

**AN ASSESSMENT FOR THE NEED TO REVIEW THE TANZANIAN
COPYRIGHT LAW TO TACKLE MODERN DAY PIRACY CHALLENGES**

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**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE
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& T) OF THE OPEN UNIVERSITY OF TANZANIA**

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CERTIFICATION

The undersigned certifies that he has read and hereby recommends for acceptance by The Open University of Tanzania a dissertation titled, *“An Assessment for the Need to Review the Tanzanian Copyright Law to Tackle Modern Day Piracy Challenges”* in partial fulfilment for the requirement for the Masters of Laws in Information Technology and Telecommunications (LL.M IT & T) of the Open University of Tanzania.

.....

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Date.....

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DECLARATION

I, **Benjamin Sitta**, do hereby declare that this research is my own work and that it has not been presented and will not be presented to any University for similar or any other degree award.

Signature:

Date:

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ABSTRACT

This research analyses the effectiveness of the copyright law and system in the modern day piracy. The work is built on the hypothesis that the current copyright law is inefficient to tackle the modern day's piracy. This is because of the various shortfalls noted in the act. The shortfalls are noted by looking at the Copyright and Neighbouring Right Act. The analyses are also done by looking at the other jurisdictions laws especially the US and UK laws on copyright. The shortfalls are noted apart for the fact that Tanzania is a member of various regional and multilateral frameworks on copyright. It is also found that there are no serious efforts to use the support from these various for a meaningful copyright protection in the modern era for the benefits of Tanzanian artists.

TABLE OF CONTENTS

CERTIFICATION	ii
COPYRIGHT	iii
DECLARATION	iv
ACKNOWLEDGEMENT	v
ABSTRACT	vi
LIST OF CASE	x
ABBREVIATIONS	xi
CHAPTER ONE	1
1.0 INTRODUCTION	1
1.2 Background of the Study	3
1.3 Statement of the Problem	5
1.4 Objectives of the Study.....	5
1.5 Significance of the Study.....	6
1.6 Hypothesis	7
1.7 Research Methodology	7
1.8 Scope of the Study.....	7
CHAPTER TWO	8
2.0 LITERATURE REVIEW	8
2.1 Introduction	8
2.2 General Literature.....	9
2.2 Domestic Instruments on Copyright	15
2.2.1The Copyright and Neighbouring Act, 1999	15

2.2.2 The National Arts Council At, Chapter 204	20
2.2.3 The Customs (Management and Tariff) Act, Chapter 403	21
2.2.4 The Bankruptcy Act, Chapter 25	22
2.2.5 The Films and Stage Plays Act, Chapter 230	22
2.3. International and Regional Instruments and Systems	23
2.3.1. Multilateral Instruments	24
2.3.2 Regional Instruments	27
2.4. Conclusion	31
CHAPTER THREE	32
3.0 RESEARCH DESIGN AND METHODOLOGY	32
3.1 Introduction	32
3.1 Area of Study	32
3.2 Research Data.....	32
3.2.1 Primary Data	33
3.2.2 Secondary Data	33
3.2.3 Tertiary Data	33
3.3 Data Gathering Method and Techniques	33
3.3.1 Interview	33
3.3.2 Documentary Review.....	34
3.3.3 Observation and Informal Discussion.....	34
3.3.4 Literature Review.....	34
3.4 Validity and Reliability.....	34
3.5 Data Analysis Procedure.....	35

CHAPTER FOUR.....	36
4.0 OBSERVATION, ANALYSIS AND DISCUSSION OF FINDINGS.....	36
4.1 Introduction	36
4.2 General Situation on the Ground.....	36
4.2 The Collective Management Institutions.....	38
4.3. The Effectiveness of the Law(s).....	41
4.3.1. Less Severe Sanctions.....	41
4.3.2. Royalties Distribution and Claims Related to Royalties against COSOTA	42
4.3.3. Tribunal on Copyright.....	43
4.3.4. Copyright in the Internet and Digital World.....	45
4.3.5 Role and Liability of Internet Service Providers	47
4.3.6. NCRA Failure to Distinguish between Literal and Artistic Works	49
4.3.7 International Cooperation and Obligations	49
4.3.8 Types of Infringements not explained in the NCRA	50
4.4 The Intellectual Property Policy	50
CHAPTER FIVE	52
5.0 CONCLUSION AND RECOMMENDATIONS.....	52
5.1 Conclusions	52
5.2 Recommendations	52
REFERENCES.....	54
APPENDICES	57

LIST OF CASE

A & M RECORDS, INC. v. NAPSTER, INC. United States District Court for the
Northern District of California 2000 U.S. Dist. LEXIS 6243 May 5, 2000.

ABBREVIATIONS

ARIPO	African Regional Intellectual Property Organization
BASATA	Baraza la Sanaa Tanzania
CAP	Chapter
CNRA	Copyright and Neighbouring Rights Act
COSOTA	Copyright Society of Tanzania
EAC	East Africa Community
IPRS	Intellectual Property Rights
ISP	Internet Services Providers
IR	Intellectual Rights
LDC	Least Development Countries
OSP	Online Service Providers
TCRA	Tanzania Telecommunications Regulatory Authority
T.R.A	Tanzania Revenue Authority
TRIPs	Agreement on Trade Related Aspects of Intellectual Property Rights
V	Versus
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

CHAPTER ONE

1.0 INTRODUCTION

Intellectual property (IP) is a property just like other properties. It is upon this notion that the intellectual property conventions make recognition that intellectual property rights are private rights.¹ It is in this same vein that Intellectual Property Commission submits that Intellectual Property is a form of knowledge which societies have decided can be assigned specific property rights and that these properties have some resemblance to ownership rights over physical property or land.² The Intellectual Property Rights referred here are in various forms which are trademarks, geographical indications, industrial designs, patent, layout-designs (topographies) of integrated circuits and copyright which is the concern of this work.

Piracy of copyrighted materials has been a global problem³ which is *inter alia* contributed by technological advancement and the level integration of economies/states. The problem is complex in the developing countries and especially the Least Developing Countries (LDCs).⁴ Tanzania as one of the global economies and an LDC is facing the same problem of piracy on literal and artistic works. The cries on the problem of piracy of works of art especial in music and film industry are

¹ See for instance the preamble of the Trade Related Intellectual Property Rights (TRIPS).

² Integrating Intellectual Property Rights and Development Policy, Report of the Commission on Intellectual Property Rights, London September 2002.

³ See for instance, Stephanie Berrong, Intellectual Property Piracy Harms Global Economy, found in <http://www.securitymanagement.com/article/intellectual-property-piracy-harms-global-economy-005827> kyodo, Japan Times Online, Crackdown on intellectual property piracy pays off in <http://www.japantimes.co.jp/text/nn20120305a9.html#.T-mNxII3tiw>, all the two were visited on 29/06/2012) see also Intellectual Property Piracy: Perception and Reality in China, the United States, and Elsewhere, TJSJ Legal Studies Research Paper No. 1022243, October 2007, (downloaded from <http://ssrn.com/abstract=1022243> on July 04, 2012)

⁴ See Schwabach A, Intellectual Property Piracy: Perception and Reality in China, the United States, and Elsewhere, TJSJ Legal Studies Research Paper No. 1022243, October 2007, p 3. (downloaded from <http://ssrn.com/abstract=1022243> on July 04, 2012)

alarming.⁵ These cries are aired not only by the victims but even the parliamentarians.⁶ The alarming rate of piracy on copyright materials is associated with various reasons such as the effectiveness of the Tanzanian copyright law and the institutions set to enforce these rights.

Refereeing to the earlier noted concept that IPRs are private and with regard to the people's right to socio economic and cultural development,⁷ this work intends to make a review of copyright law and the related to see whether they are adequate for the protection of owners of artistic works or not. This study comes in this period where youths are encouraged to think about self employment rather thinking of being employed.

Therefore, since films, music and related works of arts are some of the areas where youth and even other segments of life can be employed; it is very pertinent to look into various supporting environments including copyright related polices to make meaningful a call for self-employment and also give effect to the constitutional provision on the right to property and protection of the same.⁸

⁵ See for instance, 19 June 2012, Zourha Malisa, Wasanii waipongeza bajeti ya serikali *Majira*, 19 June 2012 (<http://majira-hall.blogspot.com/2012/06/wasanii-waipongeza-bajeti-ya-serikali.html> visited on 29/06/2012), See Barcodes kuwakomboa wasanii dhidi ya wizi wa mali sanaa zao Global on May 21, 2012 http://www.globalpublishers.info/profiles/blogs/barcodes-kuwakomboa-wasanii-dhidi-ya-wizi-wa-mali-sanaa-zao?xg_source=activity) Mwanaharakati, Ili kudhibiti wizi wa kazi za wasanii: SERIKALI KUGHARAMIA HAKIGRAMU, Jul 28, 2011 (<http://bishophiluka.blogspot.com/2011/07/ili-kudhibiti-wizi-wa-kazi-za-wasanii.html>)

⁶ See Daniel Mjema, *Wizi wa kazi za wasanii waibua mjadala Bungeni*, Mwanachi, Wednesday, 11 April 2012

⁷ See for instance article 22 of the African Charter on Human and Peoples' Rights [Adopted by the eighteenth Assembly of Heads of State and Government, June 1981 - Nairobi, Kenya] on the right to development.

⁸ See article 24(1) of the Constitution of the United Republic of Tanzania which provides that "24.- (1) Subject to the provisions of the relevant laws of the land, every person is entitled to own property, and has a right to the protection of his property held in accordance with"

1.2 Background of the Study

Protection of Copyright can controversially be said to be not a new concept in Tanzania. This is because the regimes on protecting copyright go way back before independence, that is, during British colonialism. The first copyright law was Copyright Ordinance, Cap 218 of 1924. After independence that same law continued to operate up to 1966 where the first law was replaced by the Copyright Act, Cap 218. This later law was at least comprehensive compared to the former. Remarkably, in 1999 the Copyright and Neighbouring Right Act (CNRA), Cap 218 was enacted which now embodied some local and global⁹ changes on IPRs in general and copyright in particular.

