

THE UGANDA COPYRIGHT AND NEIGHBOURING RIGHTS BILL, 2002: PROSPECTS AND CHALLENGES TO THE INFORMATION PROFESSIONALS

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Abstract

The paper discusses the concept and philosophy of copyright. It also discusses copyright infringement with special reference to ICT. Furthermore, the paper examines international provisions related to copyright and reviews the Copyright Law Model. The paper also identifies gaps in the Uganda Copyright Bill, 2002 and examines the possible role of information professionals in copyright protection. Finally, recommendations are made for the improvement of the Copyright Bill, 2002.

The Concept and Philosophy of Copyright

Intellectual property comprises of two main fields: industrial property dealing with patents, trademarks, trade names, industrial design and others. Copyright is a property, essentially giving the copyright owner the exclusive rights to produce copies, control and perform an original literary, musical, dramatic or artistic work. (<http://www.fast.org.uk/law/faq.asp>) Copyright is legally defined in the National Copyright Acts. Examples include: The Uganda Copyright Act, 1964 currently being revised by the Copyright Bill, 2002, and the United Kingdom's Copyright, Designs and Patents Act, 1988. "Copyright is achieved through declaratory laws granting authors of the literary and artistic works certain exclusive rights in respect of utilization of their works" (Masika 1995:2). Authoring, composing, and creativity of works are an investment and therefore those who deal in it should have the monopoly of distribution and reproduction of their work so as to gain economically. The philosophy of copyright is primarily to reward the producers for their intellectual investment. The secondary aspect is to encourage producers in the intellectual field to more generation of cultural heritage for the present and future. This would provide motivation to the existing and potential authors and producers. The criterion of protection is not novelty as in respect of industrial property, but originality. "One of the main principles related to protected works is that it is not the idea contained in a scientific, literary or artistic work which enjoys protection but the

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individual form of expression" (Guerassimov, 1995:3). "The rights of an author do not prevent other persons from independently creating works, which are similar to the original one" (Masika 1995:2). Producers of entertainment, phonograms and the broadcasting organisations are protected by neighbouring rights which authorise reproduction, right to public performance and right of broadcasting.

Copyright Infringement

If anything is done with a literary, dramatic, musical, or artistic work without the permission of the copyright owner as defined in the relevant National Copyright Act, then it could as well be an infringement of the owner's copyright. " A copyright gives one the sole rights to produce or reproduce ones works, performance and so on, or to authorize such activities by others. Anyone who engages in such activities without permission is infringing on the copyright holders rights" (<http://webmail.mak.ac.ug/cgi-bin/sqweb>). ICT by its nature opens up the processing, storage, retrieval and dissemination of information and concurrently opens wide the door for copyright infringement. ICT presents unique copyright infringement. Some of the ICT copyright related crimes are reviewed below.

(a) Professional Counterfeits

These are professionally made copies of software including media, packages, licenses and even security holograms. They are made to resemble the genuine article as far as is possible.

(b) Recordable CD-ROMs

This used to be called "gold-disk piracy", but recordable CD-ROMs now come in different colours including silver. Pirates compile large amounts of software onto one recordable CD-ROM and make multiple copies of the CD-ROM. There is usually no attempt to pass these off as the genuine article. These recordable CD-ROMs or "pirate CD-ROM compilations" will then be sold to customers in different ways: mail-order, "under-the-counter" at retail outlets, markets and are now even advertised on the Internet.

(c) Hard Disk Loaders

These are dealers or retail outlets who load infringing versions of software onto a computer system to encourage customers into buying their computer hardware. Customers will not have the appropriate licenses, will not be entitled to technical support or upgrades, and may find the software on the computer to be incomplete or to contain viruses.

(d) Internet Piracy

This is the downloading or distribution of infringing software on the Internet. Just because software is present at certain sites on the Internet does not necessarily mean it is free or legal for you to download. It may have been placed on the Internet without the copyright owner's consent. Software pirates also advertise their services on the Internet by offering cheap mail-order software. If you have any doubts about what is being marketed on the Internet you are advised to contact the software publisher directly.

