



UGANDA LAW REFORM COMMISSION

**A STUDY REPORT ON  
COPYRIGHT AND  
NEIGHBOURING RIGHTS LAW**

KAMPALA, UGANDA

2004

**(LAW COM PUB. NO. 9 of 2004)**

UGANDA LAW REFORM COMMISSION

**Address for communication**

The Uganda Law Reform Commission premises are located at –  
Workers House, 8<sup>th</sup> Floor, Southern Wing and Northern Wing  
Plot 1, Pilkington Road,  
Kampala, Uganda.

**The address for correspondence is –**

Uganda Law Reform Commission  
P. O. Box 12149,  
Kampala, Uganda

**Telephone:** +256-41-341138/ 341083/346200-2

**Fax:** +256-41-254869

**E-mail:** lawcom@infocom.co.ug  
ulrc@ulrc.go.ug

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

### FOREWORD.

The Government of Uganda, basing on the findings of the Commercial Justice Reform Programme baseline study and in consultation with stakeholders developed a four year detailed strategy for the reform of the commercial justice system. The strategy focused on five essential areas; the commercial courts, the commercial registries, the legal profession, the commercial regulatory environment and commercial laws.

In furtherance of the programme, the Uganda Law Reform Commission with the support of the Justice, Law and Order Sector proposed to reform key selected commercial laws that affect the basic operating environment of businesses to promote private sector business operations.

It should be noted that the commercial justice system in Uganda has fared badly because commercial life has been encumbered for several decades. This has caused inadequacy in Government delivery and led to the slow development of the private sector.

The commission, having appreciated the fact that law cannot be adequately reformed without appreciating the political, cultural and socio-economic context in which it operates and as a measure towards operationalising the people's constitutional right to participate in the law making process carried out wide consultations with the relevant stakeholders and individuals with a wide range of expertise on policy and business issues. As a result of these involving endeavours, many proposed Bills have been drafted.

The commission is grateful to the Justice Law and Order Sector for funding the completion of the laws under the commercial law project. It is also grateful to the consultants, Mr. Michael Hathaway of Nathan Associates and Mrs. Judy Goans for guiding the progress of the project to the end.

The commission also thanks various government departments and bodies, civic and educational institutions and all individuals who have contributed greatly to this process by participating in the consultations carried out by the commission and the consultants contracted for this project.

The commission acknowledges the input of previous consultants on the reform of business laws including, the Reid and Priest consultants and Ms. Claire Manuel and all other individuals and organisations that in one way or another participated in these reforms, particularly members of the business associations' taskforce.

The commission is indeed confident that the recommendations contained in this report and the proposed draft Bill will, due to the fact that the public have had an input, be easily enforceable in our society.

**Professor Joseph M.N. Kakooza,**  
**Chairman, Uganda Law Reform Commission.**

UGANDA LAW REFORM COMMISSION

TABLE OF CONTENTS

Foreword ..... iii

Table of Contents ..... iv

List of Laws, Conventions and Cases ..... v

Acronyms/Abbreviations ..... vi

Preface ..... vii

EXECUTIVE SUMMARY ..... xi

1. Background ..... xvi

2. International developments-commodification of information ..... xvii

3. Rational for reform of Uganda’s copyright law ..... xviii

4. The objective of the study ..... xxi

5. Methodology ..... xxi

6. Summary of recommendations ..... xxii

**Chapter 1:** Protection of Intellectual Property ..... 1

**Chapter 2:** Copyright and Related Rights Law ..... 6

ANNEX 1

The Copyright and Neighbouring Rights Bill, 2004 ..... 45

ANNEX 2

PUBLICATIONS OF THE UGANDA LAW REFORM COMMISSION ..... 93



## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

### LIST OF LAWS, CONVENTIONS AND CASES

1. Patents Act, Cap 216;
2. Trademarks Act Cap 217
3. Copyrights Act Cap 215;
4. United Kingdom Designs (Protection) Act Cap 84;
5. Berne Convention
6. The Paris Convention
7. The TRIPS Agreement
8. *George Hensher Ltd v Restawhile Upholstery (Lancs) Ltd.* [1976] AC 64; [ 1974] 2ALL ER 420

**UGANDA LAW REFORM COMMISSION**

**ACRONYMS/ABBREVIATIONS**

TK	Traditional Knowledge
TRIPs	Trade Related Intellectual Property Rights
USAID	United States Agency for International Development
WTO	World Trade Organisation

## PREFACE

### **Establishment of the Uganda Law Reform Commission.**

The Uganda Law Reform Commission was established in 1990 by the Uganda Law Reform Commission Act, Cap. 25. Prior to this enactment, law reform was the responsibility of the department of law reform and law revision of the Ministry of Justice, which had been set up in 1975. In 1995, with the promulgation of the Constitution, the commission became a constitutional commission by virtue of article 248 of the Constitution.

### **Composition of the commission.**

Under section 3 of the Uganda Law Reform Commission Act, Cap. 25, the commission consists of a chairman and six other commissioners, all of whom are appointed by the President on the advice of the Attorney General.

The chairperson and four of the commissioners are lawyers who are retired or sitting judges of the Court of Appeal or High Court of Uganda; or are lawyers qualified to be appointed as judges of the Court of Appeal or High Court of Uganda; or are senior practising lawyers or senior teachers of law at a university or similar institution of law in Uganda. The remaining two commissioners, as set out by section 4(2), are non-lawyers but persons who have distinguished themselves in disciplines relevant to the functions of the commission.

Additionally, section 12 of the Act empowers the Attorney General, on the advice of the commission, to appoint experts or consultants in any specific aspect of law reform undertaken by the commission.

The commission is serviced by a secretariat composed of an executive secretary and other staff. The commission has three departments which are: the law reform department, the law revision department, and the department of finance and administration. The staff of the commission consists of lawyers and non-lawyers appointed by the Attorney General from among persons who are either public or non-public officers.

### **Functions of the commission.**

The main function of the commission as set out under section 10 of the Uganda Law Reform Commission Act, Cap. 25 is to study and keep under constant review the Acts and other laws of Uganda with the view of making recommendations for their systematic improvement, development, modernisation and reform with particular emphasis on-

- (a) the elimination of anomalies in the law, the repeal of obsolete and unnecessary laws and the simplification and translation of the law;
- (b) the reflection in the laws of Uganda of the customs, values and norms of society in Uganda as well as concepts consistent with the United Nations Charter for Human Rights and the Charter of Human and Peoples' Rights of the African Union;
- (c) the development of new areas in the law by making the laws responsive to the changing needs of the society in Uganda;
- (d) the adoption of new or more effective methods or both for the administration of the law and dispensation of justice; and
- (e) the integration and unification of the laws of Uganda.

### **Powers of the commission.**

In the performance of its functions, the commission may-

- (a) receive, review and consider any proposals for the reform of the law which may be referred to it by any person or authority;
- (b) prepare and submit to the Attorney General, from time to time, for approval, programmes for the study and examination of any branch of the law with a view to making recommendations for its improvement, modernisation and reform; and those programmes shall include an estimate of the finances and other resources that will be required to carry out any such studies and the period of time that would be required for the completion of the studies;
- (c) undertake, pursuant to any such recommendations approved by the Attorney General, the formulation of draft bills or other instruments for consideration by the Government and Parliament;

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (d) initiate and carry out, or, with the approval of the Attorney General, direct initiation and research necessary for the improvement and modernisation of the law;
- (e) provide, at the instance of the government, to government ministries and departments and other authorities concerned, advice, information and proposals for reform or amendment of any branch of the law;
- (f) encourage and promote public participation in the process of law making and educate and sensitise the public on law making through seminars, publications and the mass media; and
- (g) appoint or empanel committees, in consultation with the Attorney General, from among members of the commission, or from among persons outside the commission, to study and make recommendations to the commission on any aspect of the law referred to the committees by the commission.

### **Profile of the commission.**

#### **Vision.**

The vision of the commission is to promote, in Uganda, a legal system with just and up-to-date laws, easily accessible to all.

#### **Mission statement.**

To contribute to sustainable development, an equitable and just legal system through revision, harmonisation, development and reform of the law.

#### **Values of the commission.**

The commission-

- (a) seeks to be impartial at all times in all dealings with its clients,
- (b) endeavours to operate with integrity and in a professional way,
- (c) is committed to equity and pragmatic diversity in the workplace,
- (d) respects and values the contribution of the people, and
- (e) endeavours to communicate consistently and effectively with its stakeholders in all its projects.

## Slogan.

“Law reform for good governance and sustainable development”.

## Justification for legal reform.

The Ugandan society, like all societies, is in a constant state of change caused by political, social and economic factors yet there have been few changes in the law since the inception of English law in Uganda in 1902. In addition, there are emerging cultural patterns and gender relations, new Government policies such as decentralisation, privatisation, economic liberalisation, poverty eradication, privatesector development and the modernisation of agriculture. However, there have been few changes in the law yet the law, at any given time, has to effectively respond to social changes and to the aspirations of the people. There is need for extensive research including the need for wide consultations with stakeholders when proposing reforms in any area of the law.

## Current members of the Uganda Law Reform Commission.

### 1. Professor Joseph Moll Nnume Kakooza.

Professor Kakooza is a holder of the degrees of B.C.L. and LL.B. of the National University of Ireland, Dublin; LL.M. (Harvard); M.Litt. and a Postgraduate Diploma in Anthropology of the University of Oxford; Certificate in International Relations, of the University of Oslo; Barrister-at-Law, of the Inner Temple, London and Advocate of the High Court, Uganda.

Professor Kakooza served as a lecturer at the Faculty of Law, University College, Dar-es-Salaam, as a senior lecturer and founding head (later twice dean) and finally Professor of Law at Makerere University. He has been a visiting scholar at Harvard Law School; guest lecturer at the college of criminal justice, Northeastern University Boston and visiting professor, College of Law, University of Florida. He is currently teaching law at Kampala International University and medical jurisprudence in the Faculty of Medicine, Makerere University, part-time. He is widely published, particularly in criminal justice and family law and he is a member of many professional organisations. He is listed in the international publication of *WHO IS WHO in Education* and was given the award of *MAN OF THE YEAR, 2003*, by the American Biographical Institute, Inc.

Professor Kakooza has, among other spells of public service, served as Ag. Judge of the High Court of Uganda, Ag. Solicitor General, President of Uganda

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

Industrial Court; and commissioner of law reform. He was acting chairman of the commission from 2000 to 2002 when he became the chairman.

He has been in charge of the Domestic Relations Law Project and Labour Laws Project. He is currently in charge of the Intellectual Property Law Project, the Reform of the Accountants Act Project, the Living Law Journal Project, the Sentencing Legislation Reform Project and Community Law Reform Projects.

### **2. Ms. Percy Night Tuhaise.**

Ms. Tuhaise is a holder of the degrees of LL.B and LL.M of Makerere University, Kampala; a Postgraduate Diploma in Legal Practice of the Law Development Centre, Kampala. She also holds various certificates in human rights teaching and research (Ottawa Canada 1991), (Strasbourg, France, 1995). She is the deputy director and a principal lecturer of the Law Development Centre, Kampala. She is also an advocate of the High Court of Uganda. Ms Tuhaise was appointed a part-time commissioner in 1995. She assisted commissioner Kibuka in the Rape and Defilement Project. She has been in charge of the Business Associations cluster of the Commercial Law Project and Succession Law Project, and is currently in charge of the Codification of the Contracts Law Project under the Commercial Law Project II and Simplification of the Penal Code Act Project. She is also a member of the editorial board for law revision.

### **3. Mr John Mary Mugisha.**

Mr. Mugisha holds the degree of LL.B of Makerere University, Kampala and a Postgraduate Diploma in legal practice, LDC. He was appointed a part-time commissioner in 1999. He is a principal lecturer at the Law Development Centre, Kampala and an advocate of the High Court of Uganda. Mr. Mugisha is a former President of Uganda Law Society; Vice President of the East African Law Society; lead counsel for the Constitutional Review Commission; and Deputy Secretary General in charge of Eastern Africa, International Bar Association (IBA). He is also a member of the Law Council representing the Uganda Law Society. Mr. Mugisha has been the commissioner in charge of Secured Transactions and Fair Trade Clusters of the Commercial Law Reform

## UGANDA LAW REFORM COMMISSION

Project. He is currently in charge of subsidies and countervailing measures, under the Commercial Law Reform Project II and Trial Procedures Reform Project under the Criminal Law Reform Project I.

### **4. Dr. Lillian Tibatemwa-Ekirikubinza.**

Dr. Tibatemwa-Ekirikubinza is a holder of a PhD in law from the University of Copenhagen, Denmark; an LLM in Commercial Law from the University of Bristol, UK; an LL.B (Hons) degree from Makerere University and a Postgraduate Diploma in Legal Practice from the Law Development Centre, Kampala. She was the deputy dean of the Faculty of Law, Makerere University and is currently the Deputy Vice Chancellor in charge of academic affairs at Makerere University and a part time commissioner of the commission since 1999.

Dr. Tibatemwa-Ekirikubinza is widely published in areas of women's law; children's rights and constitutionalism. Her publications include "*Women's Violent Crime in Uganda: More Sinned Against Than Sinning*" (1999). Her latest publication is entitled "*Gender and Human Rights: A Case Study of Polygamy Among the Basoga of Uganda*" (2003).

Apart from being a commissioner of the Uganda Law Reform Commission where she has been in charge of various projects namely: the Insolvency Cluster of the Commercial Law Reform Project I, the Domestic Violence Project, the E-Commerce, Computer Crime and E-Evidence Project under the Commercial Law Reform Project II. Dr Tibatemwa-Ekirikubinza has also held other positions of responsibility among which are: board member of the Uganda National Bureau of Standards, member of the academic board of Makerere University Business School, Nakawa and a complimentary member of the British Institute of International and Comparative Law.

### **Former members of the Uganda Law Reform Commission.**

#### **1. Justice Sir Harold G. Platt.**

Justice Sir Harold Platt is a holder of MA of Oxford University after his first degree in India. He retired but was actively involved in various aspects of the legal field. He served in various capacities in East Africa including: Chairman

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

Uganda Law Reform Commission 1994 -2000, where he was in charge of the Commercial Law Project among others; judge of the Supreme Court of Uganda 1989-1994, judge of the High Court and Court of Appeal Kenya 1968-1989; Government service, provincial magistrate Tanzania 1962-1972, colonial legal service Tanganyika 1954 -1962 and in legal practice 1951-1954. Justice Sir Harold Platt was called to the Bar in 1952 after serving in the royal air force from 1942-1947.

### **2. Professor Eric Paul Kibuka.**

Professor Kibuka holds a B.A and PhD of Makerere University. He was a director of the United Nations African Institute for the Prevention of Crime and Treatment of Offenders, Kampala. He was appointed a part-time commissioner in 1995. He is a retired lecturer of sociology at Makerere University. Professor Kibuka was in charge of the Rape and Defilement Law Project. He was also in charge of the Decriminalisation of Petty Offences Project as well as the Contracts Law Project.

### **3. Ms. Hilda A. Tanga.**

Ms. Tanga is a holder of a B.A degree in education and a postgraduate diploma in Human Resources Management. She has been a graduate teacher at Kololo S.S.S; lecturer in business communication at the National College of Business Studies; Ag. registrar and deputy academic registrar at the Uganda Polytechnic Kyambogo. Ms. Tanga has also been an adhoc consultant with Management Training and Advisory Centre (MTAC) on management and training of trainers. She is currently an examiner with the Uganda National Examinations Board (UNEB) and National Business Examinations Council (Nakawa).

### **4. Ms. Filda Mary Lanyero Ojok.**

Ms. Mary Lanyero was a senior lecturer and dean of the Faculty of Arts, Institute of Teacher Education, Kyambogo. She is also involved with various non-governmental organisations in various capacities. Ms. Lanyero holds certificates from the American Studies Winter Institute, USA. She holds a masters degree in international relations, Carleton University Ottawa, Canada

## UGANDA LAW REFORM COMMISSION

and a B.A of Makerere University majoring in history and literature in English. Ms. Lanyero was a teaching assistant, University of Carleton, Ottawa Canada.

### **5. Mr. Francis Butagira.**

Mr. Butagira was appointed commissioner on 22<sup>nd</sup> January 1996. He holds the degrees of LL.B Makerere University and LL.M (Harvard). He is an advocate of the High Court of Uganda and former principal lecturer at the Law Development Centre.

### **6. Mr. Richard Aboku Eryenyu.**

The late Richard Aboku Eryenyu served as commissioner from 19<sup>th</sup> January 1996 until his death on 7<sup>th</sup> April 1999. He was an LL.B graduate of Makerere University and a chief magistrate.

## EXECUTIVE SUMMARY.

The Government of Uganda has committed itself to revising the commercial laws of the Republic of Uganda in order to support private sector development and encourage private investment. The reform of the commercial laws is geared towards having modern laws supporting a competitive economy in a coherent and accessible form providing maximum freedom for participants to perform their proper functions, but recognizing the case for high standards and ensuring appropriate protection for all parties. It is also geared towards poverty eradication and promotion of Government policies like Poverty Eradication Action Plan (PEAP), in line with the Medium Term Competitiveness Strategy (MTCS). These reforms are further geared towards bringing Uganda's legislation in line with her international obligations.

The Uganda Law Reform Commission (ULRC) accessed funding from the United States Agency for International Development (USAID) in December 2000 and the Justice Law and Order Sector (JLOS) of the Ministry of Justice and Constitutional Affairs in January 2001, to complete the reform of Commercial laws.

A total of 16 commercial and trade laws are being reviewed or introduced during this period. The focus of the study is to consult with relevant actors on policy issues, preparation of reports and drafting the relevant Bills. Emphasis has been put on the interrelation between the identified laws and linkages with other laws. In the process, a number of supplementary laws, other than those identified will be proposed for amendment.

All World Trade Organisation (WTO) Agreements are essential and of immediate concern to Uganda although the degree varies from one agreement to the other. The different agreements give varied time frames within which member countries are expected to implement them. However, Uganda being a least developed country benefits from the special and differential clauses that give longer periods for the application of particular agreements or not being required to implement certain provisions of the agreement because of the additional burden in the form of resource requirements needed to implement these agreements, and possible effect on the infant and non-competitive industries.

## 1. Background.

### (a) History of copyright.

For most of human existence, oral tradition has dominated. Narratives were in constant flux. Performance was regarded more highly than authorship, which seldom could be credited since most culture was built on religious myths or common folklore, and did not originate from an individual creator. Because of this historical background, when copyright law eventually developed, it came to protect expressions and not to protect ideas, operations and processes.

Copyright was invented by and for early capitalism, and its importance to that system has grown ever since. Intellectual property rights were invented in the Italian merchant states and accompanied the spread of early capitalism to Netherlands and Britain. Early forms of what has become copyright can be traced further back into history, as is sometimes done by copyright champions. It must be emphasised that copyright in a non-trivial sense can only be realized within the context of a capitalist society, since its function is meaningless without a developed market economy.

With the emergence of individual rights and property, the spread of market relations, and technological breakthroughs, especially the printing press, the need of copyright was created. Consequently, Great Britain developed the first advanced copyright law. In the sixteenth century religious conflicts spurred the circulation of pamphlets, closely followed by legislation that banned writings of heresy, sedition, and treason. It has been argued that this censorship bears the legacy of copyright. For example, the custom of printers and authors to have their name listed with their creations began as a law demanding this practice, not to ensure the originator due credit, but in order for the king to keep track of disobedient writers.

In 1556 a royal charter established the Stationers' Company and granted it exclusive control of all printing in the United Kingdom. Limiting the number of publishers was a key strategy in the Government's arsenal to regulate writings. The two strategies to consolidate control by eradicating anonymity and restricting the number of sources of reproduction are themes that echo into the present day.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

The expansion of patents and copyright has grown since. It entered a new stage with the signing of the TRIPs Agreement, a global treaty on intellectual property, in 1994 (May, 2000). The tightening of the intellectual property regime coincides with the increasing exchange value of information and what is held to be the coming of an information age.