The changes in the IPRs regimes as a whole and copyright in particular from time to time were *inter alia* necessitated by increasing number of individuals involved in IP related activities. These activities include those in the music and film industry and thus a pressure to have their works protected.¹⁰ Apart from these changes of the regimes on IPRs herein copyright, there have been claims that the government institutions are not doing their jobs properly on protecting copyrighted materials. But there are also claims which are relevant to this work on the weakness of the law to tackle the modern day piracy.

For instance, Joseph Mbilinyi a parliamentarian of Mbeya constituency and copyright stakeholder claimed that Copyright Society of Tanzania (COSOTA) has

⁹ For instance the establishment of WTO in 1994 which came with the Trade Related Aspects of Intellectual Property Rights convention famously abbreviated as TRIPS.

¹⁰ See footnote number 4 above.

totally failed to do its work because nothing is seen to be done.¹¹ On the other hand Hon. Zitto Zuberi Kabwe noted that those who are found guilty of committing piracy on copyright materials they should be fined to a tune of 50 million Tshs.¹² This is an indication that may be the current fine/punishment are not adequate to the problem.

These aired claims on the protection of copyright and other on piracy resulted into various efforts to deal with the problem. The most recent attempt is the proposal by Minister of Finance on amendments of the Excise (Management & Tariff) Act to *inter alia* introduce Excise Duty on music and film products (DVD, VCD, CD, Video Tape and Audio Tape e.t.c).¹³ This is aimed at assisting operators in this subsector to formalize their businesses, prevent piracy of the artist works and enable them to benefit from their works.¹⁴ These efforts have always been there and thus the unanswered question needs to get some answers now, that is, can these efforts in the prevailing copyright law and practice bring any meaningful remedy to the modern piracy? This question necessitate the coming in of this study which to make a critical overview of the Copyright and Neighbouring Rights Act, 1999, which is the sole copyright law in the country for purposes of identifying its effectiveness thereby improving it if it is so demanded.

¹¹ See Daniel Mjema, *Wizi wa kazi za wasanii waibua mjadala Bungeni*, Mwanachi, Wednesday, 11 April 2012

¹² *Idem*.

¹³ See Speech by the Minister for Finance Hon. Dr. William Augustao Mgimwa (MP.), Introducing to the National Assembly, the Estimates of Government Revenue and Expenditure for the Fiscal Year 2012/2013, para 98(ii) at p 62. The measure above referred will become operational from 1st January, 2013 to allow time for the review of the relevant laws and regulations.

¹⁴ It is further noted that The Tanzania Revenue Authority (TRA) will issue stamps for the products in order to control production and earn revenue to both the Government and operators.

1.3 Statement of the Problem

The increasing works of art especially music and films has increased demands from owners of the work to seek more protection of their rights. This is there because of some indications that the level of protection afforded to such IPRs and especially copyright is still questionable.¹⁵ Theft of Copyrighted works in the modern technology has been like something normal in Tanzania and that is why others are claiming that COSOTA has failed to perform its duties and that the law is weak.

It is from this situation where this work states that piracy of copyright materials especially music and film is a problem. It is a problem because piracy on literal and artistic work is an infringement of the right to own property and consequently affecting the right to development as provided for in national and international instruments. It also goes against the ones' right to fruit from his or her labour. This being the case some serious efforts including this kind of a research need to be taken to put things in order.

1.4 Objectives of the Study

The main objective of the research is to make an overview of the copyright law and the related laws for purposes of identifying some gaps and proposing some issues to be done as remedies on the gaps. The other objective is to influence policy and legislative changes particularly on enhancing the right to property and development as related to copyright by suggesting some legal measures such as amendments to fight against piracy. The work, depending on the findings, will further look at why

¹⁵ See footnote no. 6.

there is an alarming rate of copyright infringements part from the existence of legal frameworks and institutions to deal with copyright related issues like the earlier mentioned COSOTA. Lastly, the work will make a comparative study between the Tanzanian copyright law and some selected western countries for purpose of trying to see how the former can be improved through the contents of the later.

1.5 Significance of the Study

The study is very important as it aims at ascertaining whether the current copyright law is effective in curbing piracy or not which will be done by *inter alia* looking into other model laws in US and UK and other relevant countries including the international instruments. The study also is useful in making the society aware of the right associated with copyrights to give meaning to the right to property and development as earlier mentioned. Furthermore, the study will be of use to the stakeholders in legal fraternity and other related fields which can be used apart from other things, making other studies on the related topic.

The study will also be useful to copyright related institutions such as COSOTA, BASATA and other to be awake on how copyright administration through the available legislations and practices should be. Over and above, the study is also useful to the Law Reform Commission of Tanzania in the efforts towards improving the laws relative to IPRs and especially copyright in Tanzania. This means that the objective of influencing policy and legislative changes particularly on copyright will be fulfilled.

1.6 Hypothesis

This work is built on the hypothesis that Copyright laws and the related legislations are not as effective as they should be able to tackle the modern day piracy challenge and that the copyright administration system which is a creature of the existing legislations falls short of standards to deal with infringement of copyrights.

1.7 Research Methodology

The research will apply both secondary and primary methods of data collection. The first phase consists of general reading on the subject by examining relevant texts, journals, statutes and other national and international legal instruments. This is intended to observe what others have done or written in connection to the problem, whether general or specific, and further to see the extent of the problem. In primary data collection, the main methods intended to be used are interviews, questionnaires, and discussions. In making analysis, this work intends to be exploratory, where descriptive methods will be used in which themes and subthemes will be created to reach a conclusion.

1.8 Scope of the Study

The concern of this work is IPRs and in particular copyright. Under copyright, the work concentrates only on music and film industry in Tanzania mainland because IPRs regimes are not among the union matters, the work concentrates on the Tanzania Mainland.

CHAPTER TWO

2.0 LITERATURE REVIEW

2.1 Introduction

This part reviews general the literatures on copyright and the related information relevant to this work. But most importantly, the part introduces the legal framework of the copyright and the related issues. It briefly explains the domestic legal framework on copyright and other related instruments. Since Tanzania is not an island in the waves of globalization, the international framework on copyright law are also introduced here. The international framework is divided into multilateral and regional levels in which Tanzania is a part.

The law has also provided for works which are not copyrightable. These works are (a) laws and decisions of courts and administrative bodies as well as to official translations therefore; (b) news of the day published, broadcast or publicly communicated by any other means; and (c) any idea, procedure, method of operation, concept principle, discovery or mere data, even if expressed, describe explained, illustrated or embodied in a work.¹⁶

According to section 8 of the Act copyright in a literary and artistic work is comprised of the exclusive economic and moral rights of the author. The economic rights are the rights in which an author can authorize the following; (a) reproduction of the work; (b) distribution of the work; (c) the rental of the original or a copy of an audio-visual work, a work embodied in a sound recording, a computer program, a

¹⁶ See section 7.

database, or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned; (d) public exhibition of the work (e) translation of the work (f) adaptation of the work; (g) public performance of the work; (h) broadcasting of the work; i) other communication to the public of the work and j) importation of copies of the work.

2.2 General Literature

Peter K. Yu¹⁷ makes an analysis of World Trade Organization (WTO) Dispute Settlement Body (DSB) in *China—Measures Affecting the Protection and Enforcement of Intellectual Property Rights*. In his analysis Peter notes that despite this long list of defenses and counterclaims, the WTO panel found Article 4 of the Chinese Copyright Law to be inconsistent with the TRIPS Agreement. In particular, the panel rejected China's distinction between copyright and copyright protection, pointing out that such a distinction would render copyright "no more than a phantom right" more importantly this article views that the panel's emphasis on intellectual property rights as private rights is particularly timely, in light of the developed countries' recent demands for greater criminal enforcement, ex officio authority, and data exclusivity on the part of regulatory authorities.

Such demands are noted to have gradually shifted the costs and responsibilities from private rights holders to national governments. From the standpoint of less developed countries, this shift is highly undesirable because stronger enforcement often comes with a hefty price tag and difficult trade-offs. Given the limited

¹⁷ Peter K. Yu, TRIPS Enforcement and Developing Countries, *Am. U. International Law. Review*, No 26, Vol 3, 20122. 772.

resources in many less developed countries, an increased use of resources in the enforcement area inevitably will lead to the withdrawal of resources from other competing, and at times more important, public needs.¹⁸

This article by Peter concerns China, a developing country and not Tanzania our case study. The question is what are the implication of this decision which of course is not binding to third parties to Tanzania especially on copyright because what happens in china also happens in Tanzania. The overview of Tanzanian copyright law will give answers to this question which has no answers in Pater's work.

Piracy on copyright and especially in music and film industry goes hand in hand with the digital world which has added various complexities in dealing with piracy. It is in these veins where Schwabach¹⁹ talks about the problem of difficulties in getting information and valuation on digital piracy. In this study it is noted that "as with any illegal activity, it is difficult to get reliable information on how much digital piracy actually takes place". And on valuation it is submitted that it is very difficult to quantify the works of art pirated digitally. The valuations which can be available are those after one has been arrested by the police or responsible authorities. These difficulties in valuation and information are *inter alia* the factors contributing to the alarming rate of the piracy problem. How are these issues reflected in Tanzanian polices on IPRs regimes in Tanzania and especially copyright is an issue which this work can at the end see and make necessary proposals.

¹⁸ *Ibidem*, 750.

¹⁹ Intellectual Property Piracy: Perception and Reality in China, the United States, and Elsewhere, *TJSL Legal Studies Research Paper No. 1022243*, October 2007, p 8. (Downloaded from <http://ssrn.com/abstract=1022243> on July 04, 2012)

The International Electrotechnical Commission (IEC)²⁰, reminds that failure to respect copyright and intellectual property may result in breaking the law and in legal penalties. It may also deprive the developers of standards of a fair return on their work and ultimately jeopardize the development of future standards. The IEC further submits that whether intentionally or unknowingly, a significant number of standards users are breaking copyright laws by reproducing and/or redistributing standards. This in turn contributes to the violation of copyright results in lost revenue for the organizations developing and distributing standards, which not only include ISO and IEC but also their respective members and authorized distributors.

