that the authors of a sound recording include every person (and possibly entity) that had anything to do with the creation of that sound recording, which would include mixers, background singers and session musicians in addition to featured artists and producers.

Note that attributing authorship to every person connected to the creation of a sound recording would make it virtually impossible to determine the duration of copyright protection for post- 1977 sound recordings because it would necessitate tracking the dates of death of the entire class of potential authors. Further, this position would make it difficult, if not impossible, to determine all potential termination rights claimants and could ultimately result in numerous "owners" of non-exclusive rights in the sound recording.

While attributing authorship in a sound recording to the featured artist(s) or, in the absence of a featured artist, the featured producer would seem to support a result that is consistent with both industry reality and Congressional intent; until this matter is settled through legislation or litigation it will continue to be a subject of debate. In the interim, featured artists and the heirs of deceased artists should assert their termination rights in a timely manner by serving notice of termination in accordance with the rules set forth in the Copyright Act.

Are Sound Recordings Works Made for Hire?

The grantees of rights in sound recordings (typically, the record labels) frequently take the position that performing artists render their services as employees for hire of the record label and that the grants are outside the scope of the statutory termination provisions. Indeed, the agreements entered into by performing artists and record labels often expressly state that the artist is rendering services as an employee for hire. However, this statement alone is not dispositive. Both the agreements and the artist-record label relationship must be analyzed in order to determine if the artist rendered services as an employee for hire.

Under such an analysis, a pre-1978 recording agreement will constitute work made for hire agreement only if it is found that the artist rendered services as an employee within the scope of his or her employment. Post-1977 recording agreements must be evaluated under the two-prong work made for hire test

proscribed in the Copyright Act – (i) did the artist render services as an employee within the scope of his/her employment? or (ii) were the artist's services specially commissioned as a work for hire for inclusion in one of the nine categories of works enumerated in the Copyright Act?

Did the Artist Render Services as an Employee Within the Scope of His/her Employment?

Each performing artist – record label relationship must be examined through the lens of the agency criteria to determine whether in fact the artist was the employee of the label at the time the sound recording was made. In most cases, the artist – record label relationship will not be found to create an employee- employer relationship. Importantly, it is rare that a record label will withhold taxes from the monies paid to the artist, or provide the artist with health insurance or other benefits. Note, however, that in cases in which an artist renders services through his or her loan-out corporation, the relationship between the artist and the loan-out company may indeed be deemed to be an employer-employee relationship. In these cases, the loan-out agreement may be enough to prevent the artist from successfully terminating the grant of rights to the record label (as successor in interest to the loan-out company).

Were the Artist's Services Expressly Ordered or Commissioned as a Work Made for Hire for Inclusion in One of the Nine Statutorily Designated Categories?

At the outset, it is important to note that sound recordings are not specifically included in the nine categories of commissioned works enumerated in the Copyright Act. In 1999, Congress amended the Copyright Act to add sound recordings as a category of commissioned works as part of an unrelated bill and after virtually no debate.24 The amendment was repealed the following

year "without prejudice" to the debate of whether sound recordings may or may not be deemed works made for hire. Courts have rejected the argument that a sound recording falls within the category of motion picture or other audiovisual work, thus ruling out one of the nine categories. Services rendered by a performing artist are clearly not commissioned for use in six other categories – translation, supplementary work, instructional text, test, answer material for a test, or an atlas. That leaves two possible applicable categories: contributions to collective works and compilations.

Do the Artist's Services Constitute a Contribution to a Collective Work or a Compilation?

The Copyright Act defines a collective work as "a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole." A compilation is defined as "a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship ... [including] collective works."

One can certainly envision situations in which a sound recording will fall within the definition of a compilation (for example, a holiday album comprised of pre- existing master recordings of individual compositions by different artists).

However, the record label position is that ALL sound recordings are collective works or compilations, because there are multiple separate contributions made in the creation of a sound recording, and/or because the record label may rearrange the master recordings of individual compositions delivered by the artist. According to this position, if the performing artist agreed in writing that his/her services were being provided as an employee for hire, then the resulting sound recording would be a work made for hire and the grant of rights therein would not be subject to termination.

This position is arguably going outside the plain meaning of the statute. While multiple people may work on the creation of a sound recording, the work that they provide does not necessarily rise to the level of an original work of authorship. The fact that the record label may rearrange the order of compositions on a recording, or even choose to eliminate compositions, no more renders the sound recording a compilation than does the fact that a book publisher edits an author's novel or rearranges chapters in a book. Finally, with the growing trend toward the digital release of single-song sound recordings, it will be increasingly more difficult to find that a compilation exists.

Whether or not an artist's grant of rights in a sound recording is subject to termination is currently the subject of great debate. Opinion is divided both as to who is entitled to claim authorship of a sound recording, and as to whether an artist's contribution to a sound recording constitutes that of an employee for hire. It is likely that this debate will continue until resolved by a clarifying amendment to the Copyright Act or a ruling of the Supreme Court. In the interim, it is advisable for artists with a colorable claim of authorship to serve notices of termination in a timely manner, so as not lose the opportunity by reason of the applicable notice window closing before notice is served.

Contractual Termination

The statutory termination provisions enable an author or the heirs of a deceased author to terminate perpetual or "life of copyright" grants under copyright. However, in certain cases it may not be necessary to invoke the statutory termination provisions if a contract itself provides for the expiration or termination of the grant. Some contracts provide for early termination in the event that certain events occur (such as breach by, or bankruptcy of, the grantee) or that certain events fail to occur (such as the failure to meet a minimum guaranteed royalty). Other grants are in the form of option

agreements under which rights terminate in the event that an option is not exercised. It was not uncommon prior to 1978 for a grant to be limited on its face to the initial 28-year term of copyright, or for a grant to specify that it was to persist for a limited term of years. It is established case law in the United States that a pre-1978 grant will persist in the United States for the initial term of copyright only unless the grant specifically includes a grant of the renewal term of copyright. Note, however, that the general understanding is that the grant will continue to control outside the United States in these instances unless specific provisions are included in the contract that provide for a limited term outside the United States.

During the mid-twentieth century, a series of original and renewal songwriter form agreements were published by the Songwriter's Protection Agency, successor in interest to AGAC and predecessor in interest to the Songwriter's Guild of America. It is worth noting several of the most commonly used of these forms, which contained specific provisions relating to the term of the contract. While the contract must be reviewed in each instance to determine if the parties amended or modified the standard terms, a basic familiarity with these provisions will alert you to a possibility that a grant will terminate at least in some portion of the territory by virtue of the standard language of the agreement.

The 1939 uniform popular songwriters contract

The 1939 Uniform Popular Songwriter Contract (the "1939 UPSC") provides for the grant of rights in a musical composition and the right to secure copyright in the composition throughout the world, including "the right to have and to hold the said copyright and all rights of whatsoever nature thereunder existing." Since the 1939 UPSC does not specifically grant rights for the renewal and/or extended term of copyright, the form is generally

understood to convey rights in the United States for the initial 28-year term of copyright only. With respect to the rest of the territory (the world excluding the United States) the grant is understood to persist for the life of copyright in the song in each country of the territory.

The 1947 revised uniform popular songwriters' contract

The 1947 Revised Uniform Popular Songwriters Contract (the "1947 UPSC") provides for the worldwide grant of copyright in the subject compositions. The agreement provides that rights will revert to the author in the United States and Canada at the end of the initial term of copyright, or 28 years from the date of publication in the United States, whichever is shorter. The 1947 UPSC does not provide for automatic termination and reversion of rights outside the United States and Canada but does provide in Paragraph 8 that if the author intends to offer for sale the rights in the composition outside the United States and Canada, he/she must give the publisher 6 months' prior written notice of such intention. This notice is known in the industry as the "Paragraph 8 Notice."

The 1947 UPSC does not specify when the Paragraph 8 Notice may be served. While the position of some music publishers is that the notice must be served 6 months prior to the expiration of the initial term of copyright, this argument is not supported by the language of the contract.

The better interpretation is that the Paragraph 8 Notice may be given at any time (after the initial term of copyright) that the author or his/her heirs decide to offer the rights in the song for sale outside the United States and Canada.

The 1950 uniform popular songwriters' renewal contract

The 1950 Uniform Popular Songwriters Renewal Contract (the "1950 UPSRC") provides for the grant of rights for a period equal to the shorter of (i) the second or renewal period of the United States copyright, or (ii) 28 years after the expiration of the first original term of the United States copyright. The 1950 UPSRC provides, further, that on the expiration of the 28-year term the rights to the composition will revert to the author throughout the world, unless foreign rights were granted to a foreign publisher before 1947. The effect of a grant of renewal rights utilizing the 1950 UPSRC is that even if the original songwriter agreement was construed to convey rights outside the United States for the life of copyright in the composition, the grant may only persist until the date 28 years after the original term of United States copyright.

The Implications of Foreign Copyright Law

While our focus in this publication is United States copyright law, certain provisions of foreign copyright law are particularly relevant to creators and owners of musical copyrights and will be briefly touched on here.

"Joint" or "collective" works

In the United States, a song written by two or more authors is deemed to be a "joint" work regardless of whether one author composed the music and one author wrote the lyrics or all authors wrote both music and lyrics. This has historically not been the case in certain major foreign territories including

Australia, England, Germany, Japan, the Netherlands, New Zealand, Scandinavia, and South Africa. In these "non- joint" countries where one author writes lyrics and one author composes music, the music and lyrics are each deemed to be an independent contribution to a collective work. The copyright, in this case, runs individually with each of the music and lyrics.

In September 2011, the European Parliament and Council of the European Union adopted a Directive requiring the EU Member States to adhere to a uniform term of protection for musical compositions with words that will expire 70 years after the death of the last to survive of the author of the lyrics or the composer of the musical composition.31 Each EU Member State is required to pass legislation implementing the Directive, which is to apply to "all such works in protection at the date by which the Member States are required to transpose this Directive."32 It is not clear whether the Directive requires Member States to retroactively grant copyright protection to the portion of a composition (e.g., the lyrics or the music) which has fallen into the public domain prior to the passage of the implementation legislation. Each country's implementation legislation will need to be analyzed in order to determine the impact on individual compositions.

The status of a work as "joint" or "non-joint" may have implications with regard to duration of copyright, allocation of royalties, and reversionary rights, so it is important to monitor the status of implementation legislation in the EU Member States on this issue.

Duration of Copyright

Outside of the United States the duration of copyright protection is generally measured by a term of years after the death of the author. In countries in which all songs are deemed joint works, the term is based on the date that the last author dies. In countries in which only songs for which all authors both compose and write lyrics are deemed joint works, the term of protection for "non-joint" compositions are measured individually for each of the composer

and the lyricist. The following summarizes the current term of copyright protection in several major foreign countries. Note that the term of protection for works currently deemed to be "non- joint" in EU Member States may need to be recalculated once the respective state passes legislation implementing the September 2011 Directive.

For Composers and Lyricists

The job of a composer and lyricist is to create. It is very common for creators to leave the business of their creations to managers, agents, and lawyers. These professionals are generally well versed in the specifics of registering works for copyright and handling the transactional matters of licensing and selling copyrights. However, it is critically important for the future of your songs that you yourself have a basic understanding of the workings of the copyright laws and the legacy you are leaving for your heirs.

Planning ahead for the ongoing management of your compositions and keeping careful and detailed records of copyright registrations, licenses, and grants will help ensure the smooth ongoing administration of your works. Your compositions are not only your legacy to your children and grandchildren; they are an important part of America's cultural heritage. If you understand the rights and protections afforded to the author and his/her heirs by the copyright laws, you will be able to enhance the economic portfolio of your compositions. Careful safeguarding of musical copyrights helps to prevent the abuse of treasured works and ensures that the compositions receive the honor and appreciation they deserve.

For Heirs

Before you can determine the scope of the rights you have inherited and the potential for expanding the catalogue in the future (including claiming

renewal term rights and/or terminating prior grants) you need as much information as possible. In a perfect world, the composer would leave you a file cabinet filled with precise information regarding the status of his or her musical compositions. The file would contain a complete list of songs written in whole or part by the composer, the identity of any co-writers, certified copies of all copyright registrations and renewal registrations, certified copies of all notices of termination served by the composer, an up-to-date copyright search report, and copies of all contracts entered into by the composer relating to the compositions (including agreements with co-writers, music publishers, performing rights organizations, managers, motion picture producers, record producers, and similar documents).

However, it is the rare composer who is so attentive to the minutiae of copyright administration. Often, you will have to reconstruct the history of the composer's work before planning for the catalogue's future.

The future administration of your musical copyrights

How do you administer your "recaptured" compositions?

Upon the effective date of termination of a grant, the songwriter or his/her heirs will identify a publisher for purposes of administering the music publishing rights in the song. At the outset, it is customary for this entity to be the songwriter's or heirs' wholly- owned publishing entity (be it a corporation, partnership, or d/b/a for the writer or heirs).

The long-term administration of the compositions is generally handled in one of three ways – the catalogue may continue to be handled by the songwriter or heirs (self- published), the catalogue may be administered by a third-party music publisher, or the catalogue may be sold to a third-party music publisher.

Self-Administered Catalogues

In the event the songwriter or heirs decide to personally administer future exploitation of the catalogue, the copyrights in the compositions will be retained by the songwriter or heirs. The self-publisher will handle all requests for uses of the compositions as well as the marketing and proactive exploitation of the catalogue.

Administration agreements

Alternatively, the songwriter or heirs and their publishing entity may enter into an administration agreement for a term of years with an unrelated music publisher (either the original publisher or a third-party music publisher). In this case, the copyrights in the compositions will be retained by the songwriter or heirs. The music publisher will be authorized to administer some or all of the music publishing rights in the compositions, subject to contractually established parameters (such as approval rights for the songwriter or heirs), deduct agreed- upon fees, and remit the balance to the songwriter or heirs. The amounts retained by the music publishing administrator, the advance and/or guarantee payable to the songwriter or heirs, and the scope of the rights granted to the music publishing administrator will be established in the negotiations between the parties.

Sale of catalogue/co-publishing agreements

Finally, the songwriter or heirs and their publishing entity may elect to sell all or a portion of the recaptured copyrights (or an interest therein) to an unrelated music publisher (either the original publisher or a third-party publisher). The sale of a partial interest in the copyrights is known as a "co-publishing" arrangement.

While such a sale is usually for the life of copyright, it is possible to negotiate a sale for a limited term of years with a contractually established reversion date. The songwriter or heirs will usually retain the right to receive the writer's share of the royalties generated from the catalogue and in the co-publishing situation, a portion of the publisher's share of the royalties. The author or heirs may also elect to sell all or a portion of the writer's share of the royalties.

Remember, if you sell the copyrights in the songs that you own as a result exercising Bear in mind also that a purchase price that seems substantial at the time of sale may prove to be inadequate in hindsight. You should carefully consider the options of self- publishing your catalogue or entering into an administration agreement prior to electing to sell your copyrights.

