

**THE OPEN UNIVERSITY OF TANZANIA**

**FACULTY OF LAW**

**TOPIC :**

**LEGAL AND PRACTICAL PROBLEMS IN  
IMPLEMENTATION OF COPYRIGHT LAW  
IN TANZANIA: The Case of  
Music Industry**

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## **CERTIFICATION**

The undersigned do certifies to have read and recommended for acceptance by the Open University of Tanzania (OUT) a research titled Legal and practical problems in implementation of Copyright Law in Tanzania: The case of music industry. In partial fulfillment of the requirement of Bachelor of Laws Degree (LL.B).

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Dr. KHIWELO, P. F.

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Date

## DECLARATION

I, **DOMINIC NDUNGURU** do hereby declare that this work is a product of my personal research, not presented to any other university for a similar or other degree onward.

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Signature

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If this research reflects in even a small measure the cooperation, goodwill, and encouragement of the many who somehow had a hand in its completion, it is the better for it.

Finally, I take the responsibility of any shortcoming pertaining to this research paper.

## **DEDICATION**

To the present young generation, as my contribution to it.

## **LIST OF ABBREVIATIONS**

|          |                                                                   |
|----------|-------------------------------------------------------------------|
| ARIPO:   | African Regional Industrial Property Organization                 |
| BASATA:  | Baraza la Sanaa la Taifa                                          |
| BRELA:   | Business Registration and Licensing Agency                        |
| CD:      | Compact Disk                                                      |
| CISAC:   | International Confederation of Societies of Authors and Composers |
| COSOMA:  | Copyright Society of Malawi                                       |
| COSOTA:  | Copyright Society of Tanzania                                     |
| DJ:      | Disco Joker                                                       |
| DVD:     | Digital Versatile Disk                                            |
| FCC:     | Fair Competition Commission                                       |
| IP:      | Intellectual Property                                             |
| IPRS:    | Intellectual Property Rights                                      |
| K:       | Kwacha                                                            |
| MC:      | Master of Ceremony                                                |
| MKUKUTA: | Mkakati wa Kukuza Uchumi na Kuondoa Umaskini Tanzania             |
| NGO:     | Non Governmental Organization                                     |
| OAPI:    | Organization of African Property Intellectual                     |
| OMT:     | Open Mind Tanzania                                                |
| PCT:     | Patent Cooperation Treaty                                         |
| RTD:     | Radio Tanzania Dar es Salaam                                      |
| SME:     | Small and Medium Enterprises                                      |
| TLT:     | Trademark Law Treaty                                              |

|        |                                                       |
|--------|-------------------------------------------------------|
| TRA:   | Tanzania Revenue Authority                            |
| TRIPS: | Trade Related Aspects of Intellectual Property Rights |
| TV:    | Television                                            |
| UK:    | United Kingdom                                        |
| WCT:   | Wipo Copyright Treaty                                 |
| WIPO:  | The World Intellectual Property Organization          |
| WTO:   | World Trade Organization                              |

## **TABLE OF STATUTES**

Copyright Act CAP. 61 R. E. 2002

Copyrights and Neighbouring Rights Act CAP. 7 R. E. 2002

English Copyright Act of 1956

United Kingdom Copyright Act of 1911

## **TABLE OF CONVENTIONS**

Berne Convention for the Protection of Literary and Artistic Works, 1886

Convention Establishing the World Intellectual Property Organization (WIPO), 1967

Paris Convention for the Protection of Industrial Property, 1883

## **TABLE OF TREATIES**

WIPO Performance and Phonograms Treaty (WPPT), 1996

WIPO Copyright Treaty (WCT), 1996

## **LIST OF CASES**

Bassette Vs. Société des Auteurs, Compositeurs et Editeurs de Musique (SACEM) (1987)

ECR 1747

Collins Vs. Imtrat Handelsgesellschaft mbh (1994) FSR 116

State Vs. Khalfan Abdallah Case No. C. 550 Kisumu Resident Court (unreported)

Malaika Buberwa Vs. Ally Kiba Case No. 33/2007 Kariakoo Primary Court

(Unreported)

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## CHAPTER ONE

### 1.0. THE CONCEPTUAL FRAMEWORK

#### 1. 1. Introduction

The ultimate end of the law is protection of man, his liberty, life and property. Human property might range from physical property like money and wealth, life, to intellectual property, which includes a variety of intellectual creations made by man, mainly to be used or enjoyed by the public. These include literary and non literary publications, fine arts like paintings and sculptures, and performing arts like music and films. All these need to be protected by the law as it is for life and physical wealth.

For a law to be protective, it must be effective. As it is noted by Wangwe<sup>1</sup>, the effectiveness of the laws themselves depends on the level of their enforcement. In Tanzania there have existed legal mechanisms to safeguard intellectual creators and their creations, but their implementation has not yielded satisfactory protection in terms of making intellectual creations enjoy and benefit their creations to the maximum. In other words it is observed that the relevant laws related to intellectual property (copyright laws included) are in books<sup>2</sup> than in real day to day operations. This discrepancy needs to have a reliable reason behind.

Today there is increasing access to legal information and legal education, at the same time, piracy of intellectual creations is still common, and no mass demonstration by the intellectual creators to show that they understand their rights and they support legal

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<sup>1</sup> Wangwe et al; Economic and Social Research Foundation, Country Case Study for Institutional Issues For Developing Countries in IP Policy-Making, Administration and Enforcement, (Report of the Commission on Intellectual Property Rights) (unpublished) DSM, 2007

<sup>2</sup> Ibid

instruments working towards achieving effective implementation of the copyright law. Therefore, this study is an attempt to explore whether effective implementation of the copyright law in Tanzania is constrained by ignorance of the intellectual creators about the legal mechanisms that exist to protect their copyrights, or there are other reasons behind.

## **1. 2. Background to the problem**

Copyright protection efforts in Tanzania can be rightly traced as far as the colonial era, especially in 1924 when the British Colonial Government extended the United Kingdom's Copyright<sup>3</sup> into Tanganyika (being one of her mandate protectorates). This law was basically protective to metropolitan people and their interests in the colony, regardless of being culturally superimposed if remained in place up to 1966.

In 1966, the first Copyright Act<sup>4</sup>, which was expected to reflect Tanzanian cultural creations was enacted, though still it could be perceived as an imitation of the 1956's English Copyright Act<sup>5</sup>. The Act remained legalistic and centralized, for example its sole implantation was entrusted to the ministry of legal affairs.

In this situation, the majority of the clients were not informed of the Act and its working mechanisms. Between 1966 and 1999 copyright violations happened, but no case was reported and its implementation remained dormant. Owing to the forces of globalization accompanied with mushrooming of technological piracy in the industries like music and publication, the latest Act was enacted in 1999.

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<sup>3</sup> Act of 1911

<sup>4</sup> Act No. 61 of 1966

<sup>5</sup> Act of 1956

The new copyright Act<sup>6</sup> promised to protect the interests of both performing arts, authors<sup>7</sup>, economically and morally, but still up to the present, there are evidences of artists whose copyrights have been endangered but they have not either reported such incidents to responsible implementing authorities, or their administration (implementation) has not practically been effective. There is therefore a need to understand if ignorance is still the only barrier towards effective implementation of the copyright law.

### **1. 3. Statement of the problem**

The concept of possession is vital to man kind. Possession of material things (food, clothing, shelter, tools, etc) is essential to life. Possession is the most basic relationship between men and things. A society in which possession is not protected would be very cumbersome place to live in and may lead to violence, chaos, and disorder. Thus, protection of possession is a prime responsibility of the legal system<sup>8</sup>.

In supporting trade liberation, Tanzania has enacted many laws pertaining to free trade practices in the free economy environment especially in property ownership<sup>9</sup>. In connection to that, the Copyright Law of 1966 was repealed<sup>10</sup> so to cater the new era of globalization. The new law provides for a better legal framework for guiding the intellectual creators' rights.

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<sup>6</sup> Act No. 7 of 1999

<sup>7</sup> Section 2 (i) and (iii) Act No. 7 of 1999

<sup>8</sup> Mehta, R, *50 Lectures on Jurisprudence*, (2<sup>nd</sup> Ed), Snow White Publication as Pvt. Ltd, India, 2000

<sup>9</sup> Example: 1. The Land Act No. 4 of 1999

2. The Village Land Act No. 5 of 1999

<sup>10</sup> Section 52 (1) of Act No. 7 of 1999

Despite of the efforts which have been made to mainstream the existing legal framework to provide effective and practical protection of the copyrights of the intellectual creators in Tanzania context, and although all these promising changes, implementation of the copyright law is still practically ineffective.

In connection to that, Tanzania, like the rest of East African Countries, is fast becoming a dump ground of counter freight products (CDs and music cassettes included) from all corners of the world. These fake products eat into around 75% of the genuine business<sup>11</sup>. On the other hand, technological innovations speed up actions related to piracy and exploitation of intellectual creations. In this situation it becomes hard to establish whether ignorance of intellectual creators is still a main problem that constrains effective implementation of the copyright law in Tanzania or there are other reasons than ignorance.

Then, therefore, this research examines this state of affairs and wants to trace why the law is ineffective and leaves piracy to continue in such great extent. For that this work wants to discover the existing vacuum in the operation of the law. The research also will provide for means and measures, practical, technical, administrative and legislative in combating those problems effectively.

#### **1. 4. Objective of the study**

The general aim of the study is to understand the main legal and practical problem that constrains the effective implementation of copyright law in Tanzania. The researcher is

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<sup>11</sup> Godfrey Mkocha, the Director General of Fair Competition Commission: *Speaking during a two days conference on intellectual property rights and fight against counterfeits*; held in Dar Es Salaam October, 2007

committed that at the end of the study, at least the following objectives must be achieved:

- a) To trace core reasons which constrain effective implementation of the copyright law in Tanzania.
- b) To suggest practical mechanisms that can make implementation of the copyright law more effective and practical than it is today.