It also jeopardizes the standards themselves by putting them at risk of tampering and/or inadvertent modifications. This note by IEC discusses copyright as related to standards and depicts the losses caused by piracy or infringement of the copyright as related to standards. The issue remains as to whether Tanzania using its policies on IPRs can at least say the income contributed by works of art (music and film industry) and thus able to depict the losses estimated to be accrued due to piracy. This will be one of the issues to be catered by this research.

The IEC in the above publication also commits itself to its respective members to support the protection of copyright in both the paper and electronic worlds. They are committed to promoting the importance of copyright and to doing their part to ensure that the integrity of all types of created works is upheld. At the same time, they are committed to making sure standards are implemented as widely as possible and that

²⁰ Copyright standards and the internet, p 2-4
(http://www.iso.org/iso/copyright_information_brochure.pdf)

users can make the appropriate use of the standards they need. It is from this angle where this work will also see Tanzanian membership in various international organizations on IPRs and copyright in particular and how the membership helps Tanzania to improve its IPRs regime.

In enforcement of copyright which *inter alia* is aimed at protecting the rights of the beneficiaries an institution needs to be set and in Tanzanian case there is COSOTA. Birgitte and others²¹ analyses the relationship between the copyright and income generation in the audiovisual sector, in particular music, and argues that the appropriate copyright administration is essential in creating the conditions for a viable music industry in developing countries. However, Birgitte views that an effective copyright regime is not, by itself, sufficient to guarantee a flourishing music industry, and other institutional arrangements will be needed in countries looking to better exploit their musical resources.

This article is about the music industry which is partly the case of this work where effectiveness of copyright institutions is noted to be not a guarantee as other institutions are needed to create a compliment. How does COSOTA relate with others institutions to create synergies in the fight against piracy? This work will look into this on the way to see the effectiveness of the copyright legal regime and practices. Intellectual property is directly related to development and this being the case, copyright as on the the areas is an area for development.

²¹ Birgitte A. (2000) Copyrights, Competition and Development: The Case of the Music Industry, No. 145, January 2000, UNCTAD/OSG/DP/145.

In this, Nwauche²² argues that the crisis which intellectual property in the world is currently undergoing is because enough attention has not been paid to the nature of the right to intellectual property and that it is in this concept that the foundation of a development oriented intellectual property regime for the world lies. It further argued that the crisis of intellectual property in Africa is even more profound because there is no evidence of any significant awareness that intellectual property is crucial in the development of a knowledge economy which is so essential if Africa is to move forward. Thus while Africa is a net consumer of intellectual property, it relatively does not create much. Because of this unusual situation it is not enough to identify the theoretical framework for a development oriented intellectual property regimes.

In line with development oriented approach on IPRs discussed by Nwauche, Andersen and others²³ also make reference to the relationship between copyright and international trade which is very important for the developing of countries like Tanzania. Andersen and others notes that music industry is one of the fastest growing export sectors of the global service economy. The export potential of music is already recognized in some developing countries, such as Brazil and India. However, it is noted that in most developing countries the music industry remains under-researched with insufficient information or reliable data on its economic performance, and in many countries policy makers are still reluctant to accord it the status given to more traditional industries.

²² Nwauche E, Development Oriented Intellectual Property Regime for Africa, a paper presented at the 11th General Assembly of the Council for the Development of Social Science Research for Africa (CODESRIA) in Maputo Mozambique 6-10 December 2005, 2.

²³ Birgitte A, (2000) Copyrights, Competition and Development: The Case of the Music Industry, No. 145, p. 5. UNCTAD/OSG/DP/145.

It is further submitted that most developing countries suffer from weak institutional and political support resulting into massive copyright infringement. This being the case the export potentiality of the sector and even development oriented copyright strategies cannot be achieved. The issues here which need to be addressed are whether Tanzania has adopted these concepts on development and trade properly in its regime and practice something which will be looked upon by this work.

United Nations Conference on Trade and Development²⁴ in making a general observation to IPRs notes that Tanzania is a founding member of the World Trade Organization (WTO); the African Regional Industrial Property Organization (ARIPO); and the World Intellectual Property Organization (WIPO). It is further noted that Tanzania is a signatory to the Paris and Berne Conventions, and to other key international protocols governing the creation, ownership, use and sale of IPR. However, there is currently a lack of effective statutory and administrative mechanisms to identify, pursue and punish infringements of IPR: this is currently being addressed by the Government.

The weaknesses of institutions pointed by UNDP are also pointed out by Economic and Social Research Foundation²⁵ Which submits that Tanzania has promulgated laws to deal with piracy and counterfeits and here apart from other IPRs the The Copyright and Neighbouring Rights Act of 1999 is referred. The laws lay down specific punitive actions to met out to the culprit. ESRF notes that these Acts on

²⁴ Investment Policy Review, The United Republic of Tanzania UNITED, 2002 , 56, UNCTAD/ITE/IPC/Misc.9

²⁵ The Economic and Social Research Foundation, TAKNET Policy Brief Series No.014 – 2010, 4.

IPRs if they were effectively enforced, they could possibly have been able to reduce piracy to a considerable degree in this country. But this has not been the case. The positions of ESRF and UNDP are about weakness of the institutions and not the laws. The question is, does it mean that the laws have no problems and that the problem is the institutions in administration? This work will have an answer to this matter which has not been addressed by the two.

2.2 Domestic Instruments on Copyright

2.2.1 The Copyright and Neighbouring Act, 1999²⁶

This is an Act to make better provisions for protection of copyright and neighbouring rights in literary, artistic works and folklore and for related matters. For the promotion of creation of literary and artistic works, safeguarding expressions of traditional culture and to further productive activities in the field of communicating to the public author's works, expression of folklore, other cultural productions and events of general interest, the act is in particular meant for; (i) protecting the moral and economic interests of authors relating to the works, by recognising exclusive author's rights and providing for just and reasonable conditions of lawful use of authors' work and regulated access to them; (ii) providing for the protection of expressions of folklore by rendering certain uses thereof subject to authorisation and determining offences against lawful interests relating to their integrity; and (iii) protecting lawful interest of performing artists, producers of phonograms and broadcasting organizations relating to their productions, by granting them relevant

²⁶ Signed by His excellence Benjamin William Mkapa, the then President of Tanzania on 2nd June, 1999.

rights.²⁷

The application of this act is limited to (a) works of authors who are nationals of, or have their habitual residence in the United Republic of Tanzania; (b) works first published in the United Republic of Tanzania, irrespective of the nationality or residence of their authors; (c) audio-visual works, the procedure of which has his headquarters or habitual residence in the United Republic of Tanzania and (d) works of architecture erected in the United Republic of Tanzania and other artistic works' incorporated in a building or other structure located in the United Republic of Tanzania.

According to section 5 of the Act it is not all the works in which copyright can subsist. Here the Act limits protection to the works created by an author. This means that if you have not created a work, you cannot claim copyright protection. In other words, copyright protection has to be claimed by the author of such literal or/and artistic work. Artistic and literal work includes *inter alia* dramatic and dramatico – musical works, musical works (vocal and instrumental), whether or not they include accompanying words, choreographic works and pantomimes; cinematographer works, and other audio-visual works.²⁸ On the other hand, the moral rights include the right to claim authorship of the work, in particular that the authorship be indicated in connection with any of the economic rights earlier mentioned, except

²⁷ See section 2 of the Act.

²⁸ See section 5(1). Other areas of artistic and literal works are; books, pamphlets and other writings, including Computer programs; (b) lectures, addresses, sermons and other works of the same nature; painting, architecture, sculpture, engraving, lithography and tapestry; (h) photographic works including works expressed by processes analogous to photography; works of applied art, whether handicraft or produced on an industrial scale, illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science.

when the work is included by means of photography, sound or visual recording broadcasting or distribution by cable and to object to and to seek relief connection with, any distribution, mutilation other modification of, and any other derogative action in relation to, his work, where such action would be or is prejudicial to his honour or reputation.²⁹ In ownership of copyright the law provides that the work protected under the Act shall be owned in the first instance by the author or authors who created the work. If there was joint authorship then the authors involved shall be co-owners of the said rights.³⁰

The law also provides for licencing of copyrighted works in which an author or other owner of copyright may grant nonexclusive or exclusive licences to others to carry out, or to authorize the carrying out of certain specified acts covered by his or its economic rights.³¹ In line with licence the user is entitled to transfer the rights conferred on him under the contract for the use of the work with the consent of the owner of copyright.³² In situation of non-exercise of exclusive right by the user the laws provides for revocation of the same especially when the non-exercise is prejudicial to his legitimate interests of the owner.

Part IV which deals with protection of performers, producers of sound recordings and broadcasting organizations is also an important part on copyright. This part provides for acts requiring authorization of the performers,³³ acts requiring

²⁹ See section 11 of the Act.

³⁰ See section 15.-(2) of the Act.

³¹ Section 17 of the Act.

³² See section 18 of the Act.

³³ See section 31.

authorization of the sound recordings,³⁴ equitable remuneration of use of sound recordings³⁵ and acts requiring authorization of Broadcasting Organizations.³⁶

Part V on sanctions is another important part of the CNRA. The civil remedies provided for in this acts are; an injunction to prevent the infringement or to prohibit the continuation of the infringement and payment of any damages suffered in consequence of the infringement, including any profits enjoyed by the infringing person that are attributable to the infringement. It is also provided that if the infringement is found to have been prejudicial to the reputation of the person whose rights were infringed, the court may, at its discretion, award exemplary damages.³⁷ Other rights are such as right of destruction and similar measures³⁸ and right of delivery.³⁹

Apart from these civil remedies the law has also established some offences relating to the contravention of the provisions of the Act. In general the Act provides that any person who knowingly violates, or causes to be violated, the rights protected under the Act shall be liable to– (a) a fine of not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both, for the first offence if the infringement was on a commercial basis; and (b) a fine of not exceeding ten million shillings or to imprisonment for a term not exceeding five years or both, for each subsequent offence if the infringement was on a commercial basis.⁴⁰ Other

³⁴ See section 32.

³⁵ See section 33.

³⁶ See section 33.

³⁷ See section 36.

³⁸ See section 38.

³⁹ See section 39.

⁴⁰ See section 42.

offences are created specifically for the some notable provisions such as sections 24, 26 and 28 which are all meant for protect folklore. Other offences are provided for under part VI,⁴¹ section 44 which relates to infringements of technical means of protection and rights management information.