(e) Traditional Piracy

This is piracy other than Internet piracy. It involves bogus adoption of an author's work as One's own, and goes ahead under that pretence to reproduce and distribute it.

(f) Corporate Over-Use

This is the installation of software packages on more machines than there are licenses for. For example if a company purchases 5 single-user licenses of a software program but installs the software on ten machines, then they will be using 5 infringing copies. Similarly, if a company is running a large network and more users have access to a software program than the company has licenses for, there will be corporate over-use (<http://www.fast.org.uk/law/typesofpiracy.asp>).

(g) Dubbing

This is perhaps the most common and notorious form ICT crime. It involves reproduction and distribution, of particularly music cassettes, compact disks, records and videotapes without the producers' consent.

(h) Photocopying

This is similar to dubbing but involves reproducing multiple copies of documents beyond reasonable "fair use exemption" without the producers' consent.

International Related Provisions

The proposed Uganda Bill should fall in line with the existing international provisions including:

- *The Berne Convention.* With the development of cultural and economic relations among states, there was need for bilateral treaties. This proved to be difficult because so many states were involved. Hence in 1886 a number of states formed the Berne Union, which adopted a multilateral Act - the Berne Convention for the protection of Literary and Artistic Works. By virtue of this Convention the signatories are obliged to protect

foreign authors in the same manner as their national authors in conformity with certain requirements established by the intellectual work (Guerassimov, 1995:19).

- *The Universal Declaration of Human Rights (1948)*. Article 27(2) of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations spells out that “ Everyone has the right to the protection of moral and material rights resulting from scientific, literary or artistic productions of which he is the author. This provision runs through most of the copyright laws adopted by states.
- *Treaty on International Commerce and Trade*. A new International instrument adopted in Marrakesh (Morocco) replacing the former General Agreement on Trade and Tariffs (GATT). The treaty contains a special agreement on the Trade-Related Aspects of Intellectual Properties (TRIPs), a part of which relates to copyright and demands that states must provide for the protection at the level of protection under the TRIPs, for certain rights not expressly mentioned in the conventions and for a number of strong enforcement measures. This is coded (The Berne Plus) which expects developing countries to make their legislation in accordance with TRIPs requirement within a period of 4 years and the least developed countries within 10 years (Guerassimov, 1995:22).
- *The Universal Copyright Convention*. Adopted in 1952 provides for the assimilation of foreign authors to national ones, liberation from compliance with the obligatory formalities in certain states (such as registration and deposit work) by simple attribution of the copyright “C” in a circle accompanied by the name of the author. The Convention was revisited in 1971 and prescribed that under national laws the author’s rights should include the right to authorise reproduction by any means, public performance and broadcasting of his work. It is also provided that states could make individual laws providing for exceptions in favour of public interests.
- *The Florence Agreement*. Advocates for a Waiver of customs and excise duties (tariffs) to imports of educational, scientific and cultural materials by the signatories to the Agreement.

The Copyright Law Model

The International Bureau of the World Intellectual Property Organisation prepared the model based on the Berne Convention for the protection of Literary and Artistic Works. It gives elements of the national copyright laws of countries signatory to the Berne Convention and gives answers to the

traditional questions of copyright as well as new questions arising from ICT developments. The law provides for the following elements:

- Definitions
- Subject matter of protection
- Duration of protection
- Limitations of economic rights
- Ownership of rights
- Transfer of rights, licenses
- Waiving the Exercise of Moral rights
- Collective Administration of Economic rights
- Measures, remedies and sanctions in case of piracy and other infringements
- Final Provisions.
- Non-voluntary translation and reproduction licenses for developing countries.

An overview of the Draft of Uganda Copyright and Neighbouring Rights Bill, 2002

The Copyright Law, 1964 has been in existence for 28 years and is now outdated due to developments in the fields. It does not make provision for example neighbouring rights, criminal and civil courts, moral rights, etc which now need to be incorporated. Below are highlights of the Draft Bill.