### **1. 5. Significance of the study**

This study is potentially useful in the following ways:

- a. It will help COSOTA on understanding the level of achievement reached towards making intellectual creators aware of their copyrights.
- b. It will provide additional information on the general environments that hinder effective implementation of the copyright law in Tanzania.
- c. It will come up with alternative practical strategies which can be used to make implementation of the copyright law in Tanzania more effective.

### **1. 6. Hypothesis**

This study aims to test the following major hypothesis:

Ignorance is still the main problem that constrains effective implementation of the copyright law in Tanzania.

### **1. 7. Literature review**

In light of different studies and theoretical approaches, a law is highlighted as crucial for harmonious perpetuation on of the social order. From the readings consulted so far, it is evident that a few numbers of authors have written about intellectual property in

Tanzania. Despite many complaints against piracy particular in music, only a little literature is available on this subject matter. However, the little literature available has made a tremendous contribution in this research work.

**Brainbridge**<sup>12</sup>, in his work among other things discusses the artists' role in protecting their rights. He argues that intellectual property gives rise to rights and duties. It establishes property rights, which give the owner the sole right to do certain things in relation to the subject matter. For example, if the right is copyright and the subject matter is a piece of music, the owner of the copyright has the exclusive right to make copies of the sheet music.

However, the owner has the negative right, to prevent others from doing such things in the relation to the music (duty of protecting his rights towards infringement). This research work takes this work (explanations) as a good contribution since the argument fall within the demand of the current situation.

**Mgonja**<sup>13</sup>, tries at great extent to examine the role of intellectual property law especially patents usage in combating poverty. He continues saying that once intellectual property rights are well protected the owners of the patents will become sustainable generation of income owners; hence in turn they will become potential tax payers to the government. Therefore, helps to fight poverty. Moreover, he shows how the foreigners have had an advantage of collecting or getting hold of plants and animal species or materials indiscriminate, which in turn benefit billions of money without sharing the profit with the

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<sup>12</sup> Brainbridge, D, *Intellectual Property*, (3<sup>rd</sup> Edition), Pitman Publication, Great Britain, 1996

<sup>13</sup> Mgonja, H.O, *Protection of Intellectual Property Rights and Poverty Eradication in Tanzania: Case Study in Patents*, A Dissertation for LLB Open University of Tanzania, DSM, 2002 (unpublished)

indigenous people. He gives examples of piracy due to ignorance and poverty of the deeply artists. However, the author does not look at the main legal and practical problems which make the copyright law to be inoperative. Also, he does not suggest the practical ways to overcome those problems. Therefore, it is the aim of this work to tackle that problem.

**Mmbando**<sup>14</sup>, tries at great extent to examine the problems associated with copyright infringement and piracy on copyrightable works fixed on the internet. Also, the research brings forward the problem of ineffective laws in protecting and enforcing conferred rights in digitized environment. He further tries to raise awareness that internet technology outsmart copyright law rapidly. The rapidity renders the copyright law ineffective in protecting literary and artistic works digitized on the internet. Furthermore, the author put recommendations for the government to establish an office with status of government office for copyright information rather than a mere society. On the contrary, the author failed to go in deep into analyzing the reasons for inoperative of the law. This study is going to trace the reasons for the inoperative of the law.

**Bakilana**<sup>15</sup>, finds that the copyright law in Tanzania is a law without policy, officers or systems for its administration. He concludes that despite the enactment of the aforesaid legislation – Copyright Law and Neighbouring Act, 1999 piracy and infringement still exist. This research is not extended to the extent of discovering how much ignorance affects the ineffective of the law. In my research, I will try to find if ignorance is the main

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<sup>14</sup> Mmbando, F. M, *Internet; Beyond the Protection and Rights of Copyrights Owners in Tanzania*, A Dissertation for LLB Open University of Tanzania, DSM, 2005 (unpublished)

<sup>15</sup> Bakilana, P. C, ‘‘*The Tanzania Copyright and Neighbouring Rights Act, 1999 and the Tanzania Journalist*’’ In the Tanzania Journalist November – December, 2001 (unpublished)

cause for ineffectiveness.

**Rwegoshora**<sup>16</sup>, examines the impact of the new intellectual law and its practice in relation to protection of intellectual property rights in Tanzania. He further tries to understand if this new law has solved the problem of piracy. On the contrary, he observed that the Copyright Law and Neighboring Act of 1999 which was enacted to cure the mischief contained in the 1966's copyright legislature despite its enactment, plundering, imitation, copying and the like continue unbaked. However, the author does not go in deep into finding the root cause of the ineffectiveness of the copyright law. For that reason, this study is expected to fulfill the untouched part.

**Mwita**<sup>17</sup>, though not directly talks on copyright but he much describes the impact on unprepared adoption of liberalization policies. He further argues that free market environment if not controlled very well increases selling of unfit items for human consumption. This problem also exists in copyright protection cause since the policies of free market emerged piracy has extended in an alarming rate. Moreover, the author emphasizes the need for coordinating the stakeholders in fighting the problem raised by trade liberalization. In this great work the author did not state the reasons for causing the existing law to fail combating the evils of trade liberalization. Therefore, the on going research is expected to clear that gap.

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<sup>16</sup> Rwegoshora, A. K, *Copyright Protection in Tanzania Mainland: "Law and Practice"* A Dissertation for LLB Open University of Tanzania, DSM, 2005 (unpublished)

<sup>17</sup> Mwita, M. F, *The Legal Control on Manufacturing and sale of foodstuffs Unfit for Human Consumption in Tanzania*, A Dissertation for LLB Open University of Tanzania, DSM, 2002 (unpublished)

## **1. 8. Research methodology**

This section elaborates the means by which the study will be accomplished. The study will undertake both methods of obtaining information, that is, documentary review and field research.

### **1. 8. 1. Documentary review**

Under documentary review, I will extract information from text books, statutes, journals, dissertation and thesis, unpublished materials, newspapers and presentations on the subject of copyright.

Furthermore, the research will also involve collection of data from different libraries such as the Open University of Tanzania, British Council Library, University of Dar es salaam, the Tanganyika Library Services, Commercial Court Library, the library of the High Court of Tanzania. Data collection shall also be by way of surfing and reading materials provided on the internet at various World Wide Web sites. These are those related to World Intellectual Property Organization (WIPO), OAPI, ARIPO and others, which are relevant to the research topic of the research.

### **1. 8. 2. Field research**

On the other hand, field research method will involve fieldwork so as to collect necessary data. This will be through observation and interviews with primary sources including the artists' (musicians and authors), police officers, music distributors, and promoters. Both written and oral questionnaires will be used for the purpose of gathering necessary information. Secondary sources will include the national authorities such as the Copyright Society of Tanzania (COSOTA), the National Arts Council (BASATA), the

Fair Competition Commission (FCC), the Business Registration and Licensing Agency (BRELA), and the Tanzania Revenue Authority (TRA). These authorities will be asked to provide information on the laws in operation in relation to Copyright protection and trade operations and the policy governing those areas.

## **CHAPTER TWO**

### **2. 0. COPYRIGHT SYSTEM OPERATION IN TANZANIA**

#### **2. 1. Development of copyright system in Tanzania**

The term intellectual property (IP) describes those rights which protect one works by hand or brain against unauthorized use or exploitation by another. General speaking, intellectual property law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made of those productions.

Traditionally intellectual property is divided into two branches: Industrial property chiefly inventions, trademarks, industrial designs and appellations of origin; and copyright, mainly of literary, musical, artistic, photographic and audiovisual works<sup>18</sup>.

As one of the branch of intellectual property, copyright deals with rights and protection bestowed on people who use their mind and intellect to create literary, artistic and scientific works. Section 4 of the Copyright Law<sup>19</sup> defines the term copyright as, “the sole legal right to print, publish, perform film or record on artistic or musical work”.

The development of Copyright Law in Tanzania can be put into three phrases. The first phrase was the Colonial Copyright Law. During such era the UK Copyright Act<sup>20</sup> was made applicable to Tanganyika in 1924 after having been revised and become the Copyright Ordinance<sup>21</sup> of 1924. This legislation came into force on the 1<sup>st</sup> day of August 1924. The Act was extended to protect the UK copyright owners and their interests.

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<sup>18</sup> Wangwe: loc. cit

<sup>19</sup> Act No. 7 of 1999

<sup>20</sup> Act of 1911

<sup>21</sup> Cap 218 No. 15 of 1924

This law was designed as a legal matter not commercial, economic or cultural; through the legal department. The said Act was extended to Tanganyika not because of the perceived need to protect the intellect property of the native authors and artists, but rather it was intended to protect works of metropolitan authors whose creations were being exported into the territory<sup>22</sup>.

The year 1966 marked the second era of Copyright Law as post colonial (independence) era. In this year the Tanzania Copyright Act<sup>23</sup> was enacted. It was aimed to remove the colonial label and project nationhood. However, the Act was copied from the English Copyright Act<sup>24</sup>. But still the Act failed to emphasize adequately the Tanzanian culture, creations, commercial and economic rights. Moreover, the Act did not cater for protection of neighbouring rights of performers, computer programs and databases, and users of folklore. Regulation and management still was under the Ministry of Legal Affairs. It was a regulating structure or agency.

From 1966 to 1999 no Tanzanian Copyright case was reported and no amendment to the Act was made. It was the law without police officers, or system for its administration<sup>25</sup>. All this was the influence of socialism which vested property rights in a distant state and denied the people any means of holding the state accountable for its exercise of those rights<sup>26</sup>.

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<sup>22</sup> Bakilana: loc. cit,

<sup>23</sup> Act No. 61 of 1966

<sup>24</sup> Act of 1956

<sup>25</sup> Bakilana: loc. cit

<sup>26</sup> Korten, D. C. *When Corporations Rule the World*. Berrett-Koehler Publisher California 1996

History proves that in the sixties, premium Tanzanian musicians found sanctuary for their talents in Kenya. Nairobi offers artists of the time ‘greener’ pastures. While at the time tremendous technological changes allowing room for piracy had not grown in leaps and bounds many such artists were at least able to earn a decent living through sale of vinyl records and live band performances.

Today, things have changed. Backstreet pirates reproduced music using their computers faster than producers are in their lofty recording offices. Liberalized airwaves have seen radio and TV multiply, offering ample exposure of Tanzanian talent<sup>27</sup>.