For music publishers

Musical compositions are the key assets owned by a music publisher. Clearly, the business of publishing focuses on the exploitation of these assets. However, it is essential to the long-term vitality of the business that the publisher understands as much as possible about the underlying rights that accompany the assets. The ability to anticipate the possible statutory termination, contractual termination, or reversion of a composition will enable the publisher at a minimum to plan for a possible diminution of its catalogue and provide the publisher with information necessary to maximize the potential for reacquiring rights. Publishers in the market to acquire musical compositions similarly should conduct an in-depth evaluation of the current and future legal status of the catalogue. Legal due diligence is as important as financial due diligence in attributing a value to a potential acquisition.

The relationships: radio, records, and artists

The Relationship Between Radio and Records

Some say that the recording and radio industries have been connected to one another in a "symbiotic" fashion since the dawn of radio broadcasting. Others say that there is no evidence of such, though the notion is widely regarded. Still, others regard the idea of symbiosis as an "over-simplification of a complex set of relationships"

Either way, the history of the relationship is contentious and, at first, the two media were even considered separately due to incompatible technology. Records were played experimentally and on some smaller stations during the 1950s; however, the mechanical nature of recorded performances was far inferior to the live sounds of radio, where the emerging techniques of microphone placement and studio design were becoming issues of "scientific analysis". Live radio performances initially devastated the record industry because of this differing technology. Radio stations hired live musicians and other talent, leaving the record industry to attempt selling records without the benefit of airplay. There was also a prevalent sentiment that radio should not offer pre-recorded songs that consumers could just go out and buy. As a result, record sales sharply declined and many firms left the business during the radio boom of the 1950s.

It was radio's technology, electrical transcription (ET) that, ironically, assisted in the revitalizing of record manufacturing. ET discs provided longer playing times – up to 15 minutes per side. The discs were used to record and archive radio shows and provided an all-electronic means of recording – a much higher quality alternative for the record industry. However, because

the technology arrived in the late 1950s, it was difficult to get consumers to purchase the discs because of The Great Depression – most consumers were too poor to invest in a new record player at the time.

The 1960s and 1970s saw a demand for big band music such for Afrigo Band etc, both in live venues and on records. Radio carried many of the live shows at which the artists' records were promoted, which also helped to revive record sales. The Ugandan Federation of Musicians union became very concerned that recordings were going to replace musicians working in live radio and staged two strikes in the 1940s to prevent that from happening. Their actions were futile, however, as the trajectory appeared to be set. Once singing star ELLY WAMALA heard about audio recording, he struck a deal with Radio Uganda (a then-new network) to carry his very popular program, providing they would allow him to record the show in order to avoid two live performances, in an urgent run to build a competitive position, agreed to Crosby's terms. This occurrence, coupled with burgeoning new recording technology, set the stage for radio and records to enter into what has become known as a "symbiotic" relationship.

Technology kept a rapid pace with the introduction of the 33 1/3 rpm long play album, allowing the change of records to occur less frequently, thus, leaving the listener undisturbed by the sounds of the records changing every few minutes. As the 78 rpm disappeared, expensive new home consoles were equipped with both a record player and a radio, with televisions soon to follow. The radio industry quickly learned that live music was much more expensive to produce than playing recordings. The number of radio stations expanded greatly during the late 1970s and early 1980s and helped lead to the rise of rock and roll music, striving to implement programming that would appeal to both listeners and advertisers.

Another important technological innovation – the television – caused the single- most important event in the history of the relationship between radio and records when radio stations shifted from programs to formats in the early 1990s. Major radio talent like the late Job Paul Kafero, and late Bassudde

began moving to television in the "talent raids" of the late 90s, and there was fear in the industry that radio would be replaced by television. This shift rendered recorded music indispensable to radio programming and sealed the interdependent relationship that would last into the 2000s, whereby radio promotion propped up record sales, and one industry seemed to need the other to survive.

The relationship between record labels and artists

Unconscionable contracts in the music industry can be traced all the way back to opera in the early 20th Century, when singers signed contracts giving them royalty rights for reproduction on only the original matrix. Once copies were released and re-copied, the artists had no recourse for further compensation.

Today I want to talk about piracy and music. What is piracy? Piracy is the act of stealing an artist's work without any intention of paying for it. I'm not talking about Napster-type software. I'm talking about major label recording contracts.

Love proceeded to outline, in an easily understandable mathematical equation, the nature of the unconscionable standard contract between artists and labels. Although these types of sentiments are common to the industry, most unsigned, struggling musicians in the early 2000s still considered a major label contract the best possible path to commercial success.

A string of major label artists also has sought bankruptcy protection as a result of unconscionable contracts, arguing that they lack the clout necessary to force changes to their recording contracts, and that labels took advantage of their desire to "make it" and forced upon them contracts that were not favorable to the artist. The exclusivity and exploitation clauses that are

written into artists' contracts with record labels have always sought to gain maximum dependence of the artist on the record company, resulting in record labels most often holding ownership of any given sound recording's copyright. On the other hand, it is noted that some artists "go into sensory shutdown" at the mere mention of the business side of their brand, while most are only moderately involved in order to make intelligent career decisions on their own behalf. Therefore, it is possible to ride the wave of stardom without ever really knowing anything about the industry. According to Courtney Love, record companies exploit that fact (Wolff, 2004).

The relationship between radio and artists

Since the late 1920s, when radio ceased to air live performances, artists have been historically represented by record labels and, thereby, any relationship between records and radio was extended by proxy to radio and artists. Until the digital revolution, few artists had direct relationships not only with radio, but also with the end users of their music. Since the digital revolution, artists are more directly involved in their own marketing and promotion, and have much more control over not only their relationships with radio, but also their fans. Artists who self-publish and still consider radio a viable outlet for their music now send digital files directly to radio stations, hoping for airplay. The standard paradigm of pay-for-play, therefore, is becoming outdated (Owsinsky, 2009).

Technology, once again, has been the primary factor leading to pervasive changes in music industry paradigms from fear-based grounds. Just as the introduction of television was perceived to threaten radio, the digital revolution is perceived to threaten both the record and radio industries, from piracy issues to performance rights. The introduction of the Performance

Rights Act is further evidence that this paradigm shift is taking place and pitting one industry against the other.

The performance rights act

The Performance Rights regulations – The Arguments, the Legislation, and the Politics for the first time in the history of Uganda copyright law, if passed, the Performance Rights regulations will require radio stations to not only pay royalties to songwriters and music publishers, as they do today, but also to pay royalties to record labels and performing artists – the holders of the rights to sound recordings. The argument ultimately breaks down into two factions – radio and records (with artists) – and each side presents valid reasons as to why their position is the correct one.

The Music FIRST (Fairness in Radio Starting Today) Coalition was formed in 2007 to "ensure that struggling performers, local musicians, and well-known artists are compensated for their music when it is played both today and, in the future," (Music FIRST). Branding slogans such as "Fair Pay for Air Play," Music FIRST has entered into the war for performance rights on behalf of record labels and performing artists. The coalition purports that "Big Radio" has been thieving performers for years, and they intend to see it stop (Music FIRST).

The Music FIRST Coalition argues their position on a few different levels. First, the coalition points out that "terrestrial radio's competitors - Internet, satellite, and cable radio - all pay a performance right when they use the creative property of artists and rights owners" (Music FIRST). Second, Music FIRST asserts that the only industrialized nation in which there is no performance right for artists and, therefore, artists in Uganda. are prohibited from collecting international royalties. Third, the coalition maintains it is inequitable that terrestrial radio has been required to pay songwriters for so many years, "but have so far succeeded in stiffing the artists who bring

recordings to life" (Music FIRST). Music FIRST seeks to substantiate the economic argument with a 2007 study in which "...results indicate that radio play does not have the positive impact on record sales normally attributed to it and instead appears to have an economically important negative impact, implying that overall radio listening is more of a substitute for the purchase of sound recordings than it is a complement".

Performance rights for sound recordings in foreign markets

It is often argued, by those sympathetic to the desire for legislation to enact performance rights legislation for sound recordings, that Uganda is one of a very few developed nations not to recognize the vital necessity for such legislation. The vast majority of the global community, both with international conventions and with domestic legislation in foreign countries, has responded to this need. Approximately seventy-five nations grant public performance rights for sound recordings. The World Intellectual Property Organization (WIPO) and others have also initiated a policy debate on the implications of digital technology for international copyright. The WIPO has proposed new Protocol to the Berne Convention, the largest international copyright treaty, outlining a possible new international instrument. The WIPO has also recommended that an exclusive right to authorize or prohibit the public performance of sound recordings be granted to copyright owners (O' Dowd, 1993). Certainly, the payment of royalties is at the forefront of this issue. The international market has always been very lucrative for Uganda recording industry. However, many of the countries that pay performance royalties for sound recordings do so only in reciprocity with other nations that do the same. Thus, because Uganda's copyright laws do not recognize performance rights for sound recordings, Ugandan's copyright owners are often unable to share in international royalty pools (O' Dowd, 1993). Passage

of the PRA would categorically bring more revenue to the United States in the form of foreign performance royalties.

Artists

Artist representation in the music industry

There are four different kinds of representatives that may represent recording artists, performers, and songwriters in the music industry: personal managers, agents, business managers, and attorneys.

Personal managers

Personal Managers advice and counsel the artist on virtually all aspects of the artist's career.

The duties of a personal manager may include:

dealing with the artist's publicity, public relations and advertising

assisting in the selection of the artist's material

devising plans for the artist's long-term career development

choosing the artist's booking agent, road manager, lawyer, accountant et al and overseeing the artist's relations with each of them

counseling the artist on what types of employment to accept in some instances, acting as a liaison between the artist and the artist's record company

Personal managers are usually paid a commission of 15% to 25% of the artist's gross receipts from all of the artist's activities in the entertainment industry (recording contacts, publishing contracts, endorsements, television and movie work, etc).

This commission, which may increase depending upon the artist's success, is in addition to reimbursement of the personal manager's travel and out-of-pocket expenses incurred in representing the artist. In certain states, such as California, a manager may not seek or procure employment for artists, as the artist's agent typically performs this job.

Agents:

An employment or booking agent's job is to find work for the artist in the music industry. As compensation for their services, an agent typically receives between 5% and 15% of the artist's gross earnings from any bookings, engagements, or employment secured by the agent.

The agent's commission percentage may vary depending on a number of factors, including state laws, the type of work, the length of time and/or the popularity of the artist. The laws in many states (including Illinois) require agents and talent agencies to obtain licenses before they can collect commissions and, in some states, such as New York, agents can only charge artists a maximum of 10% for securing engagements.

Business managers:

Business managers, who are often Certified Public Accountants, look after the financial aspects of an artist's career. A business manager's responsibilities can include providing accounting services, paying the artist's bills, advising the artist on investments, helping form corporations etc.

As 11 compensations, business managers typically receive anywhere from 2% to 5% of the artist's gross receipts or may get paid an hourly rate for their services.

Caution: Before managers and agents will represent an artist, they usually require signed contracts. If approached by a manager or agent, an artist should consult an attorney to advise them and to handle any contractual negotiations on their behalf.

You will need professional help before signing any agreement to be sure that the terms of the agreement (such as the fees, duration etc.) are fair to the musician.

Lawyers:

In addition to reviewing, negotiating and drafting contracts and advising clients about the law, entertainment attorneys also often perform many of the same duties as personal managers, business managers, and agents.

Attorneys have to be licensed by the state(s) in which they practice and are either paid an hourly rate for their services or receive a percentage of the deals they negotiate on behalf of their clients.

Song Writers

The person who writes a song owns the legal right to it. They may choose to perform the song themselves, or they may choose to sell the rights to perform the song to someone else. A song writer can sell the rights outright, or they can allow someone else to perform the song while they get some of the profits. In addition, it's up the artist or record label to negotiate with the song's owner to purchase just the rights to perform the song or the ownership of the song itself.

Songwriters typically belong to an organization that helps writers connect with people who want to purchase music. These agencies help broker sales between interested parties. Music lawyers must help their clients

carefully negotiate agreements for music sales and licensing. They must help their clients create contracts that protect their interests and help them sell or purchase music. To the extent that music law involves buying and selling the rights to music, music law is contract law. When disputes arise, music law may involve litigation.

If it is indeed true that singer Bebe Cool owes songwriter Blackskin cash for his role in the *Gyenvudde* hit, then he was wrong in his move to get him arrested "...on allegations of character assassination, blackmail, and defamation..."

Blackskin, who reportedly wrote *Gyenvudde*, has also written songs like *Ndi Wakabi* by Big Eye, as well as *Sitidde* by Chris Evans and John Blaq.

Bebe Cool allegedly did not honour his part of the bargain with Blackskin. In this case, Bebe Cool not only breached a contract by releasing the song minus paying up what he owes the songwriter, but also went against the laws governing Copyrights and Neighbouring Rights in Uganda.

All the people who were involved in bringing his music to the public are protected under the Neighbouring Rights. These may include the producer, actors, music publishers and broadcasting companies. These people's interests are protected by the Neighbouring Rights (they are nsot really copyright, but are closely related to it).

In instances where the performing artiste is not the writer of that song, the singer will belong to this category of Neighbouring Rights and the writer of the song owns the copyright to the song, unless there is an agreement to the contrary, which, in most cases, involves the singer paying off the writer, once and for all.

In Uganda, copyright is protected automatically when a work is created. The work, however, must be original and it must be expressed in material form of any kind. Here we can say that since Blackskin wrote *Gyenvudde*, he owns the copyrights to this song.

A copyright owner has exclusive rights to deal with their work as they wish, and may prevent others from using it without their permission. It is because Blackskin is the original creator of the song that he was able to release the original version, done by him. Although this angered Bebe Cool, it does not mean that what Blackskin did is wrong. He has all the rights to deal with that song as he so wishes and since (reportedly) Bebe Cool has not paid him for the song, then the latter should not be dealing with it, in anyway, especially for commercial purposes. No copyright or Neighbouring Right has been transferred, so far.

Registration of a copyright is not mandatory. But to be on a safer side, one "may register". If something happens and you have to defend your interests and rights, it will be easier if you have legal proof; otherwise, it will be a case of your word against theirs, like instances we've seen where artistes are in rows over who owns a song. One claims they wrote it earlier and the one who is performing it also claims it's theirs.

For work to be copyrighted, it also has to have been created with the independent efforts of the creator. These things of copying other people's songs and later owning them are legally wrong.

One of Uganda's celebrated music writers Silva Kyagulanyi once remarked that, one of the things that hurt him most is for musicians to take to the podium to pick an award for a hit song, but fail to acknowledge the writer. And when you think about it, this is a sobering and truly genuine complaint. Why do you hate to credit the brains behind the work that makes them shoot into stardom?

Those of you who still doubt the fact that musicians take perhaps an undeserved credit may remember how it hurt the fans of the late Mowzey Radio when they heard that he had written so many hit songs including Rema Namakula's Tikkula.

And yet we all know that composing music is not a bed of roses, as explained perhaps by the fact that only a handful of people in our music industry are

renowned for scripting music, even though there are countless people with musical voices but won't give you a great song. But singing and producing the music too are not any simpler tasks either.