1. The Bill seeks to update the law on Copyright to bring it into line with international standards and the Agreement on Trade Related Aspects of Intellectual Property Rights (The Copyright and Neighbouring Rights, 2002:1).
2. Explains the type of works to be protected regardless of the quality and purpose. Also explains works that should not be protected because of public interest.
3. Bibliographic details to be displayed on the works.
4. What the economic rights entitles the producer to do.
5. The moral rights not assigned to another person - claim authorship of the work except those reporting current events by means of the media.
6. Proportional sharing of rights in case of joint or multiple authorship.
7. Introduction of neighbouring rights to performers such as singers and actors.
8. The period of protection by law (life time and fifty years after death; others protected for fifty years after publication).
9. Regulation of contracts relating to authors rights:
10. In case of a publishing contract: publishing contract-period, territory and language; period not exceeding 18 months within which the contract has

to be announced; the exclusive or non-exclusive nature of the right to be transferred; the amount of author's remuneration and mode of payment.

- (i) In case of public performance contract, where a person allows another to perform the work
- (ii) In case of a contract for broadcasting.

11. Provident and Benevolent Fund where all moneys for right owners is to be credited and later disbursed.
12. Keeping of registers of works, productions and associations.
13. Charge on blank tapes dealers.
14. Provision for Criminal and Civil offences, remedies and punishments
15. Copyright Court.
16. Powers conferred to the Minister to make regulations for the betterment of copyright law.

Criticisms of the Bill

- The Bill is too long. Would this possibly prejudice its reading and comprehension?
- Minority language-consumption limited to English speakers not necessarily the language of the authors, producers and artists. There is need for translations?
- Need for non-voluntary or statutory licenses-provision for certain cases where for practical reasons, a work may be used without authorization of the author or other copyright owner but subject to payment of remuneration, the amount of which is fixed either by negotiations between the parties concerned (non-voluntary licenses) or by law (legal license) (Guerassimov, 1995:11).
- Misuse of Free Use. Needs elaboration- what is reasonable free use? Perhaps there is need for a mechanism of detecting miss-use of free use particularly when reproduction is far in excess of "the fair use doctrine". Should the aggrieved refer to court?
- It is a general complaint that library photocopying by the sophisticated machines are widely used in Universities, schools, research centres and other educational institutions and this practice in developing countries is becoming more prejudicial to the authors interest since they reduce the selling of books and subscription to journals. While the photocopiers are paid for their services the author is cheated. It appears necessary to take legal measures to compensate the authors. Perhaps non-voluntary or statutory licenses are the answer! Is Photocopiers tax the answer as proposed for the blank tapes?

- Penalties against copyright infringement were very ineffective in the 1964 Act. The same looks true of the proposed Bill. How can U Shs. 3000 prevent infringement of a deal worth of millions of shillings? Strict measures should be put in place as deterrent.
- Provisions to deal with cyber plagiarism and related crimes should be incorporated.
- The issue of Collective Administration of Copyright has been inadequately addressed in the Bill. The provisions need to be strengthened by close monitoring and supervision to ensure that society does not work to the detriment of the authors/producers/composers and those who use their works.
- Although creation of awareness and popularizing copyright should not be specifically incorporated in the Bill the message nevertheless should run throughout so that all stakeholders including grassroots are sensitized to support and protect copyright. Besides the commendable efforts to promote public awareness of the subject by WIPO, UNESCO and CISAC,

“There is need for intellectual property in teaching programmes in our tertiary institutions, not only the Faculty of Law at Makerere and the Law Development Center (LDC), but also other institutions. This would necessitate development of research and writing of books about the subject of copyright” (Masika, 1995:11).

The Challenges to the Information Practitioner

The nature of challenges in copyright protection should not be tackled in an isolatist approach. A holistic approach would be better so that all copyright stakeholders pool their resources to find solutions to common problems. Some of the challenges are briefly reviewed in the following paragraphs.

(a) Extensive and Relevant Intellectual Production

The first challenge dictates that the producers should have bigger and more relevant intellectual property for utilization. It is not quantity only but quality and diversification in indigenous languages. The producers’ front interest is to maximize profit from their products. However if they were to create wider market for their products then the products must be consumed. But the popularizing of the products encounters copyright violation and related crimes!