The changes brought by globalization and the signing of the World Trade Organization Treaty<sup>28</sup> brought a new era which necessitated to the enactment of the new Copyright Law<sup>29</sup> in 1999 and the law came into operation on December, 31, 1999.

This is very up-to-date law on copyright, neighbouring rights and expression of folklore; it compiles with the Berne Convention of 1886 and the TRIPS Agreement of the World Trade Organization<sup>30</sup>.

While much-hyped East African Community integration efforts have stalled and despite that all indicators point to the other countries leaving Tanzania out of it, there is still the need to harmonize some aspects of common interest including music.

Hitherto and buoyed by technology, there is no force that can stop the flow of music across the borders. The least Tanzania copyright authorities can do is to link up with their

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<sup>27</sup> Sunday Citizen 7 December, 2008

<sup>28</sup> World Trade Organization Treaty of 1994

<sup>29</sup> Act No. 7 of 1999

<sup>30</sup> Wangwe: op. cit

counterparts across the borders. It can be noted that Tanzania serves as a distribution point for goods into countries in the region such as Rwanda, Burundi, Zambia, Congo and Uganda.

As such, piracy in Tanzania has a potential of damaging market thought East Africa. Major concerns should therefore address the laws, their enforcement and inadequate to include joint training, enforcement campaigns and deliberate liaising and database maintenance that will serve as points of reference that is open to countries concerned<sup>31</sup>.

## **2. 2. Music business in Tanzania**

The music industry in Tanzania is one of the fastest growing industry as evidenced by increasing number of new entrants especially Bongo Flavour “Muziki wa Kizazi Kipya” and Gospel Music<sup>32</sup>.

In cultural sphere, what is popularly known as Bongo Flavour, is a musical genre that was initially developed by the urban affluent youth, who through this medium attempt to show their discontented across the street and the country at large against the division that existed among them. By late 1980, Dar es Salaam was dominated by groups of rap artists who called themselves names such as Proud Niggers, Niggers with Power, Nigger One, Rough Niggers, Gangster with Matatizo, Weusi Wagumu Asilia, etc. These names were a form of self-definition within geographical, social, economic and political terms of youths who had been related to the status of ‘Leader of Tomorrow’ by party and government leaders<sup>33</sup>.

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<sup>31</sup> Sunday Citizen 7 December, 2008

<sup>32</sup> Report on Music Industry Landscape and Regulatory System in Tanzania loc. cit

<sup>33</sup> Prof. Chachage, S.L, Youth, Politics and Democracy in Tanzania, Department of Sociology University of Dar Es Salaam, (unpublished), 2006

The industry in Tanzania consists of supply of music products in the following main forms: Sound recording, live performance, broadcast via radio and television, functions such as wedding, political rallies, burial functions, recorded music at retail outlets, hotels, restaurants and bars/pubs, casinos, passengers carriers-buses, planes, boats, etc<sup>34</sup>.

The music products are classified into the following types or forms: traditional dance, Bongo Flavour; Tanzania's home made rap, gospel music, choir, brass band, jazz band, taarab and disco music<sup>35</sup>.

Manufacturing in recent years constitute a bigger part of music industry but the firms offering compact discs produce in post probably inexpensive duplicating equipments. For a long time no available recording facility in Tanzania existed except the state controlled Radio Tanzania Dar Es Salaam (RTD). Radio recording was done for own use (by then there were only two radio stations: Radio Tanzania Zanzibar and RTD) for a token sum of money. The only source of income for local musicians was live performance<sup>36</sup>.

Production of sound recording in Tanzania is now dominated by private recording companies. These companies are small in size and majority has just registered their business names with the registrar of companies. This mode of registration provides a big challenge because music products have long life cycles and the copyright law protects the rights up to 50 years after the death of copyright holders. During the study, it's difficult to establish the number of cassettes and CDs produced in a year. Participants in group discussions indicated that recording companies tend to cheat both government and

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<sup>34</sup> Report on Music Industry Landscape and Regulatory System in Tanzania-ibid

<sup>35</sup> ibid

<sup>36</sup> ibid

musicians. Production sound recording and audio visual requires the owner of the work to hire a studio and produce a master, produce inlay cards, approach a record producer and carryout promotion of the album. This system has brought animosity and mistrust between the owners of the work (musicians) and the record producer because it is impossible for the owners to tract the number of cassettes and CDs produced and monitor sales<sup>37</sup>. Moreover, musicians have been exploited by being paid a peanut from what they have worked for years. For one cassette they receive 200 shillings, 500 shillings for each CD while a CD is being sold at a price of up to 7,000 shillings<sup>38</sup>.

Recently, COSOTA introduced adhesive labels and stamps as a means to control piracy. Musicians feel that it is still hard to control sales of tapes and CDs by recording companies. Actually they had the view that the major source of loss of income by musicians now is the recording companies. There are no regulations to control their activities<sup>39</sup>.

As indicated above recording companies also run studios which are relatively large and small recording studios. Majority of the studios are generally operated by entrepreneurs who are not musicians by career. The recording industry in Tanzania is made-up of small companies and in most cases these companies are individual owned<sup>40</sup>. These companies have set-up both mastering and duplication facilities. However, there is no facility of high quality mastering and duplications. More investors are needed to invest in this industry in order to have high quality music products for both local and international markets<sup>41</sup>.

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<sup>37</sup> Workshop Report Stakeholders Workshop loc. cit

<sup>38</sup> Yustus Mkinga CEO COSOTA Speaking During Music Workshop Organized by Prime Time Promotions Ltd. June, 2008

<sup>39</sup> Ruge Mutahaba CEO Clouds FM Radio Station During Interview on 11/06/2008

<sup>40</sup> Tanzania Daima, Friday, June 6, 2008

There no clear structure of the distribution of music products namely cassettes, CDs and DVDs. Distribution of music products currently do not need any licenses. Music products have for many years continued to be sold in the market by any person or company. This has created a wave of piracy music work and it has been very difficult to establish the extent of loss of revenue<sup>42</sup>.

Promoter's primary role, however, takes place in the post-production phrase. Once the recording production has been completed, sound and music are okay, the promoter must find a market for the album; working closely with the DJ's, TV and radios for the purpose of introducing the album to the audience. At this stage, the songs must speak to as wide an audience as possible<sup>43</sup>. The degree of audience coverage depends on the relationship between the promoter and other music stakeholders such as DJs and TV promoters. The promoter is successful when the music coverage reaches beyond the borders<sup>44</sup>.

Having presented the role of the promoter in music, I would be remiss if neither did acknowledge the power of promoters in a music achievement and as profession. The promoters share much with the musician in this respect. As a result, the promoter is a very powerful person because of his influence. The danger, then, is to abuse that power. A set of ethical standards or personal morality is the rudder for all who work in music industry. The rudder isn't always operable. The distributors do not have morale. They produce more copies than those reported; hence, big cash falls on them<sup>45</sup>. Producers also

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<sup>41</sup> Report on Music Industry Landscape and Regulatory System in Tanzania op. cit

<sup>42</sup> *ibid*

<sup>43</sup> Report on Music Industry Landscape and Regulatory System in Tanzania op. cit

<sup>44</sup> *ibid*

<sup>45</sup> Ruge Mutahaba: op. cit

participate in lyrics theft in collaboration with famous artists. When an emerging artist goes for recording in a studio, he is not given a chance directly to do so. But at the end of the day he finds some of his lyrics have been already used by the other famous musician<sup>46</sup>.

Record companies generate money by creating, manufacturing and marketing music art work. Later, they make money through recompilation rights. Record companies also have significant revenue from back catalog sales, because when music is popular it tends to have extraordinary long life through reissues. Finally recording companies may license other companies to produce copyrighted music to other companies and receive royalties in return<sup>47</sup>.

Music artists make money from sound carrier sales; they receive a royalty on each sale. Composers and authors (who are often artists as well) receive royalties for the various uses made on their compositions. These including recording (which receive mechanical royalty, live performance and broadcasting of their compositions for which they receive performance royalties<sup>48</sup>.

However, the structure outlined in this section is not fully functional because of ineffective system of collecting of royalties and its resultant high level of piracy. Most musicians earn their money through live performance particularly jazz bands and taarab groups. Only the youth has moved away from live performance to high technology music. They are in Dar Es Salaam, Mwanza, Arusha, Mbeya, Zanzibar, Tanga, Morogoro

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<sup>46</sup> Bingwa Newspaper Thursday April 17, 2008

<sup>47</sup> Report on Music Industry Landscape and Regulatory System in Tanzania-ibid

<sup>48</sup> ibid

or anywhere, and do not need to have a band anymore, but simply go to a recording studio, buy a pre-programmed rhythm, chant over it and make a rap single. They make money through mainly mechanical royalties<sup>49</sup>.

Most of the activities of domestic music relate to live performance over weekends in major cities of Dar es Salaam, Mwanza, Arusha, Tanga, Morogoro and other cities. Live performances are also common in major hotels and pubs<sup>50</sup>. Tanzania bands also in recent years also conduct live performance in Middle East (Dubai and Oman), Europe and America. However, there is much to be done in terms of exporting Tanzanian music<sup>51</sup>.

There has been no significant film industry in Tanzania through all signs that shows that in the next few years, the situation might be different. There have been a few films produced in the country, but without any significance in terms of depicting a Tanzanian presence in the international industry or in providing materials for domestic use. Local film production is limited to television. Local production tends to use existing local music rather than specific music composed for the production of film. Music for tourism is likely to increase the income of musicians through sale of records and entrance fees during live performance. Indirectly, other sectors/industries may benefit too, due to increase in demand for services such as transport, hotel accommodation, restaurants, handcrafts, etc<sup>52</sup>.

The only tourism related music events in Tanzania are the recently introduced Busara Promotion (Music festival) and Zanzibar International Film Festival. Although the

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<sup>49</sup> Report on Music Industry Landscape and Regulatory System in Tanzania: op. cit

<sup>50</sup> Bingwa Newspaper Thursday April 17, 2008

<sup>51</sup> Report on Music Industry Landscape and Regulatory System in Tanzania-ibid

<sup>52</sup> ibid

tourism sector is growing very fast, the music industry is yet to take up the opportunity. The industry needs to learn from South American and the Caribbean Island on how best to capture the tourism market<sup>53</sup>.