### 2. International developments – commodification of information?

Several new national laws have been passed in recent years on intellectual property rights. In the U.S the Digital Millennium Copyright Act was passed in 1998 and has been imitated by legislation in Europe. The European Patent Office, circumventing scheduled political decisions to be taken by European governments, decreed a regulation that authorised patent claims to computer programmes.<sup>1</sup> These national laws were implemented under the direction of the Uruguay Round agreements<sup>2</sup>, established by the World Trade Organisation (WTO). As a part of the bargain came the treaty of Trade Related Intellectual Property (TRIPs)<sup>3</sup>, and its importance lies in two respects:

- (a) as an extension of the rights accorded to the owners of intellectual property; and
- (b) as part of the extension of property-based market liberalism into new areas of social interaction, previously outside market relations.

Simply by coordinating national regulations on a global level the ‘web’ of intellectual property is tightened. Article XVI.4 of the Agreement establishing the WTO provides that each member state shall ensure that its laws and regulations are brought to conform to its obligations, under the Agreements. Some of the obligations, rights and benefits can only be accessed and taken advantage of only with the ‘correct’ legal framework in place, given the complexity and number of legislation involved. Thus by virtue of being a

---

<sup>1</sup> See the EuroLinux Alliance, at <http://www.eurolinux.org/> accessed 4 March 2002.

<sup>2</sup> See [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm) accessed 4 March 2002.

<sup>3</sup> TRIPs was originally backed by American and European pharmacy companies and entertainment industries, and unsuccessfully opposed by the developing nations and northern civil society.

signatory to the WTO, Uganda became bound to fulfil specific obligations which have a bearing on its domestic legislation, in this particular instance legislation related to trade related aspects of intellectual property rights.

### **3. Rationale for reform of Uganda copyright law.**

The Copyright Act is based on the United Kingdom Act, which commenced operation in Uganda in January 1953. The Act has not been revised despite the above mentioned reforms in the British laws from which it is derived. As currently written, the Act impedes investment because of lack of confidence in the protection that the law can provide. There is need for changes in the law; the provisions should be clearer, as well as the offences and remedies. The law needs to be modernised to cope with global changes, which includes the broader area of work protected elsewhere in the world.

For long, Ugandans whose livelihoods depend on copyright laws have wanted a law with both criminal and civil remedies, with minimal interference with the rights that are granted to legitimate users. Ugandan and foreign writers, artists, performers, etc. continue to be robbed, contrary to article 26 of the Constitution of the Republic of Uganda on protection from deprivation of property rights, of their works because of poor protection granted by the law. Further, the reform of the copyright law is geared towards bringing Uganda's legislation in line with her international obligations, including the Trade Related Aspects of Intellectual Property (TRIPs) Agreement. The proposed law also seeks to address the problem of counterfeit and pirated products that are an obstacle to the growth of legitimate businesses that strive to develop a reputation for themselves by ensuring that their products are of the highest quality. The law seeks to strengthen the enforcement mechanisms and provide adequate remedies to the rights-holders for infringement of their copyrights<sup>4</sup>.

---

<sup>4</sup> Various arguments have been advanced to justify the need for the amendment and development of the TRIPs related laws in Uganda. Those advanced include the argument that need for strong and globally uniform laws directly affects investor confidence in a country's economy and that the effect of increased trade in counterfeit goods is that business is discouraged and investor interest wanes. Further, it is argued that the absence of adequate protection is a deterrent to foreign investment in the production of patented goods and a reason for the reluctance of industries in developed countries to sell or license technology to industries in developing countries.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

Further, the proposed copyrights and neighbouring rights law, takes cognisance of the decisions of the East African Community Council of Ministers' decision which requires Uganda to expeditiously update its laws on copyrights and to strengthen the institutional framework to ensure that artists benefit from their work.

On the other hand, the tradition problem of balancing private property rights of individuals and the social need for access to information as a precondition for development and social, cultural, technological and industrial transformation must not be forgotten. There is need to protect the right of access to information, especially to ensure that any reform of copyright laws would permit use of "freely available" material, including that on the Internet<sup>5</sup> without infringing copyright. It is therefore pertinent to consider, among others-

- (a) the definition of an appropriate public policy e.g. should there be special provisions in copyright laws permitting educational use of freely available material without payment or permission?
- (b) what changes to copyright laws would permit the educational use of modern sources of information such as the Internet without infringing copyright?
- (c) whether the current reform of the copyright law covers digital copyright i.e. do new approaches to copyright need to be developed for the digital environment?
- (d) Whether the new copyright law will provide new forms of protection to cater for communally owned rights or traditional group rights which are currently not recognised under the individual rights based regime.

Other issues pertinent to the reform of copyright law, development and law enforcement debate include-

- (a) the appropriate legal relationship between copyright and contract law,

---

<sup>5</sup> Access to open source software, digital materials, materials online, etc. is essential for developing countries as they increasingly use distance learning to reach their populations.

## UGANDA LAW REFORM COMMISSION

- (b) ownership of materials created in the workplace,
- (c) the process of obtaining copyright clearances both nationally and internationally,
- (d) issues surrounding a levy on blank recording materials like tapes and CDs,
- (e) how to maintain open access to materials created by educators,
- (f) library use and access, and
- (g) concerns regarding the extension of the life of a copyright.

In answering the above questions and other pertinent questions, the review of the copyright law in Uganda should produce a law that will reward individuals and groups such as authors, actors and producers for their work by protecting their rights while at the same time ensuring that copyright law does help to answer the dire development needs Ugandans still face. It is also for this reason that the obligations as set out in the WTO agreements provide for longer transitional periods for developing countries to implement the obligations under the TRIPS Agreement.

The proposed law thus seeks to implement article 26 of the Constitution which guarantees protection from deprivation of property while also operationalising development goals such as those in the Poverty Eradication Action Plan (PEAP), access to information, legal recognition of traditional and group rights, etc.

Reform of the current laws will therefore have a cost in terms of loss of accepted jurisprudence, practice and implementation. At the same time, it must be noted that internationally, despite the heated debate on intellectual property in the mainstream media,<sup>6</sup> the condemnation of ‘piracy’ and other new widespread offences has not transformed social norms to any greater extent. The failure to curb copying is linked with the low costs and low risks for individuals to copy, i.e. the non-existent constriction of the market.

---

<sup>6</sup> The efforts made by the World Intellectual Property Organisation (WIPO) to ‘educate’ the public, borders at times on the absurd. For example 26 April, according to WIPO, is the World Intellectual Property Day, “an opportunity to highlight the significance of creativity and innovation in people’s daily lives and in the betterment of society”; see [http://www.wipo.int/news/en/worldip/world\\_ip.htm](http://www.wipo.int/news/en/worldip/world_ip.htm), accessed 4 March 2002.

#### **4. The objective of the study.**

The objectives of the study were to-

- (a) strengthen the enforcement of Uganda's copyright law in order to encourage investment and invention;
- (b) carry out a comparative analysis with foreign jurisdictions in their experience in updating domestic copyright legislation to conform to international obligations;
- (c) consult widely with stakeholders, enabling them to effectively participate in the law making process;
- (d) document and publicise the nature of Uganda's copyright obligations under the TRIPS Agreement and study existing legislation relating to the TRIPS Agreement and establish whether there is need for reform;
- (e) create awareness among stakeholders on new developments in copyright law; and
- (f) to propose amendments to the copyright legislation and to update Uganda's law to conform to her international obligations and meet development needs.

#### **5. Methodology.**

The project was to be carried out with the help of a consultant. Mr. Michael Hathaway of Nathan Associates (the consultancy) from the United States was contracted by the United States Agency for International Development (USAID). Unfortunately because of his heavy schedule, the work could not progress as fast as it was planned. From February 2001, the work stalled until August 2001, when another consultant, Mrs. Judy Goans, was contracted to carry on the project.

##### **5.1 Scope of work.**

The scope of work involved-

- (a) consulting with stakeholders on Uganda's copyright laws;
- (b) reviewing and recommending for amendment, repeal or introduction of new provisions by way of a proposed draft bill; and
- (c) preparing a detailed memorandum explaining the clauses in the proposed draft bill.

## 5.2 The taskforce.

The commission identified stakeholders with a range of expertise and with access to relevant networks of other experts to constitute the taskforce on intellectual property laws.

The task force was composed of-

- (a) Ministry of Tourism, Trade and Industry;
- (b) Ministry of Agriculture, Animal Industry and Fisheries;
- (c) Ministry of Foreign Affairs;
- (d) Attorney General's Chambers;
- (e) Registrar General's Department;
- (f) Faculty of Law – Makerere University Kampala;
- (g) Judiciary – Commercial Court;
- (h) Law Development Centre;
- (i) Uganda Revenue Authority;
- (j) Uganda Law Reform Commission;
- (k) Uganda Investment Authority;
- (l) Uganda Law Society;
- (m) National Agricultural Research Organisation;
- (n) Uganda Manufacturer's Association;
- (o) Action Aid – Uganda;
- (p) Coalition for Health and Social Development;

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (q) Food Rights Alliance;
- (r) Inter-University Council of East Africa;
- (s) Non Governmental Organizations' representative;
- (t) Private Sector Foundation (U);
- (u) Support for Private Expansion and Enterprise (SPEED);
- (v) Traditional and Modern Health Practitioners Together Against AIDS (THETA);
- (w) Uganda Broadcasters Association;
- (x) Uganda Musicians Union;
- (y) Uganda National Council for Science and Technology;
- (z) Uganda Performing Artists Society;
- (aa) Uganda Seed Trade Association.

### 6. Summary of recommendations.

- (a) Subject matter protected by copyright. The subject matter covered and protected by copyright should be expanded to include electronic data banks, computer programs and multi media works, works published on the internet, data bases, works embodied in electronic form, compilations, and any other work in the field of literature, science and art in whatever manner delivered, known or to be known in the future.

*In particular, provision should be made for protection of copyright in, and access to, databases of Traditional Knowledge (TK) compiled by, among others, academic and research institutions, and protection of rights of knowledge providers in the compilation process, and the relation of such databases to the public domain.*

- (b) Qualification for protection. There is need for the new law to specify the area and scope that is covered by copyright in Uganda. The law should apply to copyright works which are-

## UGANDA LAW REFORM COMMISSION

- (i) Created by a citizen of Uganda or a person resident in Uganda;
  - (ii) First published in Uganda, irrespective of the nationality or residence of the author; or
  - (iii) Created by a person who is a resident or national of one of the countries to which reciprocity applies.
- (c) The law should ensure that authors have control over their work, and should give the owner of the work the right to exclude others from doing certain acts without authorisation.
- (d) Rights under copyright (economic, moral rights and traditional knowledge rights). The law should provide protection for copyrights and neighbouring rights of owners to enable them to claim the fruits of their work and object to any derogatory action in relation to their work or any other derogatory action in relation to that work that would be prejudicial to their honour or reputation.
- (e) Joint authorship. There is need to provide clearly in the law for circumstances where there are more than one persons involved in creating the work. The law should clearly provide for the nature and extent of the ability of each author to exploit the work independently of the others.
- (f) Neighbouring rights. Producers, broadcasters, performers and other persons similarly placed should have a right to use or authorize use of their work as they please. They should have exclusive control over their work. Copyright law should also provide for neighbouring rights, hence the change in the name of the law.
- (g) Term of copyright protection. The law should provide a definite time for protection of copyright in all the areas that are in the Berne Convention as well as all the protection in the TRIPs Agreement. This includes the coverage of computer programmes, audio-visual work, works published anonymously or under a pseudonym. It should also cover the term of protection for neighbouring rights and in the case of joint authorship and ownership by a corporation.
- (h) Assignment of copyright and copyright license. The law should cover all the rights that a copyright owner can assign or otherwise transfer, and

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

how this can be done. The law should also provide for assignment in circumstances where there is more than one owner; for the type of contracts that the assignment should take; and for the types, scopes and conditions of the contracts that the persons can enter into regarding any such assignments or transfers. It is also important to provide for collecting societies in the law. This will give time to owners as well as users of copyright to go on with their other works, while one body is charged with handling issues of licensing of the users.

- (i) Copyright infringement. The law should be clear on what kind of act exactly amounts to infringement of copyright and by whom. It is important for the law to provide for who has a right to institute proceedings in case of infringement of rights such as the author or rights-holder or a licensee.
- (j) Defences to copyright infringement. The law should have defences to copyright infringement to address circumstances such as-
  - (i) the work was copied, but the copying is a permitted one,
  - (ii) the alleged infringing act is in public interest,
  - (iii) fair dealing which may include for purposes of research and private study or review and criticism,
  - (iv) incidental inclusion, or
  - (v) educational use,

## CHAPTER 1.

### 1.0 PROTECTION OF INTELLECTUAL PROPERTY.

Intellectual property is a branch of law that protects property interests in intangible things. The protection of intellectual property is based on two basic principles that it is beneficial to society to-

- (a) encourage the disclosure of new developments, and
- (b) ensure honest dealing.

Intellectual property offers a means for promoting progress by protecting rights in new creations of the mind. It also contributes to the strength of the market by prohibiting dishonest practices among merchants. Intellectual property protects both economic and non-economic rights in creative works.

#### 1.1 Historical background.

The role of intellectual property as a means for promoting development has been recognized since ancient times. Near the end of the third century B.C., the Greek historian Phylarchos wrote that the rulers of the Greek City Sybaris issued patents for new foods<sup>7</sup>. The patent was a refinement on the more common incentive of awarding a prize. The ancient Greeks held contests to recognize and reward a wide range of achievements. The Olympic games represented one such contest, but the Greeks also held contests to reward the writing of tragedies and comedies, painting, poetry, sculpting and pottery-making; the production of superior agricultural products; and skills in the field of medicine and surgery<sup>8</sup>.

Trademark law has even more ancient origins. Businesses have used signs to identify their services, and artisans have used marks to identify their goods, for thousands of years. Drawings in Egyptian tombs show workers branding cattle, and quarry marks have been found on Egyptian structures dating from 4000 B.C<sup>9</sup>. In ancient Greece, potters signed their works, initially with the mark of their clans and later with their own names.<sup>10</sup> Laws regulating business practices also have ancient origins. The book of Deuteronomy, written around

---

<sup>7</sup> 1 Lipscomb's Walker on Patents 7 (1984)(hereinafter Lipscomb).

<sup>8</sup> Skoyles, John R., Leviathan, Ch. 2, <http://www.skoyles.greatxscape.net/lv2.html> (1997).

<sup>9</sup> 1McCarthy on Trademarks and Unfair Competition 3<sup>rd</sup> & 5.01

<sup>10</sup> Skoyles, op.cit

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

700 B.C<sup>11</sup> contains the injunction, “You shall not have in your bag two kinds of weights, large and small. You shall not have in your house two kinds of measures, large and small. You shall have only a true and honest weight; you shall have only a true and honest measure...”<sup>12</sup>

As already stated above, copyright with the emergence of individual rights and property, the spread of market relations, and technological breakthroughs, especially the printing press, the need of copyright was created. Great Britain developed the first advanced copyright law. In 1556 a royal charter established the Stationers’ Company and granted it exclusive control of all printing in the United Kingdom. Limiting the number of publishers was a key strategy in the government’s arsenal to regulate writings. The two strategies to consolidate control by eradicating anonymity and restricting the number of sources of reproduction are themes that echo into the present day.

Intellectual property continued to develop as Governments, East and West, offered inducements to authors and investors either to create something new or to bring some desirable knowledge into the realm. The transfer of technology was promoted by offering “patents of introduction” to encourage artisans to bring a new skill into the region. In Europe, artisans banded into guilds, which enforced standards to be met by their members, and guild marks became recognised as indications of quality.

By the nineteenth century, the intellectual property system had largely developed into the form in which we know it today. The two major treaties in the field of intellectual property were adopted during that period, the Paris Convention for the Protection of Industrial Property on March 20, 1883 and the Berne Convention for the Protection of Literary and Artistic Works on September 9, 1886.

Over the next century, improvements in trade and communications prompted calls for the nations of the world to harmonize their intellectual property laws and develop international norms to which they would jointly agree. Regional industrial property offices such as the African Regional Industrial Property

---

<sup>11</sup> Bradshaw, Robert I., Deuteronomy, <http://www/robibrad.demon.co.uk/deut.htm> (1998). Other authors adopt dates ranging from approximately 1450-959 B.C.

<sup>12</sup> Holy Bible, Deuteronomy 25:13-13.

Office promoted cooperation in securing protection for intellectual property. Other regional agreements established a common set of principles to which members agreed; such arrangements were undertaken by Andean nations under the Cartagena Agreement, by the European Union, and by Mexico, Canada, and the United States under the North American Free Trade Agreement. Efforts to harmonize intellectual property laws also took place under the auspices of the World Intellectual Property Organization, while the development of international norms was taken up in the Uruguay Round of the GATT. The most recent provisions are embodied in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), an annex to the Agreement Establishing the World Trade Organization.

## 1.2 Intellectual property and economic development.

Intellectual property has historically been used to promote economic development. At the microeconomic level, patents, copyright, and similar forms of intellectual property provide a means by which innovators and investors can recover the investment of time and money needed to bring a new product to the market. Such incentives are offered to encourage disclosure. To obtain a patent, an inventor is required to make a technical disclosure that would allow other persons who are skilled in the relevant area of technology to make and use the invention. That disclosure ensures that at the end of the patent term, anyone with the relevant technical skills will be able to use the invention. It also makes that knowledge available to others who would build on it. This is important to economic development, because economists who have studied the subject have found that long-term economic growth is largely due to technological change.<sup>13</sup> In one such study, the Economics Nobel Laureate Professor Robert Solow of the Massachusetts Institute of Technology looked at economic output in the United States and concluded that the bulk of the increase was the result of technological advances.<sup>14</sup>

The other major theme of intellectual property is ensuring honest dealings – honest dealings between merchants, and honest dealings between a merchant

---

<sup>13</sup> Mansfield, Edwin, “Intellectual Property Rights, Technological change, and Economic Growth” Walker, Charles E., and Bloomfield, Mark A, Eds., Intellectual Property Rights and Capital Formation in the Next Decade 5-6, American Council for Capital Formation Centre for Policy Research (University Press, Lanham, MD, 19988).

<sup>14</sup> Prof. Solow studied the nonfarm economy during the period 1909-1949 and concluded that the bulk of the increase, other than that due to increasing population and consequent increasing work force. Walker and Bloomfield, op.cit.at 100.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

and the consumer. The Paris Convention refers to this aspect of intellectual property as “the repression of unfair competition.” Preventing dishonest and deceptive practices, and offering an effective remedy when such practices occur, is essential to promoting economic growth. The lack of such protection slows sales, as consumers are much more cautious about their purchases when they lack confidence in merchants and know that they have assurance of a remedy if goods are not as promised. Assuring such protection also makes it less difficult to establish new businesses, particularly in regard to some of the most profitable merchandise, since distrustful consumers are reluctant to take a chance on an unknown vendor.

Finally, it is difficult for merchants to establish a reputation for honesty and quality if the market permits such acts of unfair competition as trademark infringement, palming off goods as those of another or falsely disparaging a competitor. This can be seen most clearly in cases of trademark counterfeiting. In some cases, the manufacturer of a quality product may learn of the existence of counterfeit products from the complaints of disappointed consumers, who have purchased a counterfeit item in the belief that it was genuine.

At a macroeconomic level, intellectual property promotes economic development by encouraging domestic innovation and foreign direct investment. Foreign direct investment represents a major source of technology transfer and the intellectual property system creates a framework in which developing countries can participate jointly in the economic activities of the developed world.

In Uganda and many other developing countries, culture is vital in future innovation and there is need to allow future development of those cultural assets in order to enrich the national heritage. A link has been established between folklore and heritage and its transfer, not as a museum item, but as an element of sustainable development.