What is clear is that there is no minimum standard for this old craft, at least in Uganda. Everyone who has worked as a song writer, has negotiated their own terms with the musician. Some like, Yese Oman Rafiki, makes sure he adds his name to the lyrics, and insists that whoever sings, does not delete it.

Others have been cool about it and not taken trouble to demand it of musicians to mention their names anywhere.

What you are just about to read show that the real makers of the music are increasingly becoming assertive and want a place in the limelight.

Recently, Blackskin, the man behind hit songs like Ampalana by Gravity, Katono by Bebe Cool, Agenda Akusse by Sheebah and many others, shared a message on one of his social media platforms seeking advice from friends and fans whether it was necessary for him to continue writing music when some artists don't want to acknowledge his efforts.

'Please my fans and friends advise me on this. Can I go on to write good music for these artists who are so mean can't even come out and say that Blackskin wrote this song for me apart from Bebecool who is very ok with it,' he continued and mentioned most of his hit songs in the same message.

In his other post, he made no secret of the fact that he is very disappointed by the way artists think that the act of crediting people behind lyrics is doing them a favor.

'It is very disappointing that people involved in art think [that] crediting a songwriter becomes a favor when a singer pays! Crediting is discipline, a responsibility every artist should promote without being pushed, that is why credit boards exist. You would rather not pay for art but credit the artist/producer/writer and that should be courtesy'

Blackskins' post did not leave Nince Henry, one of the celebrated song writers seated in one place. Henry came out and gave Blackskin a piece of advice. Using one of his social media platforms, the Cinderella singer said: 'The issue of publicly acknowledging a song writer is dependent on individual character. It is specifically about the behavioral makeup of the individual singer you have worked with," he lightened.

"Do you expect someone to go mentioning your name everywhere regardless of whether asked who wrote the song or not? No bro! but it might be easier to put the credit on the visuals as a mention in the audio..... therefore, when I see my brother Blackskin crying out loud for recognition, I stand between him and the singers equally. It is a morally right to say THANK YOU but the situation comes in play," Henry added.

Yese Oman Rafiki the writer of Irene Ntale's Kyolowoza told The Sunrise reporter that musicians and composers should agree over song writer credits before anything else. Rafiki said he has no problem with artists who don't acknowledge him because in most of his songs, he includes the sentences where his name is mentioned and giving credits is easier when you do business on a friendship level.

John Kay, the talent behind Sibyamukisa by Remah Namakula, Kyaddaaki by Irene Namubiru, Ojjakuzinta by Lydia Jazmine and many others also has his opinion.

'The song starts with the composer so he has every right to be credited. Writers are like mothers to the songs since they develop every idea and the message. The artist's intention is to pass my message so why shouldn't I be recognized?' Kay asked.

When asked if he has any rights over a song he sold, Kay had this to say:

"When you buy a product from a supermarket, does your taking the good erase the fact that it came from the supermarket? First and foremost, our artists cannot pay good money for these songs. Giving me credit is one way of marketing me so that fellow musicians come for more. There are writers who do not sing so if you don't acknowledge them, how will they get to the public?'

When pressed on what he thinks about Nince Henry's advice to black skin, this is what he had to say

"Nince Henry should learn to practice what he preaches. If he says he has no problem with artists who don't credit him then why did he perform songs he had written for other artists on stage? Why was his relationship with artists like Juliana and other artists' sour?' By law, moral right information means information which identifies the author of the work or performer, the tittle of the work, the producer of the sound recording or audio-visual fixation, the owner of any right in the work or information about the terms and conditions of use of the work. As a writer, I am tempted to back fellow writers and wish to call upon like-minded persons to support this noble cause. Before we know it, these increasingly vocal minds could result into a petition Parliament or the powers that be to pass a law that will make it mandatory for musicians to acknowledge them wherever they perform their music.

Artistes Views

Remah Namakula one of Uganda's leading vocalists says that what writers should know is that crediting a composer is followed by either a mutual understanding between the composer and the artist or it should be a token of

appreciation from the artist to the writer. Remah added that she does the acknowledgement especially in her interviews.

Musician Karitas Kario

Karitas Kario, another talented beauty said that writers deserve to be acknowledged and respected by the artists but it is not mandatory to include the composer's name on their music videos.

Victor Kamenyo also shared his opinion with the sunrise reporter and this is what he had to say

'Song writer credits depend on the working relationship between artists and the writers. Many artists don't want the public to know that they don't compose their music that is why they buy the song and all the rights.'

When pressed about the advice he gives to Black skin, Kamenyo said that he doesn't know how the writer relates with his artists and Nince Henry's advice would have been the best if he personally shared it with black Skin.

Naira Ali's opinion on the matter could not be left out. She said that problem comes when the two parties don't agree on what to be followed in the first place. Some writers many times focus on the money they are receiving from artists. Many writers sign contracts selling the songs and their rights too. The ndi mubwengula singer said acknowledgement should be done during interviews and failure of an artist to do so should not be taken as a big deal because we have not seen many international artists acknowledge writers yet they too have composers.

Sunrise reporter pressed Bobby Lash, a talent from the B2C and he had this to say.

'Song writers need to be acknowledged because they compose and need the market. How will the public know about their existence if we don't credit

them? Acknowledgement costs nothing. It is also not easy for one to develop ideas and come out with something'

Lash also said that audio producers should help writers at least with a shout out in the audio or their names should not be left out in the videos

Producers

Section 28 of the copyrights and neighbouring act 2006 provides for the rights of the producer as follows,

Rights of producer

A producer of a sound recording or audio-visual fixation shall have a right to authorise the reproduction of that sound recording or audio-visual fixation.

A producer of sound recording or audio-visual fixation shall have the right to authorise the distribution or making available to the public of the original or copies of the fixation through sale or other transfer of ownership.

A producer of sound recording or audio-visual fixation shall have the right to authorise the commercial rental to the public of the original or copies of the fixation even after the distribution or making available to the public of the original or copies of the fixation by the producer.

A producer of sound recording or audio-visual fixation shall have the right to authorise making available to the public of the fixation, by wire or wireless means, in such a way that members of the public may access the fixation from a place and at a time individually chosen by them.

No person shall reproduce, distribute or make available to the public a sound recording or audio-visual fixation without the authorisation of the producer under this section.

For the purposes of this section, reproduction of a copy of a sound recording or an audio-visual fixation shall be unlawful if, with or without imitating the outward characteristics of the original work, it incorporates all or part of the sound or image with or without sound and without authorisation.

Where a sound recording or audio-visual fixation for commercial advertisement or its reproduction is used for broadcasting or for any other form of communication to the public, the user shall not require the authorisation of the producer, but shall pay an equitable remuneration to the producer and the performer.

The rights of the producer under this section shall be protected for fifty years from the date of the cutting of the matrix.

Distributors

Distributor of audio/audiovisual work is a person having acquired from the publisher, the contractual rights relating to distribution of the audio/audiovisual work, is responsible for resale, public presentation, lending, renting of such work in bulk.

Requirements for distributors of audio/audiovisual work Distributor of audio/audiovisual work for purposes of promotional advertisements shall provide marking of all promotion and information materials relating to the distribution of Audio/Audiovisual work with the data specified

Consumers

Different type of music can give a different effect to the consumer as the music itself has a different type of genre. As it has created to give a certain influence to people that hear it. In this situation, music acts as a marketing medium to share the experience in different environment. It gives a huge

impact to the consumers that can make them eager to come to the premise for the experience.

Promoters

A music promoter is someone who publicizes and promotes performances. Promoters organize gigs, book bands or artists and advertise the shows to bring in paying attendees—and profits.

According to Jones, a.M (1954), traditional music has remained popular with rural communities and Uganda has a plethora of distinctive instruments, which can also be heard in contemporary popular music. The most notable record labels like Black Market Records and international organisations such as Singing Wells and Selam from the UK have been working to promote regional and traditional music in Uganda. Currently, the above organisations have been specialising in field-recording in rural areas. Their initial projects were aimed at helping the localisation of hip-hop, though they have recently been facilitating capacity building work (audio production, copyright knowledge) through the support of Swedish International Development Cooperation Agency (SIDA). Some UK labels have picked up on obscure but cool local music scenes and some of Uganda's music could fill this niche and find a route to international markets. These styles could include Larakaraka music from Gulu or Bukusu Music from the North East Mbale region. Alongside Kandongo Kamu, another native popular music is Kidandali. In their contemporary forms they are both fused with reggae and ragga.[25]

Ugandan pop musicians have used radio and television to promote their music. Others have held concerts and others performing their music at events like weddings and other kinds of parties. With the coming of the internet, they used social media to promote their music. These avenues also helped then earn money. However, most Ugandan musicians haven't yet embraced digital distribution of their music. The Covid-19 pandemic reached in Uganda and affected the way of music promotion and distribution and saw

musicians embracing the use of the internet to promote and distribute their music. Musicians like Desire Luzinda, Navio,[29] Iryn Namubiru, Bobi Wine,[30] Gabriel K, Jose Chameleone and promotion managements like Bryan Morel Publications, Promoter Musa Ivan Jay Music Promoter[31] and Fezah changed the way of holding concerts and instead of having revelers physically at the venue, they held online concerts and their fans streamed their performances live and others broadcast them on television afterwards.

What does a music promoter do?

The music promoter works with an artist or a band manager to plan an event. They agree to a date and look for an appropriate venue.

The promoter negotiates any fees for the artist and then publicizes that event through radio, television, digital, or email advertising. The music promoter ensures the artists have everything they need offstage and on, from hotel rooms to sound checks.

The promoter typically creates a contract outlining the terms of the agreement, including fees owed to the promoter, date and time of rehearsals, the length of the band's performance and any other demands. A music promoter usually works in a regular office and may have an assistant or a team. Some opt to meet with clients off-site, at restaurants or other entertainment locations. Others do most of their work online or over the phone.

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[29] Music in Africa Magazine, by Benon Kigozi

[30] *Jones, A.M. (1954).* "East and West, North and South". *African Music: Journal of the African Music Society.*

[31] "Gabriel K in Concert". *Big Eye*. Retrieved 11 September 2020.

How do you to become a music promoter?

There isn't a formal education path required to become a music promoter. The most essential skills are a love of music and business savvy, so a degree in business or marketing can be very useful. The ability to negotiate effectively is essential, as you will need to bargain with artists, venues, hotels and more.

Understanding different aspects of the business is important. Read music trade magazines to understand the latest developments and see how other events are put together.

If possible, try to get an internship with an event management company. You can get experience planning and promoting major events, which can be invaluable, even if the events are not related to music.

Many people start out on their own offering their services for free or at a steep discount to local bands trying to make a name for themselves. They check out smaller bars, cafes, and fairs for venue options and research lower cost options for equipment or security. While you may not make any money for the first few events, these experiences can pave the way for larger and more lucrative opportunities going forward.

What's the nature of a music promoter's job?

Many people enter the business without fully understanding the demands of the job, so turnover and job burnout is high. For those who stay in the business, it can be fiercely competitive. It can be difficult to get steady work within the industry, particularly for those just starting out,

If you have a strong knowledge of music, a passion for the industry, outstanding communication and negotiation skills and motivation, you may excel as a music promoter. It's a challenging and competitive career path, but it can be very rewarding work if you love what you do.

The main job of a music promoter, usually simply called a promoter, is to publicize a concert. Promoters are the people in charge of "putting on" the show. They work with agents – or in some cases, directly with the bands – and with clubs and concert venues to arrange for a show to take place.

Promoters are in charge of making sure the word gets out about that show. They also take care of arranging the incidentals, like hotels and backline for the band. In a nutshell, it is the promoter's job to make sure things go off without a hitch. Note that this kind of promoter is different from a radio plugger or PR agent.

What jobs a promoter should do?

If the promoter is not tied to a specific venue, they should:

- Collaborate with bands and agents to agree on a date for a performance.
- Negotiate a deal with the band/agent for the show. What fee will be paid? Will the promoter provide accommodation?
- Book a venue for the agreed-upon date.
- Promote the upcoming gig to the local press, social media channels and radio. They may want to put up posters and email their mailing list.
- Make sure everything the band needs is in place, such as backline, accommodations, riders, etc.
- Set up sound check times and the running order of the show.
- Arrange for a support band.

Note: Venue-tied promoters should skip the "contact venue" step.

What the pay is like

The pay for promoters varies and depends on several factors, including:

The deal made with the band/agent

How popular the artists are with whom the promoter is working

Music promoters can find it very hard to make money, and many indie promoters do promotion on the side of their "day jobs." Promoters make their money off of the proceeds generated by a show. Promoters can either have two kinds of deals with bands: Pay the band a set fee, no matter how many people buy tickets, and a door-split deal. With both deals, a promoter can easily lose money on a show. Making money as a promoter requires careful planning.

Why promoters need a contract

When you are dealing with large sums of money, a contract is always a must. But many indie music promoters who know they won't be making much money, if any, on a gig often skip the contract. Even if no money is exchanging hands at the end of the night, though, it is still a good idea for a band and promoter to have a contract that clearly states things like whether or not the promoter will provide accommodation, who is taking care of the backline, when the sound check is, how long the band's set will be, what the band will get for a rider, and of course, how any profits will be split. It helps avoid confusion later.

How to become a promoter?

There are two ways you can get into promoting. You can contact promoters and venues in your area and offer your services and learn the ropes that way, or you can try to get your promoting career off the ground yourself.

If you want to work for yourself, start small. Pick a favorite local band and offer to promote a show for them. Book the venue, contact the local media, get the word out on social media and put up some posters advertising the show. If you do a good job, other bands will find you, and as you become an established promoter in your area, bands from out of the area will find you as well.

Making money as a promoter

Promoters who work with megastars who sell out huge venues can make some serious money. But indie music promoters can easily find themselves working all day, every day, and only getting deeper into debt. Many promoters have a day job that supports their promotion job. If you want to become a promoter, you need a clear understanding of the money involved, and you need to make deals with bands and venues very carefully.

For any given show, a promoter's expenses may include:

- Venue rental
- Advertising (posters, media advertisements, online marketing costs, etc.)
- Backline rentals
- Accommodation for the band
- Rider
- Payment for the band

You can't get around some of these fees, like the venue fee, but there are ways of mitigating some of the expenses involved in promoting – and if you want to stay in this for the long haul, you need to cut costs as much as you can. For instance, ask the band/label/agent to print posters and send them to you,

instead of you taking that cost on. Don't provide accommodation if the band's show is not going to generate enough money to cover the costs, or if you must, put the band up at your house. Don't provide overly generous riders a few waters and a few beers is fine. Split the cost of renting special equipment with the band.

You can also cut down on some of your expenses by working under a door-split deal arrangement, instead of paying the band a set fee. That way, you make all of your money back first, and then the band gets paid if you get paid. Bigger artists will balk at this kind of deal and will want a set fee — paying a set fee is fine, and even ideal, when you're working with a band who you know will sell enough tickets to recoup your costs.