The proper promotion and managing of artists is sadly lacking in the country. There is a great need for education in this area. Copyright matters, publishing, negotiation skills, tax management, and similar areas need to be addressed. The producer is non existing breed in the country as more and more performers find themselves in the difficult position of having to finance their own recordings as well as promote their efforts<sup>54</sup>. The promoting agencies are earmarked as the main players who robe the rights of artists in Dar es Salaam and elsewhere of millions of shillings<sup>55</sup>.

### **2. 3. Music policy of Tanzania**

Its evident truth that order to ensure good management of any transaction, there must first be a proper forecast on the same. The forecast which stands to define the intended goals. This is what we call policy. It is where all the existing mischiefs or problems intended to cure are enlightened and then the proposed provisional or sustainable solutions to be designed<sup>56</sup>.

Despite the fact that music industry is one of the major employer of youth (Song writers, musicians, promoters, agents electronic technicians, stylists, security guards/bouncers, etc), it is not perceived as an income generating activity as it is not reflected or even

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<sup>53</sup> ibid

<sup>54</sup> Banana Zorro During Exclusive Interview With Bingwa Newspaper Thursday, May, 08, 2008

<sup>55</sup> Mr. Yustus Mkinga Legal Advisor & Copyright Licensing Officer (by that time) Speaking During the 5<sup>th</sup> Annual Conference of National Culture Sector Dodoma December 11 to 16, 2007

<sup>56</sup> Msigwa, M. M, *An Examination of the Adequacy of the Legal Framework for Investment in Urban Transport in Tanzania: A Case Study of Dar es Salaam Commuter Bus Services*, A Dissertation for LLB Open University of Tanzania, DSM, 2006 (unpublished)

mentioned in the SMEs policy, Employment Policy, Labour Laws, Social Security System, Poverty Reduction Strategy (MKUKUTA) and also it is not even included in the National Economic Data<sup>57</sup>.

However, there is no a separate music policy in Tanzania since issues related to music are covered in the National Policy on Culture<sup>58</sup>. This policy recognizes the training of music as a subject at primary, secondary, teachers' education and institutions of higher education. The policy recognizes the importance of copyright and call for the establishment of an institution to oversee copyright matters. There is also a call for the government to ratify and join Copyright Conventions such as Berne Convention and Universal Convention.

The Cultural Policy clearly requires regularly review of copyright laws in order to update them and accommodate technological changes. The policy further calls for investment in the cultural sector and sell cultural products at market prices<sup>59</sup>.

Since music industry is growing fast because of its easiness of entry by the youth and the level of commercialization is higher than any other cultural industry, it is appropriate that the government formulate a specific policy to govern the music industry. Therefore, to leave this type of business to operate without a clear policy is detrimental to all stakeholders<sup>60</sup>.

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<sup>57</sup> Workshop Report Stakeholders Workshop, Bagamoyo, March 13-14, 2006

<sup>58</sup> Policy of 1997

<sup>59</sup> Section 4 of the Cultural Policy of 1997

<sup>60</sup> Workshop Report Stakeholders Workshop: ibid

## **2. 4. The role of COSOTA in implementation of copyright law in Tanzania**

The creator of a work, for instance a musician, has the right to allow or to prohibit the use of his works. He can agree on certain conditions that his music or performance be recorded on a compact disc, be performed on a stage, be broadcasted on TV, etc<sup>61</sup>.

An individual is not materially capable of monitoring, all users of such works for instance to contact every radio or TV station to negotiate on licenses and remuneration for the use of such works. Similarly, it is impractical for a broadcasting organization to seek specific permission from every single author/creator for the use of copyrighted works. This is because there are thousands of such owners of rights and their created works, hence difficulties in individually trying to approach the other parties for authorization<sup>62</sup>.

A collective management organization is needed to cater for such a problem, whose role is to bridge the gap between the two. This need led to the establishment of the Copyright Society of Tanzania (COSOTA)<sup>63</sup>.

Section 46 of the Copyright and Neighbouring Rights Act<sup>64</sup> provides for the establishment of the Copyright Society of Tanzania (COSOTA), hence, this is a body corporate having perpetual succession and a common seal, capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property, and subject to the provision of the said Act, capable of doing or performing all such acts or this as bodies corporate may by law do or perform. The Society assumed its full role from July 2001 after its budget was approved by the parliament and it employed its core staff in October, 2001<sup>65</sup>.

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<sup>61</sup> Section 9 of Act No. 7 of 1999

<sup>62</sup> Wangwe: loc.cit

<sup>63</sup> Section 46 of Act No. 7 of 1999

<sup>64</sup> Act No. 7 of 1999

## **2. 5. The mandate of COSOTA in international level**

- (i) Signing of Copyright Treaties/Conventions. Tanzania is a member of Berne Convention administered by WIPO, WTO and other relevant treaties and conventions. COSOTA is affiliated to the International Confederation of Societies of authors and Composers (CISAC) which is based in Paris, France and supported by the World Intellectual Property Organization (WIPO)<sup>66</sup>.
- (ii) Tanzania through COSOTA has also entered into agreement of reciprocal representation with MCSK (Kenya), UPRS (Uganda), SAMRO (Democratic Republic of Congo), COSOMA (Malawi), SOMA (Mozambique), ZAMCOPD (Zambia), ZIMRA (Zimbabwe), COTT (Trinidad and Tobago), AMRA (USA), MASA (Mauritius), AGADU (Uruguay) and is in the process of signing similar agreements with MCSN (Nigeria) and PRS (England)<sup>67</sup>.

These agreement and conventions provide on one side an opportunity for Tanzanian music to be protected abroad but on the other side it gives COSOTA an additional work of protecting foreign music and artists' works. The current system of collecting royalties which is prone to loopholes and inefficiencies is not like to create a favorable environment for COSOTA to meet its obligation to treaties, conventions and agreements. Piracy of foreign music is common and remains major problem which needs the urgent attention of COSOTA<sup>68</sup>.

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<sup>65</sup> Wangwe: *ibid*

<sup>66</sup> Report on Music Industry Landscape and Regulatory System in Tanzania, Bagamoyo, April, 2006

<sup>67</sup> Report on Music Industry Landscape and Regulatory System in Tanzania: *op.cit*

<sup>68</sup> *ibid*

In performing its functions COSOTA is determining the minimum rates of royalties which is levied on uses of works and performances of its members. The overall aim of COSOTA is to ensure that the owners of the rights receive adequate remuneration from their efforts/work done<sup>69</sup>.

## **2. 6. Protection of traditional music (folklore)**

Folklore as a body of expressive culture, including tales, music, dance, legends, oral history, proverbs, jokes, popular beliefs, customs, and so forth within a particular population comprising the traditions (including oral traditions) of that culture, subculture, or group. It is also a set of practices through which those expressive genres are shared. The academic and usually ethnographic study of folklore is sometimes called folkloristic<sup>70</sup>.

The Act<sup>71</sup> defines the term expression of folklore as production consisting of characteristics elements of the traditional artistic heritage developed and maintained over generations by individuals reflecting the traditional artistic expressions of their community.

Folklore can be divided into four areas of study: artifact (such as voodoo dolls), describable and transmissible entity (oral tradition), culture, and behavior (rituals). These areas do not stand alone however; often a particular item or element may fit into more than one of these areas<sup>72</sup>.

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<sup>69</sup> Section 47 Act No. 7 of 1999

<sup>70</sup> <http://en-wikipedia.org/wiki/folklore>

<sup>71</sup> Section 4-ibid

<sup>72</sup> <http://en-wikipedia.org/wiki/folklore>

Folk music consists of a people's traditional songs and melodies. Folk songs deal with almost every kind of human activity. Many of these songs express the political or religious beliefs of a people or describe their history. Other folk songs simply provide amusement. Folk music usually is composed and performed by non professional musicians. In many cases, the composer of a song or melody cannot be identified. Because of that the song belongs to the society. In some sense, it is the music of the people<sup>73</sup>. Moreover, it is yet understandable that folklore is, after all, the music of nature, origin and experience<sup>74</sup>.

Music is, after all a thing of the spirit. It may be clumsy, its technique constantly changing and difficult to define. But the basic origin of a musical culture, if it endemically belongs to a society, is some spiritual aspiration on the part of the leaders of that society<sup>75</sup>.

Conversely, the music of any of the traditions or cultures mentioned had to be the work of composers who were born into that tradition, and were part of it. In other words the composer was automatically a 'contemporary' composer. This was not necessarily because of any advance in musical technique-we must be careful in the use of such words-but simply because, in order to express fully the mood of an age, a composer had to belong to it; also because the requirements and ideals of one period were not necessarily shared by another<sup>76</sup>.

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<sup>73</sup> World Book Encyclopedia, *F volume*, World Book, Inc, USA, 1994 pg 321

<sup>74</sup> Schward, C. *Gershwin His Life and Music*, Abelard-Schuman, London, 1974 pg 1

<sup>75</sup> Routh, F: *Contemporary Music an Introduction*, the English Universities Press Ltd, London, 1968. pg 25

<sup>76</sup> Ibid pg 24-25

In today's world all cultures are subject to the tyranny of fashion. Suddenly, it's all about changing. The world of focal music is not exempt from this epochal whimsicality. In fact it tends to be more fickle and volatile than even the brave new world of linguistics. It is, at first sight, strange that inspite of the quality of folklore music played today, the contemporary composer does not belong to the society. Yet he enjoys neither patronage nor tradition. Cosmopolitan composers have been traveling in indigenous regions in searching for indigenous classical tunes which they apply in the creation of new tunes without authorization from the indigenous musical authorities. Therefore, this creates a musical exploitation<sup>77</sup>.