The proposed legislation can promote innovation and development of copyright by, among others, providing guarantees of protection of folklore and establishing the provisions related to national heritage and folklore. For example, Tunisia’s legislation on copyright protects folklore and makes its use dependent on the permission from the Ministry of Culture, upon payment of a fee to the agency

## UGANDA LAW REFORM COMMISSION

charged with copyright protection. The same applies to works derived from folklore. *Folklore is defined by the law as any artistic work transferred from one generation to another and which is associated with customs and traditions.* The aspects related with cultural heritage are regulated by the code of archaeological and historic heritage, introduced in 1994. Certain institutions have been set up to focus on the need to protect TK and culture, such as the Center for Traditional Arts, whose purpose is to collect different examples of traditional art and to ensure that they were disclosed to the public. This also applies to certain items of jewellery and items of daily life. The creation, in 1992, of the Center of Mediterranean and Arab music seeks to protect and highlight the music of that region. Ugandan law should emulate the Tunisian example.

## CHAPTER 2

### 2.0 COPYRIGHT AND RELATED RIGHTS LAW

#### 2.1 Background.

Copyright and related rights form a major branch of intellectual property. Copyright protects the right of an author to prevent the unauthorized copying or modification of a work of authorship. Works of authorship include literary works such as books or computer programs, dramatic works such as plays, musical works, audio-visual works such as movies or videos, and works of visual art such as sculptures, paintings, architectural works, technical drawings, maps, and photographs.

Closely related to copyright is the area of related rights or neighbouring rights, which protect the rights of performers, producers of phonograms (sound recordings) and broadcasting organisations to prevent the unauthorized recording or broadcast of performances, and the unauthorized copying of such recordings. In addition to these forms of intellectual property, some forms of intellectual property are protected in some countries under copyright law, and in other countries through industrial designs or a sui generis system of protection.

Copyright has two types of roots. It started as an exclusive right to make copies or reproduce the work of an author. This entrepreneurial side of copyright is linked in tightly with the invention of the printing press, which made it much easier to copy a literary work and permitted the entrepreneur for the first time to make multiple identical copies. The other side of this coin is that it became vital to protect the author since his or her work could be copied much more easily and in much higher numbers. It was felt that the author should share in the profits of this new exploitation of the work, although this tendency was much stronger in continental Europe than in the United Kingdom. Before the arrival of the printing press, many original literary, or musical, works were commissioned. One copy was written and the commissioner paid the author for it. The printing technology resulted in the production of multiple copies and it was almost naturally felt that the author

should be paid for each copy that was made. As the technique also reduced the possibility for the author to control the format and contents of the various copies, because the reproduction work was now undertaken by the entrepreneur, it became necessary to think about minimum guarantees for the author in this area. This resulted in the creation of certain so-called moral rights, which protected the author against unfair use of his or her work. This double set of roots is still reflected in modern copyright law.

## 2.2 Justification for reform.

The reasons for review of copyright law in Uganda are set out in Chapter one. The move to review and come up with better copyright protection for Ugandans, both the artists and the users or public, is in line with the Constitution and international laws. To reiterate, the major reasons for the reform include-

- (a) the need to redefine an appropriate public policy clearly balancing the rights of authors and performers on the one hand and users or the public;
- (b) need to resolve the new issues on broadening the protected subject matter covered and protected by copyright to cover, among other things-
  - (i) traditional knowledge;
  - (ii) computer programs and accompanying materials;
  - (iii) electronic data banks by selection and arrangement of its content constitute original work; and
  - (iv) any other works in the field of interactive and art in whatever manner, known or to be known in the future;
- (c) the need to comply with our international agreements including the TRIPs Agreement. Uganda currently offers copyright protection to the countries listed in the second schedule of the Copyrights Act, Cap.81. The schedule contains a partial list of countries that are parties to the Universal Copyright Convention (UCC). Uganda joined the World Trade Organisation (WTO) in 1995, but is not a member of the UCC, the Berne Convention, or any other international copyright treaty. Countries that are members of the UCC and the Berne Convention offer reciprocal rights to copyright authors and owners of other member countries. There is need for Uganda to keep abreast of international developments and to

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- incorporate any amendments to the Berne Convention into Uganda copyright law;
- (d) provision for copyright registration or the recording of ownership transfers;
  - (e) need to outline the appropriate legal relationship between copyright and contract law;
  - (f) ownership of materials created in the workplace;
  - (g) the process of obtaining copyright clearances both nationally and internationally;
  - (h) issues surrounding a levy on blank recording materials like tapes and CDs;
  - (i) how to maintain open access to materials created by educators;
  - (j) the extension of the life of a copyright; and
  - (k) Effective enforcement provisions. Uganda's copyright law cannot achieve its intended purpose if it does not include appropriate enforcement provisions.

### 2.3 Analysis of key issues for the reform of the copyrights law.

#### Subject matter protected by copyright.

Under Section 1 of the current law, the works protected by copyright are literary, artistic and musical works, cinematograph films, gramophone records and broadcasts.

*“A literary, musical or artistic work shall not be eligible for copyright unless a sufficient effort has been expended on making the work to give it an original character; and the work has been written down, recorded or otherwise reduced to material form whether with or without consent”.*

*“An artistic work shall not be eligible for copyright, if at the time when the work is made it is intended by the author to be used as a model or pattern to be multiplied by any industrial process”.*

## UGANDA LAW REFORM COMMISSION

*“A work shall not be ineligible for copyright by reason only that the making of the work or the doing of any act in relation to the work involved an infringement of copyright in some other work”.*

Copyright extends to any work of authorship. The TRIPS Agreement permits limited exceptions to copyright protection under national law, provided that these do not unreasonably conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the copyright owner. The subject matter/types of copyright protected include:

(a) Original literary, dramatic and artistic works.

All works under this category have the “originality” requirement in common. Novelty or innovation is not required; the point is that the work is not copied and originates from the author. The author must produce his or her own expression of the idea, the author must only have expended skill, judgment and labour’ or ‘selection, judgment and experience’ or ‘labour, skill and capital’ in creating the work. But even if the threshold is low, works that do not meet this minimum standard will not attract copyright protection. A copy which incorporates some minor alterations of a work which is no longer protected under copyright will not attract copyright. And even if the content of a work may be nothing more than a compilation of existing elements, some skill and labour must have been invested in the way in which they are organised and expressed.

Another essential rule is that copyright does not protect ideas, but only protects a particular expression of an idea. This does not create any specific problem for artistic works. However, if one is to protect only the expression of idea in a literary, dramatic, or musical work, the expression should be recorded in a permanent form. This can be in writing or in any other form – which includes all the new technological recording or fixation methods.

(b) Musical works.

Lyrics are protected as literary works, so what is left for consideration under “musical works” is the music. Every overlap is excluded because a musical work is defined as a work consisting of music, exclusive of any works or

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

action intended to be sung, spoken or performed with it. For copyright purposes the music and the lyrics are distinct works. They can, for example, be owned by different persons, and expire at different times.

There is no objective quality requirement: what is a beautiful piece of music to one person is nothing more than noise to another person, and a couple of notes and chords will be sufficient to attract copyright. Secondary musical works based on an existing musical work may attract their own copyright. In this category we find for example arrangements or transcriptions for another type of orchestra. These will attract their own copyright if the minimum amount of skill and labour requested by the originality requirement is invested in them. This does not rule out the possibility of infringement of the copyright in the earlier musical work if, for example, the arrangement is made without the permission of the owner of the copyright in the earlier work.

### (c) Artistic works.

Graphic works, photographs, sculptures or collages are protected as artistic works irrespective of their artistic quality. Graphic works include any painting, drawing, diagram, map, chart, plan, engraving, etching, lithograph, woodcut or similar work. The originality requirement for this first group of artistic works is the same as for all previous types of work. The work should not be copied, should originate from the author and its creation should involve the minimal amount of skill and labour. That minimal amount of skill and labour is clearly present when a photographer makes a photograph from a picture. This is shown, for example, by the choice of the angle under which the picture is taken and the exposure time. Other good examples are a woodcut made from a drawing and the label design for a sweet tin. But the skill and labour does not necessarily need to be artistic. A plan for a technical device containing three concentric circles was protected because technical judgement was involved in drawing them to precise measurements which allowed the technical device to work.

A second group of artistic works consists of works of architecture. Buildings or models for a building, which are commonly used to attract potential investors, fall in this group, but the architect's plans are protected as a graphic work and

fall in the previous category. A model made of a building also falls outside this group.

(d) Works of artistic craftsmanship.

Many items or artifacts could be called works of craftsmanship. Jewelry made to a special design, furniture, clothing or cutlery can all be called works of craftsmanship. The Berne Convention does not offer a definition of this term, but the inclusion of the word artistic makes it clear that at the very least some artistic quality is required if a work of craftsmanship is to attract copyright protection.

The House of Lords considered the issues raised by works of artistic craftsmanship in *George Hensher Ltd v Restawhile Upholstery (Lancs) Ltd*.<sup>15</sup> In this case, the first important issue was whether artistic quality is required and what level must be attempted or reached. The House of Lords decision made it clear that some artistic quality is required. The fact that the work is a work of craftsmanship which is not purely utilitarian is not sufficient; artistry and craftsmanship are both required. Reid LJ and Morris LJ suggested that a prototype could never satisfy the artistry requirement, because it is by definition not intended to have any value or permanence. The intention of the craftsman is more relevant to a separate issue.

It is not clear what level of artistic quality is required and no proper and comprehensive test is available. In practice no problems arise for handcrafted jewelry and similar items, but the position for machine made objects is problematic. In *George Hensher Ltd v Restawhile Upholstery (Lancs) Ltd* Lord Simon suggested that this should not disqualify an object and that copyright protection would still be possible, but Lord Reid seems to disagree. The problem is potentially aggravated if the object is utilitarian in nature and is produced in mass. This is especially the case because a lot of money is invested in the development of these objects. This situation is particularly

---

<sup>15</sup> [1976] AC 64; [1974] 2 All ER 420.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

regrettable because this category of works is becoming more and more important now that a proper industrial design right has been created. This will create more intellectual property activity in this area and requires a clear delimitation of the copyright and design areas respectively. All this is hampered by the absence of a clear definition of what constitutes a work of artistic craftsmanship.

No clear solution is available either for the situation where one person supplies the craftsmanship, but another one supplies the idea for the work of artistic craftsmanship. It is arguable that no copyright is available in such a case, but it is submitted that copyright should be available as long as the craftsman's contribution gives the required level of artistic quality to the work.

What is described above is the generally accepted position. The case law allows for an alternative interpretation, which may clarify things on a number of points. What is protected is a work of artistic craftsmanship, not an artistic work of craftsmanship. A glazier, a plumber, and others are all craftsmen, though it is clear that the legislators did not seek to protect all their professional activities. The purpose was to protect a certain type of craftsmanship and the legislator attempted to distinguish that activity by calling it artistic craftsmanship. The glazier who makes stained glass windows for example engages in artistic craftsmanship. In making the distinction the judge can rely on the evidence provided by expert witnesses. It follows from this starting point that it is not required that each individual work produced is a work of art, as long as it is the result of an activity which is by the relevant circles considered to be an activity of artistic craftsmanship as opposed to ordinary craftsmanship. This brings this type of work in line with the rest of the copyright works, for which no artistic value of the individual work is required and leads to the application of the normal originality requirement to the individual work.

In deciding whether artistic craftsmanship is involved, the expert evidence will be directed towards the fact that artists have, vocationally, an aim and impact which differ from those of the ordinary run of humankind. This covers both the intention of the creator and the result of his or her activity. So the work which is produced is taken into account in deciding whether the activity is artistic in nature. But this refers to the work of the author and the relevant

kind of activity in general in requiring some artistic level and has the advantage not to refer to the individual piece of work under consideration for the purpose of copyright.

(e) Entrepreneurial rights.

The Berne convention also grants copyright protection to sound recordings, films, broadcasts, cable programs and typographical arrangements of published editions. These illustrate commercial exploitation of copyright. A sound recording of a pop song is a typical example. Original copyrights exist in the lyrics and the music of the song and are, at least in the first stage, owned by their respective authors. An additional copyright is granted to the sound recording and this copyright is derivative. This right was introduced to give the entrepreneur his or her own protection. This protection is particularly important because often the financial cost of copyright exploitation is high. Many of the derivative works incorporate a series of original works protected by copyright. A film may incorporate lyrics, music and a script, which is a dramatic work.

In case of infringement it is extremely helpful that the owner of the copyright in the film can sue. This avoids a series of parallel lawsuits by the owners of the original rights, which may each face the problem of demonstrating that their copyright was infringed. The absence of a derivative right would in practice greatly facilitate film piracy.

In fact all these derivative copyrights are neighbouring rights when compared to the original copyrights. They need in general an original copyright work as their basis. A sound recording of a musical work is a good example and so is the script as the dramatic work as a basis for a film. In a sense they involve a first exploitation of the original work.

These works need not be based on works protected by copyright. If we go back to the example of the sound recording and replace the pop song by the noise of the sea unleashing its forces on the Cornish coast, the conclusion is that the recording is still a sound recording for the purposes of the Convention and will attract copyright. Whether the derivative work is based on works

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

protected by copyright or not, the originality requirement for original works will not apply to it.

Works of authorship are protected from the time they are fixed in a tangible medium of expression - written on paper, stored on disk, painted on canvas, or recorded on tape, for example. This is very different from the requirements for protection of inventions, marks, industrial designs, or plant varieties, where the owner must submit an application to a government office to obtain protection.

Copyright was directed towards the protection of a reproduction of the work. It was first of all a right in the production of printed copies of the work. This means that it is exclusively concerned with the material expression of the ideas on which the work is based. Copyright is not about ideas, but about the way in which they are expressed.

### (f) Justification for reform.

With the changing technological developments in the world, authors have various types of original work that should be protected. There is need to broaden the works that are protected currently under copyright to correspond with global changes, while at the same time complying with our obligations under the TRIPS as well as other international agreements that Uganda has signed. The area of works that are protected by copyright should be widened to cover other areas in the light of international technological developments.

The TRIPS Agreement provides for works that are eligible for copyright protection under articles 9, 10 and 14.

Article 9 provides for relation with the Berne Convention:

- (a) Members shall comply with articles 1 through 21 of the Berne Convention (1971) and the appendix thereto.
- (b) Copyright protection shall extend to expressions and not ideas, procedures, methods of operation or mathematical concepts as such.

Article 10 provides for protection of computer programs and compilations of data:

## UGANDA LAW REFORM COMMISSION

10. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention, further, compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not be extended to data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 14 provides for protection of performers, producers of phonograms (sound recordings) and broadcasting organizations:

1. In respect of a fixation of their performance on phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.
2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.
3. Broadcasting organisations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the re-broadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcast of the same. Where members do not grant such rights to broadcasting organisations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention.

There is need to update the law in line with international agreements that we have ratified, coupled with the need to bring our laws up to date with technological, economic and other developments the world over.

## 2.4 Summary of recommendations

### Recommendation 1.

- (a) The subject matter covered and protected by copyright should be expanded to include electronic data banks, computer programs and multi media works, works published on the internet, data bases, works embodied in electronic form, compilations, and any other work in the field of literature, science and art in whatever manner delivered, known or to be known in the future.
- (b) The protection of a derivative work should not affect the protection of the pre-existing work used by a person for derivation purposes.
- (c) Ideas, procedures, methods of operation and mathematical concepts should not be protected.

#### (a) Qualification for protection.

Works that fall within one of the categories described above have to pass one more hurdle to secure copyright protection, namely the qualification requirement. This requirement is linked to the principle of national treatment contained in the Berne Convention, the TRIPs Agreement and in the Universal Copyright Convention. Authors connected with another Member State are to be treated in the same way as a Member State's own authors and should receive the same copyright. The connection with a Member State can be provided in two ways. The author can have a personal relationship with the Member State or the work can be first published in that Member State. The latter option is not available as long as a work remains unpublished.

In the United Kingdom, this principle is implemented through a two - stage process. First, the criteria used to establish a connection with Britain whether through the author or through publication are laid down. Secondly, the system is applied to works connected with other member states of both Conventions. The application to another member State is effected by an order in council.

Things become further complicated because countries adhere to one or both Conventions at different dates. This creates problems for works published

before the date on which the country adheres to the Conventions. Unfortunately the provisions dealing with this issue are not identical in both Conventions. The Berne Convention works in part retroactively. If a work is still in copyright under its own national copyright legislation when a country adheres to the Convention, the work will attract copyright protection in the United Kingdom for the remaining part of the term of copyright. The universal Copyright Convention does not work retroactively and a work published before a country, which is not a member of the Berne Convention, adheres to the Convention will not be granted copyright in the United Kingdom.

**(b) Qualification by the personal status of the author.**

The issue here is whether the author of the work, being the creator of the work, is a qualifying person. This will be the case if the author is a national, is domiciled or resident in Uganda or is a body incorporated under the laws of the Uganda. Application to a foreign work depends on the question whether the author is a citizen, subject, domiciliary or resident of a Convention country listed in an order in council or a company incorporated in such country.

Since all these connecting factors can change over time, the connection has to exist at the material time. That is the date on which the work is made for unpublished literary, dramatic, musical and artistic works. If the work is published, reference is made to the date of first publication and the author's status at that date or on the date on which the author died if that occurs before the work is published. There is only one rule for works which do not come within the scope of the original category. The date on which sound recording or film is made is the material time for these works. The date of transmission is the material time for broadcasts and cable programs. For typographical arrangements this is the time first publication.

**(c) Qualification through first publication.**

The country of first publication is also a separate connecting factor. A work which is first published in Uganda will qualify for copyright protection and so will a work first published in another Convention country. The country of transmission is the connection factor for broadcasts and cable program.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

Simultaneous publication does not create a problem if one of the countries in which the work is published is Uganda or another contracting State, but a problem may be created if the country in which publication takes place a couple of days before publication in other countries is not a contracting State to one of the copyright conventions. This would normally jeopardize the option of qualification for copyright protection through first publication in a contracting State, but a period of grace of 30 days has been built in. Publication in that period in Uganda or another contracting State will be treated as simultaneous publication and will secure qualification for copyright protection.

But what amounts to publication? The definition of the term “publication” is relevant for the qualification issue. For copyright purposes “publication” means issuing copies of the work to the public in sufficient quantities with the intention to satisfy public demand. Copies are issued to the public if they are put into circulation by sale, gift or hire and this takes place where the publisher invites the public to acquire the copies. The intention of the publisher is an important element, since he or she must be prepared to meet public demand. For literary, dramatic, musical and artistic works, copies can also be issued to the public through the inclusion of the work in an electronic retrieval system, which makes it available to the public. The number of copies issued is of secondary importance, as shown by the Court of Appeal’s decision to accept that the release for sale of six copies of a song which was not yet known amounted to publication.

Copies are not issued to the public by the performance of a literary, dramatic or musical work. The same goes for broadcasting or including them in a cable program, exhibiting an artistic work and issuing graphic works or photographs of sculptures, works of architecture or works of artistic craftsmanship.

There is need for the new law to specify the area and scope that is covered by the copyright in Uganda.

### **Recommendation 2.**

The law should apply to copyright works which are-

- (i) created by a citizen of Uganda or a person resident in Uganda;

## UGANDA LAW REFORM COMMISSION

- (a) first published in Uganda, irrespective of the nationality or residence of the author; or
- (b) created by a person who is a resident or national of one of the countries to which reciprocity applies.
  - (ii) The law should ensure that authors have control over their work, and should give the owner of the work the right to exclude others from doing certain acts without authorization.
  - (iii) The law should widen the scope of protected acts to include publishing, producing, reproducing work; distributing or making available to the public the original or copies of the work through sale or other means of transfer of ownership, performing the work to the public by wire or wireless means or through any known means or means to be known in the future, including the making available to the public of the work in such a way that members of the public may access the work from a place and at a time individually chosen by them; where the work is a pre-existing work, to make a derivative work; to commercially rent or sell the original or copies of the work; and to do, in relation to that work any act known or to be known in the future.

### (d) **Rights under copyright.**

- (i) Economic rights.