But if the band you're putting on is just building a name for themselves, a door-split deal is fair for everyone. Make sure the band tries to sell some merchandise at the show to give them some extra money. If you have a door-split deal, and the show didn't make any money, a nice promoter might throw the band a little bit of gas money, which can go surprisingly far in earning you a reputation as a good promoter.

The truth is that many indie shows lose money, especially shows featuring new bands. As long as you are not withholding earnings from the band, it is perfectly OK to set up your shows so you lose as little as possible. Most up-and-coming bands will recognize that and will work with you. After all, if you succeed, they succeed. Being fair to both parties (yourself included) is the name of the game.

CHAPTER ELEVEN

The Internet and Musical Copyright Law

My friend John is the vocalist and songwriter for a rock band that enjoyed modest radio success some years ago. Every three months, John receives a check from BMI, one of three main companies who administer the system of performance royalties. [1] Enclosed with the check is an itemized statement of the air play that each of the band's registered songs has received, and how much money John received each time. On the most recent statements, royalties have begun to appear for web broadcasts of songs.

For some musicians, performance royalties are a primary source of income. However, such royalties are reserved for the songwriters. Musicians who do not receive songwriting credit – though they may have spent days in the studio giving life to otherwise character-less lyrics and chords – will receive no checks from BMI for performance royalties. Income for these musicians comes from record sales, and then only if sales are high enough to allow the record company to recoup first. So members of John's band who contributed time and talent but no lyrics or tunes must settle for musician credits and day jobs.

This paper argues that depriving singers/musicians of performance royalties for broadcasts is an anachronism rooted in the origins of modern American copyright law, and that the original rationales are no longer valid. However, this paper also suggests that developments in copyright law on the Internet will help to blur the distinction between performance (from which

singers/musicians do not profit) and distribution (from which singers/musicians do), and therefore prompt reconsideration of existing copyright laws. The ideal result would be for the law to create at last a public performance right in sound recordings and thus correct an archaic imbalance.

This specific area of copyright law is a good example of how the Internet requires an innovative application of existing laws, but it also demonstrates how those innovations can reflect back into and change laws in the non-Internet sphere. In other words, legal changes made necessary by the Internet might soon be considered necessary in other areas.

Performance and reproduction of songs and sound recordings

Definitions

Copyright law in music makes two crucial distinctions. First, it distinguishes between the composition itself and sound recordings of the composition. The composition consists of the notes and lyrics that make up the song. For example, the song "My Way" was written by Paul Anka, Jacques Revaux, Claude François, and Gilles Thibault. [2] Those songwriters (had they not sold their publishing rights) would be the copyright owners of the composition. When Frank Sinatra recorded the song in 1968, he and/or his record company were the copyright owners of the sound recording. [3] Eleven years later, when Sid Vicious covered the song, he and/or his record company owned the copyright to the new recording of the song. [4]The second important distinction in copyright law is between the performance and reproduction of musical works. Under the 1976 Copyright Act, to perform means to "recite, render, play, dance or act, either directly or by means of any device or process." [5] Copyright law is implicated only when the performance is public. For copyright purposes, broadcast of a song over the radio constitutes a public performance. Reproduction and

distribution occurs when a copy of a sound recording is made and sold. Record companies engage in reproduction and distribution when they press and distribute CDs or records.

Typically, musical compositions are owned by the songwriter(s) and/or publishers. (Publishers come into the picture when a company such as Warner Tamerlane buys the publishing rights to a song.) For simplicity, I will refer to the owners of musical compositions as the songwriters. Sound recordings, on the other hand, are usually owned by the band as a whole or the record company. For convenience I will refer to the owners of sound recordings as the musicians. [6]

Under current copyright law, the exclusive right to reproduce copyrighted works applies both to musical compositions and to sound recordings. The copyright owner of the musical composition -- the songwriters -- receives mechanical royalties for the reproduction and distribution of any recording of that composition. For example, Paul Anka received mechanical royalties both for Sinatra's "My Way," and for Vicious's. These mechanicals are administered by publishers or by the Harry Fox Agency, Inc., [7] the wholly-owned licensing subsidiary of the National Music Publishers' Association, Inc. Similarly, the copyright owner of a sound recording -- usually the musicians -- receives mechanical royalties for the reproduction and distribution of that recording. However, the exclusive right of public performance of copyrighted works generally applies only to musical compositions, not to sound recordings. [8] Therefore owners of a musical composition receive performance royalties each time that song is publicly performed, but owners of sound recordings do not. So Paul Anka also receives royalties each time either Sinatra's or Vicious's recordings of "My Way" are played on the radio, but neither Sinatra's nor Vicious's estate receives anything.

This paper takes the position that this imbalance in copyright law is based on historical notions of performance and distribution that are no longer relevant, but that advances in technology may help to recast those notions

and correct the imbalance. Traditionally the distinction between performance and reproduction was clear, and although people from time to time took issue with the imbalance between the categories, few were confused as to the categories themselves. However, because the nature of the Internet blurs the distinction between music reproduction and performance, it forces us to reconsider those definitions and thereby reconsider copyright law. Should these changes (some of which have begun to materialize) cast a new light on copyright laws in traditional, non-Internet contexts, they will provide a good example of how new applications of old laws might finally effect change in the old laws themselves.

In 1909, Congress passed the first comprehensive federal copyright statute to provide the holder of a copyright with exclusive rights in copyrighted works.[9] Whereas previous laws had focused on the written word, the 1909 Copyright Act authorized the protection of musical works and granted exclusive performance rights to the composer.[10]

This traditional system of copyright law, which deprives singers and musicians of performance royalties, is rooted in conceptions of copyright law and performance value which pre-date radio and other broadcast media. Performers of classical compositions "were less involved with the creation of music than they are [today]. . .. [T]he vast majority of the creative energy and the musical expression in classical works lies in the written score, where music is meticulously described. Thus, the copyright system once accurately reflected composers' and performers' respective roles in the creation of music . . .."

Before the advent of radio, musical compositions were disseminated by the distribution and public performance of sheet music. Typically, the performer was not also the composer. Composers of songs were considered creators of an original work of art – the musical composition itself. A musician could learn to perform the song by reading the sheet music, but such a performance was generally not seen by the law as a work of art. The performance was merely a conduit for the sheet music, a medium by which the public could

experience the songwriter's art. Performers were more or less interchangeable. Copyright law therefore naturally developed to protect the songwriter's rights in his or her composition, [12] just as it would protect an author's rights in a novel.

As technology changed, so did the nature of the music industry. With the advent of radio and musical recordings (phonorecords), performers played an increasingly important role in the commercial success of songs. In part this was due to the changing face of popular music: compositions were musically less intricate, with a simplicity of tune that offered more opportunity for artistic interpretation by performers. Radio and sound recordings meant that people across the country could become acquainted with particular performers, and the first true music industry stars began to emerge. A cycle developed in which composers began to write songs to showcase the talents of certain performers, whose recordings in turn made the songs popular. Listeners developed preferences for certain recordings as artistically superior, as discrete works of art in themselves.

However, through these changes in media, American copyright law remained stagnant. [13] It did not evolve to account for the changing role of the performer vis à vis the songwriter and failed to recognize individual performances of songs, captured on tape, as copyrightable works of art. Though all of popular culture viewed performers as artists in their own rights, American copyright law continued to view them merely as vehicles. (It is something like saying that Bernini, in sculpting The Rape of Persephone, did not create a work of art distinct from the myth that inspired the sculpture – and that in fact the anonymous originators of the myth were responsible for the artistic value of Bernini's sculpture.) No law granted any federal copyright protection to sound recordings until Congress passed the Sound Recordings Act of 1971. [15] The Act was passed in response to advances in duplicating technology which made phono record piracy inexpensive and profitable; as a result it focused on reproduction rights only and did not grant exclusive rights of public performance to copyright owners of sound recordings.

The advent of the computer age, and of the Internet in particular, has led to the beginnings of change. In 1992, Congress enacted the Audio Home Recording Act ("AHRA"). The AHRA was intended in large part to address the issue of home taping of copyrighted music and to establish a framework for ensuring that holders of copyright in musical works would still receive royalty payments.[16] It exempted from copyright infringement consumers who copied music for noncommercial uses; for example, making a tape copy of a CD that I have purchased, in order to listen to it in my car's tape deck, would be acceptable. However, I could not make a copy of that copy to give to a friend, who had not bought the CD and therefore not contributed to the copyright owner's royalties. Now, I can put a CD-quality copy online for millions to download without paying royalties. This paper argues that doing so should be a similar copyright violation.

More directly on point, the Digital Performance Right in Sound Recordings Act was passed in 1995 as PL 104-39. For the first time, performance artists were granted an exclusive performance right in sound recordings. however, the right is limited to sound recordings performed publicly by means of a digital subscription service. The Act still did not provide for a performance right for sound recordings transmitted by traditional radio or television, or for broadcasts of background music, such as Muzak.

The role of the internet in the evolution of copyright law in music

This book argues that the contributions of singers/musicians to the recording of a song is an integral part of the creation of a work of art. These contributions – the singer's style, timbre, and interpretation – are acts of artistic creation in the same way that writing lyrics, chiseling marble, and applying paints are. The composition is the idea of a painting; each performed note is a brushstroke; and the recording is the finished canvas.

Therefore, this paper contends that although depriving singers/musicians of performance royalties for broadcasts may have been rational at one point, it is no longer morally defensible, and should not be legally defensible either. The rule is an anachronism rooted in the sheet music origins of copyright law, and the original rationale is no longer applicable. Whereas once songs became popular based more or less on the notations contained in the sheet music, many songs that have since became popular would not have done so if not for the persona, talent, and delivery of the singers and musicians. In casual conversation, most people are able to list many examples of songs whose success arguably depended at least as much on the performer as on the composition itself. Elvis Presley, Patsy Cline, and Frank Sinatra are archetypal examples of singers who wrote few or none of their songs, but whose delivery made songs uniquely successful and uniquely theirs in a way that assures that certain songs will forever be associated with those singers.

Again, "My Way" provides a good illustration. The soaring, triumphant pride (and lifestyle) that Sinatra lent to "My Way" made the song not just enormously popular but also his signature. That version has little in common with the mocking, self-destructive defiance of the Vicious cover, which became something of a punk anthem but never achieved commercial success. Ask people whose song it is, and few will name Paul Anka; for most people, the song belongs to Frank Sinatra. Even Sex Pistols fans thought it was Frank Sinatra's song that Sid Vicious was covering.

However, this paper also suggests that developments in copyright law on the Internet will blur the distinction between performance and distribution. At a minimum the Internet will require continued reconsideration of existing copyright laws; what might result is hard to predict. The law might simply designate certain kinds of transmissions as reproduction only, rather than as performance or as a combination with divisible royalties. Better still, the Internet might finally encourage creation of a public performance right in sound recordings and finally correct the longstanding imbalance. The Digital Performance Right in Sound Recordings Act was a step in that direction. Either result would go a long way toward remedying an archaic inequality,

affirmatively benefitting musicians and record companies without much disadvantaging songwriters. It would also do much to address the likely drop in sales of actual CDs and records, and therefore ensure that musicians and record companies do not lose profits as a result of online music distribution. It might also (though such drastic change is usually hard to come by) help to restructure the underlying rules of copyright law in music from the ground up.

Why does the Internet offer this possibility, when other advances in media effected no such potential? Part of the answer has to do with the nature of the advance, which is unlike previous changes in media. The nature of music delivery on the Internet demands a reworking of traditional copyright laws because two distinctions necessary to the conceptions underlying those laws lose their meaning online. First, online transmission of music shrinks the gap between the technical definitions of reproduction and performance. Second, online transmission of music shrinks the related but distinct temporal gap between listening to and purchasing music

Reproduction and Performance

"Performance" of music over the Internet is difficult to divorce from "reproduction." Dissemination of music over the Internet makes the act of copying a song automatic; the digital representation of a song is copied into Random Access Memory (RAM) so that it can be played. Therefore, music transmitted online often results in a copy on the receiver's hard drive. The user's decision to listen to a song online is simultaneously (and not always consciously) a decision to copy it. No longer is there a voluntary, affirmative act necessary to move from public performance to reproduction.

Though the point is far from undisputed, courts have held that loading a computer program into a computer's RAM was the making of a copy for purposes of copyright law. "If this holding is widely adopted, a 'copy' may be

created under United States law at each stage of transmission of a work through the Internet. The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty] would strengthen copyright holders' rights of 'distribution'. The ubiquitous nature of "copying" in the course of physical transmission gives the copyright owner potentially very strong rights with respect to the movement of copyrighted material through the Internet." [19]

Organizations such as the Harry Fox Agency, who distribute mechanical royalties to copyright owners of compositions, argue that a download is a reproduction (for which owners of the sound recording and of the composition should receive mechanical royalties). [20] The Harry Fox Agency is "currently negotiating an agreement with its international counterparts that would make it clear that mechanical licenses will be collected from the source of the transmission -- that is, the web site offering the digital phono record deliveries - regardless of where in the world the transmission recipient receives his or her copy of the recording." [21] Issuance of such licenses are subject to the compulsory license provision of the Copyright Act, [22] which provides that as long as records of a composition have been distributed (in the United States), anyone may obtain a license to record the song, at a fee established by law. Each digital transmission that results in a phono record of a song should therefore be subject to the statutory rate, currently 1.35 cents per minute of playing time, or 7.1 cents.

However, organizations such as BMI and ASCAP consider all transmissions to be performances, even if the transmission is a download. [23] These organizations therefore require websites (25) to buy performance licenses before using songs that belong to BMI or ASCAP. However, both these organizations recognize the dual nature of a music transmission over the Internet. A spokesperson for BMI acknowledged the possibility that some online transmissions of music (straight downloads as opposed to streaming, for example) might also qualify as reproductions, but noted (i) that such a designation would be in addition to, rather than instead of, its status as a performance; and (ii) that BMI was concerned only with administering the

performance right.[26] ASCAP goes so far as to note that "Internet transmissions also involve the reproduction and distribution rights in musical works," and refers licensees to the Harry Fox Agency.[27] The line between broadcast and distribution is less distinct.

Ideally, an online transmission that results in a copy should be considered something like a record sale, which falls under the category of reproduction/distribution and implicates mechanical royalties. The designation has become increasingly important, especially because the technology exists to make downloaded songs a true threat to the conventional sale of sound recordings.[28] At least one company is well into production of a portable device which will allow users to download high-quality music files from the Internet for later replay. This past September, Diamond Multimedia Systems Inc. announced that in November it would begin shipping the Rio PMP 300. The Rio PMP is a portable device that can hold up to an hour of music in a compressed audio format known as MPEG-1 Layer 3, or just MP3. One minute of near-CD quality music in MP3 requires only 1 MB, or one-tenth the space it would take on a CD. "The format is one of the first digital 'products' that is small enough to download from the Net and valuable at the same time, creating an Internet distribution product that consumers may be willing to pay for."[29] In October, the Recording Industry Association of America (RIAA) filed suit against Diamond, arguing that the Rio PMP violated the Audio Home Recording Act (AHRA). RIAA won a temporary restraining order halting production of the Rio PMP, but the order was lifted and production began again. Diamond plans to begin shipping the Rio PMP almost on schedule, beginning this month.