For collective administration of copyright and neighbouring rights the Copyright Society of Tanzania (COSOTA) is established⁴² for purposes of promoting and protect the interests of authors, performers, translators, producers of sound recordings, broadcasters, publishers, and, in particular, to collect and distribute any royalties or other remuneration accorded to them in respect of their rights provided for in this Act; maintaining registers of works, productions and associations of authors, performers, translators, producers of sound recordings broadcasters and publishers; searching for, identifying and publicising the rights of owners and give evidence of the ownership of these where there is a dispute or an infringement; printing, publishing, issuing or circulating any information, report, periodical, books, pamphlet, leaflet or any other material relating to copyright and rights of performers, producers of sound recordings and broadcasters and advising the Minister on all matters under the Act.⁴³

For the better performance of its functions above listed, the Society is also empowered to *inter alia* (a) determine the minimum rates of royalties to be levied in respect of uses to be made of works registered by it; (b) levy fees upon registering

⁴¹ The part is about Measures, Remedies and Sanctions against Abuses in Respect of Technical Means of Protection and Rights Management Information (Ss 44-51)

⁴² See Section 46 of the act.

⁴³ See Section 46 of the act.

works and associations; (f) join regional and international associations having similar objectives and functions; and (h) train and sensitise its members, institutions and other members of the public on copyright matters.

2.2.2 The National Arts Council Act, Chapter 204

This is another important instrument in the area of copyright in Tanzania. This Act replaces the then National Arts Council Act and National Music Council Act, Acts No 6 and 7 of 1974 respectively. This current Act is very relevant in the protection of copyright in Tanzania because it was enacted to reconstitute the National Arts Council by amalgamation of the National Arts Council and the National Music Council and to provide for related matters.⁴⁴ It is in this vein where section 3 establishes the National Arts Council⁴⁵ as a body corporate in which its functions can in one way or another can be of help in the protection of copyright owners in Tanzania.

The relevance of National Art Council Act can be well appreciated by looking at its functions which are; assuming the responsibility for the revival and to promote the development and production of artistic works including the production and use of indigenous and additional musical instruments, songs, poetry, and traditional dancing with a view to reviving and promoting Tanzania culture, carrying out research in the development and production of artistic works and marketing of such works, including the standard and quantity of artistic works produced in Tanzania, providing advisory services and technical assistance necessary for or incidental to

⁴⁴ See the long title to the Act.

⁴⁵ According to section 5 of the Act, the Council is headed by the Secretary as a Chief Executive Officer appointed by the President.

the proper development of enterprises for the production of artistic works to parastatal organizations and other persons engaged in such enterprises, planning and coordinating the activities of persons engaged in the production of artistic works in Tanzania and advising the Government on all matters relating to the development and production of artistic works in Tanzania.⁴⁶

2.2.3 The Customs (Management and Tariff) Act, Chapter 403

This is another law which in one way or another is applicable to copyright in Tanzania. This is because it is meant to provide for the management and administration of customs, transfer tax and related matters. This law had limitations on its applicability to IP and especially copyright which is the subject of this paper. It is only the Fourth Schedule, paragraph 7 (1) (c) which explicitly makes reference to Intellectual Property. This is in cases tax determination and in particular where the production of the element in question involves a number of countries and over a period of time. The law provides here that the royalties and licence fees referred to in here may include, among other things, payments in respect to patents, trademarks and copyrights.

However, this law as introduced at the beginning is expected to be among the pieces of legislation which are going to be protective to copyright owners. This is expected

⁴⁶ See section 4 of the Act. Other functions are such as providing and promoting training facilities for persons engaged in or employed or to be employed in enterprises for the production of artistic works, undertaking or assisting any institution or person in the undertaking of production, importation, exportation and sale of artistic works for any matter appertaining to artistic works, stimulating the development of artistic works by preparing and arranging exhibitions, displays, performances, workshops, seminars and competitions between different artists and providing by-laws published in the Gazette and in such manner as the Council may approve, a system of registration of persons engaged for gain in giving public musical performances, production of musical instruments, the recording of gramophone records or magnetic tapes for play-back or otherwise in any manner with any matter relating to music.

to be done by amending the Excise (Management & Tariff) Act to *inter alia* introduce Excise Duty on music and film products (DVD, VCD, CD, Video Tape and Audio Tape e.t.c).⁴⁷ This measure is aimed at assisting operators in this subsector to formalize their businesses, prevent piracy of the artist works and enable them to benefit from their works.⁴⁸

2.2.4 The Bankruptcy Act, Chapter 25

An Act relating to bankruptcy⁴⁹ has only one section explicitly applicable to copyright. This is section 64 which is about limitation of trustee's powers in relation to copyright. In here the section provides that where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee shall not be entitled to sell, or authorise the sale of, any copies of the work, or to perform or authorise the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the court, be entitled to assign the right or transfer the interest or to grant interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of the profits at rate not less than that which the bankrupt was liable to pay.

2.2.5 The Films and Stage Plays Act, Chapter 230

This is another relevant Act to regulate the Cinematograph Ordinance; to provide for

⁴⁷ See footnote no 13.

⁴⁸ See footnote no 14.

⁴⁹ See its long title.

regulating the making of cinematograph films, exhibiting of cinematograph pictures and performance of stage plays and for the licensing of theatres and to provide for related matters. This Act prohibits the making of films permit⁵⁰ which has to be applied by a film maker/author to the Minister responsible.⁵¹ In cases of any material alteration or addition to the text, synopsis or scenes of a film which is to be made and in respect of which a film permit has been granted, the holder of the permit is required by the law to apply in writing to the Minister for permission to make the alteration or addition.

Under section 7 it is an offence to contravenes *inter alia* the provisions on permit.⁵² This law also establishes Censorship Boards⁵³ whose functions apart from the general ones are to examine every film, and every poster or description thereof, submitted to it under the Act, with a view to deciding whether, and if so in what manner, it should be approved for exhibition.⁵⁴

2.3. International and Regional Instruments and Systems

Tanzania is a member of member of various organization and systems in the field of intellectual property multilaterally and regionally. The membership goes hand in hand with being signatory to some instruments which includes copyright issues.

⁵⁰ See section 3 of the Act.

⁵¹ See section 4 on application and 5 on granting of the permit.

⁵² Other offences are like obstructing officers in performance of their function under the Act.

⁵³ Section 13.

⁵⁴ Section 16.

2.3.1. Multilateral Instruments

2.3.1.1 Berne Convention (Literary and Artistic Works)⁵⁵

This Convention is administered by World Intellectual Property Organization (WIPO) in which Tanzania is a member and a signatory to the Convention since July 1994. By being a signatory to this Convention Tanzania is a member of the union for the protection of the rights of authors in their literary and artistic works.⁵⁶ The Berne Convention can be said to be the main and first Convention to provide for principles of copyright laws which have been reflected in various national jurisdictions including Tanzania.

This Convention, apart from establishing the union above noted it extensively provides for; works deserving protection (i.e. Literary and artistic works) and the requirements and most importantly the obligation to countries to protect the literary and artistic works of authors in the union.⁵⁷ Other areas provided for are; possible limitation of protection of certain,⁵⁸ criteria of eligibility for protection,⁵⁹ criteria of eligibility for protection of cinematographic works, works of architecture and certain artistic works,⁶⁰ rights guaranteed (Outside the country of origin and in the country of origin),⁶¹ possible restriction of protection in respect of certain works of nationals of certain countries outside the Union⁶², moral rights⁶³, term of protection,⁶⁴ right of

⁵⁵ Of September 9, 1886, completed at PARIS on May 4, 1896, revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, revised at ROME on June 2, 1928, at BRUSSELS on June 26, 1948, at STOCKHOLM on July 14, 1967, and at PARIS on July 24, 1971, and amended on September 28, 1979

⁵⁶ The Union is established by article 1 of the Convention.

⁵⁷ See article 2 of the Convention.

⁵⁸ See article 2bis of the Convention.

⁵⁹ See article 3 of the Convention.

⁶⁰ See article 4 of the Convention.

⁶¹ See article 5 of the Convention.

⁶² See article 5 of the Convention.

translation,⁶⁵ right of reproduction,⁶⁶ certain rights in dramatic and musical works,⁶⁷ broadcasting and related rights,⁶⁸ certain rights in literary works,⁶⁹ right of adaptation, arrangement and other alteration,⁷⁰ possible limitation of the right of recording of musical works and any words pertaining thereto,⁷¹ cinematographic and related rights,⁷² “Droit de suite” in works of art and manuscripts,⁷³ right to enforce protected rights,⁷⁴ infringing copies⁷⁵ and special provisions regarding developing countries⁷⁶

2.3.1.2 Trade Related Aspects on Intellectual Property Rights (TRIPS)⁷⁷

The World Trade Organization (WTO) came also with an agreement on intellectual property which *inter alia* covers copyright. Tanzania is a member of WTO Since January 1995. In WTO intellectual property is governed by TRIPS which recognizes the existence of the WIPO conventions including Berne Convention above referred.⁷⁸ The relevant part for copyright in TRIPS is section 1.⁷⁹ Article 9⁸⁰ commits Members to comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. The TRIPS under this part also provides for the protection of

⁶³ See article 6bis of the Convention.

⁶⁴ See article 7 and 7bis of the Convention.

⁶⁵ See article 8 of the Convention.

⁶⁶ See article 9 of the Convention.

⁶⁷ See article 11 of the Convention.

⁶⁸ See article 11bis of the Convention.

⁶⁹ See article 11ter of the Convention.

⁷⁰ See article 12 of the Convention.

⁷¹ See article 13 of the Convention.

⁷² See article 14 and 14bis of the Convention.

⁷³ See article 14ter of the Convention.

⁷⁴ See article 15 of the Convention.

⁷⁵ See article 16 of the Convention.

⁷⁶ See article 21 of the Convention.

⁷⁷ TRIPS is under Annex C of the Marrakesh Treaty (Agreement Establishing The World Trade Organization)

⁷⁸ See articles 1, 2, 3 and 4 of the Convention.

⁷⁹ Which is titled *copyright and related rights*.