Economic rights are the principal focus of copyright law. Copyright gives the owner of the work the right to exclude others from doing certain acts without authorization. These generally include reproducing, distributing, or selling copies of the work, publicly performing or displaying the work, broadcasting the work, or preparing derivative works based on the work. Examples of derivative works include making a sound recording or motion picture of a literary work, or translating or adapting a work. Under the TRIPS Agreement, nations are required to include among the author's rights, at least for cinematographic works and computer programs, the exclusive right to authorize or prohibit the rental of such works to the public.

(ii) Moral rights.

Although the principal emphasis of copyright law is on economic rights, copyright law also recognizes the rights of authors to certain non-economic rights known as moral rights. Article 6 (b) of the Berne Convention for the Protection of Literary and Artistic Works requires that all Convention member countries provide for the moral rights. The author must have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of the work, or any other derogatory action in relation to the work, that would be prejudicial to the author's honour or reputation.

Moral rights must be recognized independently of the author's economic rights and must continue even after the transfer of the economic rights. These moral rights must, after the death of the author, be maintained at least until the expiry of the economic rights. Moral rights must be exercisable by the persons or institutions authorized under national law in the country where protection is claimed. The Berne Convention permits an exception for those countries whose legislation, at the moment of their ratification or accession to the Convention, does not provide for the protection after the death of the author of all the moral rights specified above. In such cases, the member country may provide that some of those rights may cease to be maintained after the author's death.

(iii) Application of moral rights.

The concept of moral rights can have significant practical effect. After the expiration of economic rights, the author ordinarily no longer has the right to object to reproduction, sale, or making of a derivative work. If, however, that reproduction, sale, or derivative work would be prejudicial to the author's honor or reputation, the moral right may give the author an independent basis for objecting to the making of the derivative work. Consider whether an author might object, on the grounds of moral rights, in two examples:

A popular character from children's literature is used in a pornographic film. The author of the original cartoon no longer owns copyright in the work featuring the character. Would that author have the right to object to the intended use?

## UGANDA LAW REFORM COMMISSION

A religious leader publishes an article. A publisher proposes to reprint the article in a magazine where it will be surrounded by material that followers of the religion would consider objectionable. Would this author have the right to object to the intended use?

In the case of works of visual art, an author may assert moral rights to object to the destruction or placement of the work, even though it has been sold. Such a situation might exist, for example, if a work of art were to be purchased with the intention of locating it in a setting that would hold it up to ridicule. A moral rights claim might also be made when the location would be of a different style from that of the work of art - a modern sculpture in front of a traditional building, or vice versa.

Moral rights must exist at least as long as economic rights - the life of the author plus fifty years, or longer if provided for under domestic law. If the author is deceased, a claim of moral rights could be made by someone speaking on the author's behalf. Some countries have incorporated in their laws a much longer period for moral rights.

In Uganda, the current law gives copyright owners exclusive control over such acts as distributing, performing or broadcasting their work in Uganda or any other country. Moral rights are not provided for under our current laws. Our copyright law should be able to protect both economic and non-economic rights of authors.

As provided under the TRIPS Agreement and in the laws of other countries, our law should provide protection for copyrights and neighbouring rights of owners to enable them to claim the fruits of their work and object to any derogatory action in relation to their work or any other derogatory action in relation to that work that would be prejudicial to their honour or reputation.

### **Recommendation 3.**

- (a) The author must have a moral right to claim authorship of the work and to object to any distortion, mutilation or other modification of the work.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (b) The author must also have a moral right to have his or her name or pseudonym mentioned or acknowledged each time the work is used, except where it's not practicable to do so.
- (c) The author of a copyright in literary, musical or artistic work, and the director of a copyright film should be identified as the author or the director of a work.
- (d) A performer shall have the right to be identified as the performer; to have his or her name mentioned each time the performance or the broadcast or communication of the fixation is used; to object to and seek relief in connection with any distortion, mutilation, alteration or modification of his or her performance.
- (e) The author of a copyright in literary, dramatic, musical or artistic work and the director of a copyright film has a right not to have his or her work subjected to derogatory treatment.
- (f) A person does not infringe a moral right unless the right was asserted either generally, or in relation to any specified act or description of acts.

### (e) **Authorship or ownership of copyright.**

An author is the creator of the original expression in a work. Determination of authorship is a question of fact. A person should not be listed as an author merely as a courtesy or honour, for example, to gain credibility for the work by association with the name of an expert in the field or to show appreciation to a supervisor. Likewise, it is improper to fail to include as an author a person who contributed to the creation of the work.

Determination of authorship has important legal implications. A person cannot claim copyright to another's work, no matter how much he or she changes it, without the owner's consent. An author whose name is omitted has a cause of action to remedy that omission, and incorrect attribution of authorship compromises its exploitation. In the case of technical documents, the relatively common practice of listing authors as a matter of courtesy can affect the patentability of inventions and raise questions about ownership of patent rights.

## UGANDA LAW REFORM COMMISSION

The author of a work is the owner of copyright in that work unless ownership is transferred to another person or entity. This can happen if the author assigns the work, for example, to a publisher, or pursuant to the terms of a contract. Depending on national law, this may occur automatically in certain employment situations. Under U.S. law, for example, the employer or commissioning party is considered to be the author in certain carefully defined situations.

In some cases, more than one person may contribute to the creation of a work. Such persons are joint authors, and each owns copyright in the work. The Berne Convention Article 7 (b) provides that in the case of a work of joint authorship, where the term of protection is measured from the death of the author, it shall be calculated from the death of the last surviving author.

The nature and extent of the ability of each joint author to exploit the work independently of the other(s) depends on national law. Since the ability to convey an exclusive right generally carries greater economic benefit than the ability to convey a mere nonexclusive licence, the best practice is to exploit the work as though only a single person owned copyright, either by assignment to a common owner or by agreement among the joint authors to act only by agreement. Otherwise, the advantages of owning exclusive rights may be lost.

In determining authorship, evidence may include testimony of persons who are familiar with the work of the author and have observed him or her at work as well as any other evidence that would be probative of the question of authorship.

### **Recommendation 4.**

- (a) The author of any work should have the right of protection of his or her work, irrespective of the quality of that work or purpose for which the work is created, where the work is original and is published in whatever method.
- (b) The author of a protected work shall have, in relation to their work, the exclusive right to do or authorize other persons to do the following-

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (i) to publish, produce or reproduce the work;
- (ii) to distribute or make available to the public the original or copies of the work through sale or other means of transfer of ownership;
- (iii) to perform the work in public;
- (iv) to broadcast the work;
- (v) to communicate the work to the public by wire or wireless means or through any known means or means to be known in the future, including the making available to the public of the work in such a way that members of the public may access the work from a place and at a time individually chosen by them;
- (vi) where the work is a pre-existing work, to make a derivative work;
- (vii) to commercially rent or sell the original work; and
- (viii) to do in relation to that work any act known or to be known in the future.

### **(f) Joint authorship.**

Questions of joint authorship raise additional issues. It is not necessary that joint authors have contributed the same degree of creativity, but to be joint authors, each must have made some original contribution. Likewise, it is not necessary that joint authors work together in a physical sense- being present at the same place and time - in order to establish joint authorship, but there must be some degree of cooperation between their contributions, and those contributions must have been made to the same work. Consider, for example, the authorship of a song. A single individual might compose both words and music; but if two or more persons are involved, an additional determination is required.

#### **Example 1.**

Person A played a piano and Person B recorded lyrics, but the composition was carried out interactively, with both Person A and person B contributing words and both Person A and Person B contributing to the music. In this case, persons A and B are joint authors of the song, including words and music.

### **Example 2.**

Person A played piano and composed the tune and Person B wrote lyrics to match the tune. The composition was not carried out interactively, as each did his or her own part. In this case, Person A is the sole author of the music, and Person B is the sole author of the words.

In determining whether Persons A and B are joint authors in Example 2 above, it is useful to consider whether the nature of the contributions can be separated without destroying the form of expression. If the contributions form a unified work, with the parts cooperating, the situation suggests that there is joint authorship to the entire work. If the contributions can be separated and each can stand independently, it suggests that the contributors are not necessarily joint authors. However, the nature of the collaboration is a more important consideration, and situations exist where it is not possible to separate out the work of one person from a general collaboration.

The Copyright Act, Cap. 215, vests ownership of copyright in the author of the work. Co-ownership is considered under assignment and licensing of rights; where persons are deemed to be co-owners if they share a joint interest in the whole or part of a copyright or if they have interests in the various copyrights in a composite production - that is, a production consisting of two or more works made in collaboration.

There is need to provide clearly in the law for circumstances where there are more than one persons involved in creating the work. The law should clearly provide for the nature and extent of the ability of each author to exploit the work independently of the others.

### **Recommendation 5.**

- (a) Where work is created by more than one person and no particular part of the work is identified to have been made by each person, that is, if the work created by more than one person is indistinguishable, all of the economic rights and the moral rights relating to that work shall be jointly owned by the persons involved in the creation of the work and the co-owners shall have equal rights in the work.

**(g) Neighbouring rights.**

Neighbouring rights protect the rights of performers, producers of phonograms, and broadcasting organisations. Phonograms are sound recordings such as audiotapes, records, or music CDs. Some of the problems addressed by the TRIPS Agreement included the unauthorised copying or broadcasting of live performances and the unauthorised reproduction of recordings or of radio and television broadcasts. Under the TRIPS Agreement, nations must provide a legal means by which performers, broadcasters, and producers of phonograms can prevent such acts. The term of protection must be at least 50 years from the end of the calendar year in which the fixation was made or the performance took place, or 20 years from the end of the calendar year in which the broadcast was made.

**Copyright and neighbouring rights distinguished.**

Rights related to copyright protect similar interests as copyright does. Public performance of a dramatic work may require permission of the author under copyright law, but the performer, who has also invested time, talent, and other resources to refine his or her performance, has the related right to prevent others from making a recording of the performance without his or her permission. The author of a musical work can rely on copyright to prevent others from making copies of that work without the author's permission. Once that permission is given, the producer of a sound recording must invest time and resources to secure the right to make the recording and the skill, technical resources, and money to make and edit a high quality recording. The producer of sound recordings thus needs the protection under related rights to prevent others from making unauthorized copies of that sound recording. A Broadcast organization must either produce works for broadcast or take steps to secure rights to broadcast works produced by others and therefore also needs protection against unauthorised recording or re-broadcasting of broadcasts.

Neighbouring rights are the rights attached to the auxiliary role played by performers, producers of sound recording and audio-visual and broadcasting companies. They enable-

- (a) the fulfillment of literary or artistic works;
- (b) the provision of destiny and permanence in works; and

- (c) the diminishing of distance in the publication of works.

The Copyright Act Cap 215 does not provide protection for neighboring rights. There is no protection other than for the author of a piece of work, which right is given only to the author of the work, or to the person to whom he or she has assigned the right. Many copyright works can be improved or diversified into many more interesting things, for example novels into plays and movies, or a song or other musical piece used in a musical drama. However, the people involved in transforming pieces of work need incentives in the form of protection for them to know that they will be able to reap from their work if protection is given to them. They need to eliminate piracy, copying without authority, and to know that they can get remedies in case of infringement. The only way this protection can be guaranteed is to make sure there is a law in place to achieve this purpose. Producers, broadcasters, performers and other persons similarly placed should have a right to use or authorize use of their work as they please, in other words, these should have exclusive control over their work.

## Recommendation 6

### (a) Rights of performers

- (i) A performer shall have the right to authorize-
  - (A) the fixation of his or her live performance not previously fixed on a physical medium;
  - (B) the broadcasting or communication to the public of his or her unfixed performance;
  - (C) the reproduction of fixation of his or her performance;
  - (D) 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;
- (ii) A performer should have the right to enter into contract on terms and conditions that he or she may wish for the use of his or her performance or fixation by another person.
- (iii) A performer shall have a right-
  - (A) to be identified as the performer;

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (B) to have his or her name mentioned each time the performance or the broadcast or the communication of the fixation is used;
  - (C) to object to and seek relief in connection with any distortion, mutilation, alteration or modification of his or her performance.
- (b) Rights of producers.
- (i) A producer of a sound recording or audio-visual fixation should have the right to:
    - (A) authorise the reproduction of that sound recording or audio-visual recording or audio-visual fixation;
    - (B) to authorize the distribution or making available to the public of the original 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; and
    - (C) authorize 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.
  - (ii) No person should reproduce, distribute or make available to the public a sound recording or audio-visual fixation without the authorization of the producer.
  - (iii) Where a sound recording or audio-visual fixation is used for commercial advertisement or its reproduction is used for broadcasting or for any other form of communication to the public, the user shall require the authorization of the producer and shall pay an equitable remuneration to the producer and the performer.
- (c) Rights of a broadcasting company.
- (a) A broadcasting company shall have the right to authorize or prohibit-
    - (i) the broadcasting of its broadcast;
    - (ii) the fixation of its broadcasts; or
    - (iii) the reproduction of a fixation of its broadcasts.

## UGANDA LAW REFORM COMMISSION

### (d) Limitation on neighbouring rights.

Neighbouring rights shall not apply where the acts done are for-

- (i) private use;
- (ii) the reporting of current events, except that no more than a short excerpt of a performance, sound recording or visual performance fixation or broadcast is used;
- (iii) teaching and research; and
- (iv) quotations in the form of short excerpts of a performance, sound recording, audio-visual fixation, or fixation of broadcast, which are justified by the informative purpose of the quotations.

### (e) Term of copyright protection.

Protection of copyright in the 1964 Act is provided in the schedule to the Act as follows:

1. Unpublished literary, musical works are protected for fifty years after the end of the year in which the author dies.
2. Published literary, musical or artistic work is protected the later of the following-
  - (a) the end of the year in which the author dies;
  - (b) Fifty years after the end of the year in which the work was first published.
3. For unpublished cinematograph film or gramophone record, fifty years after the record, if first published fifty years after the end of the year in which the work was first published, forty-five years after the end of the year in which the work was first published.
4. For broadcasts, fifty years after the end of the year in which the broadcast was made.

The Act does not provide exhaustive terms of protection for all works that are protected today the world over. It does not, for instance, provide protection for computer programs; thus no term of protection is provided in that regard.

The term of copyright protection depends on national law. Article 7 of the Berne Convention specifies the minimum term of copyright protection as the

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

life of the author plus fifty years after the author's death. In the case of cinematographic works, the countries of the Union may provide for a term of protection that should not expire before fifty years after the work has been made available to the public with the consent of the author, or, if the work is not made available to the public with the consent of the author within fifty years from the making of the cinematographic work, then fifty years after the making of the work. In the case of anonymous or pseudonymous works, the Berne Convention requires a minimum term of protection of fifty years after the work has been lawfully made available to the public.

However, when the pseudonym adopted by the author leaves no doubt as to his identity, or when the author of an anonymous or pseudonymous work discloses his or her identity during the fifty-year period after the work has been lawfully made available to the public, the applicable term of protection shall be the same as in cases where the author of the work was known. It is not required to protect anonymous or pseudonymous works in cases in which it is reasonable to presume that their author has been dead for fifty years. The Berne Convention permits member countries to determine the term of protection of photographic works and of works of applied art in so far as they are protected as artistic works, provided that the term is at least twenty-five years from the making of such a work.

The term of protection subsequent to the death of the author and the other terms provided for cinematographic works, anonymous or pseudonymous works, photographic works, and works of applied art, run from the date of the event, but such terms must always be deemed to begin on the first of January of the year following the death or other event mentioned. (or as the TRIPS Agreement provides, not less than fifty years after the last day of the year in which the death or other event occurred.) In cases of joint authorship, the term is measured from the death of the last surviving author. (Berne 7).

It is permitted to grant a term of protection in excess of those mentioned. For WTO members, the principles of national treatment and most favored nation treatment require that the copyright term be the same as, and no less favorable than, that accorded to any other member. Unless a Berne member's domestic legislation provides otherwise, the term of protection it provides to foreign

## UGANDA LAW REFORM COMMISSION

works should not exceed the term fixed in the country of origin if the country of origin is a member of Berne but not of the WTO.

The law should provide a definite time for protection of copyright in all the areas that are in the Berne Convention as well as all the protection in the TRIPS Agreement.

### **Recommendation 7.**

- (a) The economic rights of an author should be protected during the life of the author and fifty years after the death of the author.
- (b) The economic rights of joint authors should be protected during the life of the last surviving author and fifty years after the death of the last surviving author.
- (c) The economic rights of corporation or other bodies should be protected for fifty years from the date of the first publication of the work.
- (d) Work which is published anonymously or under a pseudonym should be protected for fifty years; and if the author is known before the expiry of fifty years, it should be protected during the life time of the author and fifty years after the death of the author.
- (e) Audio- visual work, sound recording or broadcast, should be protected for fifty years either 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.
- (f) Computer programs should be protected for fifty years from the date of making the recording.
- (g) Photographic work should be protected for fifty years from the date of making the work.
- (h) Moral rights should be enforceable by the author or his or her successors in title, and should exist in perpetuity.

### **(h) Assignment of copyright and copyright licence.**

Copyright as a form of intellectual property has the same kind of commercial value as any other intellectual property right. Its contractual exploitation can

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

take various forms, such as a sale or a more restricted right to do something in relation to the subject matter of the right. Authors can exploit their works themselves, but they may not be interested in doing so. Often they do not have the financial, material and organizational means to exploit their works or to exploit them efficiently. They can then leave the exploitation to a third party. This normally involves the transfer of some or all rights in the work to that third party.

The person who exploits the rights should ideally have an exclusive right. There should be a transfer of all economic rights if each of these rights has been contracted against an equitable remuneration. A producer who has acquired exploitation rights from authors or performers has to possess all exclusive rights, which are required for an efficient exploitation in the interest of all right holders. Clearly a right to act independently against infringers should form part of these exclusive rights.

The essential feature of this system is that neither party gains total control over the other. Both of them would be given parallel exclusive rights and this should incite them to cooperate, which is in the best interest of both parties and in the best interest of copyright.

There are two forms of contract involved in the exploitation of a copyright work by a third party.

### (i) Assignment.

An assignment involves the disposal of the copyright. The copyright is assigned by the author to another person. The standard type of assignment involves the transfer of the complete copyright, but this need not be the case. Two forms of partial assignments are possible. It is possible to assign only certain aspects of the copyright or certain rights and not the whole copyright and it is also possible to restrict the assignment to a certain period. This makes it possible to assign for example only the public performance right or the translation right or to assign all or any of these rights for a limited period, for instance, ten years. The assignor will normally receive a lump sum in return for the assignment of the copyright in the work.

(ii) Licences.

A licence does not involve a transfer of the copyright in the work. The owner of the copyright simply grants permission to the licensee to do certain acts in relation to the copyright work which would otherwise constitute infringement of the copyright in the work in case no licence had been granted. An obvious example is a license to perform a play. Without the licence being granted the performance would have constituted an infringement of the copyright in the play. A licence can be granted in return for the payment of a lump sum or the licensor can be paid by royalties. This involves the payment of a fixed sum or a percentage of the return each time the act allowed by the licence takes place.

In the same way as an assignment, a licence can be restricted in relation to its scope, i.e. the acts that are allowed, or in relation to its term. It is indeed quite common to grant various licences, eventually in combination with partial assignment, to various persons in relation to the exploitation of a work. Take a novel as an example. The owner of the copyright in the novel can assign the publication rights in Uganda to a publisher, licence the performing right, licence another publisher to produce a translation in French, licence a German producer to make a sound recording, assign the film rights to Walt Disney in the USA. The combinations can be numerous.

A license can be exclusive or non-exclusive. An exclusive licence must be signed, and it allows the exclusive licensee to exercise certain rights in relation to the copyright work on an exclusive basis. This means that all other persons, including the licensor, will be excluded from exercising that right. The exclusive licensee can also bring an independent infringement action after joining the owner or by leave of court. A nonexclusive licensee, on the other hand, needs the assistance of the licensor to do so, because in that case only the owner can sue. The exclusive licensee has the same rights against a successor in title who is bound by the license as he has against the original licensor. Every successor in title is bound by the licence except a purchaser in good faith and for valuable consideration, or someone deriving his or her title from such a purchaser, if he or she had no actual or constructive notice of the licence.