The Rio PMP represents a threat to traditional avenues of business in the music industry. Because it is likely that the Rio is just the first of such threats, the appropriate response is not to try to squash the threat, but rather to rethink those traditional avenues. A reworking of copyright law in music would accommodate products as inevitable as the Rio, and allow all parts of the music industry to continue to flourish.

Listening and Purchasing

The blurring of the distinction between listening and purchasing is so closely connected to the argument above as to seem almost the same. The nature of the Internet means that the divide between listening to a song and buying the song is temporally smaller. Users who hear a "broadcast" of a song on a website can – in almost the same motion – also obtain a copy of that song. The user no longer has to get into the car upon hearing the song, drive to the store, and purchase a physical copy of the album. In terms of time as well as technology, listening to and copying a song are almost one and the same.

The point is distinct and important because technical definitions of copying versus mere broadcasts may seem arcane and less than crucial to most people. The clear empirical difference between listening to and purchasing music, however, is a much more obvious concept. Broadcast and distribution merge in a way that will hopefully encourage additional reworking of copyright laws and royalty distribution, and in doing so remedy a legal inequality perpetuated through other changes in media.

The Internet changes everything. It is perceived as a revolution, a change much more dramatic and complete than any wrought by previous changes in media. Previous changes in media were not big enough to merit reconsideration of copyright theories set in stone for years. The one technological change with the potential to do so – the one change which called for a rethinking of conventional rules – was the ability to record and broadcast music, but the law failed to respond. Subsequent changes were mere format changes (lacquer LPs to vinyl LPs, tapes to CDs) and did not have the magnitude to work any sort of revolution. The Internet, however, is a revolution not just in the way music sounds, but in the way communication itself happens. It is big enough to prompt reconsideration of many areas of law – public forum doctrine, for example, or laws dependent on traditional geographic concepts. It has already prompted the beginnings of significant change in copyright law.

The Digital Performance Right in Sound Recordings Act represented the beginning of what might be a restructuring of copyright law in music. However, it is unclear how the trend will continue. This paper advocates (at the very least) expanding the right that the 1995 Act created, so that a performance right in sound recordings exists in media other than digital subscription services. Expanding this right, which was created and tailored for the Internet, would not only set a workable standard for the new medium, but would resolve a century-long inequity.

It is, of course, possible that what actually ends up happening is something entirely different. For example, rather than allowing the lines to blur enough that the system of performance rights is restructured, it is possible that organizations such as BMI and ASCAP will use advances in technology to sharpen the divide between performance and distribution. Codes within musical works online might render some files listen-only, perhaps by surfacing and scrambling the file once the user tries to make a permanent copy of it. [30] Alternatively, license agreements might follow the example set by CompuServe and Frank Music in a 1995 settlement. [31] In that case, CompuServe agreed to require bulletin board operators to obtain mechanical licenses to post songs on the Internet. Such a solution designates certain transmissions as reproductions but fails to address the question whether owners of sound recordings should also have performance rights in those recordings. The above solutions, by themselves, would just throw up another artificial divide. The Internet offers a valuable opportunity, the real possibility of remedying a long-standing inequity that other advances in media could not change. We would do well to take advantage of it.

Music and Human Rights

Musical works or compositions are part of the works eligible for copyright protection in Uganda under the Copyright and Neighbouring Rights Act (CNRA) 2006. The protection accorded to musical works in Uganda extends

to works intended to be sung or performed with music. What attracts independent protection is not mere works but

the lyrics and the song itself. For a work to qualify for protection as a musical work, it must be an independent musical composition. Song writing is also taken to be part of copyright. Section 5(1)(b) of the CNRA lists "dramatic-musical and musical works" as part of the works eligible for copyright protection.

Over the years, there has been marginalization of the use of music to promote human rights in Uganda. Despite numerous policy pronouncements as seen in both local and international legislations such as the International Bill of Rights contained in the International Covenant on Civil and Political Rights (ICCPR), the Bill of Rights contained in Chapter Four of the Constitution and other laws, and regulations made thereunder, the use of music as a form of artistic (freedom) of expression has remained largely low. Needless to mention is the fact that measures used to curtail the use of music as a form of artistic expression in Uganda are largely incompatible with both local and international human rights standards. However, while attempts to use music as a form of artistic expression and promotion of human rights have been partially successful, there have been a number of challenges faced along the way.

At the global level, the use of art in the form of music has become significant in the realization of human rights. Indeed, music has been used as major method and tool for highlighting human rights abuses, raising awareness and addressing these issues including in the campaigns on the abduction of children by Joseph Kony in northern Uganda, just to mention a few.[32]The

[32] Bosmic Otim' song called, 'Peace Return to Northern Uganda' is

a goos example: 'NorthernUganda awaits final peace' ReliefWeb 26

essence of this article is to discuss how music has been used as an art form to discuss human rights in Uganda.

Music can be used to shape the human rights narrative, scholarship and act as a way of using the voice to air human rights violations or to discourage such violations. Besides, music appeals to a big section of the Ugandan population since much of it is sung in the local languages which helps promote human rights. Since the Government of Uganda (GoU) is yet to translate both the local and international Bill of Rights and other human rights instruments into the over 65 indigenous languages of the communities of Uganda, creating human rights awareness through music in local languages plays a significant role in building a human rights culture in the country. While there has been previous research on music and human rights in Uganda,[33] that research focused on how music is used to promote human rights in Uganda. This book builds on that research to examine the challenges faced in using music as a tool for human rights promotion.

The article examines music as a tool for engagement, and how music can be used to curtail the perpetuation of dangerous stereotypes and propaganda that violate human rights, especially against the vulnerable societies in Uganda, including ethnic and religious minorities as well as women and children. Highlighting examples and drawing largely on native Ugandan music, this article critically examines the intersection between music as an art

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Mar 2008 https://reliefweb.int/report/uganda/northern-uganda-awaits-final-peace.

[33] Ronald Kakungulu – Mayambala 'Music and Human Rights in Africa: The Role of HumanRights in Uganda', The Artt of Human Rights (2020), at 143 – 15 http://link.springer.com/chapter/10.1007/978-3-030-30102_610 (accessed 8 September 2010).

and human rights law in Uganda as an innovative pattern of thinking about human rights. Thus, music is a form of artistic expression that can be used as a vehicle to promote freedom of expression and access to information. This article also critically engages with the challenges faced in achieving this goal particularly looking at the stumbling blocks laid before musicians by the government regulatory bodies and restrictive legislation.

In Uganda, Article 20 of the constitution obliges all persons and the state to observe fundamental and other human rights and obligations by stating:

Fundamental rights and freedoms of the individual are inherent and not granted by the State.

The rights and freedoms of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons. The fact that human rights were enjoyed collectively in the African societies makes music, which is largely communal, very attractive in the promotion of human rights.[5] Creativity in general and the arts in particular are increasingly recognized as drivers of cultural, economic, political, social, and scientific innovation and development.[6] Artistic expressions such as music have faced censorship.[34] Music is an expression of people's culture. Music supports human rights in a variety of ways. Music can be used to create a sense of hope even to seemingly hopeless societies or communities. It can build hope. Dunn best captures this scenario in reference to the music band, The Clash, thus:

[34] G. Bast, G.E. Carayannis and D.F.J. Campbell, Introduction to Arts, Research, Innovation,and Society (ARIS), in Bast, G., Carayannis, E.G., Campbell, D.F.J, ARTS, RESEARCH, INNOVATION AND SOCIETY (SPRINGER INTERNATIONAL PUBLISHERS, SWITZERLAND, 2015) 1.

In their engagement with political issues, The Clash regularly employed a cosmopolitan understanding of human rights, while heavily framing that around the socioeconomic context of the late 1970s Britain. Faced with collapsing welfare and social structures and the rise of Thatcher's free-market economic policies, The Clash's discourse on human rights has a pronounced socialist flavour, with a defense of the welfare system. Central to the discourse was a critique of the capitalist system. For The Clash, discussions of human rights centered primarily on the rights of humans to get access to basic human needs, like food, clothing, and shelter.

Challenges faced in Using Music to Promote and Protect Human Rights in Uganda

Attempts to use music to route human rights activism has faced challenges.[35] Whereas it is clear and of no doubt that music can and has indeed played a leading role in the promotion and protection of human rights in Uganda and beyond, the type of music may be inimical to certain cultures.[36] Religious limitations have been a challenge. For example, traditional Islam permits the

[35] A.K. Saud, Rep that Islam: The Rhyme and Reason of American Islamic Hip Hop, 97(1) THEMUSLIM WORLD (2007), 125-141.

[36] T. Swedenburg, Islamic Hip-Hip vs. Islamophobia, in GLOBAL NOISE: RAP AND HIP-HOPOUTSIDE THE AMERICA (T. Mitchell, ed., 2001) 57-85.

use of music only in limited aspects..[37]In as much as hip-hop music may be a popular youth culture, "the religious fatwa on the status of music in Islam ranges from a total prohibition of music, to allowing musical instruments as long as the song complies with Islamic precepts such as the ruling against uttering profanities."[38] Only Nasheed singers may be tolerated. Nasheed is an Islamic-oriented form traditionally sung acapella in tandem with only basic percussion.[39]

In 2022 Negendende and Sente nina by Kide dde, in 2014 messe by captain dollar these songs were critised by very many religious leaders as obsini. In 2004, the popular song nsonyiwa faza (forgive me Father) by Titi, a Ugandan music artist, was considered controversial and condemned in some church pulpits. The lyrics of the song had a married woman confessing to a Catholic priest that she had developed feelings for another man. A number of radio station DJs expressed concern about giving the song airplay fearing that it could lead to protests from dedicated Catholic listeners. More nuanced analyses, however, noted that the song had an emancipatory effect on women in a country in which male philandering was widely tolerated and, in some instances, even applauded while female infidelity is excoriated.[40] Much of the

[37] Nasir Kamaludeen Mohamed, The September 11 generation, hip-hop and human rights,51(4) JOURNAL OF SOCIOLOGY 1039-1051 (2015), at 1043.

[38] ibid

[39] ibid

[40] Sebidde Kiryowa, Titi treads on forbidden ground, NEW VISION, 17 June 2004, https://www.newvision.co.ug/new_vision/news/1098235/titi-treads-forbidden-ground.

music including the one on human rights is now shared through the internet or online.[41]Internet

censorship therefore becomes very real in light of music that is considered critical of government especially its human rights record.[42] The censorship has been based on moral grounds among other factors.

For example, in October 2014, a music artiste, Jemimah Kansiime aka Panadol Wa' Basajja and her music video producer were arrested over a music video they posted on YouTube which the minister of ethics and integrity deemed to be pornographic.[43] The producer, March Didi Muchwa Mugisha, pleaded guilty to the charges and was fined 200,000 Uganda shillings (USD

[41] Herbert Ssempogo, 15 Arrested Over Nude Dancing, NEW VISION, 31 December 2006, https://www.newvision.co.ug/new_vision/news/1134011/arrested-nude-dancing; Henry Mukasa, Govt battles nude dancers, NEW VISION, 4 November 2004, https://www.newvision.co.ug/new_vision/news/1256803/govt-battles-nude-dancers.

[42] DEBORAH KINTU, THE UGANDAN MORALITY CRUSADE: THE BRUTAL CAMPAIGN AGAINST HOMOSEXUALITY AND PORNOGRAPHY (McFarland & Company Publishers, 2018), at 22; Denis Jjuuko, Amanda, the man who heads Kampala's latest lewd dancers, NEW VISION, 24 April 2003, https://www.newvision.co.ug/new_vision/news/1269435/amanda-heads-kampala-eur-lewd-dancers; Amanda's preferred gender pronoun is unknown but since she regularly dressed up as a woman, we haveadopted the pronoun "she".

[43] Cissy Makumbi & Polycap Kalokwera, Song critical of government big shots banned, DAILY MONITOR, 5 June 2018, http://www.monitor.co.ug/News/National/Song-critical-government-big-shots- banned/688334-4596014-qk4025/index.html.

55), becoming the first person to be convicted under the Anti-Pornography Act.[44] Jemimah pleaded not guilty and was remanded to prison for one month before she was released on bail.[45]

In March 2018, the Pornography Control Committee warned Sheebah Karungi, a Ugandan recording artiste, dancer and actress, that she was dressing indecently in her videos, threatening to take action if she did not comply. Artists whose performances do not live up to a certain standard of morality are subject to arrest and prosecution under the vague catch-all crime of being "idle and disorderly."[46] The arrest of dancers who participate in strip-tease acts in bars under this law was common.[47]In 2003, a Ugandan transgender woman calling herself Shaban Amanda created the dance group, Amanda's Moonlight Angels, that gained considerable popularity and rose to be the most popular strip-tease act around. Revelers at her performances often struggled to determine her gender. After performing for just four months, she was arrested together with six of her dancers and charged with indecent dressing and the public performance of lewd acts. Following subsequent run-ins with the police over her performances, she called it quits and has since retired to her ancestral home on the shores of Lake

[44] RDC shouldn't ban song but take singer to court, DAILY MONITOR, 6 June 2018, http://www.monitor.co.ug/OpEd/Editorial/RDC-should-ban-song-take-singer-court-/689360-4597164- e1dtr0/index.html.

[45] Nadia Nkwaya, 'Art Work Africa: Monitoring Freedom of Creative Expression, Arterial Network Report' (2013) at 87.

[46] Repealed Rule 12(2) id.

[47] ibid

Albert.[48]Music has also been restricted for political reasons. In June 2018, the Resident

District Commissioner (RDC) of Kitgum district in northern Uganda banned radio stations, discotheques and other public places from playing a song by a popular artiste, Bosmic Otim, titled mac Onywalo buru which means "fire produces ash." The song lampooned the president and many leading politicians from the northern region of the country.[66] The RDC claimed that the song was inciting people to violence. The RDC's actions were condemned as they lacked any clear basis in law as RDCs do not have authority to make such bans.[67] The actions of the RDC had a chilling effect on the use of music as an artistic expression intended to fight against human rights abuses. Faced with a real danger of being jailed, most artistes retreated on their songs that were critical of government's human rights record.

Furthermore, about 70% of radio stations in Uganda are owned by politicians, severely limiting the creative expression of the musicians who seek to have their music played there.[49] These musicians must limit their criticism of unfavourable government policies to get airplay.

Official government regulators also pose challenges to musicians. The Uganda Communications Commission (UCC) regulates the arts industry in

[48] Sylver Kyagulanyi, 'Uganda's Music Industry Under Siege Again' and 'Performing Arts in Uganda need a Boast not restriction' (unpublished papers).