The situation today as we have said is a criss-cross of many different styles, categories and influences; and it is important that we should just see which ones are to be considered, and which ones are not. One thing is certain; never before has there been such a flood of music pouring down, cascades say that 'the name of it is called Babel'. There is also an equal variety of idioms, and for this reason it is impossible to generalize about contemporary music under one all inclusive heading. But we can establish the sort of background against which to consider the contemporary composer. If we have suggested that he does not belong to his society in quite the same way as his forbearers did, we next need to ask him to pay us<sup>78</sup>.

Great music legends such as James Brown<sup>79</sup> particularly from developed countries such as the United States of America are known of their appropriation and adoption on

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<sup>77</sup> Schward: ibid pg 1

<sup>78</sup> Routh, F: ibid pg 26-26

<sup>79</sup> One of the Greatest Legend and the Most Famous Black American Musician Who Influenced the Making of Today's American Music Especially the popular Music or Pop Music

traditional tunes and dancing styles<sup>80</sup> with little or no compensation to the custodians of these tunes and without their prior consent<sup>81</sup>.

Traditional music of indigenous people and their communities should be protected and have a share in the economic and commercial benefits arising from copyright<sup>82</sup>. However, the fact that knowledge of indigenous people and local communities are held collectively, are evolved over time and often lack the pre-requisite of knowing the composer, thus making it difficult to apply the existing copyright system to such protection<sup>83</sup>.

Because of that the parliament vested the Tanzania Arts Council (BASATA)<sup>84</sup> with the powers to protect and promote folklore in Tanzania. Therefore, any application, reproduction, distribution of copies, communication to public, including recitation, performance, broadcasting or distribution of cables of expression of folklore made with both gainful intent and outside their traditional or customary are required to have authorization from BASATA<sup>85</sup>.

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<sup>80</sup> [http://en.wikipedia.org/wiki/james\\_brown](http://en.wikipedia.org/wiki/james_brown)

<sup>81</sup> Analyze generally: Food and Agriculture Organization (FAO) Commission on Generic Resources for food and Agriculture 1983

<sup>82</sup> Convention on Biological Diversity (CBD) of 29<sup>th</sup> December, 1993 Article 1

<sup>83</sup> The Common Wealth Science Council Report-August, 2001

<sup>84</sup> Section 28(a) and 29(a) Act No. 7 of 1999

<sup>85</sup> Section 25-ibid

## CHAPTER THREE

### 3. O. LEGAL AND PRACTICAL PROBLEMS IN IMPLIMENTATION OF COPYRIGHT LAW IN TANZANIA

#### 3. 1. Legal limitation on implementation of copyright law in Tanzania

Once the law is put into practice it brings the positive and or the negative side of it which creates lacunae which is needed to be filled for the smooth operation of the law. For the Copyright Law to function properly, the following lacunae must be filled so that the law can be strong enough to fight the evils of piracy;

(a) The Copyright and Neighbouring Rights Act<sup>86</sup>

- Economic Rights S. 9 and Transfer of Rights S. 18<sup>87</sup>;

The sections provides for economic rights of the copyright owner and the transfer of rights, but they are silent on the amount or percentage of royalty which the owner is entitled owing to the use of the transferee and the benefits that he makes for using the works for commercial gains. Some laws of other countries<sup>88</sup> provide that the owner is entitled to not less than 10% of the retail price of each copy that the transferee sales. This vacuum in our law gives a loophole to the users to exploit the owners.

- Offences and Legal Sanctions s. 42 (1) (a) and (b)<sup>89</sup>;

These sections provide for maximum fines and sentences. This has given too much discretion to the magistrates to the extent that the provisions are abused. The law should

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<sup>86</sup> Act No. 7 of 1999

<sup>87</sup> *ibid*

<sup>88</sup> 1. Malawi Copyright Act No. 6 of 1989 provides of 10% as Mechanical Rights.

2. Bassette Vs. Société des Auteurs, Compositeurs et Editeurs de Musique (SACEM) (1987) ECR 1747  
SACHEM – Is a French Collecting Society which collects and distributes royalties in respect of the performing and mechanical production rights for literary, dramatic and musical work. It offers 8.25%; of which performing fees is 6.6 and mechanical production fee is 1.65.

<sup>89</sup> Act No. 7 of 1999

provide for minimum fines and sentences to limit the magistrates to give fines that do not prevent offenders to continue pirating copyrighted works, for example in State Vs. Khalfan Abdallah<sup>90</sup> whereby the accused was found with one truck load of pirated cassettes and CDs, he was fined Tshs. 200,000 only. This encourages piracy. Furthermore the sections do not provides as to what to do with the impounded pirated works, as provided in section 36 that the infringed works should be destroyed. In the said case, it is not known as to what happened to the works after the accused was found guilty and fined!

- The Role of Police Officers is not mentioned in S. 42<sup>91</sup>.

It is impossible to enforce criminal offences/sections in the absence of police officers' support. Since the law is silent there is a feeling among some police officers that it not their duty to deal with copyright cases.

- Absence of the express provisions for COSOTA to register users of copyright works such as bars, hotels, broadcasting stations, MCs, etc., makes it difficult to control users due to the absence of powers by COSOTA. This should be added in section 47<sup>92</sup>.

(b) Copyright (Licensing of Public Performances and Broadcasting Regulations)<sup>93</sup>

- The Tariffs as provided in second schedule are not clear because the hotels in Tanzania are not classified. Efforts should be done to have the hotels in Tanzania classified so as to have clear tariff to steer clear complaints which the users may raise.

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<sup>90</sup> Case No. C. 550 Kisutu Resident Court (unreported)

<sup>91</sup> Act No. 7 of 1999

<sup>92</sup> Act No. 7 of 1999

<sup>93</sup> Regulation of 2003. Govt. Notice No. 328 of 10/10/2003

- The distribution rules are not clear as provided in third schedule. They do not indicate clearly the entitlement of those who participated in making the works.

© The Tanzania Communications Regulatory Authority Act<sup>94</sup>

- Despite the fact that this law provides for licensing of broadcasting stations, yet it is silent when it comes to copyright issues. Yet broadcasters are the main consumers of copyrighted works therefore the law should include clauses that prohibit piracy and required broadcasting stations to comply with the Copyright Law and its regulations.

(d) The Fair Trade Practices Act<sup>95</sup>

- This law should provide a clause that will require all manufacturers and distributors of music art to comply with all regulations related to the Act.

(e) Local Government Council By-Laws.

- These councils should put in place by-laws that will require licensed public performance places to comply with the Copyright and Neighbouring Rights Law<sup>96</sup>.

- Absence of clear boundary between commercial and non commercial sides of gospel music is the source of piracy in the name of God<sup>97</sup>.

### **3. 2. Practical problems on copyright operations in Tanzania**

When one looks deep on the functions of COSOTA he will find that COSOTA plays two roles; Copyright Office with a core functions of administering the Copyrights Law and fight against piracy and Collective Management Organization with a core functions of

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<sup>94</sup> Act of 2004

<sup>95</sup> Act of 1994

<sup>96</sup> Workshop Report Stakeholders Workshop: loc.cit

<sup>97</sup> ibid

administering rights of the authors and composers<sup>98</sup>.

In fight against piracy COSOTA is constrained by lack of capacity in terms of human resources. COSOTA has only one licensing officer, a documentation officer, the Executive Secretary and the supporting staff. The mere size of staffing creates a situation whereby a fight against piracy is an uphill task<sup>99</sup>. In connection to that COSOTA has a total number of 13 workers and only two have attained intellectual property education at a university level while all others have not even attended a course in intellectual property law<sup>100</sup>. This situation revives the problem of inadequacy and incompetence of COSOTA staff.

This is further complicated by law which does not provide a clause for delegation of authority of licensing and registration of copyrighted work to government institutions at district level<sup>101</sup>. Therefore, there is a need to improve the capacity of COSOTA in relation to its ability to perform its core functions.

Collection of royalties is an area which COSOTA has performed very poorly. The situation has left entertainment and broadcasting organizations enjoy free rights by not paying royalties for public performance. For the year 2007/2008, COSOTA has managed to collect Tshs 113,275,500 million in royalties for music and films<sup>102</sup>. All the hotels, disco places, airlines, radio stations, TV stations, bar and other public places enjoy the negative impact of the inefficiency of COSOTA<sup>103</sup>. Moreover, COSOTA has managed to

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<sup>98</sup> Section 47 Act No. 7 of 1999

<sup>99</sup> Workshop Report Stakeholders Workshop: op. cit

<sup>100</sup> Mr. Yustus Mkinga CEO of COSOTA During Interview on 18/06/2008

<sup>101</sup> Workshop Report Stakeholders Workshop-ibid

<sup>102</sup> Budget Speech of the Minister for Trade, Commerce and Marketing Ms. Dr. Mary Nagu on August 12, 2008

<sup>103</sup> Workshop Report Stakeholders Workshop-ibid

mediate 25 cases on the copyright. This has been done especially for musicians who can not afford to run court cases<sup>104</sup>.

COSOTA has not extended working cooperation with all music stakeholders such as Fair Commission<sup>105</sup>. This Commission is empowered by law<sup>106</sup> to lead the fight against importation or selling of counterfeit products in Tanzania. Since music products are sold everywhere in Tanzania, the Commission also could have been used to participate also in the war against piracy<sup>107</sup>.

In general, the practice of law by COSOTA has not been performed well, piracy remains one of the major problems in the industry, collection of royalties is very limited, the general public is yet to understand the implications both moral and legal perspective of pirating copyrighted work. Specifically, COSOTA has performed poorly at the expense of copyright holders<sup>108</sup>.

### **3. 3. Ignorance of the copyright law in Tanzania**

Poverty is a big problem in many societies. Persisting poverty generates numerous problems such as lack of safe and clean drinking water, poor education, health services and domestic violence, etc. Studies have shown that there is high rate of legal and human rights violation in societies, which are prone to poverty. In these communities, people's access to justice is limited<sup>109</sup>.

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<sup>104</sup> Budget Speech-ibid

<sup>105</sup> This is an independent commission established under the Fair Competition Act, 2003 to promote and protect effective competition in trade and commerce and to protect consumers from unfair and misleading market conduct.