(iii) Collecting societies.

The normal way of exploiting copyright by way of licences involves the grant of a licence for every use that is made of the copyright work. In cases where the work is a record, that would involve a licence every time the record is played. It is not very convenient for the copyright owner to collect a minimum fee on every occasion. The overhead costs would be tremendous, it would take up all his or her time and he or she would, in practice only be able to collect a fraction of royalties owed to him or her. The user of the records would not be in any better position. If a restaurant wants to play background music in the restaurant that requires a separate licence for every work which is played, how is he or she going to find all the right owners in the first place? The problem is solved by the creation of collecting societies, such as the Performing Right Society, and the Visual Arts Right Society. There is normally one collecting society per type of work and per country. Owners of the copyright become members of this body, which will license the use of their work and collect the royalties for them. The society will for instance take on the assignment of the copyright in the performance and broadcasting of musical works, grant licences, and collect administration costs. This presents a tremendous advantage to copyright owners, but it is also advantageous for the users of the works. They now have to deal with one body only and they will be able to get a blanket licence, which will allow them to use any work in the ambit of the society.

Under the current Act, copyright is transmissible by assignment, by testamentary disposition or by operation of the law as movable property. The assignment or testamentary disposition may be limited so as to apply to only some of the acts which the owner of the copyright has exclusive right to control or a part only of the period of the copyright. The assignment must be in writing and signed by or on behalf of the assignor.

The Act is not clear on assignable rights. Further, it does not provide for several of the assignable rights as provided under both the Bern Convention and the TRIPS Agreement. It does not consider the issue of collecting societies at all. Under the Berne Convention, there are several rights that can be assigned or licensed, as shown in the table on page 36.

## UGANDA LAW REFORM COMMISSION

The law should cover all the rights that a copyright owner can assign or otherwise transfer, and how this can be done. The law should also provide for assignment in circumstances where there are more than one owner; for the type of contracts that the assignment should take; and for the types, scopes and conditions of the contracts that the persons can enter into regarding any such assignments or transfers. It is also important to provide for collecting societies in the law. This will give time to owners as well as users of copyright to go on with their other works, while one body is charged with handling issues of licensing of the users.

### **Recommendation 8.**

- (a) The owner of a copyright may:
  - (i) assign his or her economic rights to another person;
  - (ii) license another person to use the economic rights in a copyright;  
or
  - (iii) transfer to another person the economic rights in the copyright in whole or in part.
- (b) The assignment, license or transfer of the economic rights in whole or in part shall not include or imply the assignment, license or transfer of the moral right.
- (c) An assignment or transfer of the economic right shall be in writing and signed by the owner of the right or by a person authorized by him or her for that purpose and by the person to whom the rights are being assigned or transferred.
- (d) A licence to do an act falling within a copyright may be oral, written or inferred from conduct or circumstances.
- (e) An assignment or transfer of the economic right shall be limited to the use, period and country specified in the contract.
- (f) Where the ownership of the only copy of one of several copies of a work is assigned, the economic rights relating to the work shall, unless the contrary is stated in writing not be assigned.
- (g) The law should provide for formation of collecting societies.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

<b>Rights of the Author</b>			
<b>Right</b>	<b>Type of Work</b>	<b>Scope of Right</b>	<b>Source</b>
Translation	literary and artistic works	Authors have exclusive right to make and authorize the translation of their works.	Berne Article 8
Reproduction	Literary and artistic works	Authors have exclusive right to authorize the reproduction their works, in any manner or form, including sound or visual recording.	Berne Article 9
Public performance	dramatic, dramatico-musical and musical works	Authors have exclusive right to authorize the public performance of their works, by any means or process, and communication to the public of the performance of their works.	Berne Article 11
Public performance	original dramatic or dramatico-musical works	Authors have exclusive right to authorize the public performance, of translations of their works, by any means process, and any communication to the public of the performance of their works.	Berne Article 11
Broadcasting	literary and artistic works	Authors have exclusive right to authorize the broadcasting their works or the communication thereof to the public by other means of wireless diffusion of signs, sounds or images, including re-broadcasting and public communication of a broadcast.	Berne Article 11ter
Public recitation	literary works	Authors have exclusive right to authorize the public recitation of their works by any means or process and any communication to the public of the recitation, including recitation of translations.	Berne Article 12
Adaptation	literary and Artistic works	Authors have exclusive right to authorize adaptations, arrangements and other alterations of their works.	Berne Article 14
Cinematic adaptation, reproduction, distribution, and public performance	Original works of art and original manuscripts of writers and composers	Authors have exclusive right to Authorize the cinematographic adaptation and reproduction of their works; the distribution, public performance and communication to the public by wire, of the works adapted or reproduced; and adaptation into any other artistic form of a cinematographic production derived from literary or artistic works.	Berne Article 14ter

**(i) Copyright infringement.**

Any copying of copyrighted work without the permission of the author constitutes an infringement unless it falls into a legal exception or is otherwise excused. Copyright infringement involves two basic types of cases. The first, and most straightforward, is a situation where a person uses all or part of the work of another person without first obtaining permission. The second is where a person appropriates a work and adapts it in some manner without first obtaining permission.

In determining whether copyright infringement exists, in both types of cases, the courts will look first at whether the work is subject to copyright, whether the alleged infringer had access to the original work, and whether there is substantial similarity between the works. These three elements constitute a prima facie case of infringement. The existence of a licence or a claim that the use was excused constitutes a defence. The plaintiff normally has the burden of showing the elements of a prima facie case and the defendant the burden of showing the elements of a defence.

Not every act of copying is actionable. The defendant must have copied either the whole work or a substantial part of it. Cases where the whole work has been copied are not problematic; but what is a substantial part of a work? This is not determined on a quantitative basis. Although obviously the quantity taken from the original work plays a certain role, it is much more a qualitative approach that is taken to determine whether the copying was substantial. This is linked to the fact that copyright is used in many places, for example the U.K., as a tool against unfair competition. A qualitative approach fits this purpose much more easily. Another relevant actor is the principle that ideas are not protected. A substantial part of the expression of the idea can be copied, but it is not possible to translate that into a percentage of the work, as one does not know the balance between idea and expression in the work. Whether or not a substantial part of the work has been copied will have to be determined case by case. It is a matter of fact and degree and will depend on the circumstances of the case.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

### (i) Evaluating infringement claims.

Determining whether infringement has occurred depends on whether the defendant has copied all or a portion of work protected by copyright and whether the copying is a permitted use. It is reasonable to copy brief portions of a work, especially for scholarly purposes, news reporting, or criticism; but if a substantial amount is copied, it may replace the market for the original. There are no simple rules concerning the percentage of a work that can be copied without infringement. However, if 100% of a work is copied, it is difficult to justify a claim that the copied material falls within the permissible range of quotation.

Factors to consider in deciding whether the copying is permitted include-

- (a) the amount and substantiality of the work copied,
- (b) the nature of the work copied,
- (c) the nature of the alleged infringing use,
- (d) the effect of the copying on the market for the original work, and
- (e) whether the copied material is taken from a published or unpublished source.

None of these factors is absolute. Short quotations are more likely to be permitted than long quotations. The quotation of factual material is more likely to be permitted than the use of nonfactual material. A nonprofit or scholarly use is more likely to be permitted than a use in pursuit of profit; but carried to its fullest extent, this would effectively remove copyright protection for academic and educational materials. A balancing is required: a literary critic may quote a small portion of a fictional or dramatic work in order to illustrate the style of the work, even though the review will appear in a for-profit newspaper, but copying a substantial amount may replace the market for the original work. Most importantly, copying that replaces the market for the original work can rarely be considered as a permitted use.

The amount and substantiality of copying is not strictly a matter of volume or percentage but should take into account the economic effect of the copying.

## UGANDA LAW REFORM COMMISSION

Publishing a brief but particularly newsworthy segment of a book may destroy the market for the book, even though the copied material is only one or two page out of several hundred.

Copying a photograph, drawing, poem, or essay from a book may appear to be a small fraction of the whole - perhaps only one page out of several hundreds. However, each photograph, drawing, poem or essay is a separate work of authorship, so that the copied portion is 100% of the whole.

### (ii) Establishing a prima facie case in copyright infringement

The plaintiff must offer evidence of ownership of a valid copyright in the work, that the defendant has access to the work, and that there are substantial similarities between the copyrighted work and the alleged copy. Substantial similarities can be shown by comparing the works. The arrangement of the parts of the work, the use of common language or settings, and the replication of errors - of spelling, typography, or other types of errors - are factors to be considered in determining whether copying has occurred. When copying is not slavish reproduction of parts of the work, the plaintiff may need to show copying through an analysis of such factors as plot and characterization, or the look and feel of the work.

A second type of copyright infringement involves the adaptation right. Common situations involve the production of a movie or play from a book, or a movie from a play, or use of a song in a video, or unauthorised translation. It is possible for a three-dimensional work or the reverse - for example, a sculpture that copies a photograph, a dress made from a dress pattern, a building built from architectural plans, or a toy that reproduces a cartoon figure.

Cases of copyright piracy may not require particular expertise to determine because of the identical, or nearly identical, nature of copying. In the case of computer programs, the copying may not be easy for a layperson to discern, and expert assistance may be useful.

Under the Copyright Act, Cap. 215 a copyright is infringed by any person who does, or causes any other person to do, an act falling within the copyright without the license of the person in which is vested either the whole of the

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

copyright or, where there has been a partial assignment or partial testamentary disposition, the relevant portion of the copyright.

The Act does not state clearly what amount of copying amounts to infringement of copyright. This is important since not all copying can amount to actual contravention of the rights vested in the owner of the copyright as explained above. Further, it is important for the law to provide for who has a right to institute proceedings in case of infringement of rights; should it be open for anybody to institute proceedings in case of infringement of anybody's copyright? The law should be clear on what kind of act exactly amounts to infringement of copyright and by whom.

### **Recommendation 9.**

- (a) Infringement of copyright is where, without valid transfer, licence or authorisation a person does or permits another person to-
  - (i) reproduce, fix, duplicate, extract, imitate, or import into Uganda otherwise than for his private use or permit or cause to be reproduced, fixed, duplicate, extracted or imported into Uganda otherwise than for his private use;
  - (ii) distribute or permit or cause to be distributed in Uganda by way of sale, rental, hire or like manner;
  - (iii) exhibit or permit or cause to be communicated to the public, for commercial purposes by way of broadcast, public performance or otherwise; or
  - (iv) any work or performance protected under the law.
- (b) An act of copying is not actionable unless the copying involved either the whole or a substantial part of the work.
- (c) An act of infringement is actionable by the copyright owner.
- (d) The use of a work in a manner prejudicial to the honour or reputation of the author of the work shall be deemed an infringement of the right of the author.

**(j) Defences to copyright infringement.**

Certain acts that constitute infringements of copyright are permitted acts. In a particular circumstance copyright will not be infringed because a defence is available, making the allegedly infringing act a permitted act. These defences exist in order to restore the balance between the rights of the owner of copyright and the rights of society at large. They restrict the exclusive rights granted by copyright in cases where it is felt that they go too far. This is particularly useful as copyright is extremely wide in scope and its term of protection is long. It should be emphasized that the permitted acts are exceptions to copyright infringement only. If a case involves for instance a breach of confidence too, the exception will not apply to the action for breach of confidence.

**(k) Principal defences to the charge of copying.**

**(i) No copying occurred, and the work is the result of original effort.**

A defendant who relies on this defence should be prepared to demonstrate that the work was made independently of the work alleged to be infringed. Clearly, the greater the similarity, the greater the defendant's burden. Since copying need not be intentional, simply showing independent effort may not be sufficient, and the defendant may need to show lack of access, for example that the alleged copy was made before the plaintiff's work was made or at least before a date on which the defendant might have gained access to it. This defence might also be pertinent if both authors have drawn on the same sources, in which case both works may contain substantial amounts of material drawn from that common source. In this case, however, the defendant should be able to demonstrate some differences in the form of expression of the two works.

**(ii) The work alleged to have been infringed was not protected under copyright at the time of the copying.**

A work is not protected by copyright if copyright has expired. In countries that were not members of the Berne Convention at the time the work was made or published, the work may have been protected because of failure to comply with formalities. However, the TRIPs Agreement requires countries

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

to restore rights to works that have entered the public domain at the time of adherence to the Berne Convention. A limited instance of this defence may also apply where the portions copied were not subject to copyright.

(iii) The work was copied, but the copying is a permitted use.

If copying has occurred, a court should look at whether the amount copied is substantial in respect of the whole work or is a permissible use of the copyrighted material.

(iv) If the alleged infringing act is in the public interest, this will provide valid defence against the alleged infringement.

In the copyright context, the defence is often used to justify publication of information in breach of copyright and confidence in the information. Especially when that information is embarrassing for someone, an attempt to use copyright to stop the publication of the information will be launched. It is submitted that the principles involved are identical to those formulated by the court in relation to breach of confidence. The concept of public interest can also be used to punish anyone who acts against the public interest and who has a copyright interest that results from that act. The public interest concept will allow the courts not to enforce the copyright in question and the infringers will then not be liable.

(v) Fair dealing.

Copyright allows fair dealing with work that attracts copy. This means roughly that there will be no copyright infringement if the use made of the work is fair. The defence only becomes relevant when the part taken from the work is substantial, otherwise no copying arises in the first place and any defence is without purpose.

The fairness issue will have to be determined by the judge taking into account all circumstances of the case. Copying of copyrighted work under fair dealings may include copying of work for-

(a) research and private study; and

## UGANDA LAW REFORM COMMISSION

(b) review and criticism. Copyright will not be infringed if sufficient acknowledgement of the author is given. It is fair to deal with one work in order to criticize another.

(vi) Incidental inclusion.

When a foreign tourist visits Kampala and takes some photographs it is inevitable that at least one of the photographs will include a work protected by copyright, such as a building, an artistic work or just the front page of a newspaper. The same applies when a television news crew films a demonstration in the city and the report is broadcast. It is not feasible to require that on each of these occasions copyright permission is obtained in advance or it would be impossible to make these photographs, films and broadcasts. Copyright law gets round this by introducing a rule that copyright in a work which is accidentally included in an artistic work, a sound recording, a film, a broadcast or a cable program will not be infringed.

The inclusion must be accidental. This defence will not be available if a work is included deliberately. If we go back to the news crew, they may decide to add some background music to the soundtrack of their film. The background music will not be included accidentally and if the copying through the inclusion is substantial, copyright in the musical work will be infringed if no advance copying permission was obtained.

(vii) Educational use.

Instruction and examination.

Copyright will not be infringed if a literary, artistic or musical work or a substantial part of any of them is copied in the course of instruction or while preparing instruction if two conditions are met. The copying must be done by the person giving instruction or the person receiving instruction and it may not be done by means of a reprographic process. When a student writes down a substantial part of a legal article in his or her essay in support of his or her own point of view, copyright in the article as a literary work will not be infringed. Neither will it be infringed when a lecturer writes down the same quote on the blackboard for discussion with the students during a lecture.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

In the same circumstances copies of a sound recording, a film, a broadcast or a cable program can be made in making a film or soundtrack for the purpose of instruction, without infringing copyright.

In an exam situation copyright will not be infringed by anything done in setting the questions, communicating them to the students or answering them. The question can thus contain a large quote taken from a literary work before asking students to analyze it and comment on it. The only exception to this rule is the making of reprographical copies of a musical work, which is to be performed by the students during the examination, here copyright permission is required.

The educational exception does not cover any subsequent dealings in the copies made or educational use. Copyright will be infringed if they are sold, let for hire, or offered or exposed for sale or hire.

The Copyright Act Cap 215 does not provide for defence to copyright infringement.

### **Recommendation 10.**

- (i) The law should provide for the defences reflected above.

**ANNEX 1.**

**THE COPYRIGHT AND NEIGHBOURING RIGHTS BILL, 2004.**  
**Arrangement of Clauses.**

Clause.

**PART I - PRELIMINARY.**

1. Interpretation.
2. Application of the Act.

**PART II - COPYRIGHT PROTECTION AND RIGHTS.**

3. Author entitled to copyright protection.
4. Work eligible for copyright.
5. Ideas not protected by copyright.
6. Public benefit works not protected.
7. Employed authors and works for Government or International bodies.
8. Economic rights of author.
9. Moral rights of author.
10. Co-author's right.
11. Fine art works to have inalienable right in proceeds of sale.
12. Copyright to pass under will with unpublished work.

**PART III - DURATION OF COPYRIGHT AND AUTHORISED  
USES OF PROTECTED WORKS.**

13. Duration of copyright protection.
14. Assignment, Licence or transfer of a copyright.
15. Exclusive licences.
16. Permitted free uses of work
17. Ephemeral recording.
18. Compulsory translation licence.
19. Scope and conditions of translation licence.
20. Translation for broadcasting.
21. Compulsory reproduction licence.

## **A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW**

22. Reproduction licence for audio-visual fixations.
23. Records of copyright centres.

### **PART IV - NEIGHBOURING RIGHTS.**

24. Neighbouring rights and persons entitled to them.
25. Rights of performer.
26. Moral rights of a performer.
27. Actions not authorised without a specific provision in a contract.
28. Authorisation in co-performance.
29. Duration of protection for a performer.
30. Right to be identified as author or director.
31. Requirement that right be asserted.
32. Exceptions to the right.
33. Rights of a producer.
34. Producer to indicate moral rights information.
35. Notice of protection of producer's rights.
36. Remuneration for broadcasting advertisement.
37. Rights of a broadcasting company.
38. Producers of programmes carrying signals.
39. Right to object to derogatory treatment of work.
40. Exceptions to right.
41. Qualifications of right.
42. Limitation on neighbouring rights.

### **PART V- CONTRACTS RELATING TO THE EXPLOITATION OF AUTHORS' RIGHTS**

43. Contract to be in writing.
44. Publishing contracts.
45. Public performance contracts.
46. Broadcasting contracts.
47. Void contracts.
48. Remuneration payable to author.

UGANDA LAW REFORM COMMISSION

**PART VI- MANAGEMENT OF COPYRIGHT AND  
NEIGHBOURING RIGHTS.**

Establishment, functions and composition of the copyright department.

49. Establishment of the department.
50. Functions and powers of the department.
51. Registrar.

**PART VII - GENERAL PROVISIONS RELATING TO  
ADMINISTRATION OF COPYRIGHT.**

52. Registration of works.

**PART VIII - MISCELLANEOUS**

53. Collecting Societies.
54. Users of works to apply for licence.
55. Users subject to either conditions of licence or of contract.
56. Monthly returns by user.
57. Infringement actionable by copyright owner.
58. Civil remedies.
59. Offences.
60. Infringement of neighbouring right.
61. Offences by companies or other bodies
62. Defences to infringement.
63. Penalties and compensation.
64. Proof of facts.
65. Inspectors.
66. Entry into premises.
67. Mode of inspection of premises.
68. Inspectors not personally liable.
69. Suspension of release by customs authorities.
70. Jurisdiction reciprocal protection.
71. Department to have rules.
72. Regulations.
73. Minister's power to amend schedules.
74. Repeal, saving and amendment.

**A BILL for an Act  
ENTITLED  
THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT, 2004.**

An act to repeal and replace the Copyright Act, and to provide for the protection of literary, scientific and artistic works and their neighbouring rights; and to establish the Copyright Department and its board; and to provide for other related matters.