⁸⁰ Relation to the Berne Convention.

computer programs and compilations of data,⁸¹ and the protection of performers, producers of phonograms (Sound Recordings) and broadcasting organizations.⁸²

TRIPS are generally a supporting Agreement on the move towards globalization WTO multilateral system. This is evidenced by the objectives of TRIPS in which the Agreement desires “to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.”⁸³ TRIPS is thus an important instrument to a country like Tanzania because it provides for a wider scope of protection of protection in the multilateral level and the enforcement mechanism through the WTO Dispute Settlement Mechanism. Article 69⁸⁴ is very relevant on the point of wider protection and even enforcement as it provides;

“Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods”.

[Emphasis supplied]

⁸¹ See Article 10 and 11 of the TRIPS.

⁸² *Ibid* Article 14

⁸³ See the preamble.

⁸⁴ The article is about International Cooperation.

Technical Cooperation⁸⁵ is another important provision of the TRIPS especially for an LDC like Tanzania. The article creates environment for developed countries to provide technical and financial cooperation in favour of developing and LDC Members. This is to be done on on request and on mutually agreed terms and conditions.

2.3.2 Regional Instruments

2.3.2.1 Agreement on the Creation of the African Regional Industrial Property Organization (ARIPO)⁸⁶

This Agreement establishes the African Regional Industrial Property Organization (ARIPO)⁸⁷ for purposes of promoting the harmonization and development of the industrial property laws, and matters related thereto, appropriate to the needs of its members and of the region as a whole; fostering the establishment of a close relationship between its members in matters relating to industrial property; establishing such common services or organs as may be necessary or desirable for the co-ordination, harmonization and development of the industrial property activities affecting its members; establishing schemes for the training of staff in the administration of industrial property laws; organizing conferences, seminars and other meetings on industrial property matters; promote the exchange of ideas and experience, research and studies relating to industrial property matters and promoting and evolving a common view and approach of its members on industrial

⁸⁵ See Article 67.

⁸⁶ (as adopted by the Diplomatic Conference for the adoption of an Agreement on the Creation of an Industrial Property Organization for English-Speaking Africa at Lusaka (Zambia) on December 9, 1976, and amended by the Administrative Council of ARIPO on December 10, 1982, December 12, 1986 and November 27, 1996)

⁸⁷ See article I.

property matters; assisting its members, as appropriate, in the acquisition and development of technology relating to industrial property matters.⁸⁸

This Agreement does not have technical provisions on intellectual property but rather setting some administrative structures in the protection of industrial property. This is evidenced by the fact that the agreement provides for establishment and maintenance of close and continuous working relationships with the United Nations Economic Commission for Africa, the World Intellectual Property Organization and the Organization of African Unity.⁸⁹ Such provisions mean recognition of the commitments existing in other Agreements like the Berne Convention.

2.3.2.2. Southern Africa Development Community (SADC)

SADC is a regional integration established by article II of the Treaty of the Southern African Development Community, as amended. On intellectual property the SADC member countries did not have a agreement/protocol on intellectual property but a provision reflecting intellectual property generally on Protocol on Trade. The Protocol just has one provision covering IPRs which also means that copyright the subject matter of this work is covered. The said provision obliges States to adopt policies and implement measures within the Community for the protection of Intellectual Property Rights, in accordance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.⁹⁰ Such a position on SADC is an indication that all the 14 member States are WTO members thus no need of duplications of same principles while they are already covered multilaterally. This

⁸⁸ See article III of the ARIPO Agreement.

⁸⁹ See article IV of the ARIPO Agreement.

⁹⁰ See Article 24 on intellectual property rights.

means that when it comes to IPRs including copyright, a resort shall be made to TRIPS. And the good thing is that TRIPS makes or incorporates some important provisions of the Berne Convention on literally and Artistic Work above referred. Since the Berne Convention has extensively covered for copyright, the SADC members again through TRIPS are to resort to the Berne when it comes to multilateral, regional and national protection copyright owners.

2.3.2.3 East African Community (EAC)

To date, the EAC in which Tanzania is a founding member does not have a specific protocol on intellectual property general. This being the case, copyright the subject of this work is not regionally centralized. However, there are some provisions in the mother agreement and the protocols which touch in one way or another intellectual property generally and copyright in particular. The EAC Agreement to start with, recognizes the fundamental importance of science and technology in economic development and thus committing Partner States to promote co-operation in *inter alia* the development of science and technology within the Community through harmonization of policies on commercialization of technologies and promotion and protection of intellectual property rights.

The most relevant provisions are found in the Protocol on the Establishment of the East African Community Common Market.⁹¹ The Protocol undertakes to cooperate in the field of intellectual property rights to promote and protect creativity and innovation for economic, technological, social and cultural development in the

⁹¹ Signed on the 20th day of November in the year Two Thousand and Nine.

Community; and enhance the protection of intellectual property rights.⁹² The commitment to protect intellectual property rights is made on inter alia copyright and related rights.⁹³

To achieve the protection of IPRs Partner States are obliged to put in place measures to prevent infringement, misuse and abuse of intellectual property rights; cooperate in fighting piracy and counterfeit activities; exchange information on matters relating to intellectual property rights; promote public awareness on intellectual property rights issues; enhance capacity in intellectual property; increase dissemination and use of patent documentation as a source of technological information; adopt common positions in regional and international norm setting in the field of intellectual property; and put in place intellectual property policies that promote creativity, innovation and development of intellectual capital.⁹⁴

Moreover, the Protocol obliges Partner States to also establish some mechanisms to ensure the protection of IPRs referred in it.⁹⁵ The Council is also duty bound to issue directives for: co-operation in the administration, management and enforcement of intellectual property rights and for the elimination of discriminatory practices in the administration of intellectual property rights amongst Partner States.⁹⁶ More importantly, the protocol obliges Partner States to honour their commitments in

⁹² See article 43(1) of the protocol

⁹³ See article 43(2) of the protocol. Other areas committed for protection in IPRs are copyright and related rights; patents; layout designs of integrated circuits; industrial designs; new plant varieties; geographical indications; trade and service marks; trade secrets; utility models; traditional knowledge; genetic resources; traditional cultural expressions and folklore; and any other areas that may be determined by the Partner States.

⁹⁴ See article 43(3) of the protocol

⁹⁵ See article 43(4) of the protocol

⁹⁶ See article 43(5) of the protocol

respect of international agreements which relate to intellectual property rights.⁹⁷ This means that the WTO and WIPO commitments via TRIPS, Berne Convention and the related need to be given weight by partners States in the protection of IPRs.

2.4. Conclusion

This part has generally indicated what the situation on the copyright through the instruments and other literature so far as copyright is concerned. It is the fact that Tanzania has lots of obligations to fulfill when it comes to copyright. And these obligations as per the discussed instruments range from national, regional and international (i.e. multilateral). What remains to be seen is the reflection of the instruments in the real world which is the subject of the next chapters.

⁹⁷ See article 43(6) of the protocol

CHAPTER THREE

3.0 RESEARCH DESIGN AND METHODOLOGY

3.1 Introduction

In this Chapter, the Research Design and Methodology are discussed. Case study design was used during the study. Data from various sources enabled the researcher to get information which was relevant and thus enabling answering some important issues of this work.

3.1 Area of Study

The researcher chose the area of copyright and especially the main act (The Copyright and Neighbouring Rights Act) and its administrative institution, COSOTA established under the Act due to the following reasons:-

- i. The Act and the main instrument in administering the copyright related issues together with the administrative institution established under it.
- ii. The copyright area has wide publicity thus easy to get some relevant information.
- iii. Geographically it is convenient for the researcher to collect data since the researcher resides in Dar es Salaam where copyright administration is regulated.

3.2 Research Data

All kind of data primary, secondary and tertiary data were collected in order to get good composition for the research.

3.2.1 Primary Data

Primary data were collected through observation and interviews which were targeted to key stakeholders in the administration and also copyright area generally.

3.2.2 Secondary Data

These data were collected from the various sources such as media, reports and other relevant publications. The researcher received data through available documentation.

3.2.3 Tertiary Data

These data were collected from COSOTA, Baraza la Sanaa Tanzania (BASATA) and other relevant companies' websites. The available data helped the researcher to write the research paper with quality data and also minimize the time consumption during data collection.

3.3 Data Gathering Method and Techniques

Various methods of data collection were deployed so as to get the best information which enabled the researcher to analyze the data. Those methods as noted above included; formal interview, literature review, documentary review and observation. Also through observation and informal discussion some relevant information was also availed to the researcher.

3.3.1 Interview

The interview schedule was used by the researcher in some specific situations. The researcher used the guide on interviewing various respondents from the COSOTA.

Interview was conducted with some selected officers especially the legal and licencing officers.

3.3.2 Documentary Review

Organization documents were reviewed, these assisted in clarification of some data. Documents relating to protection of copyright and related complaints were reviewed.

3.3.3 Observation and Informal Discussion

The researcher also used the observation technique in the case study in order to get data. This helped in situation clarification as it helped the researcher to compare data collected through observation with that obtained from the respondents through the use of interview and documentary review.

3.3.4 Literature Review

Literature related with copyright protection in the internationally, regionally and nationally were reviewed and important information retrieved which assisted in explanation of finding.

3.4 Validity and Reliability

A combination of different methods such as interview, questionnaires, documentary review and observation in collecting information were employed to back up and complement on each other to bridge the weakness of each method.

3.5 Data Analysis Procedure

Data analysis is systematic process involving working with data; organizing them and dividing them into small manageable parts⁹⁸. Both qualitative and quantitative data analysis technique were used to analyze data collected. Generally this is an analytical study which uses descriptive methods to reach to conclusion.

⁹⁸ Guba, E.G & Lincoln, Y.S (1994) **Competing Paradigms in qualitative research** as cited in Shah, S.K & Corley, K.G (2006), **Building better Theory by bridging the quantitative-qualitative divide**, journal of management studies, p. 1823

CHAPTER FOUR

4.0 OBSERVATION, ANALYSIS AND DISCUSSION OF FINDINGS

4.1 Introduction

Having seen the Copyright laws and the related laws together with some institutions administering copyright in Tanzania this part concentrates on the applicability of the law. This is looked through institutions' and instruments effectiveness. In looking at these, this part makes a comparison of even other jurisdictions for purposes of proposing some changes at the end.