<sup>106</sup> Fair Competition Act No. 8 of 2003

<sup>107</sup> Mr. John Esau Mponela, Director, Fair Competition Commission During Interview on 20/06/2008

<sup>108</sup> Workshop Report Stakeholders Workshop : op.cit

<sup>109</sup> [www.ippmedia.com/ipp/observer/2005/09/11/49262.html](http://www.ippmedia.com/ipp/observer/2005/09/11/49262.html)

In reviling the extent to the percentage of ignorance in Tanzania professor Hamis Dihenga<sup>110</sup> said that in 1980's more than 90 percent of people did know to read and write but in recent years the number has dropped to 70 percent. This means in every ten people three do not know to read and write<sup>111</sup>. Moreover, about twenty five percent of the enrolled primary school pupils drop-out before finishing class seven<sup>112</sup>. This testimony brings the question that if such great number of people does not have basic education and does not know to read and write, how will they understand their basic legal and human rights?

In general, there is lack of public awareness on the importance of abiding by Copyright Law. The concept of copyright is a new concept in the country and people see nothing wrong in copying. There was a tendency in place the ownership on physical property and not in intellectual property. For instance, if one buys a tape, he regards it as his personal property and therefore feels free to make as may copies as possible out of it<sup>113</sup>.

More recently, however, some sections of the society have become aware of Copyright Law in Tanzania. Performing artists such as musicians have of recent been making efforts to impress upon the government to gear up its law administering and enforcing machinery to protect their works from piracy. Musicians have been in the forefront in this regard. The business community is also aware of the requirements to adhere to Copyright Law. Unfortunately due to the inadequacies inherent within the legal system in connection with Copyright rights matters, the business community is openly involved in

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<sup>110</sup> Permanent Secretary Ministry of Education and Vocation Studies

<sup>111</sup> Presentation During the Educational Stakeholders Meeting Reported by the African 17<sup>th</sup> March, 2008

<sup>112</sup> Analysis of the Results of Primary Education Examination as Given out on 18<sup>th</sup> December, 2007 by the Then Minister of Education and Culture Ms. Margareth Sitta

<sup>113</sup> Workshop Report Stakeholders Workshop-ibid

doing business in pirated Copyrighted goods. The public at large is not much involved of the laws governing their rights to copyrights. Although people are involved in the creation of works of art, such as literary works, folklore and other cultural productions and events, in most cases these are done without awareness of laws protecting the rights on such creations<sup>114</sup>.

Although COSOTA has done some awareness, creation of activities on the copyright law, more needs to be done. The copyright law is over seven years old but piracy of music works continues to flourish. Illegal duplication and selling of music works has left composers to die in poverty<sup>115</sup>. One participant at the focus group discussions in Mwanza had this to say, “If the law existed and COSOTA is there to administer the law, how comes pirated cassettes and CDs are sold everywhere in Dar es Salaam where the office of COSOTA is located? What about if it happens in Ngara or Bunda?... normally crime is committed in hiding, if piracy is a crime why is it done in public?”<sup>116</sup> The view of majority stakeholders interviewed during the research concluded that COSOTA has not done enough to educate the public on the evils of piracy and the law that protect musicians’ work<sup>117</sup>.

Lack of awareness among enforcement authorities is another major setback. Majority of police officers do not know the law itself and even the procedures for enforcing Copyright Law<sup>118</sup>. It has even happened musicians took a person pirating music cassettes

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<sup>114</sup> Op. cit

<sup>115</sup> Mr. Mseti Ryioba, Director of Administration and Personnel, Ministry of Information and Culture When Opening a Music Stakeholders Workshop in Bagamoyo, March 13, 2006

<sup>116</sup> Report on Music Industry Landscape and Regulatory System in Tanzania loc.cit

<sup>117</sup> The Opinions of the Interviewees During this Research

<sup>118</sup> The Situation Reviled From the Analysis of the Questionnaires Filled by Police Officers in Dar es Salaam

and CDs to the police station. At the post, the police asked those musicians what was wrong for him (infringer) to copy the music<sup>119</sup>.

Also, a big number of court officials do not know the court which is empowered to hear copyright cases i.e. the District Court<sup>120</sup>. In Malaika Buberwa Vs. Ally Kiba<sup>121</sup>, whereby Ali Kiba was alleged of selling the verses of the Sinderela son and record it as his, this copyright case was opened at Kariakoo Primary Court instead of Kisutu District Court. All of this is due to lack of training required to cause awareness of intellectual property laws. Considering that until recently, intellectual property law was not formally taught in the country. But now some aspects of IP have been introduced in the law curriculum at some universities such as Open University and University of Dar es Salaam<sup>122</sup>.

On the foregoing reasons, administration of copyrights sounds a new thing in Tanzania; therefore, change of attitude and practices is necessary.

### **3. 4. Registration of musicians**

Despite the size of the country and the increased number of artists, COSOTA has registered 800 musicians<sup>123</sup> and 6,349 registered works<sup>124</sup>. The number of the registered members is not comparable with countries such as Malawi which has over 2,000 registered local authors and composers and over 17,000 registered works<sup>125</sup>. The research found that musicians have limited awareness on the existence of COSOTA, its roles and

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<sup>119</sup> Waziri Ally: Senior Musician with Kilimanjaro Band “Wana Njenje” Speaking on 5 Connect a TV Programme on EATV, 12/06/2008

<sup>120</sup> Section 4 Act No. 7 of 1999

<sup>121</sup> Case No. 33/2007 Kariakoo Primary Court (unreported)

<sup>122</sup> Wangwe: loc.cit

<sup>123</sup> Mr. Yustus Mkinga CEO COSOTA During Interview on 18/06/2008

<sup>124</sup> Budget Speech: loc. cit

<sup>125</sup> Munkhondia, M, The Music Industry in Malawi: Its Growth and Constraints: loc. cit

functions and the benefits for the musicians to be registered with it<sup>126</sup>. This is much resulted from expensiveness in registering ones work with COSOTA because of the mere fact that all the processes have to be done in Dar es Salaam. The centralization of the entire process of registration denies musicians and other artists their basic rights of protecting their work and receiving royalties<sup>127</sup>.

In order for COSOTA to perform its activities well, a sufficient number of the Tanzanian creators and performers have to join the Society; and assign their rights to it, as per section 16 of the Act<sup>128</sup>. By this, they will be refusing to be drawn into individual exploitative contracts; hence they will lose nothing other than piracy<sup>129</sup>.

COSOTA therefore appeals to all the Tanzanian creators and performers to contact the Society and register for membership so that it can best perform its role<sup>130</sup>.

### **3. 5. Artists fight against piracy**

Piracy is defined as unauthorized reproduction and distribution of other peoples work.

Piracy has a grave impact in the industry as its results into the following situations:

Discourage who would be investors, discourage financial institutions to provide finance, robs creative artists of their income since no royalties are paid, and as the result artist die poor, causes exodus of many talented local composers and authors to developing countries with proper enforcement of copyrights law, and denies government valuable income<sup>131</sup>.

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<sup>126</sup> Findings from the Research Questionnaires Analysis

<sup>127</sup> Report on Music Industry Landscape and Regulatory System in Tanzania op. cit

<sup>128</sup> Act No. 7 of 1999

<sup>129</sup> Wangwe: loc.cit

<sup>130</sup> Mr. Yustus Mkinga-ibid

<sup>131</sup> Report on Music Industry Landscape and Regulatory System in Tanzania-ibid

Effective participation of members in the fight against piracy is necessary factor in winning the anti piracy war. The situation is that musicians and artists in Tanzania are disorganized<sup>132</sup>; there is no one organization which unites all of them. Associations that exist are weak hence can not provide the necessary support to COSOTA. In order to create good force for the fight against piracy, musicians and artists in general need to organize themselves in associations and or networks. Such organizations would provide COSOTA with working partners and at the same time would facilitate advocacy issues affecting the industry. The associations in existence today include: Tanzania Music Network (TMN), Chama cha Musiki wa Dansi Tanzania (CHAMUDATA), Tanzania Urban Musicians Association (TUMA), Tanzania Folk Music Development Association (TAFOMUDEA), Tanzania Taarabu Music Association (TTA), Tanzania Disco Music Association (TDMA), Dar Choir Association (DCA), Umoja of Tanzania Musicians (UTAMU), and Sherehe Arts Association (SAA). These associations have been registered by the National Arts Council (BASATA)<sup>133</sup>.

Insp. Haroun<sup>134</sup> comments on the war against piracy that COSOTA has failed musicians, that is the truth; he further asks a question, how does one explain for all these pirated videos, cassettes and CDs which are being sold openly everywhere<sup>135</sup>. Mb Dog<sup>136</sup> adds that you can give-out a single and buy a car but when you give-out an album you end-up being told by the distributor that the market for the album was not that good<sup>137</sup>.

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<sup>132</sup> Mr. Ruge Mutahaba: loc. cit

<sup>133</sup> Report on Music Industry Landscape and Regulatory System in Tanzania op. cit

<sup>134</sup> One of the Greatest Bongo Flavor Musician

<sup>135</sup> Sunday Citizen 14<sup>th</sup> October, 2007

<sup>136</sup> A Bongo Flavour Musician From Makopa Inc, Company

<sup>137</sup> Mb Dog Interviewed by Dimba Newspaper Wednesday June 18, 2008

COSOTA has not succeeded to convince the police authorities to act as law enforcement agencies, as piracy implies criminality. Thus, artists sometimes had to resort to their own means to have the law enforced in relation to piracy<sup>138</sup>. Despite the fact that artists have been working very hard nevertheless distributors of their works, including music, have been exploiting them<sup>139</sup>. COSOTA has not been able to use existing means at its disposal to fight piracy. COSOTA could have used musicians themselves in the war against piracy through music festivals, organizing marches of musicians and other artists, radio programs, etc<sup>140</sup>.

On the other hand, matters making the war against piracy more difficult are the prevailing inclination in which composers readily sell their copyright to producers or distributors for want of making quick money. This rush makes the artists always be the losers. For instance one musician (name withheld) sold his copyright which was one of the hits in 2005 to a distributor at 2m/- Tshs in cash and a 'Toyota' make 'baloon' car. The distributor produced and distributed the track without the limits, the distributor obviously ended up with an attractive goldmine due to the lack of professional knowledge on the part of the young man who had not made his hands into good money, leave alone owning one of the posh cars in this part of the world<sup>141</sup>.