[49] Serubiri Moses, Political Music: Kadongo Kamu is dead, START JOURNAL OF ARTS AND CULTURE, 30 April 2012, <http://startjournal.org/2012/04/political-music-kadongo-kamu-is-dead/>.

general.[50] Indeed, at the height of the popular opposition People Power movement, the UCC reportedly banned performance of a song by singer-turned-politician, Kyagulanyi Ssentamu popularly known by his stage name Bobi Wine. The song Kyarenga, a sensational song which resonated very well with the youth was popular across the country and despite its apolitical message, it was considered political because of the singer. In 2016, musicians publicly endorsed Museveni. Privately, some musicians cited the threat of greater scrutiny from the country's tax body, the Uganda Revenue Authority, and the threat of cancellation of shows for "security reasons.

The trend of the government stopping shows or music concerts of its critics was dealt with in the case of Abbey Musinguzi T/A ABTEX Productions and Bajjo Events and Marketing Agency v. The Inspector General of Police & Attorney General, in which the applicants brought this suit against the respondents for stopping the music shows of the applicants dubbed "Kyarenga Extra Concerts." These concerts, which were to be held at One Love Beach in Busaabala (Kampala), Lira, Gulu and Arua were on numerous occasions cancelled. Justice Esta Nambayo, issued an order of certiorari quashing the decision and/or directive of the 1st respondent contained in a letter dated April 19, 2019, halting the applicant's Kyarenga Extra Concert indefinitely as well as an order of prohibition restraining, stopping and preventing the 1st respondent from assuming powers to authorize and/or sanction the holding of musical shows and celebrations of a social nature by the applicants.[51]

Indeed, Robert Kyagulanyi's latest liberation song Tuliyambala Engule has caused quite a storm. Originally a religious song, the song is a remix of

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[50] Lyrics: Ronald Mayinja Stings Museveni in New Song, CHIMP REPORTS, 22 March 2018, https://chimpreports.com/lyrics-ronald-mayinja-stings-museveni-in-new-song/

[51] East African Journal of Peace and Human Rights · December 2020

contemporary political issues and religion. Its precursor was Mbabazi's Bobi Situka Tutambule,which was released at the height of Kyagulanyi's detention and alleged torture while in detention.[52]

The government and the regulator of public shows in Uganda – the UCC – have come up with a host of laws which border on censorship of artistic freedom of expression, contrary to Article 29 of the constitution, which seeks to guarantee freedom of expression. In this bid, UCC has spearheaded the passing of several laws which negate and curtail artistic expression. Basing on its mandate under the Uganda Communications Act of 2013 and the Stage Play and Public Entertainment Act, UCC has passed comprehensive subsidiary legislation which is briefly discussed below with its implications on music as a form of artistic freedom of expression in Uganda.

On 28 May 2020, Parliament passed the Uganda Communications (Film, Documentaries and Commercial Still Photography) Regulations 2019 and the Stage Play and Public Entertainment Rules 2019 which had been drafted by UCC.[53]

Generally speaking, the Stage Plays and Public Entertainment Act, under which the Stage Play and Public Entertainment Rules 2019 were made, should have no place in a civilized society and should have been repealed after the enactment of the 1995 constitution. This article highlights some of the salient problematic features of the Stage Plays and Public Entertainment Rules.

These rules affect musicians, actors, comedians, authors, promoters, venue owners (including hotels, parks, bars, gardens, beaches, etc.), DJs and VJs, record labels, broadcasters and so on. Under the rules, one must have a permit

[52] East African Journal of Peace and Human Rights · December 2020

[53] 28th May 2020 New vision.

to stage a play, a concert or any form of public entertainment. Failure to have a permit is punishable by a fine or imprisonment for six months or both.

UCC has wide powers to charge fees for the permits;[75] regulate the content of what is to be performed and on top of the fees for the permits, the applicant has to pay extra money to facilitate the attendance of a UCC officer. Moreover, the UCC inspector has the power to withdraw the permit even when the concert or play is ongoing.[54]Denying a UCC officer entry can lead to imprisonment for a year.

The requirements when applying for a permit may include a certificate of censorship issued by the Media Council of Uganda. There is also a compulsory requirement for an English translation of every work. A person cannot advertise a play or concert using any means without authorization from UCC. The regulator will not grant authorization if one has not been cleared by a local government entity.[55]

Music is a very powerful instrument in connecting the youth, most of whom are always pro-human rights, and always seeking to challenge the status quo in Uganda and other parts of the world. [56] In December 2017, two musicians, David Mugema and Jonathan Muwanguzi, were charged with offensive communication under section 25 of the Computer Misuse Act for composing and singing a song titled Wumula Mzee (Take a Rest Old Man), which was distributed through social media.[57] The song was interpreted as a protest against plans that were underway to extend President Museveni's 30-

[54] Ibid 15

[55] Ibid 15

[56] Ibid 20

[57] Ibid 16

year rule over the country through amending the constitution to remove the age limit of 75.[58]

In October 2018, musician Moses Nsubuga aka Viboyo was arrested and charged with offensive communication under section 25 of the Computer Misuse Act over a song in which he used expletives to insult the president of the country and the speaker of parliament. The arresting detectives informed the media that "in the song, he abused several leaders and tribes in Uganda which is illegal."[59] Music also played a key role in both the 2011 and 2016 general elections, with musicians singing sensational songs such as the Forum for Democratic Change's (FDC) popular song Toka Kwa Barabara (Clear the Way) which became the highlight of the opposition campaigns.

Uganda has many indigenous communities, which use their culture, traditional norms and folklore mainly through music. Music helps such indigenous communities to strive for their human rights including the right to self-determination and as a form of expression Art forms such as music have for a long time been used to speak truth to power in Uganda. In pre-colonial times, the kadongo kamu musicians of the king of Buganda were known to embed stories communicating the people's disapproval of certain actions as they entertained the king.[60] Kyagulanyi in particular is noted for singing powerful emotive songs that capture the struggles of and injustices faced by the urban youth. In 2012, he released an immensely popular song titled Tugambire ku Jennifer, meaning 'Please ask Jennifer to be kind'. The song was addressed to Ms Jennifer Musisi, then executive director of the Kampala Capital City Authority (KCCA). For months leading up to the release of the song, KCCA had been harassing illegal street vendors and hawkers who had previously gone unmolested. The new measures were an effort to clean up the streets but had inadvertently led to mass joblessness as

[58] Article : music and the law by Isaac Khaukha

[59] October 15th 2018 New vision

[60] Ibid 17

many of these illegal vendors had no other source of income.Kyagulanyi's song captured the injustice many felt that these people were facing with the line 'Tugambire Ku Jennifer akendeeze obukambwe' (Please tell Jennifer to be kind). True to form, within days of release, UCC threatened radio stations that played the song. Nonetheless, its popularity spread largely due to social media.[61]The artiste Ronald Mayinja is noted for singing very popular songs dealing with issues like corruption. Some of his most popular hits are Tuli Kubunkenke (we are on tenterhooks) sang in 2005 and Tuwalana Nguzi Naye Tetuwalana Gavumenti (We Hate Corruption, We Do Not the Government) sang in 2013.[62]In 2018, he released another popular hit titled Bizzeemu (Repeated) in which he bemoans the fact that President

Museveni was repeating the very mistakes of his predecessors that he so frequently condemns including arbitrary arrests and corruption.[63]

In the NRA/NRM guerrilla struggle in the early 1980s, songs were sung to mobilize the masses, communicate ideology, and raise and maintain morale among the fighters and their supporters.[64]Songs about fallen comrades engendered the internalization of their sacrifices and the acceptance of the possibility of the same fate among the singers. In 2017, President Museveni proposed that these songs be incorporated into the school syllabus to teach

[61] Ibid 1

[62] Yes, Sevo! Ugandan President Yoweri Museveni Has Hit Rap Song, Huffington Post, 5 November 2010, https://www.huffingtonpost.com/2010/11/05/yes-sevo-ugandan-presiden_n_779769.html.

[63] Museveni wants NRA heroes songs on school syllabus, EDGE, 9 June 2017, https://edge.ug/2017/06/09/museveni-wants-nra-heroes-songs-on-school-syllabus/

[64] ibid

youth the "cost of freedom."[65] Arts serve as vehicles of communication for political messages.[66]Artistic forms such as song and dance in Africa have traditionally been structured to communicate a particular message to prospective listeners and participants simultaneously. A message that would have required hours of lectures can be compressed into a five-minute song and dance. The ruling NRM government has embraced the use of the arts as a means to communicate its message to people. Since it took power in 1986, the NRM cultural desk has organized its own party propaganda dramas.[67] Musicians have been paid by the NRM government to release pro-government songs during election years.[68] The president himself has taken to

[65] Museveni wants NRA heroes songs on school syllabus, EDGE, 9 June 2017, https://edge.ug/2017/06/09/museveni-wants-nra-heroes-songs-on-school-syllabus/

[66] NGUGI WA THIONG'O, WRITERS IN POLITICS: ESSAYS (HEINEMANN, 1981), at 71.

[67] Eckhard Breitinger, Uganda, In: A HISTORY OF THEATRE IN AFRICA (Martin Banham, ed.,2004), at 249.

[68] R. Kasasira, Uganda Elections 2006: Musicians Take Over Political Campaigns, UGPULSE,31 January 2006, http://www.ugpulse.com/government/uganda-elections-2006-musicians-take-over- political-campaigns/292/ug.aspx; Darius Mugisha, Museveni money: Artistes disagree over agenda, Daily Monitor, October 21 2015, https://www.monitor.co.ug/News/National/Museveni-money--Artistes-disagree- over-agenda/688334-2923170-rht47yz/index.html.

singing songs including the release of a song titled Another Rap in the 2010 presidential campaigns in a bid to appeal to the youth.[69]

Contemporary challenges that cannot easily be addressed in mainstream arenas of public discourse can be referenced and dealt with obliquely through the use of metaphor. Otherwise, restricted political critique can flourish under the veil of songs, dance, melodrama, and other aesthetic devices. Art forms can take advantage of a cultural code only understood in full by its intended audience such that messages can be communicated undetected.[99] Famously, the popular song We Miss You Manelo by Chico Sello Twala released in 1988 was a veiled expression of the South African people's longing for Nelson Mandela then serving a life sentence in the apartheid government's custody.[70]

Indeed, music can be used to shape the human rights narrative, scholarship and act as a way of using the voice to air human rights violations or to discourage such violations. Besides, music appeals to a big section of the Ugandan population since much of it is sung in the local languages, which helps promote human rights. Since the government is yet to translate the Bill of Rights and other human rights instruments into the over 65 indigenous languages of the communities of Uganda, many challenges remain in respect of appreciation and understanding of human rights in Uganda.

Music can be used as a tool for engagement and to curtail the perpetuation of dangerous stereotypes and propaganda that violate human rights, especially

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[69] Yes, Sevo! Ugandan President Yoweri Museveni Has Hit Rap Song, Huffington Post, 5 November 2010, https://www.huffingtonpost.com/2010/11/05/yes-sevo-ugandan-presiden_n_779769.html.

[70] Ibid 17

against the vulnerable societies in Uganda, including ethnic and religious minorities as well as women and children. Highlighting examples and drawing largely on native Ugandan music, this article noted the intersection between music as an art and human rights law in Uganda as an innovative pattern of thinking about human rights.

Lastly, the article demonstrates recent trends in the music industry, practices and emerging issues in the region impacting the enjoyment of fundamental freedoms, in particular the rights of freedom of expression, assembly and access to information with a focus on the situation in Uganda's music industry. The article examined the different legislations used in the restrictions of music as a form of artistic expression including the banning of musical shows or concerts of artistes perceived to be critical of the ruling establishment.

Chapter twelve what is in the copyright amendment bill?

Copyright is form of intellectual property protection that applies to a vast number of works such as books, music, art and software. It is the one of the most inclusive and broad-spectrum forms of intellectual property protection. It automatically arises on the creation of a work. So, if you organisation has any interaction with literature, music, art, films, media or software (to name a few!) then you need to know what your copyright rights and obligations are.

A Technical Working Group of experts was mulled over several issues that had been highlighted in a paper titled, ***"Review of the Copyright and Neighbouring Rights Act, 2006: Issues paper"*** which was authored by the Uganda Law Reform Commission.

Several meetings drew experts from Uganda Registration Services Bureau, Ministry of Justice and Constitutional Affairs, Uganda Communications Commission, First Parliamentary Counsel, Parliament, National Culture Forum, Copyright Institute, and Uganda Reproduction Rights Organisation

have been held since October 2022. The Technical Working Group has up to 31st December 2022 to produce a draft Amendment Bill.

The introduction of a Private Copy Levy (PCL) within the Copyright Act was one of the key issues on the table for discussion. This issue has earlier dominated artists' lobbying efforts and in 2020 attracted the President of Uganda who directed the Minister of Finance to study the PCL proposals. It is also captured in the Private Member's Bill by Hon. Hillary Kiyaga, Member of Parliament for Mawokota North Constituency. The Technical Working Group is studying several best practices from other jurisdictions to understand how such a provision can be enforced to the benefit of the creative sector. When passed, this provision will expand royalty streams from gadgets being used to exploit works, available to artists and writers.

The Administration of Copyright in Uganda was also discussed. Currently, Copyright administration is under Uganda Registration Services Bureau (URSB). The role of Registrar of Copyright is fused with that of the Registrar General. There are strong sentiments to separate this role by creating an independent agency to take care of Copyright industries on the one hand. On the other, new ideas are emerging on how best to strengthen the current structures under URSB for the administration of the Copyright Act.

It had been noted that Collective Management Organisations (CMOs) which include Uganda Performing Right Society, Uganda Reproduction Rights Organisation and Uganda Federation of Movie Industry need legislation to strengthen them. Currently, not every artist or writer is a member of a CMO which hampers their capacity to be more representative. The Technical Working Group is weighing different options to address this challenge by including provisions like legal presumption or collective extended mandate. The power of a CMO to license and give comfort to users of protected works is if they are representative of the biggest portion of rights holders in the country.

Other issues in the spotlight included exceptions andltal era; remedies for infringement; remedies for civil actions; infringement of neighbouring rights; criminal liability for copyright infringement and; the resale right by including a role for visual arts CMO. There were also discussions to grant the Registrar of Copyright quasi-judicial powers or a copyright tribunal to handle copyright related matters before they can be referred to the High Court.

It was expected that in the course of this process, public consultations will be undertaken to collect views from rights holders and users on the different issues under consideration.

The Copyright Amendment Bill was aimed at promoting the economic interests of creators of works whilst accommodating changing technology. The Copyright Amendment Bill also has increased the scope of fair use with specific emphasis on educational uses. It has also created provision relating to the availability of accessible formats for people with disabilities. This is an example of some of the changes in the Bill and reflected in our Copyright Amendment Summary. All of these changes come with significant obligations for people who are using copyrighted work or for copyright owners (like organisations who have purchased the intellectual property rights). It is essential that if your organisation wants to use copyrighted work lawfully that you know and understand the new obligations and provisions of the Copyright Amendment Bill. The Bill can be fairly impenetrable and difficult to understand. So, we have created a clear and helpful Copyright Amendment Bill summary. This summary will be tailored to your organisation which provides insights into the specific risks to your organisation posed by each new section of the Bill.