4.2 General Situation on the Ground

The general situation in the functioning and implementation of the laws on copyright is not pleasing. This is highlighted by the stakeholders of the field and various claims showing that nothing tangible is taking place in making sure that copyright owners are protected. As noted above, even the parliamentarians who enacted the laws existing show their concern on the weakness of the law and the institutions. Joseph Mbilinyi a Member of Parliament of Mbeya constituency and copyright stakeholder aired that Copyright Society of Tanzania (COSOTA) has totally failed to perform its duties.⁹⁹

On the hand Hon. Zitto Zuberi Kabwe noted that those who are found guilty of committing piracy on copyright materials they should be fined to a tune of 50 million Tshs.¹⁰⁰ This is an indication that may be the current fine/punishment are too minimal to be deterrent.

⁹⁹ See Daniel Mjema, *Wizi wa kazi za wasanii waibua mjadala Bungeni*, Mwanachi, Wednesday, 11 April 2012

¹⁰⁰ *Idem*.

The emergency of some companies fighting piracy on their own motion make the problem more open and may be showing the failure of government institutions especially COSOTA. Msama Promotion lead by one Alex Msama has been very instrumental in recent days to fight against piracy especially on evangelical music. Generally it can rightly be concluded that Msama Promotions has been engaging in the work which would have been done by COSOTA and other government agencies. This signifies the weaknesses of copyright related institutions in the protection against piracy of copyrighted materials. Moreover, Msama has been working on one sector and one aspect of evangelical music. This means that there are other areas in which the situation is more serious but none has come to rescue.

There have been various attempts to deal with the scourge historically. One of these attempts is the formation of the Anti-Piracy Committee composed of COSOTA, Arts Council of Tanzania¹⁰¹, Tanzania Revenue Authority (TRA) and the Police. Since the formation of this Committee no records of tangible effects have been noted.¹⁰² It is noted that the Committee was formed without going hand in hand with capacity building of the staff of the institutions forming the Committee on various issues such as identification of pirated copyrights.¹⁰³ Even the serious cooperation among the institutions in the Committee was/is not as it was intended hence making the implementation of CNRA difficult. These difficulties referred to here are the ones accounting *inter alia* for the adulteration of the rights of copyright owners.

¹⁰¹ Known in Swahili as Baraza la Sanaa la Taifa abbreviated as BASATA.

¹⁰² An interview with Nurdin Said on June 26, 2012 who by then was still a Copyright Licencing Officer.

¹⁰³ *Ibid.*

The proposals of the Minister of Finance when presenting the Government budget of 2012/13 in the parliament can be said to be the most recent arrangement by the government to ensure copyright owners of their rights. This again indicates that these are still not in order so far as protection of copyright is concerned. The Minister as it was earlier briefed noted that the Ministry has proposed the amendments of the Excise (Management & Tariff) Act to *inter alia* introduce Excise Duty on music and film products (DVD, VCD, CD, Video Tape and Audio Tape e.t.c).¹⁰⁴ This measure is aimed at assisting operators in copyright sector to formalize their businesses, prevent piracy of the artist works and enable them to benefit from their works. To implement this, it is further noted that The Tanzania Revenue Authority (TRA) will issue stamps for the products in order to control production and earn revenue to both the Government and operators.

These efforts have always been there and the problem is still there. However, it suffices to say that these efforts by the government and private entities show what is on the ground generally. This general situation generally shows that the realization of the rights of copyright owners is far from being achieved.

4.2 The Collective Management Institutions

The Copyright Society of Tanzania (COSOTA) is the overall administrator of copyright in Tanzania. As presented earlier COSOTA for purposes of promoting and protect the interests of authors, performers, translators, producers of sound recordings, broadcasters, publishers, and, in particular, to collect and distribute any

¹⁰⁴ See footnote no 13.

royalties or other remuneration accorded to them in respect of their rights provided for in this Act; maintaining registers of works, productions and associations of authors, performers, translators, producers of sound recordings broadcasters and publishers; searching for, identifying and publicising the rights of owners and give evidence of the ownership of these where there is a dispute or an infringement; printing, publishing, issuing or circulating any information, report, periodical, books, pamphlet, leaflet or any other material relating to copyright and rights of performers, producers of sound recordings and broadcasters and advising the Minister on all matters under the Act.¹⁰⁵

The main question here is about the functioning of COSOTA in enforcing the NCRA. It has been noted that one of the big challenges on COSOTA is acting both as a collective management organization and copyright office.¹⁰⁶ For instance, there is this function of collecting and distributing any royalties or other remuneration accorded to them in respect of their rights provided for in the Act. According to COSOTA this function alone is not adequately covered as still there are areas which have not been reached thus exploiting the labour of copyright owners.¹⁰⁷

The practice in other jurisdictions is that for purposes of efficiency in collection of royalties, the collective management organizations are the societies established by the owners of copyright in a particular sector such as film. Such sectors make some

¹⁰⁵ See Section 46 of the act. (footnote no 44)

¹⁰⁶ National Seminar On the IP and Competitiveness The Tanzania Legal and Institutional Framework Presented by Esteriano E.Mahingila CEO BRELA (see <http://www.brela-tz.org/NATIONAL%20FORUM%20ON%20THE%20ROLE%20OF%20IP%20IN-Mahingila.pdf> , visited on July 30, 2012)

¹⁰⁷ An interview with Maureen Fondo, COSOTA Legal Officer.

collection and distribute the dues to the people who registered their work to the copyright office. This means that the function of Copyright Offices like COSOTA becomes just an overall administrator and regulator. In so doing it makes even the process more democratic as the royalties as collected by the sector to which owners of copyright are found. The importance of collective management organizations is well demonstrated by WIPO by stating that;

The experience of recent years has increasingly confirmed that the individual exercise of rights is impractical; there are cases in which users need rapid access to a vast mass of works. Collective management is an essential tool for the efficient exercise of rights; collective management societies therefore play an important and very useful role, both for authors/creators and for users. This is definitely why they have experienced considerable development in parallel to the increased use of works made possible by new technology. The importance and usefulness of collective management is such that many national legislators have taken that aspect into account in the drafting of laws.¹⁰⁸ [Emphasis mine]

Tanzania is among the countries which show the importance of collective management organization thus reflecting it into the CNRA. But since the efficiency of the CMO is questionable by merging it with copyright office then again the legislator has to take cognizance of this for purposes of having more meaningful realization of copyright.

¹⁰⁸ See WIPO, (1999) Promotion and Development of Collective Management of Copyright and Related Rights, GENEVA, pg 1, para 3.

Others are even proposing that COSOTA would have been a nongovernment entity for it to function effectively.¹⁰⁹ It is noted that the society would have been private composed of the stakeholders of the sector specific and the government just remain as a regulator.

4.3. The Effectiveness of the Law(s)

The effectiveness of the law is among the major area of concern of this work. There are the concerns that the law falls short of lots of things so far as copyright is concerned. The technological advancement as above noted has exacerbated the situation. The shortfalls referred here are as found here in below.

4.3.1. Less Severe Sanctions

The sanctions imposed for pirating copyright materials are very minimal to the extent other saying that it does not discourage piracy but rather stimulating it.¹¹⁰ The highest sanction is ten million Tanzania shillings. The note that the sanctions encourage piracy is because one might have acquired huge amount of money to the extent that paying 10 million may not be an issue. This can for instance be proved by Criminal case No 550/2004, Kisutu resident Magistrate Court, where the accused were caught with a lorry full of copyrighted materials and fined 200,000 Tshs.

On this matter Zitto Kabwe North Kigoma Constituency Member of Parliament was noted to propose that the minimal punishment be 50 million Tshs for those caught

¹⁰⁹ Based on an interview with a Legal Researcher and Computer Law Specialist, Adv. Adam Mambi on 8th August, 2012.

¹¹⁰ An interview with Nurdin Said on June 26, 2012 who by then was still a Copyright Licencing Officer.

with pirated works.¹¹¹ This MP makes this proposition due to the fact that the artists in the music, film and other related industries get nothing due to piracy. They are just working for the *pirates*.

4.3.2. Royalties Distribution and Claims Related to Royalties against COSOTA

One of the serious omissions of this Act is the non-establishment of the Tribunal on copy right royalties. The law has no provisions on cases where one claims the existence problems so far as the royalties due to him/her. The law as seen above has just provided for power to collect and distribute royalties but there are no clear provisions on claiming the royalties against COSOTA. The provisions on remedies as just limited on the infringement and other criminal related sanctions.¹¹² These sanctions and remedies are not mentioning about the claims of royalties from the sole collective management organization existing, i.e. COSOTA.

According to COSOTA,¹¹³ it is even difficult to make some claims against COSOTA that there are problems in ones share, for example, receiving something which one thinks is little compared one would have got. It is said to be difficult because there are formulae which has been put to determine the royalties one deserves. So once the formulae have given the results then one deserves what is due to him or her as per the results. And there is another problem which is associated with who deserves a bigger share, is it the one with many registered works or the one whose works are frequently used. In practice and even in law, the one whose works are frequently

¹¹¹ See footnote no 6.

¹¹² See section 36, 37 and 39.

¹¹³ An interview with Nurdin Said on June 26, 2012 who by then was still a Copyright Licencing Officer.

used deserves a bigger share compared to those whose works are less frequently used.

Because of the formula set and lack of records of the frequency in which ones work is used, it has happened that COSOTA distribute the royalties on the basis of the number of works one has registered at COSOTA. This is an automatic grave mistake which has to be cured by not only the law but even the administration of royalties. And this is also exacerbated by the problem above noted of the merging of copyright office and the collective management organization. Absence of such a provision is like sending the situation back to the concept of the *king (COSOTA) can do no wrong*.