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<sup>138</sup> Waziri Ally: Senior Musician with Kilimanjaro Band "Wana Njenje" Speaking on 5 Connect a TV Programme on EATV, 12/06/2008

<sup>139</sup> IPP Executive Chairman Reginald Mengi While Launching Flora Mbasha's Album in Moshi 19<sup>th</sup> June, 2007

<sup>140</sup> Report on Music Industry Landscape and Regulatory System in Tanzania-ibid

<sup>141</sup> Mr. Eugene Mkami an Advocate with Sungwi Advocates speak to the Guardian on December 31, 2007

## CHAPTER FOUR

### 4. 0. COPYRIGHT LAW OPERATION IN OTHER JURISDICTIONS

#### 4. 1. COSOMA's role in the implementation of copyright law in Malawi

The Copyright Society of Malawi (COSOMA) was established as a parastatal in accordance with section 41 of Copyright Act<sup>142</sup>. The main objectives of the Society were to promote and protect interest of the owners of copyright material and to collect and distribute royalties which accrue to them for use of their works<sup>143</sup>.

In fulfilling its objectives COSOMA assumed two roles. One is Copyright Office which administers the Copyright Law and fight against piracy and Collective Management Organization which administers rights of authors and composers<sup>144</sup>.

As it's well understood that the real economic value of copyrights is the ability for authors to enforce them. Practically world wide it is very difficult for authors as individuals to authorize and monitor uses of their work, negotiate the rates of the fees, grant licenses and collect fees. This is why Malawi government took initiative to establish COSOMA in 1992 to act on behalf of right holders. COSOMA acts as a link between right holders and users of works after acquiring the mandate to act on their behalf. COSOMA ensures that authors are adequately remunerated<sup>145</sup>.

COSOMA also protects rights at international level through: Signing of Copyright Treaties/Conventions i.e. Malawi to be a member of Berne Convention administered by

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<sup>142</sup> Malawi Copyright Act No. 6 of 1989

<sup>143</sup> Munkhondia, M, The Music Industry in Malawi: Its Growth and Constraints, Bagamoyo, Tanzania, March 13-15, 2006

<sup>144</sup> *ibid*

<sup>145</sup> [http://www.cosoma.org/about/background\\_purpose.html](http://www.cosoma.org/about/background_purpose.html)

WIPO. Reciprocal provisions i.e. COSOMA signed reciprocal agreement with COSOTA. Through these agreements royalties are exchanged i.e. COSOMA has sent royalties to SAMRO (South Africa), ZIMRA (Zimbabwe), COSOTA (Tanzania), ZAMCOPS (Zambia), etc. COSOMA has also received royalties from SAMRO, ZIMRA, GEMA (German), IMRO (North Ireland), etc<sup>146</sup>.

#### **4. 2. Practice of copyright protection in Malawi**

For long time there was no any available recording facilities in Malawi except at state controlled Malawi Broadcasting Corporation. Radio recording for own use in their programmes and paid authors/performers token sum of money. Malawi Broadcasting Corporation licensed by PRS (UK) before COSOMA but local authors never received any royalty. Only the source of income for local musicians was live performances<sup>147</sup>. In production of sound recording in Malawi the owner of work needed to pass in a number of series of activities: Hire a studio and produce master, produce inlay cards, advertise to record producer and carryout promotion of the album. This is because rarely were there music publishers in Malawi<sup>148</sup>.

This system brought animosity and mistrust between the owners of the work and the record producer because it was difficult to know the exact number of cassettes produced and monitor sales. This led to introduction of Banderole system in 1998. Banderole system distinguished between genuine from pirated cassettes. Banderole system was introduced according to section 23 of the Act<sup>149</sup>. This was one of the ways to fight piracy.

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<sup>146</sup> [http://www.cosoma.org/activities/reciprocal\\_agreements.html](http://www.cosoma.org/activities/reciprocal_agreements.html)

<sup>147</sup> Munkhondia, M, The Music Industry in Malawi: Its Growth and Constraints: op. cit

<sup>148</sup> ibid

<sup>149</sup> Act No. 6 of 1989

Other ways which COSOMA used to fight piracy include national anti piracy campaigns- posters, street marches, music festivals, radio programmes, etc. And, also formation of anti piracy task force in the regions<sup>150</sup>.

#### **4. 3. The miracle of banderole system in Malawi**

In 1999, COSOMA introduced mechanical rights as per section 23(3) of the Act<sup>151</sup> which stipulates that, ‘‘the manufacture shall within ninety days after the notice, pay royalties to the owner of the work and shall have affixed to each copy of the sound recording made by him an adhesive label issued by the society as evidence of such payment’’.

Introduction of the banderole and mechanical rights changed the system of production of sound recordings. At this time owners of work signs agreement with record producer, sell master tape and inlay cards to record producer, before delivery, COSOMA fixes banderoles on each inlay to be supplied to record producer, owners delivers inlay cards affixed with banderoles together with master tape to record producer. Society sends out two invoices to record producer for banderoles and mechanical rights. Mechanical royalties paid at 10% of retail price as per section 23(3) of the Act<sup>152</sup>. Distribution of mechanical royalties is done every 15<sup>th</sup> of each calendar month. COSOMA also offers advance to members<sup>153</sup>.

Banderole system and mechanical rights brought tremendous results. Apart from fighting piracy, they helped to know the size of the music industry i.e. from July 2004 to June 2005 – 1,442,428 banderole sold for local works. As a result of the fight against piracy,

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<sup>150</sup> Munkhondia, M, The Music Industry in Malawi: Its Growth and Constraints: op. cit

<sup>151</sup> Act No. 6 of 1989

<sup>152</sup> ibid

<sup>153</sup> Munkhondia, M, The Music Industry in Malawi: Its Growth and Constraints-ibid

high sales of genuine works occurred. For instance, a local composer Joseph Mkasa sold more than 200,000 copies and received up to 10,000 US\$ in mechanical rights royalties for one album<sup>154</sup>. Owners of works now are able to monitor sales of their works. Authors now have extra income through mechanical right royalties. Growth of music industry is very big since a lot of individual recording studios emerged hence; new albums are released every week. One company invested huge sums of money in heavy duty fast doubling machines. There are a lot of inquiries by foreign investors in the music industry including Japan Tech Ind. Ltd and FM Production from Tanzania. COSOMA is able to estimate market of music. The government collects tax easily. COSOMA is enabled to know export areas of its repertoire in neighbouring countries i.e. Northern Mozambique, Zambia, etc<sup>155</sup>.

Currently, COSOMA administers: public performance right, broadcasting right, mechanical right and reprographic rights. In 2004/2005 year COSOTA collected<sup>156</sup>:

- K 14,394,984 in mechanical rights
- K 2,321,558 in public performance rights
- K 13,656,208 in broadcasting rights
- K 1,874,464 in reprographic rights

TOTAL - K 32,247,219<sup>157</sup>

COSOMA, has established a social and cultural fund for its members, the fund gets its revenues through deduction of 10% from public performances and broadcasting royalties.

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<sup>154</sup> [http://www.cosoma.org/activities/music\\_activities.html](http://www.cosoma.org/activities/music_activities.html)

<sup>155</sup> Munkhondia, M, The Music Industry in Malawi: Its Growth and Constraints-ibid

<sup>156</sup> ibid

<sup>157</sup> Kwacha 1 = 14 Tshs. Bank of Tanzania official Foreign Exchange Rate as by July 25<sup>th</sup>, 2008

This social fund contributes towards hospital bills and funeral costs. Hospital bill is up to K 1,000 per member and funeral costs is up to K 2000 per member. The cultural fund is for meetings of the general assembly, associations meetings and national awards<sup>158</sup>.

Existence of COSOMA has enabled authors and composers to enforce and implement their economic rights both locally and international. This has raised the interest in the music industry as more people including politicians have realized that music is now a business worthy venturing into. However, there are not many record producers in Malawi thus few available act in monopoly and products not enough for the whole market<sup>159</sup>.

As we have seen in Malawi the banderole are imported, soled and fixed by COSOMA only. Such a system is also ideal for Tanzania as a means to effectively fight piracy at all levels. Since this experience is of a third world country, it signals that COSOTA can make a difference to impoverished but talented artist by collecting royalties and implementing social security programmes to support musicians and other artists<sup>160</sup>.

#### **4.4. Coalition against counterfeit and illicit trade in Ghana**

Counterfeit involving copying or imitating an industrial, artistic or literary work to the detriment of the author or inventor. It is an infringement on intellectual property rights. It is in this respect that we act safeguard and protect brands of manufactures. In fighting counterfeiting and piracy in Ghana many interventions have been made possible through the National Taskforce. Copyright Society of Ghana implemented several projects to provide security devices for musical productions to fight pirated works. A consultant team of four people was formed. They took time to interact with various regulatory

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<sup>158</sup> [http://www.cosoma.org/activities/music\\_activities.html](http://www.cosoma.org/activities/music_activities.html)

<sup>159</sup> Munkhondia, M, The Music Industry in Malawi: Its Growth and Constraints: op. cit

<sup>160</sup> Report on Music Industry Landscape and Regulatory System in Tanzania: loc. cit

agencies as well as the Attorney General Department to review legal provisions on punitive measures on counterfeits<sup>161</sup>.

As it was revealed that counterfeit is a global problem which affects developed and developing countries, a shared responsibility measures were employed to curb the situation.

Three organs were adopted in these strategies in inter-sectoral collaboration. These are the private sector, the government and the consumers. The private sector used anti-counterfeit technology/devices suggested to local industry starting with the labeling of products. The government revised regulatory and legislative framework including levels of punishment/deterrence to counterfeit. It provided extra budget allocation, expansion of administrative capacities including decentralization, recruitment of more staff, long and short term training, attachments, seminars and workshops were used for capacity building purposes. The government increased collaboration with law enforcing agencies such as customs, police service and judiciary. Accreditation to ISO-roadmap developed. Website improved for transparency. Import and export control measures were developed such as introducing security features for monitoring industrial products leaving and entering the country and inspection of manufacturing premises (both local and foreign). Consumers were empowered through educational programmes such as public education, documentaries, posters, brochures, etc.