Actions you can take

- Empower, protect and inform yourself by asking us to draft a bespoke Copyright Amendment Bill summary for your organisation.

- Get the latest update on the progress of the Bill in parliament by signing up to our newsletter.
- Manage your assets effectively by asking us to conduct an intellectual property audit for your organisation.
- Address specific intellectual property concerns by having us draft a practical opinion dealing with your specific issue.

The Copyright Act of 1978 needs updating to accommodate technological advancements and be a robust and flexible piece of legislation for the information age.

Top five insights from the Copyright Amendment Bill Submissions:

1.The terminology of the Bill was problematic. It is confusing, creates uncertainty and is potentially unusable in its current form. There is confusion between the term's 'author', 'owner' and 'user'. This creates a lack of certainty.

2. The scope of the fair use or fair dealing remains a controversial section of the bill. Proponents for an expanded fair use section motivated for it by arguing that it provides greater opportunity for innovation and greater equal access to resources. Some of the people who submitted comment were not in favour of an expanded fair use section and argued that it would undermine the fundamental economic value of the work.

3. State funded works will be owned by the state. This is a hugely problematic section for film, documentary and music creators where the only way for them to create work is to be funded by the state (e.g., the state broadcaster). Most of the presenters proposed that this section needed to be redrafted to be less broad.

Key concerns are terminology, the scope of fair use and state funded works

4. The introduction of resale royalty rights. The concept behind this introduction is in principle a good idea. However, as the section stands it is too broad and there is a lack of clarity on how it will be practically implemented.

5. There is a possible unconstitutional aspect of the Bill. The Bill allows for the Minister responsible for communication to prescribe local music content for television and radio broadcasting. This may be in conflict with s 192 of the Constitution which states that there must be an independent authority established to regulate broadcasting in the public interest (i.e., ICASA). The constitutional emphasis is on an independent body to regulate broadcasting. This may be in conflict with the Bill and may need to be tested in a constitutional limitations analysis.

Overall, there were a large number of issues raised about this important Bill. The standard of the submission was exemplary and we commend the presenters on the time, detail and effort that has gone into the submissions. We await with interest to hear about the fate of this Bill.

The Genesis

The need to seek to amend the 2006 Copyright and Neighbouring Rights Act, aaccording to Kiyaga Mawokota North Member of Parliament, aka Dr. Hilderman the current Copyright and Neighbouring Act does not grant due benefits to originators of works, a trend that his new Bill will cure. Mawokota North Member of Parliament, Hillary Kiyaga was granted leave of Parliament to introduce the Copyright and Neighbouring Rights (Amendment) Bill, 2022, that the current Copyright and Neighbouring Act does not grant due benefits to originators of works, a trend that his new Bill will cure. “As an artist, I know you are fed up seeing musicians on the streets as beggars;

it is because their works are not protected. It is, therefore, the duty of this House to protect their works", said Kiyaga, famously known as Dr. Hilderman.

The Bill proposes penalties and sanctions on infringement on copy-right works, a task, Kiyaga said has proved tedious and unattainable for most authors in the country. Kiyaga noted that with the passage of time, some aspects of the Copyright and Neighbouring Act have become outdated, necessitating an amendment.

This amendment is timely, the music industry is a potential foreign exchange earner for the country. "This is the industry which is very attractive to everyone but in Uganda, you find the holder of the copyright is miserable when their rights are reproduced and sold elsewhere,"

Rachel Magoola, the Bugweri District Woman MP and former musician said the bill will streamline works that qualify for copyright protection including political speeches, interviews, and speeches delivered during judicial proceedings.

The proposed legislation will attract revenue from ringback tunes and devices used in the reproduction of protected copyright works.

The proposed amendment seeks to close gaps in the 2006 law to recognize and protect the rights of a composer of artistic work and to streamline the registration of copyrights among others.

The Registrar General, Mercy Kainobwisho told the meeting that while her agency, URSB recognizes that there are gaps in the existing law coupled with implementation challenges, there is no need for a Private Members' Bill her entity had already engaged Uganda Law Reform Commission to process an amendment that would lead to the domestication of international treaties on

copyright and audio-visual performances, "The provisions of this Bill and the proposed amendments of the current Act may be parallel to the steps URSB is taking to amend the Act,"

Her submissions were however challenged by concerns that were amplified by artistes, Hannington Bugingo (comedian) and Sylver Kyagulanyi from the Copyright Institute. They argued that "We wish to have this law amended in the areas of regulation, administration and protection. Regulation is so pertinent because we already have an existing issue with [Uganda Communications Commission] UCC," Kyagulanyi said in reference to the stage plays and public performance rules which were announced by UCC in 2019.

"We the creatives need to be regulated but what UCC is doing is an exhibition of the gap in the current law. UCC is using a 1964 draconian law – The Stage Plays and Public Entertainment Act which ought to be repealed. UCC would be within their mandate if they try to regulate broadcast but are trying to [stretch their mandate] to the regulation of everything including creativity and creative work," he added, the current Copyright and Neighbouring Act does not grant due benefits to originators of works, a trend he wishes to cure in the new bill.

"As an artist, I know you are fed up seeing musicians on the streets as beggars; it is because their works are not protected. It is therefore, the duty of this House to protect their works", said Kiyaga.

The bill proposes penalties and sanctions on infringement on copyright works, a task, Kiyaga said has proved tedious and unattainable for most authors. Kiyaga noted that with passage of time, some aspects of the Copyright and Neighbouring Act have become outdated, necessitating the amendment.

"In light of advances in technology and emerging practices, there is an increase in the nature of copy right works that can be protected and infringed on", he said.

These amendments are timely saying, 'the industry it seeks to regulate is a potential foreign exchange earner'.

"This is the industry which is very attractive to everyone but in Uganda, you find the holder of copy right is miserable when their rights are reproduced and sold elsewhere," said Byakatonda, He cited international good practices where authors of works in countries such as the United States are granted rights over their works for 20 years.

Bugweri District Woman MP, Hon. Rachel Magoola said the bill will streamline works that qualify for copyright protection including political speeches, interviews and speeches delivered during judicial proceedings.

"The new bill will establish a register of copyrights and empower the registrar to impose administrative penalties for infringement on copy right works and settle disputes," Magoola said.

The proposed legislation will attract revenue from ring back tunes and devices used in reproduction of protected copyright works. that the current law does not grant due benefits to originators of works, something that the proposed Bill seeks to cure through ensuring revenue from ring back tunes and devices used in the reproduction of protected copyright works.

"I know you are fed up seeing musicians on the streets as beggars; it is because their works are not protected. It is, therefore, the duty of this House to protect their works," Kiyaga, a musician then said.

He added that the proposed amendments would ensure penalties and sanctions on infringement on copy-right works, something that Kiyaga said has proved tedious and unattainable for most authors in the country.

Biribonwoha said that the Uganda Law Reform Commission, working together with Uganda Registration Services Bureau (URSB)- which registers

copyrights and enforces them, has been already working on something regarding the Bill. "We were of the view that the two interested parties should perhaps synergize and avoid duplication of efforts and work together in order to attain what the objective of this amendment is," said Biribonwoha. Regarding the resolution reached, he said that he was to inform the Attorney General and ensure that the ongoing process is expedited, as they work with the mover of the Bill to ensure that the matter is urgently handled. Kiyaga, said that he has no problem working with the different government departments to ensure that the proposed amendments are made. He said that all statements in the industry need to be consulted with a view of having an industry whose work is respected. The Bill seeks to recognize and protect the rights of a composer of literary, artistic, scientific and intellectual works cognizant that the law as it is, assigns such rights to producers, the current Copyright and Neighbouring Act does not grant due benefits to originators of works, a trend he wishes to cure in the new bill. "As an artist, I know you are fed up seeing musicians on the streets as beggars; it is because their works are not protected. It is therefore, the duty of this House to protect their works", said Kiyaga.

The bill proposes penalties and sanctions on infringement on copy right works, a task, Kiyaga said has proved tedious and unattainable for most authors.

Kiyaga noted that with passage of time, some aspects of the Copyright and Neighbouring Act have become outdated, necessitating the amendment. "In light of advances in technology and emerging practices, there is an increase in the nature of copy right works that can be protected and infringed on", he said.

Workers Representative, Hon. Abdul Byakatonda who seconded the motion said the amendment is timely saying, 'the industry it seeks to regulate is a potential foreign exchange earner'. "This is the industry which is very attractive to everyone but in Uganda, you

find the holder of copy right is miserable when their rights are reproduced and sold elsewhere," said Byakatonda.

He cited international good practices where authors of works in countries such as the United States are granted rights over their works for 20 years. Bugweri District Woman MP, Hon. Rachel Magoola said the bill will streamline works that qualify for copyright protection including political speeches, interviews and speeches delivered during judicial proceedings.

"The new bill will establish a register of copyrights and empower the registrar to impose administrative penalties for infringement on copy right works and settle disputes," Magoola said. The proposed legislation will attract revenue from ring back tunes and devices used in reproduction of protected copyright works.

Possible areas of improvement

Creation of An Appellate Board

The Chairman and other members of the Board can be appointed according to the provisions of the copyright and neighboring Act, The Technical Member of the Board should however have to have the qualifications as specified in a constituted Tribunal, Appellate Tribunal, and Other Authorities (Qualifications, Experience, and Other Conditions of Service of Members)

Rules for collection of royalty by Copyright Societies

Copyright Societies that are registered under the Copyright Act should be engaged in the business of issuing and granting copyright licenses related to literary, dramatic, musical, or artistic work that is incorporated in a film or

recording. A copyright society should be allowed to collect royalties according to the tariff schemes laid down concerning the licenses issued for the specific rights for the specific work that the society has been authorized to administer.

The royalty collected by the copyright society in such a manner is usually distributed according to the distribution scheme. Rules should be laid down as the guidelines for copyright societies under the copyright rules. such as those which deals with the collection of royalty by a copyright society

The copyright society concerning the collection of royalty under sub-rules and distribution of royalty under sub-rules of the primary rule, would create a system of payment through electronic modes and shall establish a system through which the payments so made are traceable. The rule should imply that a digital payment system for the collection and distribution of royalty by copyright societies must be created, and the same must be stored through electronicmeans.

Rules concerning the collection of royalty should be introduced as follows:

If royalty cannot be distributed within the time specified in the rules by a copyright society, in the instance where the authors could not be identified or located, then such royalty payments have to be maintained separately in the books of accounts of the society.

The copyright society has to take all the means necessary to locate and identify authors and owners of the copyrighted material. At the end of every quarter, if they cannot identify such authors or owners then they have to publish the following onto their websites:

The title of the copyrighted work

Names of the authors and owners of the copyrighted work, any relevant information that may help to identify the authors or owners.

If royalties remain undistributed to the owners and authors three years from the end of the financial year when the royalty was collected, then such royalty payments may be transferred to the welfare fund of the society for their use.

New rules should also be introduced under copyright rules, detailing new items that must be made available by the society on their website. According to the amendment, the following items must also be displayed on the website of the copyright society:

A facility allowing a search of the works forming the repertoire of the society

There should be an Annual Transparency Report, as authorized by the general body.

Annual Transparency Report

rules concerning publishing an annual transparency report should be introduced for copyright societies. and should mandate that all copyright societies must draw up and publish an annual transparency report within six months from the end of every financial year. The report should be made available on the website of the copyright society for at least three years.

The report should also contain the following information:

- Reports on the activities undertaken by the society in the specified financial year.
- The number of refusals/rejections of the grant of licenses.

- The financial statements on the royalties that are collected.
- Information on the royalty paid to the authors and owners of the copyright.
- Information on the royalty collected but not distributed to the authors or owners of the copyright.
- The administrative deductions that have been made from the royalty collected.
- The details of the amounts deducted for funding activities conducted under the welfare scheme of the society as determined under Rules of the copyright.
- Information on amounts received and paid to foreign societies or organizations.

Changes to accommodate electronic records:

The rules should be adapted to account for the use of electronic media and the adaptation of technological advances. A copyright journal should be introduced, which will be available on the official website. This will eliminate the requirement of publishing in the official gazette, as it will have to be published in the copyright journal instead. Rules to enhance compliance requirement for registration of copyright of software. Rules governing the source and object code, the applicant may submit the first ten and last ten pages of the source code.

The Register of Copyrights shall be kept in physical or electronic form

The Indexes may be kept in the copyright office in physical or electronic form. The requirement of arranging the indexes in alphabetical order or any

other order can be adopted. The amendment of the copyright rules is mainly introduced to harmonize the copyright rules with other similar rules. The amendments also introduce new measures of making more information available on the websites, publication in the copyright journal, reducing compliance requirements for application of copyright for computer software, etc. to adopt electronic means as the primary means of communication and to encourage the adoption of advanced technology.

A. Commissioned Works and Works under Contract of Employment

According to copyright of the original Act, the author is the first owner of copyrights in a work unless such work is commissioned by another person or is created under a contract of service or employment, in which cases the employer or the person commissioning the work is the owner. A new proviso can be added to the section providing that the logic or notion of commissioned work or work created under employment does not accord ownership to the employer where such work is incorporated in a cinematograph film. Therefore, a production house will not own the copyrights created by its employees during the course of their employment. Even where a previously commissioned work is used in a cinematograph film, there is a reversion of rights to its author. Surprisingly, this provision does not apply to works incorporated in a 'sound recording' and therefore, a record label can still own the works created by its employees or commissioned authors.

B. Assignment of Copyrights

Under the original Copyright Act, author of a literary, artistic or musical work could assign the copyright to the producers for incorporation in a film. Such assignment could broadly be for both current and future modes of exploitation. There is no right to receive any royalty for exploitation of the

works. Where such right existed, it could be transferred or waived. amendment can be added.

First, an assignment made to a producer or other person is not applicable to any medium or mode of exploitation that is not in existence at the time of the assignment unless specifically mentioned in the assignment agreement;

Secondly, the author of a literary or musical work incorporated in a cinematograph film cannot assign or wave his right to receive 'equal share of royalties' from the 'assignee' for utilisation of such work in any form other than communication to the public in a cinema hall. The only exceptions are copyright societies and legal heirs to whom an author may assign the right. Therefore, producers should now share the non theatrical exploitation royalties equally with the script writers, lyricists and composers;

Thirdly, the author of a literary or musical work incorporated in a sound recording shall not assign or waive his right to receive equal share of royalties from the 'assignee' for utilisation of such work in any form. The permitted exceptions are copyright societies and legal heirs to whom an author may assign the right.

Though, this amendment should come with a noble intention of granting royalty rights to the authors, the language of the amendment is so ambiguous and general that it leads to more questions than answers. What is meant by 'equal share of royalty from exploitation of works' is not clear. There are no objective criteria to determine the share of royalty accrued from the lyrics of a three-minute song, in a 90-minute-long film. Secondly, the royalty sharing principle is usually unfairly extended to any form of exploitation of the full film other than theatrical exploitation. It seriously undermines the copyright of the Producer in the cinematograph film. The television serials, programs, music album videos, telefilms etc. that qualify to be a cinematograph film have been neglected in most laws. Such films have to share equal royalties with the authors even for their primary exploitation on television.