4.3.3. Tribunal on Copyright

The remedies above explained on copy right are enforced through the normal courts. The CNRA has defined a court as the District Court established under the Magistrates Courts Act 1984.¹¹⁴ This means that the organ to determine the remedies of copy right owners and stakeholders is the District Court as referred to in the CNRA. This is another problem in this act if reference should be made to other jurisdiction on copyright. It is well known in Tanzania the problems surrounding these normal courts. These courts have many cases to deal with emanating different spheres and legislations. There are civil and criminal cases which result to a normal problems delays characterized by unnecessary adjournments. This may be a normal problem which cannot be that much fatal when it comes to copyright or IP related

¹¹⁴ Act No 2. The definition of court in CNRA is under section 4.

matters. But the fatal problem which is likely to happen is lack of specialization and experience on this technical subject of copyright.

Other jurisdictions have a solution to such problem. In US for instance there is The Copyright Royalty Tribunal Reform Act of 1993. This Act as the title suggests has establishes a tribunal which deals with copyright royalties. The tribunal has special judges who are also referred to in the principal copyright law, i.e. the Copyright Law of the United States.¹¹⁵ This law defines; “Copyright Royalty Judge” is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.

The US law has not only provided for the tribunal and the judges but also has provided for the qualifications of Copyright Royalty Judges; here the law provides in a relevant part;

- (1) In general.—Each Copyright Royalty Judge shall be an attorney who has at least 7 years of legal experience. The Chief Copyright Royalty Judge shall have at least 5 years of experience in adjudications, arbitrations, or court trials. Of the other 2 Copyright Royalty Judges, *1 shall have significant knowledge of copyright law, and the other shall have significant knowledge of economics.*¹¹⁶

The US law thus makes it mandatory for the judges to have sufficient knowledge on copyright and economics. This is what should have been in the CNRA. It is not

¹¹⁵ C i r c u l a r 9 2, Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code, December 2 011.

¹¹⁶ *Ibid*, section 802.

necessary to establish a tribunal presided by judges, it can just be presided by normal magistrates with sufficient knowledge on copyright. This will in one way or another ensure the realization of copyright related rights. Absence of this contributes to piracy as piracy should not only be interpreted on the basis of the infringers but even on the way the law is set and implemented.

4.3.4. Copyright in the Internet and Digital World

The digital world is another global challenge in the administration and implementation of copyright instruments. It is noted that development in technology means that copyright enforcement becomes even more difficult to achieve.¹¹⁷ The new technology has made it possible to transmit, reproduce and obtain copyrighted materials around the globe. The internet and digital technology allow users from different countries to share and obtain music, movies or other protected works by simply downloading them instead of buying them. Thus, as technology becomes more sophisticated and easy to use, copyright holders need the availability of more efficient enforcement procedures to stop the infringement.

According to WIPO the new digital technology has a major effect on the collective management of copyright and related rights.¹¹⁸ WIPO submits further that the widespread application of digital technology, including the advent of multimedia productions and the use of digital networks like the Internet, the conditions, the exercise and the management of rights are facing new challenges. New technological

¹¹⁷ Abdalla Msuya

<http://in2eastafrika.net/signup/> wed, May 4th, 2011, visited on June 30, 2012.

¹¹⁸ See WIPO, (1999) **Promotion and Development of Collective Management of Copyright and Related Rights**, GENEVA, pg 7, para 26.

solutions (encryption technology, digital identification numbers, rights management information systems, etc.) have been worked out in response to those challenges, and are still being developed.

The Tanzanian law has no provisions suiting the digital world in the copyright laws and other related instruments. There is also no general law covering information technology issues which would have to some extent cover copyright related issues. Other developed jurisdictions on copyright have extensively regulated the digital world in the copyright arena. The US law for instance has apart from other areas, provides for digital audio recording devices and media.¹¹⁹

This part provides for *inter alia* incorporation of copying controls obligation to make royalty payments, deposit of royalty payments and deduction of expenses, entitlement to royalty payments, procedures for distributing royalty payments, prohibition on certain infringement actions, civil remedies and determination of certain disputes.¹²⁰ This law has also provided for issues of copyright on the internet while making reference to Section 2 of the Computer Crime Enforcement Act. The law states that computer crime includes infringement of copyrighted works over the internet.¹²¹ Even the Register of Copyright is empowered to maintain a current directory of agents available to the public for inspection, including through the Internet.

¹¹⁹ See Chapter 10 of the law.

¹²⁰ See sections 1002 to 1010 of the Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code.

¹²¹ *Ibid*, see section 401.

General the internet and the digital world so far as copyright is concerned is not reflected in the NCRA thus worsening the situation which this work calls *piracy*. The Tanzania law should thus have provisions to reflect the technology on the ground. This has to be extensively covered in the CNRA to make the copyright related rights meaningful.

4.3.5 Role and Liability of Internet Service Providers

In line with the above the role and liability of internet service providers has not been explained in the CNRA apart from the fact that the act has mentioned computer programs on the coverage of copyright. This is another serious omission which operates against the rights of the owners of copyright. Bad enough the stakeholders seem not to be aware on this matter.¹²² The law needs to be set here to reflect the holding in a celebrated NAPSTER CASE.¹²³ The law needs to provide as it was in this case that internet service providers should have limited liability on the infringement of copyright. That, once they are liable to the extent they know about the infringement. A related example of Utamu social online network though not a copyright issues is referred here.¹²⁴

This social network was alleged to post some information/news which were offence to others especially public figures. To deal with the complaints brought by the offended Telecommunication Regulatory Authority (TCRA) ordered the internet hosts not to host the social network. This made the network automatic disappearance

¹²² This is based on my observation as in the interviews none noted about this. Even in the media cuts reviewd, there is no such an information.

¹²³ A & M RECORDS, INC. v. NAPSTER, INC. United States District Court for the Northern District of California 2000 U.S. Dist. LEXIS 6243 May 5, 2000.

¹²⁴ Based on an interview with a Legal Researcher and Computer Law Specialist , Adv. Adam Mambi on 8th August, 2012.

in Tanzania. Now, had it been that one or some hosts continued to sot the network, the liability would have started there. The same applies to copyright materials especially those shared and downloaded through the internet.

On this matter it is also pointed out that the invention and use of software using mp3 files through peer to peer file sharing for downloading and storing compressed music files under the so called peer-to-peer technology poses a great challenge to copyright owners and the music industry in general.¹²⁵ This is noted to affect the traditional music distribution and thus unfairly infringing the copyright of music distributors and musicians. The trend is even normal in developing countries like Tanzania apart from the existing laws which seems to cover digital infringement.¹²⁶

The great role and responsibility referred to the Internet Service Providers and other Online Service Providers (ISPs and OSPs) on the protection of IPRs are the ones necessitating having provisions covering their activities. It is pointed out that the ISPs and OSPs related firms provide the lowest level of service in the multi-tiered internet architecture by leasing access to home owners, small businesses and large institutions or organizations.¹²⁷ These organizations facilitate transactions and communications between end users and identification of parties creating some kind of relationship with infringers, other facilitators and their customers adding an additional complex layer of potential responsibility.¹²⁸

¹²⁵ See Mambi, A.J, Legal Implication and Dilemma of Information and Communications Technologies (ICT) on Intellectual Property, the Law Reformer Journal, Vol 3, No 1, 2011, p 40.

¹²⁶ *Ibid*, p 41.

¹²⁷ *Idem*.

¹²⁸ *Idem*.

These issues as above noted, have not been reflected in the Tanzanian laws on IPRs or copyright in particular. It is thus good to have something like what the UK Copyright, Designs and Patents Act, 1988 provides. This law provides under section 24 for limited liability of the ISPs where they have knowledge on illegal activities taking place online.

4.3.6 NCRA Failure to Distinguish between Literal and Artistic Works

The way the law has been structured appears that the demarcation between literal and artistic work has not been clearly put which also puts copyright rights in jeopardy. This can be exemplified by music, in music the singing is literal but the melody is not. So it may be found that the law, CNRA protect the singing is literal but not the melody. Therefore, this is another part which necessitates the amendments of the law.

4.3.7 International Cooperation and Obligations

Copyright piracy cross borders and with the internet world, piracy can be very easily done. This being the case, international cooperation and meeting of the obligations is essential for effective copyright protection. Tanzania apart from being linked to other far countries (e.g. the overseas) It borders countries like Kenya, Burundi, Rwanda, Zambia, Malawi and Congo DRC. These borders makes easy for the crossing of copyright materials from one country to another. Thus, having campaigns targeted to Tanzania market and for Tanzanians only can not work. There must be some cooperation with neighbours to tackle piracy. For instance, the amendments of the Tax Laws above referred cannot be effective if other EAC countries for instance do nothing.

Generally, it is observed that international cooperation is still very work on Tanzania and neighbouring countries to deal with modern day piracy. Moreover, the law of Tanzania and even those of the EAC countries for instance do not show the international commitments and cooperation in the law. The Digital Millennium Copyright Act, UK,¹²⁹ for instance has directly made reference to the WTO and WIPO Treaties something which is missing in NCRA.

4.3.8 Types of Infringements not explained in the NCRA

In infringement of copyright, there is primary and secondary. For instance if somebody put some films in the internet without the permission of the owner, he/she is infringing the copyright and this becomes primary infringement. And when someone downloads the films and reproduces for sale for instance, this becomes secondary infringing. These incidences have not been captured in the NCRA. This is again an omission which is likely costing the owners of copyright.

4.4 The Intellectual Property Policy

Tanzania has never had intellectual property policy. Laws have been enacted and still they are enacted without having any policy document on the matter. Intellectual property issues are just mentioned in some few paragraphs of the National Science and Technology Policy¹³⁰ and the National Trade Policy.¹³¹ The National Technology policy under the general objectives stipulates that;

To establish appropriate legal framework for the development of technology including intellectual property rights;

¹²⁹ 105TH CONGRESS REPORT 2d Session "HOUSE OF REPRESENTATIVES"105-796

¹³⁰ Ministry of Science and Technology, 1996.

¹³¹ Ministry of Trade and Industry, February 2003.

To institute mechanism for identification promotion and development of special-talents and aptitudes in science and technology among Tanzanians, especially youths, in order to benefit from rich human intellectual capabilities (NSTP: 1996:9);

The National Trade Policy on trade policy implementation action plan especially on major implementation issues¹³² highlights the issue of fundamental premises and challenges that serve as prerequisites towards achieving the objectives and vision of the policy. In this the policy identifies fourteen issues which *inter alia* include intellectual property services. The two policies, i.e. the National Science and Technology Policy and the National Trade Policy are not the sectoral policies on intellectual property but rather related policies on IP. This means that the two policies cannot and it is impossible to cover adequately IP issues.