**PART I – PRELIMINARY.**

**1. Interpretation.**

In this Act, unless the context otherwise requires-

“audio visual fixation” means work consisting of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible and where accompanied by sound, susceptible of being audible such as cinema, television or video films;

“author” means the person or body who created or creates a work protected under section 4, and includes a person, body or authority commissioning the work or employing the person making the work;

“board” means the board of the Uganda Registration Services Bureau;

“broadcast” means any communication or transmission of sound, video or data intended for simultaneous reception by the public by means of any electronic apparatus; and reference to broadcasting shall be construed accordingly;

“broadcasting company” means a company which-

- (a) communicates or carries on transmission or broadcasts programmes of sound, video or data intended for simultaneous reception by the public; or
- (b) provides or supplies audio-visual fixation rental communication or library services;
- (c) provides services by wire or wireless means in such a way that members of the public access the fixation from a place and at a time individually chosen by them;

## UGANDA LAW REFORM COMMISSION

“choreography” means steps and movements of a dance; and “choreographic work” includes any form of dance or body movement communication whether in a dramatic form or not;

“communication to the public” means the operation by which sounds or images or both sounds and images are transmitted to the public whether through broadcast performance or other means;

“computer programme” means a set of instructions expressed in any language, code or notation, intended to cause the device having an information processing capacity to indicate, perform or achieve a particular function, task or result;

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

“currency point” has the meaning assigned to it in the first schedule to this Act;

“department” means department of copyright as established under section 49 of this Act;

“derivative work” means work resulting from adaptation, translation or other transformation of an original work but which constitutes an independent creation in itself;

“economic rights” means the copyrights specified under section 8;

“fixation” means the embodiment of images or sound or both images and sound in a material form sufficiently stable or permanent, to permit them to be perceived, reproduced or otherwise communicated through a device during a period of more than transitory duration;

“literary work” includes-

- (a) novels, stories or poetic work;
- (b) plays, stage directions, audio-visual scenarios or broadcasting scripts;
- (c) textbooks, histories, biographies, essays or articles;
- (d) encyclopaedia, dictionaries, directories or anthologies;
- (e) letters, reports or memoranda;
- (f) lectures, addresses or sermons;
- (g) computer programs; and
- (h) other works of the same nature.

“Minister” means the Minister responsible for justice;

“moral right” means the right to claim authorship or performance as provided for in sections 9 and 26;

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

“moral rights information” means information which identifies the author of the work, performer, the title 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;

“neighbouring rights” includes the rights of performing artists in their performances, the rights of producers and music publishers and the rights of broadcasting companies in their programmes;

“performance” means the presentation of a work by actions such as dancing, playing, reciting, singing, delivering, declaiming or projecting to listeners or spectators;

“performer” includes an actor or actress, dancer, disclaimer, musician, singer, or other person who performs a literary artistic work and the conductor or director of a performance of any work;

“producer” means a person who organises or finances the production of an audio-visual fixation or sound recording;

“pseudonym” means the fictitious name adopted by an author;

“publication” means the lawful reproduction of a work or of an audio-visual or audio visual sound recording, fixation or of sound recording; and includes public performances;

“public performance” means a performance of work which is presented to listeners or spectators not restricted to specific persons belonging to a private group and which exceeds the limits of normal domestic representations;

“programme-carrying signals” means electronically generated carriers transmitting live or recorded material consisting of images, sounds, or both images and sounds in their original form or any form recognisably derived from the original and emitted to or passing through a satellite situated in extra-territorial space;

“public place” means any building or conveyance to which for the time being the public are entitled or permitted to have access, with or without payment, and may include cinema, concert, dance or video halls, bars, clubs, sports grounds, holiday resorts, circuses, restaurants, counter vehicles, banks or other commercial establishments;

“sound recording” means any exclusively aural fixation of sound in a material carrier such as a tape, disc or other similar material but does not include audio visual work including sound.

## 2. Application of the Act.

This Act applies to any work, including work created or published before the commencement of this Act, which has not yet fallen into the public domain where the work is-

- (a) created by a citizen of Uganda or a person resident in Uganda;
- (b) first published in Uganda, irrespective of the nationality or residence of the author;
- (c) created by a person who is a national of, or resident in, a country listed in the Second schedule to this Act; or
- (d) first published in a member country of organisations listed in the second schedule to this Act.

## PART II - COPYRIGHT PROTECTION AND RIGHTS.

### 3. Author entitled to copyright protection.

- (1) The author of any work specified in section 4 shall have a right of protection of his or her work, where the work is original and is published in whatever method, irrespective of the quality of that work or purpose for which the work is created.
- (2) The protection of the author's work under subsection (1) shall not be subject to any formality.
- (3) For the purpose of this section, a work is original if it is the product of the independent efforts of the author.

### 4. Work eligible for copyright.

- (1) The following literary, scientific and artistic works shall be eligible for copyright-
  - (a) articles, books, pamphlets, lectures, addresses, sermons and other works of a similar nature;
  - (b) dramatic, dramatic-musical and musical works;
  - (c) audio-visual works and sounds recording, including cinematographic works and other work of a similar nature;
  - (d) choreographic works and pantomimes;

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (f) computer programmes and accompanying materials;
  - (g) works published on the internet;
  - (h) works of drawing, painting, photography, mosaic, architecture, sculpture, engraving, lithography and tapestry;
  - (i) works of applied art, whether handicraft or produced on industrial scale, and works of all types of designing;
  - (j) illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science;
  - (k) electronic data banks which, by selection and arrangement of its content, constitute original work;
  - (l) any other work in the field of literature, science or art in whatever manner delivered, known or to be known in the future;
  - (m) typographical arrangements of published work.
- (2) derivative works such as-
- (a) translations, adaptations and other transformations of pre-existing works under subsection (1); and
  - (b) collections of pre-existing works like encyclopaedia anthologies, which by selection and arrangement of their contents constitute original works;  
shall be protected under this Act as original works.
- (3) The protection of a derivative work under subsection (2) shall not affect the protection of the pre-existing work used by a person for derivation purposes.

### 5. Ideas not protected.

Ideas, concepts, procedures, methods of operation or other things of a similar nature, shall not be protected by copyright under this Act.

### 6. Public benefit works not protected.

- (1) The right to protection of copyrights under this Act shall not extend to the following works-
- (a) an enactment, including an Act, Statute, Decree, Statutory Instrument or other law made by the Legislature or Government;

## UGANDA LAW REFORM COMMISSION

- (b) decree, order or other decision by a court of law for the administration of justice and any official translations from them;
  - (c) a report made by a committee or commission of inquiry appointed by Government or any agency of Government;
  - (d) news of the day or miscellaneous facts having the character of mere items of press information.
- (2) The Government shall be the trustee for the public benefit of the works specified in subsection (1).

### 7. **Employed authors and works for Government or international bodies.**

- (1) Where a person creates a work-
- (a) in the course of employment by another person; or
  - (b) on commission by another person; then in the absence of an agreement to the contrary, the copyright in respect of that work shall vest in the employer or the one that has commissioned the work as the case may be.
- (2) Where a person creates a work under the direction or control of the Government or a prescribed international body, unless agreed otherwise, the copyright in respect of that work shall vest in the Government or the international body.
- (3) The moral right in a work made under this section shall always remain with the actual author of the work.

### 8. **Economic rights of author.**

The author of a protected work shall have, in relation to that work, the exclusive right to do or authorise other persons to do the following-

- (a) to publish, produce or reproduce the work;
- (b) to distribute or make available to the public the original or copies of the work through sale or other means of transfer of ownership;
- (c) to perform the work in public;
- (d) to broadcast the work;
- (e) to communicate the work to the public by wire or wireless means or through any known means or means to be known in the future,

## A STUDY REPORT ON COPYRIGHT AND NEIHGBOURING RIGHTS LAW

including the making available to the public of the work in such a way that members of the public may access the work from a place and at a time individually chosen by them;

- (f) where the work is a pre-existing work, to make a derivative work;
- (g) to commercially rent or sell the original or copies of the work; and
- (h) to do, in relation to that work any act known or to be known in the future.

### 9. Moral rights of author.

- (1) The author of any work protected by copyright shall have a moral right-
  - (a) to claim authorship of that work, except where the work is included incidentally or accidentally in reporting current events by means of media or other means;
  - (b) to have his or her name or pseudonym mentioned or acknowledged each time the work is used or whenever any of the acts under section 9 is done in relation to that work, except where its not practicable to do so; and
  - (c) to object to, and seek relief in connection with any distortion, mutilation, alteration or modification of the work.
- (2) The author of a work has a right to withdraw the work from circulation if it no longer reflects his or her convictions or intellectual concepts; and if he or she does so he or she must indemnify any authorised user of that work who might, in any material way, be affected by the withdrawal.
- (3) The moral right under subsection (1) is not assignable to any person except upon and by reason only of the death of the author and henceforth such rights shall be exercisable by his or her legal representative.

### 10. Co-author's right.

Where work is created by more than one person and no particular part of the work is identified to have been made by each person, that is to say, if the

work created by more than one person is indistinguishable, all of the economic rights and the moral rights relating to that work shall jointly belong to the creators of the work and the co-owners shall have equal rights in that work.

**11. Fine art works to have inalienable right in proceeds of sale.**

The author of fine art work shall have an inalienable right to share in the proceeds of each sale of that work by public auction, through a dealer or by whatever means or method used in the sale and his or her right shall not be less than five percent of the resale price.

**12. Copyright to pass under will with unpublished work.**

Where under a bequest, whether specific or general, a person is entitled to: -

- (a) an original document or other material thing containing a recording; or embodying a literary, dramatic, musical or artistic work which was not published before the death of the testator; or
- (b) an original material thing containing a sound recording or film which was not published before the death of the testator; then unless a contrary intention is indicated in the testator's will or codicil to it, the bequest includes the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

**PART III - DURATION OF COPYRIGHT AND AUTHORISED USES OF PROTECTED WORKS.**

**13. Duration of copyright protection.**

- (1) 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.
- (2) 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.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (3) 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.
- (4) 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.
- (5) 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.
- (6) In the case of a computer program the economic right of the author are protected for fifty years from the date of making the recording.
- (7) In the case of photographic work, the economic rights of the author are protected for fifty years from the date of making the work.
- (8) The moral rights of an author exist in perpetuity whether the economic rights are still protected or not and the moral right is enforceable by the author or his or her successors in title.

### 14. Assignment, licence or transfer of a copyright.

- (1) The owner of a copyright may-
  - (a) assign his or her economic rights to another person;
  - (b) license another person to use the economic rights in a copyright;
  - (c) transfer to another person the economic rights in the copyright in whole or in part; as if the copyright were a movable property.
- (2) The assignment, licence or transfer of the economic rights in whole or in part under subsection (1) shall not include or imply the assignment, licence or transfer of the moral right.
- (3) An assignment or transfer of the economic right under subsection (1) shall be in writing and signed by the owner of the right or by a

## UGANDA LAW REFORM COMMISSION

person authorised by him or her for that purpose and by the person to whom the rights are being assigned or transferred.

- (4) A licence to do an act falling within a copyright may be oral, written or inferred from conduct or circumstances.
- (5) An assignment or transfer of the economic right shall be limited to she use, period and country provided in the contract under subsection (3).
- (6) Where the ownership of the only copy of one of several copies of a work is assigned, the economic rights relating to the work shall, unless the contrary is stated in writing, not be assigned.

### 15. Exclusive licences.

- (1) In this part an “exclusive licence” means a licence in writing signed by or on behalf of the copyright owner authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the copyright owner.
- (2) The licensee under an exclusive license has the same rights against a successor in title who is bound by the licence, as he has against the person granting the licence.

### 16. Permitted free uses of a work.

The following free uses of a work under this part, either in its original language or in its translation shall be permissible without the author’s consent and without the obligation to pay remuneration for the use of such work--

- (a) in the case of any work that has been lawfully published;
  - (i) the reproduction, translation, adaptation, arrangement or other transformation of such work exclusively for the user’s own personal or private use;
  - (ii) the inclusion, subject to mention of the source and the name of the author, of quotations from such work in another work, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- from newspaper articles and periodicals in the form of press summaries;
- (iii) use of the work by way of illustration in publications, broadcasts, programmes distributed by cable, or audio-visual works or sound recordings for teaching to the extent justified by the purpose, or communication for teaching purposes of the work broadcast or distributed by cable for use in schools, universities and professional training, provided that such use is compatible with fair practice and that the source and the name of the author are mentioned in the publication, the broadcast, the programme distributed by cable or the recording;
  - (iv) the distribution by cable of any work is broadcast or played back from a lawful recording thereof, where the beneficiaries of the distribution by cable live in one and the same building, or group of buildings none of which is separate from another building by public street or road, if the cable distribution originates in such building or group of buildings and the distribution by cable is done without direct or indirect gainful intent;
  - (v) in the case of any article published in newspapers or periodicals on current economic, political, social or religious topics, and in the case of any work of the same character broadcast or distributed by cable, the reproduction of such article or such work in the press, or the communication of it to the public, unless the article when first published, or the work, when broadcast or distributed by cable was accompanied by any express condition prohibiting such use, and provided that the source of the article or work when used in such manner is clearly indicated;
  - (vi) for the purpose of reporting on a current event by means of photography, cinematography or communication to the public, the reproduction or making available to the public, to the extent justified by the informative purpose, of any work that can be seen or heard in the course of the said current event;
- (b) the reproduction of works of art or of architecture in an audio-visual work or video recording, if such works are permanently located in a place where they can be viewed by the public or are included in the

## UGANDA LAW REFORM COMMISSION

- audio-visual work or video-recording or by way of background or as incidental to the essential matters represented;
- (c) the reproduction, the photography, audio-visual work or sound recording or electronic storage by public libraries, non-commercial documentation centres, scientific institutions and educational establishments, or literary, dramatic, musical and artistic works which have already been lawfully made available to the public; provided that such reproduction, the number of copies made and the use thereof is limited to the needs of the regular activities of the body reproducing the work, and neither conflicts with the normal uses of the work nor unreasonably prejudices the legitimate interests of the author;
  - (d) the reproduction in the press or the communication to the public of,
    - (i) any political speech delivered in public or any speech delivered during legal proceedings; or
    - (ii) any lectures, addresses, sermons or other work of the same nature delivered in public, provided that the use is exclusively for the purpose of current information and the author retains the right to publish a collection of such works;
    - (i) the recording by any broadcasting organisation for the purpose of its own broadcast and by means of any facilities, in one or several copies, of any work which it is authorised to broadcast, on condition that all copies of such recording shall be destroyed within six months of the making thereof or within any longer period agreed to by the author; provided that, where such recording has an exceptional documentary character, one copy of it may be preserved in the official archives, without prejudice to the application of the provisions of section 8.

### 17. Ephemeral recording.

- (1) A broadcasting company may, for the purpose of its own broadcast and by means of its own facilities, make an ephemeral recording of the broadcast, in one or several copies, of any work which it is authorised to broadcast.
- (2) No copyright shall exist in a broadcast that infringes, or to the extent that it infringes, the copyright in another broadcast.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (3) Subject to subsection (4) all copies of the ephemeral recording shall be destroyed within a period of six months or such longer period as may be authorised by the copyright owner.
- (4) Where a recording under subsection (1) is of exceptional documentary character, a copy of the recording may be preserved for the National Archives.
- (5) The preservation of a copy under subsection (4) does not affect in any way the rights of the author in the work that was broadcast.
- (6) Whether the recording of a broadcast under subsection (1) is of an exceptional documentary character is a question of fact to be determined having regard to all the circumstances, in particular to the need for the enhancement of the historical or cultural aspect of life in Uganda.

### 18. Compulsory translation licence.

- (1) Where a work is expressed exclusively in words the right to make and publish a translation thereof shall be subject to compulsory licensing under the conditions specified in this section.
- (2) A person who is a citizen of Uganda or who is ordinarily resident in Uganda may, subject to the provisions of this section, apply to the Minister for a licence to make or for the purpose of making a translation of a work which is expressed exclusively in words into English, Swahili or any Ugandan language, and to publish or authorise the publication of the translation in copies.
- (3) No application for a licence under this section may be filed until the expiration, as the case may be, of a period of-
  - (a) three years commencing from the date of the first publication of the work in copies if the licence is for translation into the English language;
  - (b) one year commencing from the date of the first publication of the work in copies if the licence is for translation into Swahili or any Ugandan language;
- (4) The Minister shall not grant a licence under this section unless he or she is satisfied that-
  - (a) no translation of that work into the language in question has ever been published in copies by, or under the authority of the owner of the right of translation or that all previous editions in that language are out of print;

## UGANDA LAW REFORM COMMISSION

- (b) following the expiration of the period specified under subsection (3), the applicant has either, requested the owner of the right of translation for his or her consent to translate the work, but has unreasonably been refused, or in spite of genuine efforts made by the applicant, he or she is unable to locate the owner;
- (c) in the case of work created by a person who is not a member of any of the collecting societies, the applicant has at the time of making the request, sent a notice of his or her request to the International Copyright Information Centre at the United Nations Educational, Scientific and Cultural Organisation (UNESCO) or to a national or regional copyright information centre officially designated to that organisation by the Government of the country where the publisher is believed to have the principal place of business;
- (d) where the person who created the work is not a member of any of the collecting societies, where the applicant cannot locate the owner of the right of translation, where the applicant has sent copies of the application by registered mail to the publisher whose name appears on the work and to the national or regional copyright information centre specified in paragraph (c), or in the absence of a national or regional centre, has sent a copy to the Information Centre of UNESCO.
- (5) For purposes of paragraph (c) of subsection (4) the Registrar General shall keep up to date records of such centres for easy reference or contact by interested persons.
- (6) No licence shall be granted under this section until the expiration of a further period of –
  - (a) six months in the case of an application filed under paragraphs (b) and (c) of subsection (3);
  - (b) nine months in the case of an application filed under paragraph (d) of subsection (3).
- (7) If during either of the periods specified in subsection (6) a translation of the work into the language in question is published in copies by or under the authority of the owner of the right of translation, then no licence shall be granted for translation of the work.
- (8) Where the author of the work has withdrawn all copies of the work from circulation, no licence under this section shall be granted in respect of that work.

## 19. Scope and condition of translation licence.

- (1) A licence issued under section 18 shall -
  - (a) be limited to a non-exclusive right to translate the work into the language in respect of which it is granted;
  - (b) be for the purpose of teaching, scholarship or research only;
  - (c) not be transferable by the licensee;
  - (d) not extend to the export of copies of the work translated under the licence.
- (2) The licensee shall provide fair compensation consistent with the standards of royalties normally payable in the case of a licence freely negotiated between persons in Uganda and the owners of the right of translation in another country, which shall be paid to the owner of the right of translation if known or found.
- (3) Where a licence is granted under section 18, the licensee shall ensure that the translation of the work is correct and that the published copies include-
  - (a) the original title and the name of the author of the work;
  - (b) a notice in the language of the translation stating that the copies of the work are for distribution in Uganda only, that is to say, that the translated copies are not for export from Uganda; and
  - (c) a reprint of the copyright notice, that is, the symbol © accompanied by the name of the owner of the copyright and the year of first publication, where the work from which the translation is made is printed with a copyright notice.
- (4) A licence granted under section 18 shall terminate if a translation of the work in the same language and with substantially the same content as the edition for which the licence was granted is published in Uganda by or under the authority of the owner of the right of translation, at a reasonable price; and any copies produced before the termination of the licence may be distributed until the stock is exhausted.

**20. Translation for broad casting.**

- (1) Subject to sections 18 and 19, a broadcasting company may be granted a licence to translate published printed work or text of an audio visual fixation where-
  - (a) the translation is to be made from a copy lawfully acquired;
  - (b) the translation is for broadcast intended for teaching or for dissemination of the results of specialised technical or scientific research to experts in a particular profession by broadcast;
  - (c) the broadcast under paragraphs (a) or (b) is lawfully made and is intended for reception in Uganda only.
- (2) A translation under this section may be exchanged only between the departments or divisions of that licensed company.
- (3) No translation made under this section shall be used for any commercial purpose.