Further, unlike Hollywood, in the Ugandan films, the lyricist/composer derives inspiration from the script and the plot of the film. Their works are influenced by factors such as the lead actors of the film, the situation in the film etc. The director and producer have considerable inputs on the final outcome of the film and the songs. Considering the fundamental differences, comparison with the western system of revenue sharing seems grossly unfair and rather should not be adopted.

C. Mode of Assignment of Copyright

Any assignment made contrary to an assignment made to a copyright society is void. Therefore, once an author assigns all his present and future rights to a copyright society, he cannot assign the same to other persons or exclude a future work from this general assignment. Most laws contemplate that no assignment made for utilisation a work in a cinematograph film shall affect the right to claim equal royalty for any exploitation of the work other than as part of the cinematograph film screened in a cinema hall and incorporates similar provision with respect to a sound recording; Even if a composer or lyricist is not a member of any society and assigns all rights in the work to the producer, he will still be eligible to receive equal share of royalty accruing from non theatrical exploitation of his work as part of the film or otherwise.

These provisions are applied *mutatis mutandis* to the provisions relating to 'License' (that is to say, an author cannot grant a license contrary to his assignment to the society or a license granted by an author does not affect his right to claim equal share of royalties from non-theatrical exploitation).

D. Copyright Societies

As per the current laws usually, no person other than a copyright society can be in the business of issuing licenses over works in which copyright subsists.

Only recognised exception is that the owner of the rights can issue licenses with respect to his works, even the owner of a literary, dramatic or musical works incorporated in a cinematograph film should issue licenses for exploitation of such works only through a copyright society. Further the registration of a copyright society is made valid for five years and is renewable thereon.

E. Statutory Licenses

i. Cover Versions: to provide that any person willing to make a cover version in the form of a sound recording of any literary dramatic or musical work where sound recording of that work is already made by the author or under the author's license, may do so by giving a prior notice of his intention, providing advance copies of all covers and advance payment of royalties to the owner. The cover recording shall not be different from the original medium of recording unless such medium has become obsolete. No alteration to the original work is permitted in the cover version.

ii. Statutory License for broadcasting of Literary and musical work and sound recording: to allow broadcasting organisations to communicate to the public by way of broadcast or performance of a published work (literary and musical work, sound recording and not a cinematograph film) by giving a notice in the prescribed manner and advance payment of royalty prescribed by the copyright board. The rates shall be separate for television and radio broadcasting. This provision does not affect the agreements concluded before the amendment. Therefore, the copyright owners in the sound recordings have to spend more on monitoring all these channels to ensure that the logs being provided to them are accurate.

F. Performers' Rights

To consolidate and provide certain economic rights and moral rights to the performers. Once a performer has consented incorporation of his performance in a cinematograph film, the performers' rights (not moral rights) can be enjoyed by the producer. However, a performer is entitled to performance royalty where 'the performances are made for commercial use'.

Further, the provisions relating to the assignment of copyrights are made applicable *mutatis mutandis* to the performers' rights. Therefore, a performer cannot assign his rights on his performance contrary to his agreement with a society (which may come into existence after the commencement of the amendment) and no assignment of performance will affect a performer's rights to receive equal share of royalties from the non theatrical exploitation of the performance as part of the film or from any exploitation of the sound recording.

G. Other Provisions

To provide clarity and to consolidate the current law. The definition of 'Performer' can be modified to exclude incidental performances. And to provide digital storage of a cinematograph film, sound recording and other works as a separate copyright. 'Commercial Rental' has been defined to exclude non profit libraries. The provisions relating to compulsory licenses for the benefit of the disabled, extension of the term of copyrights in photographs, Digital Rights Management provisions come with noble intentions. The proposal of making the 'principal director' as a co-author of the cinematograph film can be dropped following the standing committee report on the ground that the 'time was not ripe'! For whatever that means, it certainly is a sigh of relief for the producers.

The Ugandan Copyright Board is required to maintain a register of all works, which is prima facie proof of copyright.

The Act should introduce an artist's resale royalty right which will apply for as long as the copyright remains effective or subsists in the work in question. It should also prescribe the value of royalties payable, as well as the various circumstances in which the right falls away. For instance, it does not apply in situations where the work is sold for charity purposes. Collection societies are now known as collective management organizations, with the Ugandan Revenue Authority responsible for the collection of royalties on behalf of these organizations.

There should also be an expansion of the fair dealing provision allowing artists to use more of the exceptions in expressing themselves.

There should also be a policy to key provisions for incentives to allow the artists to derive monetary benefit from their works. Incentives including provision for the artists resale rights and new provisions covering collective management organizations who collect royalties for artists are also covered.

The implementation of the policy/measure has the following advantages

Reorganization of the collective management organizations that collect royalties for artists.

There has to be proper management of collection and payment of royalties.

To make it possible for copyright holders to benefit more than was the case previously.

REFERENCES

Cornish, Llewelyn and Aplin, 2010 Intellectual Property: Patents, Copyright,

Trademarks and Allied Rights 7th Edition, Sweet & Maxwell.

The Copyright and Neighbouring Rights Act, 2006

The Copyright and Neighbouring Rights Regulations, 2010

WIPO Intellectual Property Handbook, 2004

Case law

1. Broadcast Music, Inc. ("BMI"), the American Society of Composers, Artists, and Publishers ("ASCAP"), and the Society of European Stage Authors and Composers ("SESAC"). BMI and ASCAP are the big players in the American music industry.

2. For my own convenience, I will use "Paul Anka" to refer to the copyright owner of the composition, although in truth the copyright owner is now Spank Music Corp.

("My Way" is the English version of a 1967 French song called "Comme d'habitude," written by Jacques Revaux, Claude François, and Gilles Thibault. Paul Anka wrote the English lyrics. "Comme d'habitude" means "as usual" or "as always.")

3. Frank Sinatra, *My Way, on* My Way (Reprise 1968).

4. Sid Vicious, *My Way, on* Sid Sings (Virgin 1979).

5. 17 U.S.C. § 101 (1996). Congress noted that a performance might occur either directly or through some process – equipment for reproducing or

amplifying sounds, transmitting appliances, electric retrieval systems, and techniques and systems not yet in use or invented. See H.R. Rep. No. 94-1476, at 63.

6. The owner of a sound recording is most often a record company. Income from distribution of recordings – traditionally through sales of CDs – is set against the musicians' advances from the record company. Once the advance is recouped, musicians may begin to profit from distribution.

Since this paper argues in favor of expanding the definition of distribution in order to benefit musicians, who thus reach the point of recoupment more quickly, I am focusing on musicians as the beneficiaries of the change. Record companies will likely benefit, or at least suffer no losses. However, except insofar as it affects their willingness to accept the new system, the effect on record companies is incidental to the argument.

7. The Harry Fox Agency specializes in issuing licenses to record companies for the reproduction of songs. The agency collects fees, retains a small percentage for its services, and pays the rest to music publishers (which then typically pays half of that to the songwriter). The agency does not license performance of songs. Bob Kohn, *A Primer on the Law of Webcasting and Digital Music Delivery*, 20 Ent. L. Rep. 4 (September, 1998).

9. *See* Twentieth Century Music Corp. v. Aiken, 422 U.S. 151, 154-56 (1975).

10. 17 U.S.C. § 1 (1970). Until 1976, the exclusive right to public performance only applied to performances "for profit"; unauthorized public performances not associated with a profit-making venture were not considered infringements. *See* Julien H. Collins III, Note, *When in Doubt, Do Without: Licensing Public Performances by Nonprofit Camping or Volunteer Service Organizations Under Federal Copyright Law*, 75 Wash. U. L.Q. 1277, 1286-87.

11. Edward T. Saadi, Sound Recordings Need Sound Protection, 5 Tex. Intell. Prop. L.J. 333, 346 (1997).

12. A right to perform the composition publicly was generally granted just to the purchaser of the sheet music. *See* Collins, *supra* note 10, at 1284-85.

13. Many foreign nations recognize an exclusive performance right in sound recordings, but U.S. performance artists have been unable to claim the benefit of foreign performance royalties because reciprocity between nations is necessary. *See* Neil A. Smith and Roberta L. Cairney, *Advanced Issues in Copyright law: Recent Copyright Legislation*, Practicing Law Institute Patents, Copyrights, Trademarks, and Literary Property Course Handbook Series, 529 PLI/Pat 13 (1998).

14. I realize that this analogy is somewhat inappropriately exalted, but I really had a hard time coming up with a good one, and this was the best I could do.

15. Sound Recordings Act of 1971, Pub. L. No. 92-140, 85 Stat. 391 (1971), amended by Pub. L. No. 93-573, 88 Stat. 1873 (1974)(codified as amended at 17 U.S.C. § 102 (1988 & Supp. V 1993)).

(16) Andrew Hartman, *Don't Worry, Be Happy! Music Performance and Distribution on the Internet Is Protected After the Digital Performance Rights in Sound Recordings Act of 1995*, 7 DePaul-LCA J. Art & Ent. L. 37, at 55-56 (1996).

17. American performance artists now have a (limited) exclusive right in their sound recordings, comparable to the rights enjoyed by European musicians. *See* Smith & Cairney, *supra* note 13.

18. *See* MAI Systems Corp. v. Peak Computer, 991 F.2d 511, 518 (1993).

19. David L. Hayes, Advanced Copyright Issues on the Internet (1998).

20 "Bye-Bye, Miss American Pie," by Brian McWilliams, PC World News Radio, March 17, 1998

21. Kohn, *supra* note 5.

22. Section 115.

23. BMI License agreement, and telephone interview with John Coletta, Director, Operations & Business Affairs, New Media Licensing, BMI (November 6, 1998).

24. According to Mr. Coletta, BMI has already licensed hundreds of websites, including AudioNet, NetRadio, and CMJ Online. *Id.*

25. In July 1997 BMI began offering three main types of licenses for websites; others are in development. Owners of websites that are intended to make a profit may choose between a website license, which enables a website to play unlimited amounts of BMI music, or the website music area license, which requires payment based on traffic to the music pages on those sites. For the website license, minimum fee is $500. For the website music area license, fees are 1.75% of revenue directly attributable to the music pages – usually a proportion equal to the percentage of pages which have music content. The site owner may switch license types from quarter to quarter as the site's success changes.

The second type of license is for sites that are intended not to earn profits but rather to promote a corporate image. Such sites generate no real revenue but generate "value."

For websites who resist negotiations with BMI, a rate court has been set up (by a consent decree) specifically to hear BMI rate litigation. According to Mr. Coletta, BMI has not yet needed to resort to the rate court.

See Interview with John Coletta, *supra* note 20. See also ASCAP performance license agreement, at <http://www.ascap.com/licensing/licensing.html> (describing similar licensing scheme, extending to "all such performances regardless of the file format (such as wav., midi., or one of the various streaming technologies

available) in which [the] transmissions occur," but with a $250 flat fee minimum). Visited site November 12, 1998.

26. See interview with John Coletta, *supra* note 23.

27. "ASCAP Internet Licensing: Frequently Asked Questions about Internet Licensing," <http://www.ascap.com/weblicense/webfaq.html>, visited November 12, 1998.

28. Many observers predict that downloading songs by computer will soon be a primary means of distributing music. For example, a participant in the 1998 College Music Journal (CMJ) Convention in New York reported that a hot topic of conversation among record industry people was speculation that buying and downloading songs over the Internet was the wave of the future. Interview with John Hall, November 1, 1998.

See also Bill Gates, The Road Ahead 21 (1995) (noting that the "celestial jukebox" would compete directly against traditional record stores by providing digital delivery of music – from a selection greater than that of any record store – to users' homes).

However, other music industry figures report that executives at major record labels are presently concerned less with the loss of mechanicals from record sales, and more with the ease of piracy that the computer age in general allows. Interview with Jeff Levy, legal counsel for Atlantic Records, November 9, 1998.

29. "Court Lifts TRO preventing production and shipping of Diamond's Rio

Player," News Bulletin, October 28, 1998, Communications Media Center at New York Law School, <http://www.cmcnyls.edu/public/Bulletins/cltroddr.HTM>, visited November 12, 1998.

30. *See, e.g.*, Mark Stefik, *Trusted Systems*, Scientific American, March 1997.

31. *See* Frank Music Corp. v. Compuserve, Inc., No. 93 Civ. 8153 (JFK) (SDNY 11/29/93).

ABOUT THE BOOK

Music law is important to creating and performing music. Music lawyers do their part to help their clients understand the laws and protect their interests. While the music industry primarily involves licensing and contract law, music law may involve a number of different types of law that are all a part of creating and performing music so the question therefore is What is Music Law?
Music law is the law that affects the music industry. Music is commercially bought and sold in Uganda and around the world. Any law that impacts how the music industry does business is part of music law. Music law includes any laws of any kind that apply to the business of creating, selling, performing and listening to music. Music law is a part of entertainment law.

Music lawyers are entertainment lawyers, are primarily contract lawyers, but they also work in all of the fields of law that music law may involve. Music lawyers also handle dispute resolution that may include formal litigation. While music lawyers work throughout the world, they may concentrate in areas where musicians need their services. Some music lawyers may function as an all-purpose agent for their clients. Other music lawyers work only on legal issues that arise for their clients. music law may be a good fit.

A lawyer who advises their client in all areas of music law may have a well-rounded practice. Lawyers who enjoy music may enjoy working on behalf of those in the music industry. Music law can be academically challenging, and it can involve many different types of law. A music lawyer can tailor their practice to meet their interests.

And who does music law impact? Music laws impact most people in society in one way or another. Music law impacts the people who write music and the distributors who purchase the rights to perform and sell music. Music law also impacts performers who must have a legal right to perform music. Businesses that seemingly have no relation to music law like restaurants must ensure that they comply with music laws when they conduct business. Even consumers must follow music laws.

Music law governs the activities of musicians, record producers, and those working on behalf of recording companies. A number of legal issues often occur during the execution of entertainment deals and other business transactions. These issues include recording contracts, copyright issues, royalties, compulsory cover licensing, and more. Understanding copyright is one of the foundational aspects of music law.

A copyright is a legal instrument that protects original works of authorship. These works include any type of artistic, literary, musical, or dramatic creation such as books, poetry, movies, music, lyrics, computer software, and architecture. After writing music or lyrics, a composer or songwriter can register a copyright that will protect this intellectual property. The copyright remains in effect for 70 years after the death of the artist. When a copyright lists more than one creating artist, the protection lasts for 70 years from the date of death of the last surviving person. The question therefore is whether the present Copyright and neighboring law has any rules that pertain directly to music law and copyright. According to certain laws, music and songs published prior to 1923 are considered to be part of the public domain. This means that these artistic works are no longer protected by copyright. I guess then the magic question is, could this be the state of music law in Uganda, this book no doubts gives the answers to such many questions welcome to understanding the law of music.