It is at this juncture where it is noted that the fact that there is no intellectual property policy to take care of WIPO/WTO related matters have brought great hardship in the implementation of IP laws.¹³³ To add on this finding, it can be said that the absence of policy is not only bringing hardships so far as the international obligations are concerned but also meeting the demands of the copyright owners and stakeholders within the local settings of Tanzania.

¹³² See para 6.4.1.

¹³³ Kihwelo P, (2001) Intellectual Property Rights (IPR) Protection in Tanzania, the Nightmare and the, Noble Dream, Open University of Tanzania.

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

5.1 Conclusions

The study assessed the copyright system in Tanzania by making a review of the main act, the NCRA. It has been generally found that there's a long journey to go as the protection of copyright law in Tanzania is concerned. This is because of the short falls identified in the laws and the related administrative issues.

The above note therefore concludes positively that Copyright laws and the related legislations are not as effective as they should be to tackle the modern day piracy challenge. Also the copyright administration system which is a creature of the existing legislations falls short of standards to deal with infringement of copyrights. This being the case, some necessary steps must be taken as a remedy to the situation.

5.2 Recommendations

Having found the weakness of the law, this research recommends for the following;

- i) The policy on intellectual property having statements on copyright be made to act as a guideline in enacting laws that go with time and more protective to copyright stakeholders.
- ii) The copyright law and all relevant acts need to be amended to incorporate some important issues missing in the Act. The law need to consider the principles reflected in the international and other jurisdictions instruments. Digital world should emphatically be taken into consideration as it the challenge in the modern day piracy.

- iii) Some administrative measures be set to to enforce the laws and the new polices to be made. This should include separation of collective management organization from copyright office.
- iv) Government agencies relevant to protection of copyright should cooperate to make the laws more meaningful for the benefit of the nation and copyright stakeholders at large.
- v) The government should seriously utilize the assistance under WIPO, WTO, ARIPO and any arrangement for having policies and institution that would manage thr modern day piracy.
- vi) International cooperation be strengthened regionally and multilaterally copyright protection by using available institutions and mechanisms through institutions like ARIPO, WIPO, WTO, EAC, SADC and the African Union.
- vii) Dispute settlement mechanism on copyright claims be strengthened by establishing special intellectual property law judiciary units. This should be managed by specialist or experienced staff on copyright/intellectual property in general.

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APPENDICES

Appendix 1: News Papers Article on Some Copyright Flaws In Tanzania
Copyright Law



INSIDE YOUR MONDAY CITIZEN

> NATIONAL, P. 2
Push for syrup patenting

THE CITIZEN

< Nothing like the Olympic Games **SPORTEXTRA**

REVENUE One firm earns a reported Sh15 billion from Bongo Flava callback tunes

Handwritten: #BongoFlava

DAR ES SALAAM ISSN 0856-9754 No. 2526 Price TSH 800 KSH 50
thecitizen.co.tz Monday 23 July 2012

How Bongo artistes miss billions in ringtone deals

Two Tanzania-based mobile phone firms are said to earn a total of Sh80 million daily – 40 per cent of which goes to an India-based company

22bn

Earnings in shillings annually that two companies are said to make

Dar es Salaam. Music by young generation artistes, popularly known as Bongo Flava, is reportedly minting millions for a foreign company in a lucrative ringtone and call-lartunes business while little

if anything goes to the pockets of local copyright holders.

Investigations conducted by *The Citizen* have established that the company, OnMobile, which has headquarters in Bangalore, India, works in collaboration with two major mobile service providers, Vodacom Tanzania and Airtel. Each callback tune costs Sh300. Our source, who asked

MORE INFO: RINGTONES

A ringtone or ring tone is the sound made by a telephone to indicate an incoming call or text message. Not literally a tone nor an actual (bell-like) ring anymore, the term is most often used today to refer to customizable sounds used on mobile phones. A phone "rings" when its network indicates an incoming call and the phone thus alerts the user. For landline telephones, the call signal can be an electric current generated by the switch or exchange to which the telephone is connected. For mobile phones, the network sends the phone a message indicating an incoming call.

Continued on page 2

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Known also as Knob tree or *Zanthoxylum ghalybeum*, the plant grows in the wild and semi-arid jungle in Manyara and Arusha regions where the majority of the cattle herding Maasai community are found.

Reports say in recent years, Swiss pharmaceutical researchers have been to the area where they encouraged commercial harvesting of the plant for processing of its barks abroad for a syrup used as additives to fruit juices or consumed as tea.

Activists call it "bio-piracy" because it mainly aimed at benefiting foreign firms at the expense of Tanzanians who have been using it for years.

Another NGO, Loiborsoit Integrated Rural Development Organisation (Lirdo), based at Loiborsoit Village in Simanjiro, says it is in touch with the Swiss embassy in Tanzania to

He stressed that they would press to have the patent for the by-products from the indigenous plant whose harvesting, according to him, is done only in Tanzania for income generation by women groups.

He called for support from the embassy, adding that the aim was to benefit up to 500 women from the poor families as one of the strategies to alleviate poverty.

An official with the embassy who was here last week urged the NGOs to ensure local people benefited. Ms Geraldine Zeuer who heads the Swiss Agency for Development Cooperation at the mission, promised to follow up the matter.

Enkaina-e-Retoto was registered in Switzerland in 2005 to assist development programmes in the Maasailand.

Since 2006, the organisation has teamed up with Lirdo to assist the

total sales, while OnMobile takes the rest.

But the line of distribution does not end there, as there is another locally registered and licensed company, Push Mobile, which, after getting the money, retains 40 per cent while the artiste gets seven per cent as the rest goes to OnMobile.

Asked of the Sh8 billion they reportedly generate from the business annually, Vodacom's chief for marketing and corporate affairs, Ms Mwamvita Makamba, could neither admit nor deny it. She, however, maintained that Vodacom was not privy to the arrangements between their content providers (not necessarily OnMobile) and the musicians.

"Much as we would enjoy seeing every stakeholder get fair returns of their works, it is really not our business to get involved with artistes-provider commercial relationships. The whole thing is dictated by the market," she told The Citizen.

For her part, Airtel's regulatory and corporate communications director, Ms Beatrice Singano, confided to this reporter that they had an agreement with OnMobile to provide value added services (VAS) as it was common practice with any contract. She, however, maintained that she was obliged not to reveal the details to any third party. Regarding the information that her firm is raking in about Sh15 billion annually from the callback tunes business, Ms Singano was categorical that she would not share that information for obvious reasons, saying that it was still important to understand that value added services revenue constitutes varied offerings beyond call back tunes.

"We are not in a position to scrutinise revenue sharing mechanisms between third parties. We believe that there are good legal frameworks in Tanzania that can arbitrate any disputes and ensure appropriate gaps are closed," said Ms Singano.

According to our source, in the late 2000, any recording artiste had to strike a deal with two local companies - Push Mobile or Spice - if he or she wanted to sell their songs as ringback tones, but the trend has since changed after OnMobile came on board.

"As for now, an artiste has to sign a contract with Push Mobile which now has to deal with OnMobile which has a contract with Vodacom and Airtel in the ringtone business... but OnMobile does not have the licence to operate in the country," maintained the source.

A deal between the foreign company on the one hand and Airtel and Vodacom on the other, was struck in 2011, this paper can reveal.

OnMobile is said to have entered into an agreement to provide technical service platforms for contents, including music from local artistes, to Vodacom Tanzania and Airtel Tanzania.

This paper has reliably learnt that Tanzania Communications Regulatory Authority (TCRA) met with OnMobile officials on Tuesday last week.

Contacted for comments on what transpired from the meeting, TCRA director general, Prof John Nkoma, told The Citizen that licensing was a process and it was still ongoing.

For his part, Mr Biswajit Nandi, OnMobile's senior director for business development in Africa initially told this paper that they lodged an application for an "Application Services Licence" with TCRA in November 2011, adding that an acknowledgement of the same has been received.

He further explained that OnMobile's licence application is being studied and the firm would be updated of any progress at the TCRA.

The managing director of Push Mobile Media, who are Airtel and Vodacom, Mr Freddie [Name], reporter to the two companies, [Name] better position to know the

“Much as we would enjoy seeing every stakeholder get fair returns of their works, it is not our business to get involved with artistes-provider commercial relationships,”

MS MWAMVITA MAKAMBA, VODACOM'S CHIEF FOR MARKETING AND CORPORATE AFFAIRS

INTERNATIONAL, P. 24
Shooting suspect
faces 142 charges



A 24-year-old allegedly
shot into a midnight
wing of the latest Batman
film and opened fire into the
packed auditorium

International P. 4 E. Africa P. 13
Environment P. 8 Internet P. 14
Analysis P. 9 Leisure P. 29
Business P. 10 Sport P. 33

Artistes sever business with mobile firm

By Paul Owere
The Citizen Reporter

Dar es Salaam. One week after it was revealed that Bongo Flava artistes were losing billions of shillings in royalty sharing scheme, artistes have moved in to sever business with Push Mobile. *The Citizen* can exclusively reveal.

Through Trustworth Attorney, the local artistes have served Spice Vas Tanzania Limited with a seven-day notice to terminate their contract through which the company was selling their works to mobile phone companies.

Also affected in the severance deal are other companies that have been involved in brokering the deal between the artistes and mobile phone

BACKGROUND: CALLER TUNES BRING IN MILLIONS

Investigations conducted by The Citizen have established that OnMobile, which has its headquarters in Bangalore, India, works in collaboration with major mobile service providers in the country. Each callerback tune costs Sh300, earning each firm between Sh20 million and Sh40 million daily, according to reliable sources.

companies such as Spice and Crystal.
In what seems to be a move
Continued on page 2



A riot police officer helps an exhausted little boy in Kunduchi. Dar es Salaam, yesterday when hundreds of pupils from eight primary schools attempted to demonstrate to the Kinondoni District Commissioner's office, about 20 kilometres away, in protest at the teachers' strike. The pupils had walked for about two kilometres when police broke up the protest march. PHOTO | FIDELIS FELIX

NABU CI