**21. Compulsory reproduction licence.**

- (1) A person who is not the owner of a reproduction right shall not make a reproduction of any work or publish in any form a reproduction of any work, or cause to be made a reproduction of any work without the authority of the author or a licence issued by the owner of the copyright under this section. The right to make and publish a reproduction of any work thereof shall be subject to compulsory licensing under the conditions specified in this section.
- (2) A person who is a citizen of Uganda or who is ordinarily resident in Uganda may apply to the Minister for a licence to reproduce or cause to be reproduced a work which is published in any form of reproduction and to publish or cause to be published the work reproduced.
- (3) The Minister shall not grant a licence under subsection (2)-
  - (a) until the following period commencing from the date of first publication of the work, has expired -
    - (i) three years in the case of a work of technology or natural or physical science including mathematics;
    - (ii) five years in the case of music or any other work;

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (iii) seven years in the case of work of fiction, poetry, drama or a book of art;
- (b) unless the Minister is satisfied that-
  - (i) there has never been a sale or other distribution, authorised by the owner of the reproduction right, of copies of the particular edition in Uganda to the public or in connection with systematic instructional activities, or that there has been no sale or other distribution during the immediately preceding six months;
  - (ii) the applicant has requested from the owner of the right of reproduction for the authorisation to reproduce and has been unreasonably refused or in spite of genuine efforts made by the applicant it has not been possible to locate the owner;
  - (iii) the applicant has at the time of making the application, sent a notice of the application to the International Copyright Information Centre at the UNESCO, or a national or regional copyright information centre officially designated to that organisation by the government of the country where the publisher is believed to have his or her principal place of business;
  - (iv) where the applicant cannot locate the owner of the right of reproduction, the applicant has, by registered mail, sent copies of the application to the publisher whose name appears on the work and also to the national or regional copyright information centre or in the absence of such a centre, has sent a copy of the application to the International Copyright Information Centre of UNESCO.
- (4) The Minister shall not grant a licence under this section before the expiration of six months from the date of receipt of the application.
- (5) A licence issued under this section shall terminate-
  - (a) where copies of an edition of the work reproduced are distributed to the general public in Uganda; or
  - (b) where copies of the edition of the work are distributed in Uganda in connection with systematic instructional activities, by or under the authority of the owner of the right of production at a reasonable price if that edition is in the same language and substantially the same in content as the edition published under the licence, and any copies

already made before the licence is terminated may continue to be distributed until the stock is exhausted.

## **22. Reproduction licence for audio-visual fixations.**

A person who is not the owner of a reproduction right may apply to the owner of a copyright for a licence to-

- (a) reproduce an audio-visual from a lawfully made audio-visual fixation including protected work in it; or
- (b) translate any text incorporated in that fixation into either English or a Ugandan language.

## **23. Records of copyright centre.**

The owner of a copyright shall deposit copies of the copyright work with the department, which shall keep up-to-date records of the copyright information centres for ease of reference or contact by the interested persons under sections 18, 19 and 21.

## **PART IV -NEIGHBOURING RIGHTS.**

### **24. Neighbouring rights and persons entitled to them.**

- (1) Neighbouring rights are rights attached to the auxiliary role played by performers, producers of sound recording and audio-visual and broadcasting companies through-
  - (a) the fulfilment of literary or artistic works;
  - (b) the provision of destiny and permanence in works; and
  - (c) the diminishing of distance in the publication of works;respectively, which auxiliary role is dependent on the work of the author and without which the role cannot begin.
- (2) For the avoidance of doubt, the neighbouring rights attached to the auxiliary role of a performer or a producer or broadcasting company do not in any way affect the copyright in a literary, scientific or artistic work from which it arose.

## 25. Rights of a performer.

- (1) A performer shall have the right to authorise-
  - (a) the fixation of his or her live performance not previously fixed on a physical medium;
  - (b) the broadcasting or communication to the public of his or her unfixed performance except where-
    - (i) it is made from a previously authorised fixation;
    - (ii) the transmission has been authorised by a broadcasting company that transmitted the first performance;
  - (c) the reproduction of fixation of his or her performance in the following cases-
    - (i) where the performance is initially fixed without his or her authorisation,
    - (ii) where the reproduction is for purposes other than those initially intended or specified;
  - (d) 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.
- (2) A performer has the right to enter into contract on terms and conditions that he or she may wish for the use of his or her performance or fixation by another person.
- (3) A performer shall have the right to authorise 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.
- (4) A performer shall have the right to authorise the making available to the public of the fixation of his or her performance by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them.

## 26. Moral rights of a performer.

- (1) For the avoidance of any doubt, a performer shall have a moral right-
  - (a) to be identified as the performer;

## UGANDA LAW REFORM COMMISSION

- (b) to have his or her name mentioned each time the performance or the broadcast or communication of the fixation, is used or whenever any of the acts referred to in section 22 is done in relation to a performance, except where it is not practicable to do so;
- (c) to object to and seek relief in connection with any distortion, mutilation, alteration or modification of his or her performance.
- (2) The moral right under subsection (1) is not assignable to any person except upon and by reason only of the death of the author and henceforth such rights shall be exercisable by his or her legal representative.

### **27. Actions not authorised without a specific provision in a contract.**

Unless it is specifically provided in a contract, the authorisation to broadcast or communicate a performance by one party to the contract does not imply-

- (a) a licence to other broadcasting or other companies to transmit that performance;
- (b) authorisation to make a fixation of the performance;
- (c) authorisation to reproduce the fixation where the authorisation granted is to broadcast and communicate a fixation of the performance;
- (d) authorisation to broadcast or communicate the performance from the fixation where the authorisation granted is to make a fixation.

### **28. Authorisation in a co-performance.**

Where two or more persons take part in the same performance as a group, authorisation for the use, broadcast or communication of the performance shall be given by the leader of the group or the legal representative of the group if any.

### **29. Duration of protection of a performer.**

The right of a performer under this Act shall be protected for fifty years from the date of the performance.

### 30. Right to be identified as author or director.

- (1) The author of a copyright in literary, musical or artistic work, and the director of a copyright film, has the right to be identified as the author or director of the work in the circumstances mentioned in this section; but the right is not infringed unless it has been asserted in accordance with section 31.
- (2) The author of a literary work (other than words intended to be sung or spoken with music) or a dramatic work has the right to be identified whenever-
  - (a) the work is published commercially, performed in public, broadcast or included in a cable programme service; or
  - (b) copies of a film or sound recording including the work are issued or made available to the public, and that right includes the right to be identified whenever any of those events occur in relation to an adaptation of the work as the author of the work from which the adaptation was made.
- (3) The author of a musical work, or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified whenever-
  - (a) the work is published commercially, performed in public, broadcast or included in a cable programme service;
  - (b) copies of a sound recording of the work are issued or made available to the public; or
  - (c) a film of which the sound-track includes the work is shown in public or copies of such film are issued or made available to the public; and that right includes the right to be identified whenever any of those events occurs in relation to an adaptation of the work as the author of the work from which the adaptation was made.
- (4) The author of an artistic work has the right to be identified whenever-
  - (a) the work is published commercially or exhibited in public, or a visual image of it is broadcast or included in a cable programme service;
  - (b) a film including a visual image of the work is shown in public or copies of such film are issued or made available to the public; or
  - (c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship,

## UGANDA LAW REFORM COMMISSION

copies of a graphic work representing it, or of a photograph of it, are issued or made available to the public.

- (5) The director of a film has the right to be identified whenever the film is shown in public, broadcast or included in a cable programme service or copies of the film are issued or made available to the public.
- (6) The right of the author or director under this section is-
  - (a) in the case of commercial publication or the issue or making available to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy;
  - (b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building; and
  - (c) in any other case, to be identified in a manner likely to bring his identity to the notice of a person seeing or hearing the performance, exhibition, showing, broadcast or cable programme in question, and the identification must in each case be clear and reasonably prominent.
- (7) If the author or director in asserting his right to be identified specifies a pseudonym, initials or some other particular form of identification, that form must be used; or otherwise any reasonable form of identification may be used.
- (8) This section has effect subject to section 31.

### **31. Requirement that right be asserted.**

- (1) A person does not infringe the right conferred by section 30 by doing any acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.
- (2) The right may be asserted generally, or in relation to any specified act or description of acts-
  - (a) on an assignment of copyright in the work, by including in the instrument effecting the assignment a statement that the author or director asserts in relation to that work his right to be identified; or
  - (b) by instrument in writing signed by the author or director.
- (3) The right may also be asserted in relation to the public exhibition of an artistic work-

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached; or
- (b) by including in a licence by which the author or other first owner of copyright authorises the making of copies of the work a written statement signed by or on behalf of the person granting the licence that the author asserts his right to be identified in the event of the public exhibition of a copy made in pursuance of the licence.
- (4) The persons bound by an assertion of the right under subsection (2) or (3) are-
  - (a) in the case of an assertion under subsection (2) (a), the assignee and anyone claiming through him, whether or not he has notice of the assertion;
  - (b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought;
  - (c) in the case of an assertion under subsection (3) (b), the licensee and anyone into whose hands a copy made in pursuance of the licence comes, whether or not he has notice of the assertion.
- (5) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

### 32. Exceptions to right.

- (1) The right conferred by section 30 is subject to the following exceptions.
- (2) The right does not apply in relation to a work the design or presentation of which makes it impossible to identify the author.
- (3) The right does not apply to anything done with the authority of the copyright owner where copyright in the work originally vested in the author's employer by virtue of section 8.
- (4) The right does not apply in relation to any work made for the purpose of reporting current events.
- (5) The right does not apply in relation to the publication in-
  - (a) a newspaper, magazine or similar periodical; or
  - (b) a dictionary, yearbook or a literary, dramatic, musical, or artistic work made for the purposes of such publication.

- (6) The right does not apply in relation to-
  - (a) a work in which Government copyright subsists; or
  - (b) a work in which copyright originally vested in an international organisation unless the author or director has previously been identified as such in other published copies of the work.

### **33. Rights of a producer.**

- (1) A producer of a sound recording or audio-visual fixation shall have a right:-
  - (a) to authorise the reproduction of that sound recording or audio-visual fixation;
  - (b) 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;
  - (c) 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; and
  - (d) 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.
- (2) No person shall reproduce, distribute or make available to the public a sound recording or audio-visual fixation without the authorisation of the producer.
- (3) 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.
- (4) 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 require the authorisation of the producer and shall pay an equitable remuneration to the producer and the performer.
- (5) The rights of the producer under this section shall be protected for fifty years from the date of the cutting of the matrix.

**34. Producer or publisher to indicate moral right information.**

- (1) The producer or publisher shall indicate on the book cable of the disc or tape or the container-
  - (a) the name of the author and those of the main performer or performers if any;
  - (b) the title of the work;
  - (c) the year of the cutting of the original matrix or of first publication of the book;
  - (d) the name (whether individual or body corporate) or distinguishing mark of the producer or publisher; and
  - (e) that the rights of the producer or publisher under this Act are reserved.
- (2) For the purposes of paragraph (a) of subsection (1) a choir, orchestra, theatre company or author shall be referred to by the proper name and by the name of the leader if any.
- (3) The producer may indicate on the cable of the disc or tape or the container any information about the terms and conditions of use of the fixation.

**35. Notice of protection of producer's rights.**

- (1) Where copies of a sound recording or audio- visual fixation are made for commercial purposes, there shall be printed on the copies a notice consisting of-
  - (a) the symbol p; and
  - (b) the year of first publication of the sound recording or audio visual fixation placed in a manner that gives reasonable notice of claim of protection of the rights of the producer.
- (2) Where the copies of sound recording, audio-visual fixation or their containers do not identify-
  - (a) the producer;
  - (b) the producer's licence in relation to that sound recording or fixation; or
  - (c) the description or trade mark of the producer;the notice shall include the name of the person who owns the rights of the producer.

## UGANDA LAW REFORM COMMISSION

- (3) Where the copies of a sound recording, audio-visual fixation or their containers do not identify the principal performers the notice shall include the name of the person who owns the rights of the performers.
- (4) The coming into force of this Act shall not affect the right of any person to use, in accordance with the provisions of this Act, any fixation or reproduction made in good faith before the coming into force of this Act.

### **36. Remuneration for broadcasting.**

- (1) If a sound recording or audio-visual fixation published for commercial advertisement purposes, or a reproduction of that sound advertisement recording or audio-visual fixation is used directly or indirectly for broadcasting or other communication to the public, or is publicly performed, unless otherwise agreed, a single equitable remuneration for the performer or performers and the producer of the sound recording or audio-visual fixation shall be paid by the user to the producer.
- (2) Unless otherwise agreed between the performers and the producer, one-half of the amount received by the producer under subsection (1) shall be paid to the performer or performers.
- (3) Sound recording or audio visual-fixation published for commercial advertisement and made available to the public by wire or wireless means in such a way that members of the public may access it from a place and at a time individually chosen by them shall, for the purposes of this section, be subject to subsection (1).

### **37. Rights of a broadcasting company.**

- (1) A broadcasting company shall have the right to authorise or prohibit-
  - (a) the broadcasting of its broadcast;
  - (b) the fixation of its broadcasts; or
  - (c) the reproduction of a fixation of its broadcasts except where-
    - (i) the fixation used to make the broadcast is made without authorisation; or

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (ii) the broadcast is initially fixed in accordance with the provisions of this Act but the reproduction is made for purposes other than those specified.
- (2) The rights of a broadcasting company under this section shall be protected for fifty years from the date the first broadcast takes place.

### **38. Producers of programme carrying signals.**

A producer of a programme carrying signals transmitted through the point-to-point communication intellects shall have the right to authorise further transmission of the signal in Uganda or from its territory, which right shall exist for fifty years from the date of publication of the programme.

### **39. Right to object to derogatory treatment of work.**

- (1) The author of a copyright literary, dramatic, musical or artistic work, or the director of a copyright film has the right in the circumstances mentioned in this section not to have his work subjected to derogatory treatment.
- (2) For purposes of this section-
  - (a) “treatment” of a work means any addition to, deletion from or alteration to or adaptation of the work, other than-
    - (i) a translation of a literary or dramatic work; or
    - (ii) an arrangement or transcription of a musical work involving no more than a change of key or register; and
  - (b) the treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director, and in the following provisions references to a derogatory treatment of a work are construed accordingly.
- (3) In the case of a literary, dramatic or musical work, the right is infringed by a person who-
  - (a) publishes commercially, performs in public, broadcasts or includes in a cable programme service a derogatory treatment of the work; or
  - (b) issues or makes available to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.

## UGANDA LAW REFORM COMMISSION

- (4) In the case of artistic work, the right is infringed by a person who-
  - (a) publishes commercially or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme service a visual image of a derogatory treatment of the work;
  - (b) shows in public a film including a visual image of a derogatory treatment of the work or issues or makes available to the public copies of such a film; or
  - (c) in the case of-
    - (i) a work of architecture in the form of a model for a building;
    - (ii) a work of visual art; or
    - (iii) a work of artistic craftsmanship,  
issues, publicly displays or makes available to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.
- (5) Subsection (4) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment he or she has the right to require the identification to be removed.
- (6) In the case of a film, the right is infringed by a person who-
  - (a) shows in public, broadcasts or includes in a cable programme service a derogatory treatment of the film; or
  - (b) issues or makes available to the public copies of a derogatory treatment of a film.
- (7) The right conferred by this section extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director if those parts are attributed to, or are likely to have to be regarded as the work of, the author or director.
- (8) This section is subject to sections 40 and 41.

### **40. Exceptions to right.**

- (1) The right conferred in section 39 is subject to the following exceptions
- (2) The right does not apply to a computer programme or to any computer generated work.
- (3) The right does not apply in relation to any work made for the purpose of reporting current events.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (4) The right does not apply in relation to the publication in a newspaper, magazine or similar periodical.

### **41. Qualification of rights.**

- (1) This section applies to-
  - (a) works in which copyright originally vested in the author's employer by virtue of section 7;
  - (b) works in which Government copyright subsists; and
  - (c) works in which copyright originally vested in an international organisation.
- (2) The right conferred by section 39 does not apply to anything done in relation to a work referred to in subsection (1) by or with the authority of the copyright owner unless the author or director-
  - (a) is identified at the time of the relevant act; or
  - (b) has previously been identified in or on published copies of the work, and where in such a case the right does apply, it is not infringed if there is a sufficient disclaimer.

### **42. Limitation on neighbouring rights.**

The provisions of sections 24,27,28,33,36 and of 37 shall not apply where the acts done are for-

- (a) private use;
- (b) the reporting of a current event, except that no more than short excerpts of a performance, sound recording or audio-visual performance fixation or broadcast are used;
- (c) educational purposes, or
- (d) quotations in the form of short excerpts of a performance, sound recording, audio-visual fixation or fixation or broadcast, which are compatible with fair use and are justified by the informative purpose of the quotations.

**PART V - CONTRACTS RELATING TO THE EXPLOITATION  
OF AUTHOR'S RIGHTS.**

**43. Contracts to be in writing.**

Any contract relating to the exploitation of the author's rights shall be in writing and signed or marked by the parties to the contract.

**44. Publishing contracts.**

- (1) Subject to section 39, in a publishing contract, the author or his or her successor in title shall transfer to the publisher, against payment of a remuneration, the right to publish his or her work in a material form and distribute that work to the public.
- (2) A publishing contract made under this section shall specify-
  - (a) the period, the territory and the language for which the right is transferred;
  - (b) the exclusive or non-exclusive nature of the right transferred;
  - (c) the period within which the work of the contract is to be published, which period shall not exceed eighteen months from the date of the making of the contract or the date on which the author submits the work ready for publication, whichever is the later;
  - (d) the amount of the author's remuneration and mode of payment.

**45. Public Performance contracts.**

- (1) Subject to section 39, the author or his or her successor in title shall, in a public performance contract, and against payment of remuneration, transfer to a person or body, the right to perform in public his or her literary, dramatic, dramatic-musical or musical work against payment.
- (2) A performance contract made under this section shall specify-
  - (a) the exclusive or non-exclusive nature of the rights transferred;
  - (b) the period for which the right is transferred or the number of performances to be effected;
  - (c) the period within which the performance or performances are to be effected, which shall not exceed two years from the date of the making of the contract or the date of the first performance, whichever is the later;

- (d) the territory for which the right is transferred;
- (e) the type of performance; and
- (f) the amount of the author's remuneration and mode of payment.

#### **46. Broadcasting contracts.**

- (1) Subject to section 39, the author or his or her successor in title shall, in a broadcasting contract, and against payment of remuneration, transfer to a company involved in radio or television broadcasting or the supplier of audio-visual communication services or other form of broadcast, the right to broadcast his or her literary, dramatic, dramatic-musical or musical work.
- (2) A broadcasting contract made under this section shall specify-
  - (a) the exclusive or non-exclusive nature of the right transferred;
  - (b) the period for which the right is transferred or the number of times the work shall be broadcast;
  - (c) the language in which the work is to be broadcast;
  - (d) the territory on which the work is to be broadcast; and
  - (e) the amount of the author's remuneration and mode of payment.

#### **47. Void contracts.**

A contract made under this Part of the Act which does not include any item specified in respect of the respective contract or any contract which contravenes a relevant provision of this Part of the Act is void.

#### **48. Remuneration payable to author.**

The remuneration to be paid to an author under this Part of the Act shall be that agreed upon by the parties but in any case the author shall be paid-

- (a) not less than twenty percent of the proceeds from the exploitation of the author's work, where practicable; or
- (b) a reasonable lump sum to off set the expenses incurred by the author both in terms of money, time and brain fatigue in the creation of the work, plus a reasonable profit; but the lump sum shall not be less than twenty percent of the estimated proceeds from the work.

**PART VI - MANAGEMENT OF COPYRIGHT AND  
NEIGHBOURING RIGHTS.**

**Establishment, functions and composition of the department of  
copyright.**

**49. Establishment of department.**

- (1) There is established a department under the Uganda Registration Services Bureau to be known as the copyright department.