(b) Utilization of Intellectual Property

On the parallel side the information scientist’s major challenge is the utilization of the products so that knowledge for development is derived. But

full-fledged utilization tends to result into copyright violation and related crimes.

(c) International Copyright Solidarity

Uganda is yet to be a signatory to Copyright and related International Agreements, Conventions and Protocols and as such has not benefited from their goals.

Some solutions to the challenges posed by the Bill

Some solutions to the above challenges are reviewed below:

(a) Cultivation of ethical and moral attitude

The first solution is cultivation of ethical and moral attitude towards copyright so that it is not violated. It is a question of attitude change both to the copyright holders, the consumers and the information scientists so that there is respect to the copyright provisions.

(b) Government appreciation and support of copyright

Make the government aware of the need and urgency of appreciation and recognition of copyright as a means of producing and preserving the national heritage (Intellectual property.) Funding and policy provisions must be made to build the ICT infrastructure and encourage ICT education and training in the School curriculum.

(c) International Copyright Solidarity

Uganda should join the International Copyright solidarity through being signatory to the Florence Agreement, the Berne Convention, and the Universal Copyright Convention, among others so that Ugandans could fully reap the benefits of these arrangements.

(d) Formation of Strong Copyright Association(s)

Strong Copyright related Association such as; The Federation Against Software Theft (FAST) should be formed in Uganda to agitate for the enforcement of intellectual rights.

(e) Current Awareness

There is need for a Current Awareness Drive towards the importance of copyright and the need for its protection and sanctions against those who infringe copyright.

The role of Information Professionals in the Bill

Information professional is a generic term to define information collectors, processors, retrievers and disseminators of information. This clan includes librarians, documentalists, record and archive managers, publishers and book traders, information scientists, mass media and so forth. They work in a circle of contradiction: they need information, the merchandise they deal in, generated by authors, composers and artists. So they should ensure that the rights of these people are protected so that they are motivated to produce quality work in adequate quantities. Yet, the paucity of these publications coupled with abject poverty, compounded by the right of access to information by everybody, and the ignorance of the Copyright Law itself, have tempted them to reproduce information without due authority from the producers, particularly through photocopying. Following this argument information professionals either by design or default are the worst infringers of the Copyright Law. There are fears that many of the professionals may not know the Copyright Law and therefore do unknowingly infringe it. It is the old story of eating the chicken, which produces the egg, a very sorry terminal action.

Yet the contribution of the information professional to the Copyright prosperity cannot be over-emphasised. Therefore there is need for them to:

- Read, interpret and understand the Copyright Law,
- Play a responsible role of protecting those who produce the merchandise they deal in,
- Ensure that free use provision of information is not abused,
- Contribute to the users awareness of the Copyright through lectures or posting notices in photocopying places, and
- Support the idea of non-voluntary and statutory licenses so that the authors, producers and composers are compensated.

Copyright infringement of whatever magnitude is suicidal to intellectual property development and should be eliminated unsparingly. It is not a battle to be fought and won by producers alone but requires a united front of producers, the government, the users and ICT business circles. The information scientists being key players in the information flow process should take the lead to process and disseminate information within the limits of the Copyright Law.

Recommendations and solutions for the Improvement of the Copyright Bill, 2002.

The Copyright Bill, 2002 should incorporate measures to handle ICT copyright infringement as follows:

- Damages in the form of fixed penalties being payable for each copyright infringement (software),
- Should also introduce a court order instructing a public apology to be made via a media advertisement by the offender to the producer,
- The penalties for infringement should be tougher including unlimited fine or up to two years imprisonment,
- Software license should also be introduced. These are the terms and conditions of use of a software program, as set out by the software publisher or owner of the copyright. The license will be issued with the software on paper or in electronic form. It is important that the license is read and understood, before the software is installed and used. If one is in breach of the license conditions it is very likely that one will have infringed the owners' copyright.
- Like the U.K Copyright, Designs and Patents Act 1998, the Copyright Bill should specifically allow the making of back-up copies of software, but only providing it for lawful use. (<http://www.fast.org.uk/law/faq.asp>)

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