**50. Function and powers of the department.**

The functions of the department shall be-

- (a) in cooperation with collecting societies and other relevant bodies and organisations to promote and encourage creativity in the artistic, literary and scientific fields in Uganda;
- (b) to promote and carry out public awareness on copyright and neighbouring rights;
- (c) to advise Government, in collaboration with collecting societies on matters relating to copyright and neighbouring rights in Uganda and elsewhere;
- (d) to issue licences under sections 18 and 21 and ensure that the conditions attached to those licences are complied with;
- (e) to register any works to be registered under this Act;
- (f) in cooperation with other relevant bodies and organisations, to promote activities for dissemination of cultural work in and outside Uganda;
- (g) to perform any other function related or incidental to the foregoing functions.

**51. Registrar.**

The department shall have a registrar responsible for copyright, copyright inspectors and such other staff as may be appointed by the board on such terms and conditions as the board may determine.

**PART VI1 - GENERAL PROVISIONS RELATING TO  
ADMINISTRATION OF COPYRIGHT.**

**52. Registration of works.**

- (1) The department shall keep registers of works, productions and associations of authors for the purpose of-
  - (a) identification of works and authors;
  - (b) maintenance of record of works;
  - (c) publication of record of owner of copyright and neighbouring rights; and
  - (d) keeping evidence of ownership of work and their copyrights and neighbouring rights
- (2) A piece of work shall be reduced into a material form before the owner or publisher can register it.
- (3) The publisher or owner of a work may register that work with the department within three months after its publication and a copy of the best edition of the work shall be deposited with the department.
- (4) The department shall, on registration of a piece of work, issue a registration certificate as proof of registration of a piece of work and one certificate may include more than one piece of work.
- (5) A certificate of registration of a piece of work shall be received in evidence as proof of ownership of that piece of work without further proof unless the contrary is proved.
- (6) The procedure for application and form of registration of a piece of work shall be as prescribed by regulations made by the department for the purpose.

**PART VIII- MISCELLANEOUS.**

**53. Collecting societies.**

There may be established collecting societies which have as their main object or objects the administration of economic rights and the negotiation or granting, either as the owner or prospective owner of copyright or as agent of him or her, of copyright licences, and whose objects include the negotiating and

## UGANDA LAW REFORM COMMISSION

granting of licences and administration of the economic rights of more than one author. The functions of the collecting societies shall include:-

- (a) where delegated to do so, to charge and collect royalties from the users of work on behalf of rights owners and pay the royalties to the appropriate beneficiaries;
- (b) to make reciprocal agreements with foreign societies or other bodies of authors or neighbouring rights owners for the issue of authorisations in respect of their members' works and for collection and distribution of copyright fees deriving from those works;
- (c) to help in the preparation of standard forms of contract for the benefit and use of the authors and neighbouring rights owners and to act as an intermediary for the conclusion of contracts between authors or performers and users of their works;
- (d) to foster harmony and understanding between authors or performers with the users of their works as is necessary for the protection of their economic rights;
- (e) to provide authors, performers or other persons in need of information with such information on all matters relating to copyright and neighbouring rights and to give advice and keep rights owners informed about their rights and interests;
- (e) to receive and record information from authors and neighbouring rights owners in respect of their identification and work;
- (f) to perform any other function related to or incidental to the foregoing functions.

### **54. Users of works to apply for licence.**

- (1) A person who wishes to use or perform another person's work or who causes work to be performed in public for gain shall apply to the owner of the copyright for a licence to do so.
- (2) The owner of the copyright or his agent may grant a licence and shall, in respect of any grant, charge such royalties as it may determine to be appropriate.
- (3) A licence granted under this section shall expire on the first annual anniversary following the date on which it was issued but may be renewed each time it expires.

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (4) A person who, after the expiration of a licence, continues to use, perform or cause to perform in public for gain any work without renewing the licence commits an offence and shall be liable, in addition to any other punishment under this Act, to pay not less than fifty percent of the royalties charged in respect of that work in addition to the royalties due for that particular use.
- (5) The form of application and licence under this section shall be prescribed by rules made by the department.
- (6) This section shall not affect the right of the copyright owner to licence his or her work directly or through his or her representative.

### **55. Users subject to either conditions of license or of contract.**

Section 60 shall not affect the rights of the owner of the work under section 8 but where a person is licensed under section 53, the owner shall not impose extra conditions; similarly where the owner exercises his or her rights under section 8, the department shall not impose conditions other than those agreed upon between the owner and the user of the work if the agreement is in conformity with this Act.

### **56. Monthly returns by users.**

- (1) The department may require a person licensed under section 54 to submit to it monthly returns of the works used or performed.
- (2) A person who fails to submit returns under subsection (1) when required to do so commits an offence and is liable on conviction, to a fine not exceeding one currency point.

### **57. Infringement actionable by copyright owner.**

- (1) An infringement of copyright is actionable by the copyright owner.
- (2) Infringement of copyright occurs where, without valid transfer, licence or authorisation under this Act, a person does, or permits another person to-
- (a) reproduce, fix, duplicate, extract, imitate, or import into Uganda otherwise than for his private use or permit or cause to be reproduced,

## UGANDA LAW REFORM COMMISSION

fixed, duplicated, extracted, imitated or imported into Uganda otherwise than for his private use; or

- (b) distribute or permit or cause to be distributed in Uganda by way of sale, hire, rental or like manner; or
- (c) exhibit or permit or cause to be communicated to the public, for commercial purposes by way of broadcast, public performance or otherwise, deal with any work or performance protected under this Act.
- (3) An act of infringement is not actionable unless the infringement involved either the whole or a substantial part of the work;
- (4) For the purposes of subsection (2) of this section, the use of a work in a manner prejudicial to the honour or reputation of the author of the work shall be deemed an infringement of the right of the author.

### 58. Civil remedies.

- (1) A person whose rights under this Act are in imminent danger of being infringed or are being infringed may institute civil proceedings in the court for an injunction to prevent the infringement or to prohibit the continuation of the infringement.
- (2) Upon an ex-parte application by a right owner, the court may in chambers make an order for the inspection of or removal from the infringing person's premises or control, of the right infringing materials, which constitute evidence of infringement by that person.
- (3) The grant of an injunction under subsection (1) shall not affect the author's claim for damages in respect of loss sustained by him or her as a result of the infringement of the rights under this Act.
- (4) A person who sustains any damage because of the infringement of his or her rights under this Act may claim damages against the person responsible for the infringement whether or not that person has been successfully prosecuted.

### 59. Offences.

- (1) A person who, without the authorisation of the rights owner of a work or without a licence from the department-

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

- (a) publishes, distributes or reproduces the work;
  - (b) performs the work in public;
  - (c) broadcasts the work;
  - (d) communicates the work to the public; or
  - (e) imports any work and uses it in a manner which, were the work made in Uganda, would constitute an infringement of copyright; commits an offence and is liable on conviction, to a fine not exceeding one hundred currency points or imprisonment not exceeding four years and four months or both.
- (2) A person who contravenes sections 33, 37 and 38 shall be guilty of an offence and liable on conviction to a fine not exceeding twenty five currency points or imprisonment not exceeding one year or both.
  - (3) Where a work is communicated to the public on the premises of an occupier or by the operation of any apparatus which is provided by or with any consent of the occupier of those premises, the occupier shall be deemed to be the person communicating the work to the public whether or not he or she operates the apparatus.
  - (4) A person who sells or buys in the course of trade or imports any apparatus, article, machine or thing, knowing that it is to be used for making infringing copies of work, commits an offence and is liable on conviction, to a fine not exceeding fifty currency points or imprisonment not exceeding two years or both.
  - (5) In addition to the punishment prescribed by subsection (4) the court shall, where an offence is committed under that subsection, order the forfeiture of the apparatus, article or thing which is the subject matter of the offence or which is used in connection with the commission of the offence.
  - (6) A person who does any act to make other people believe that he or she is the author or performer of a piece of work, whether that act is-
    - (a) by words or writing;
    - (b) through conduct or fraudulent tricks; or
    - (c) the use of electronic or other device;commits an offence.
  - (7) For the purposes of this section, the exploitation of a work in a manner prejudicial to the honour, dignity or reputation of the author shall be deemed to be an infringement of the rights of the author.

- (8) A person commits an offence who, having reasonable grounds to know or suspect that the act will induce, enable, facilitate or conceal any infringement of a copyright or a neighbouring right, does the following:
  - (a) removes or alters any electronic moral rights information without lawful authority to do so;
  - (b) distributes, imports for distribution, broadcasts, communicates or makes available to the public any pirated work;
  - (c) without lawful authority, distributes, imports for distribution, broadcasts, communicates or makes available to the public, any performance, copy of a sound recording or audio-visual fixation knowing that the moral rights information has been unlawfully removed or altered.
- (9) Where a work is communicated to the public on the premises of an occupier by live performance without the authority of the owner of the copyright or neighbouring right or the department, the occupier of the premises shall be deemed to have communicated the work to the public.

**60. Infringement of a neighbouring right.**

A person who infringes a neighbouring right of another person under this Act commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding four years or both.

**61. Offences by companies or other bodies.**

- (1) Where an offence is committed -
  - (a) by a body corporate, every director and the secretary of the body corporate shall be deemed to have committed the offence; and
  - (b) in the case of a partnership or other body not being a body corporate, every partner or member shall be deemed to have committed the offence.
- (2) A person shall not be taken to have committed an offence under subsection (1) if he or she proves to the satisfaction of the court that the offence for which he or she is charged was committed by some person other than himself or herself and was without his or her consent or connivance and that he or she exercised all diligence to prevent the commission of the offence as he or she ought to have exercised in the circumstances.

## 62. Defences to infringement.

The following shall be defences where copyright is infringed-

- (a) authorisation or consent of the owner;
- (b) public interest;
- (c) fair dealing, which shall include uses such as-
  - (i) research and private study; or
  - (ii) review and criticism;
- (d) incidental inclusion;
- (e) educational use, including-
  - (i) instruction and examination;
  - (ii) anthologies;
  - (iii) recording and reprographic copying;
  - (iv) performing, playing or showing a work; and
- (f) use in libraries, archives and public administration.

## 63. Penalties and compensation.

- (1) A person convicted of an offence under this Act, for which no other punishment is provided, is liable to a fine not exceeding fifty currency points or imprisonment not exceeding two years or both.
- (2) In addition to any punishment imposed by the court in respect of an offence under this Act in any action for infringement, all such relief by way of damages, injunctions, account of profits or otherwise, shall be available to the plaintiff as in any other corresponding proceedings in respect of infringements of other proprietary rights, and in any such action the court may give such orders as are necessary to-
  - (a) enable the plaintiff obtain evidence of any infringement which he intends to adduce at the trial;
  - (b) prohibit the defendant from removing his assets from the jurisdiction of the court or otherwise wasting them, to the extent that such assets are necessary to satisfy the plaintiff's claim if he succeeds at the trial.
- (3) In any proceedings to which subsection (2) (a) applies-
  - (a) a person shall not be excused from answering any question put to that person or complying with any order made pursuant to that subsection by reason only that to do so would tend to expose that person or his or her spouse to criminal proceedings under this Act;

## UGANDA LAW REFORM COMMISSION

- (b) no statement of admission made by a person in answers to a question put, or an order made, in accordance with that subsection shall be admissible in criminal proceedings brought under this Act against that person or his or her spouse, save that nothing in this paragraph shall render such statement or admission inadmissible in proceedings against that person for perjury or contempt of court.
- (4) The court may order that all reproductions, duplication, extracts, imitations and all other materials involved in the infringement be forfeited and disposed of as the court may direct.
- (5) For the purposes of this Part, “owner of copyright” means the first owner, an assignee or an exclusive licensee, as the case may be, of relevant portion of the copyright.

### **64. Proof of facts.**

An affidavit made on oath, affirmation or other like manner before a magistrate, commissioner for oaths or other person authorised to administer an oath or affirmation under the law of the country where the oath was made, which-

- (a) purports to have been made by or on behalf of the owner of the copyright or his successor in title, and
  - (b) states all or any of the following-
    - (i) that at the time specified therein the rights of the owner of the copyright work subsisted;
    - (ii) the nationality of the work of the copyright;
    - (iii) the place where the work was first made;
    - (iv) the date and place of first publication of the work and the date of publication thereof in Uganda, if such publication was not first publication;
    - (v) that the person named therein is the owner of the copyright or his successor in title;
    - (vi) that a copy of the work exhibited to the affidavit is a true copy of the work,
- shall be admissible in any proceedings under this Act.

### **65. Inspectors.**

- (1) The copyright department shall, for the purposes of enforcing the provision of this Act, appoint such number of inspectors as the board

## A STUDY REPORT ON COPYRIGHT AND NEIGHBOURING RIGHTS LAW

considers appropriate and shall issue to them, in writing or in such form as may be prescribed, certificates of authority to act as such inspectors.

- (2) In addition to inspectors appointed under subsection (1), the department may authorise any member from the department or any police officer to perform the functions of an inspector under this Act.
- (3) A person appointed as an inspector shall hold office subject to such conditions as the department may determine with approval of the Minister.

### **66. Entry into premises.**

Subject to the provision of this section, an inspector may, at any reasonable time and on production of his certificate of authority enter any premises, ship, aircraft or vehicle for the purpose of ascertaining whether there is or has been, on or in connection with those premises, ship, aircraft or vehicle any contravention of this Act.

### **67. Mode of inspection of premises.**

- (1) For the purpose of ascertaining whether there is or has been a contravention of this Act, an inspector may inspect-
  - (a) any substance or article appearing to him to be a work;
  - (b) any container or package appearing to him or her to be used or intended to be used to contain any work; or
  - (c) any plant or equipment appearing to him to be used or intended to be used in connection with the production, reproduction or otherwise manufacture of a work.
- (2) An inspector may seize and detain any substance or article which he has reasonable cause to believe to be an infringing copyright of any work or in relation to which or by means of which he has reasonable cause to believe that an offence under this Act has been or is being committed, and any document which he has reasonable cause to believe to be a document which may be required in proceedings under this Act.
- (3) Where an inspector seizes any work, he shall notify in writing the person from whom it is seized the fact of that seizure and shall in that notification specify the item seized.
- (4) A person who-

## UGANDA LAW REFORM COMMISSION

- (a) wilfully obstructs an inspector in the discharge of the inspector's duties;  
or
- (b) wilfully fails to comply with any requirement properly made to him by an inspector; or
- (c) without reasonable cause fails to give to the inspector any assistance or information which the inspector may reasonably require of him for the purpose of the performance of his or her duties under this Act; or
- (d) in giving any such information as is mentioned in sub-paragraph (c) above makes any statement which he knows to be false or which he does not believe to be true shall be guilty of an offence and shall be liable on conviction to a fine or imprisonment.

### **68. Inspectors not personally liable.**

An inspector shall not be personally liable in respect of any act done in good faith by him or her in the course of his employment and in the execution or purported execution of any duty under this Act.

### **69. Suspension of release by customs authorities.**

- (1) A right holder, who has reasonable grounds for suspecting that the importation of pirated copyright goods may take place, may lodge an application in writing with the competent court (authorities) for the suspension by the customs authorities of the release into free circulation of such goods.
- (2) Any right holder initiating the procedures under subsection (1) shall be required to provide adequate evidence to satisfy the court (authorities) that, under the laws of this country, there is prima facie an infringement of the right holders copyright and to supply a sufficiently detailed description of the goods to make them readily recognisable by the customs authorities. (The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action).

**70. Jurisdiction reciprocal protection.**

A copyright or neighbouring rights owner who is not a citizen or resident of Uganda but whose work was first published in a country which is-

- (a) a member of any of the organisations specified in Part I of the Second Schedule to this Act; or
  - (b) a signatory to any of the international conventions specified in Part II of the Second Schedule to this Act;
- shall be protected under this Act.

**71. Department to have rules.**

The Minister may, on the recommendation of the Board make rules prescribing-

- (a) the form of banderol, stamp or hologram to be fixed on copyright works;
- (b) the form and system of its operations;
- (c) the procedure of its meetings; and
- (d) any other thing that may need to be prescribed to facilitate its smooth operation and the fulfilment of its functions.

**72. Regulations.**

- (1) The Minister may, on the recommendation of the board, make regulations generally for the better carrying into effect of the provisions of this Act and may prescribe or provide for anything required or authorised to be prescribed or provided for under this Act.
- (2) The Minister may make regulations for the establishment of collecting societies for the better attainment of artists' returns for their endeavours.
- (3) Regulations made under subsection (1) may prescribe as penalties for the contravention of the regulations any fine not exceeding one hundred currency points or any term of imprisonment not exceeding four years or both and may provide for the forfeiture by the court of any object involved in the commission of the offence.

**73. Minister's power to amend Schedules.**

- (1) The Minister may, with the approval of Cabinet, by statutory instrument amend the First Schedule to this Act.
- (2) The Minister may, by statutory instrument, amend the Second Schedule to this Act.

**74. Repeal Cap. 215.**

- (1) The Copyright Act is repealed.
- (2) The repeal under subsection (1) shall not affect any copyright or other rights that existed immediately before the repeal of the Act and all such rights shall be enforceable under this Act as if this Act was in force at the time of the creation of that work.

**75. Amendment (of Cap. 210).**

- (1) The Uganda Registration Services' Bureau Act is hereby amended.

### **First Schedule.**

s. 1

#### **Currency point.**

One currency point is equivalent to twenty thousand shillings.

### **Second Schedule.**

#### **Part I – Organisations.**

1. World Intellectual Property Organisation (WIPO)
2. Africa Region Intellectual Property Organisation (ARIPO)
3. The United Nations Educational Scientific and Cultural Organisation (UNESCO)
4. The World Trade Organisation.

#### **Part II - International Conventions.**

1. The Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement).

## UGANDA LAW REFORM COMMISSION

### ANNEX 2

#### PUBLICATIONS OF THE UGANDA LAW REFORM COMMISSION

No.	Publication.
1.	A Study Report on Rape, Defilement and Other Sexual Offences.
2.	A Study Report on the Reform of the Law of Domestic Relations.
3.	The Sixth Revised Edition of the Laws of Uganda, 2000.
4.	A Field Study Report on Voices of the People on Trial Procedures, Sentencing and Decriminalisation of Petty Offences.
5.	A Study Report on Company Law.
6.	A Study Report on Competition Law.
7.	A Study Report on Contracts Law.
8.	A Study Report on Cooperatives Law.
9.	A Study Report on Copyright and Neighbouring Rights Law.
10.	A Study Report on Electronic Transactions Law.
11.	A Study Report on Geographical Indications Law.
12.	A Study Report on Industrial Property Law (Patents, Industrial Designs Technovations and Utility Models)
13.	A Study Report on Insolvency Law.
14.	A Study Report on Intellectual Property - Traditional Medicine Practice.
15.	A Study Report on Intellectual Property Rights - Trademarks and Service Marks Law.
16.	A Study Report on Intellectual Property Rights -Trade Secrets Law.
17.	A Study Report on Law Relating to Trial Procedure Law.
18.	A Study Report on Plant Variety Protection Law.
19.	A Study Report on Quadhi's Courts Law.
20.	A Study Report on Reform of the Laws Relating to Chattel Securities.
21.	A Study Report on Reform of the Laws Relating to Hire Purchase.
22.	A Study Report on Reform of the Laws Relating to Mortgage Transactions.
23.	A Study Report on Sentencing Guidelines.
24.	A Study Report on the Law for Establishment of Special Economic Zones.
25.	A Study Report on the Proposals for the Reform of the Accountants Act, Cap 266.
26.	A Study Report on the Reform of Business Associations - Partnerships Law.
27.	A Study Report on the Reform of Selected Trade Laws - Consumer Protection Law.
28.	A Study Report on the Reform of Selected Trade Laws - Sale of Goods and Services Law.
29.	A Study Report on the Reform of Selected Trade Laws - Trade Licensing Law.
30.	Handbook on Making Ordinances and Byelaws in Uganda.
31.	How Our Laws Are Made.
32.	Report on the Background Study on the Legal Implementation of the World Trade Organisation Agreements.
33.	Report on the Law Relating to Publishing Horrific Pictures and Pictures of the Dead in the Press and Pornography.