Although significant achievements have been made, there is more room for improvement. A national counterfeit survey has been planned for this year to establish actual levels and

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<sup>161</sup> File://G:\CACIT,Ghana.htm

to recommend further measures to deal with the situation<sup>162</sup>.

#### **4. 5. Online music royalty in United States of America**

ASAP stands for the American Society of Composers and Authors and publishers. This is the US's biggest collection society with 68,000 members<sup>163</sup>.

Internet radio sometimes is known as web radio, net radio or e-radio is an audio broadcasting service transmitted via the internet. Broadcasting on the internet is usually referred to as web casting<sup>164</sup>.

In struggling to determine the price of music in the information age, the US Copyright Office ruled in December 2000 that organization distributing music and other radio content over the internet must pay additional fees to record companies that hold song copyrights. This is for each person who is receiving a broadcast sent online. The rate range from .07 of a penny per song for a radio broadcast to .14 of a penny for all other broadcasted audio sent on the internet. For example, if 1,000 people use their computers to listen to a song broadcast by a radio station online, the broadcaster would have to pay for the and for each of those listeners, or 70 cents. If those people listen for two songs, the fee would be \$<sup>165</sup> 1.40<sup>166</sup>.

This is a good experience for COSOTA to curb all the online service providers in Tanzania to pay royalties to musicians.

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<sup>162</sup> [www.bcacit.co/home/docs](http://www.bcacit.co/home/docs)

<sup>163</sup> <http://www.knopfler.com/royalty-link.html>

<sup>164</sup> [http://en-wikipedia.org/wiki/internet\\_radio](http://en-wikipedia.org/wiki/internet_radio)

<sup>165</sup> BOT Exchange Rate by 13<sup>th</sup> August, 2008 – 1US \$ = 1174 Tshs

<sup>166</sup> <http://www.ustoday.com.tech/news/2002/02/21/net-music.htm>

## **CHAPTER FIVE**

### **5. 0. CONCLUSION AND RECOMMENDATIONS**

#### **5. 1. Conclusion**

In this age of rapid technology development it is important to keep a sensible perspective by reminding ourselves that music has been a fundamental part of every human society for thousand of years. By contrast computers have only been available to the general public since the 1980's<sup>167</sup>.

However, the seemingly independent displines of music and computing appear to be increasingly interwoven in the modern western world. The technological advances of the latter half of the twentieth century have allowed larger proportions of the population to have access to music and computing facilities as an integral part of everyday life. The two subject areas are inextricably linked now that digital technology has become the prime method of storing music and an increasingly important way of producing it<sup>168</sup>.

In Tanzania the music industry is growing very fast to the extent that it starts to capture the global market. The number of musicians is increasing day and night, but the quality of the products is undermined due to the lack of formal training and facilities<sup>169</sup>.

Many musicians still operates as self employed persons, and are part-times. There are very few who earn good income. In recent years there are musicians who have turned into music profession. The industry has become the main source of employment for the youth. New and upcoming talents have promoted what is known as bongo flavour or Tanzania

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<sup>167</sup> Hunt, A. & Kirl, R, *Digital Sound Processing for Music and Multimedia*, Bath Press, Bath, Great Britain, 1999 p 4

<sup>168</sup> *ibid*-p 4

<sup>169</sup> Report on Music Industry Landscape and Regulatory System in Tanzania loc. cit

blend of hip hop or rap<sup>170</sup>.

A support infrastructure has emerged, with a range of service providers such as studios, promoters, agents, etc. While these entities are small, for most of the part, there are some of the structural differentiations occurring. Thus one operation may start with a musician or just an individual doing many things and then would achieve competence and expertise in a limited number of areas in the music chain, while experience leads to specialization, the government through its program of supporting the private sector can lift the support infrastructure to a higher level<sup>171</sup>.

There is little data on income and number of CDs or cassettes produced in a year the music industry's income is not recorded in the national statistics. The direct income to musicians and income generated by the industry is estimated to be high to create an impact to the national economy. There is therefore a need to work out mechanism to establish the contribution of the industry in the national income<sup>172</sup>.

The capacity of the industry to penetrate international market place and even the regional market is to a considerable extent, based on the quality of training and preparation of musicians. While they have made a considerable advance in all major genres that have been commercialized, the need of infrastructure of support of training to provide the base among the folk for professionalism without, at the same time, stifling the essential vitality and creativity that is currently prevailing. In addition, the industry needs specialized training in the area of sound engineering, stage management, agents,

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<sup>170</sup> *ibid*

<sup>171</sup> *ibid*

<sup>172</sup> Report on Music Industry Landscape and Regulatory System in Tanzania op. cit

entrepreneurship, contract management and many other skills necessary for the industry to function<sup>173</sup>.

Tanzania is better positioned to compete in audio-visual rather than traditional industry. This is because the basic raw materials, such as talent to create new music, are not prohibitive as in the other industries, hence a need to have music policy and other regulatory system that support its existence. The government needs to make regulations and mechanisms that will ensure royalties are collected and taxes are paid<sup>174</sup>.

Protection of copyrights paves the way for sustainable generation of income flowing to the owners who in-turn are potential tax payers to the government that have an obligation to provide social services like health, water, communication network, electricity and infrastructure generally to the community or society at large<sup>175</sup>. It is through taxation that the government is empowered to run various development projects ranging from education, security, energy and essential administrative functions. An artist say a composer of a piece of music or an author of a published work, is essentially a tax payer as a result of sale, license, transfer / and or assignment pertaining to his or her work<sup>176</sup>.

The study prompts the need for further research. The government and the general public need data on production, employment generated, royalties collected and income generated through live performances. The study should also look on formal structures in the evaluation of the music industry. The industry is still dominated by informal sector

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<sup>173</sup> *ibid*

<sup>174</sup> *ibid*

<sup>175</sup> Phillips, O. Hood, *Constitutional and Administrative Law*, 7<sup>th</sup> Ed, Sweet Max Ltd, London, 1987  
p 335-340

<sup>176</sup> Mgonja, H.O loc. cit

operations, some of which operates in the regional economy. It is possible that formal training in business and entrepreneurship will help would-be entertainers and musicians to understand the need to form structures to develop their product and to improve their earnings as commercial operations. The factors influencing industrial organization and distribution of music products need to be examined<sup>177</sup>.

Then, therefore, although the presence of COSOTA has brought some degree of formalization of the music industry. COSOTA has attempted to provide some measures to protect music copyright owners but much need to be done<sup>178</sup> since Copyright Law is not well known to both potential and existing copyright holders<sup>179</sup>.

## **5. 2. Recommendations**

From the observations which I have made as explained above, the following are some recommendations which give what I consider as proposal reform for the purpose of minimizing or eradicating piracy in Tanzania.

- (i) Sensitization programmes have to be carried throughout the country on the copyright matters and the rights that are associated with. The basic knowledge of Copyright Law, administration and enforcement procedures of the Copyright Law stand to encourage as well as promoting creativeness and innovation in the music sector in the country. It is worth considering the work of Non Governmental Organizations (NGOs) such as Open Mind Tanzania in rising the awareness campaigns through training, production and distribution of

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<sup>177</sup> Report on Music Industry Landscape and Regulatory System in Tanzania op. cit

<sup>178</sup> Workshop Report Stakeholders Workshop loc. cit

<sup>179</sup> Esaurp: *Tanzania Tomorrow Dar es Salaam*, Tema Publisher Company Ltd, 1969

manuals, posters, leaflets, brochures and other publicity materials for successful public outreach with a view of intensifying increased understanding of Copyright Law and Neighbouring Rights.

(ii) Music industry is now under two Ministries, the Ministry of Trade and Industries, which controls the legal framework (COSOTA is under this Ministry) and the Ministry of Culture and Sports which controls the process for policy formulation. Music falls under the National Culture Policy of 1997. It is therefore ideal for the COSOTA to be under the Ministry of culture and sports in order to provide rational link between non commercial music and commercial music and create a harmonious link<sup>180</sup>.

(iii) COSOTA should be equipped with competent staff that possess intellectual property knowledge and skills especially in copyright matters so that it can handle its noble task effectively and confidently. For those who are yet in service, provision of on job training within and outside the country should be administered so that they can be well conversant with copyright matters. Moreover, COSOTA should open up-country offices so as to bring its services close to its stakeholders.

(iv) With regard to policy making there is great need of having a clear policy which purposely gives special regards to the interest of all stakeholders who are connected with music industry. This policy should be under the control of relevant authority which is relevant to the people. This should not be other

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<sup>180</sup> Report on Music Industry Landscape and Regulatory System in Tanzania ibid

than COSOTA. In order to have a good policy which ensure wide coverage and sufficient response to interests of stakeholders, it is necessary also, that all the responsible stakeholders must be consulted. Through consultation all the grievances of the affected groups can be expressed and a sustainable solution be found<sup>181</sup>.

(v) To establish music as one of the trades with the Vocation Training Center under VETA or private entity which will train sound engineers, studio managers, arrangers, professional songwriters, etc. so as music could not be learnt any more by musicians on their own or through apprenticeship<sup>182</sup>. Moreover, Music curricula should include Copyright Law and contract components so that musicians can be aware of their rights and the procedures for entering valuable contracts<sup>183</sup>.

(vi) Court's discretion on giving sentences pertaining to the offences which fall under section 42(1) (a) and (b)<sup>184</sup> should be limited since magistrates tend to give minimum sentences when the statute gives only the highest sentence. Also, this criminal section should be put in Penal Code so that it can be easily implemented by police officers since their main role is to enforce Penal Code<sup>185</sup>.

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<sup>181</sup> Workshop Report Stakeholders Workshop op. cit

<sup>182</sup> Presentation of Mr. A. Millinga: Semina kwa Wabunge Kuhusu Tasnia ya Muziki, Dodoma Julai 17, 2006

<sup>183</sup> Tanzania Daima Newspaper Friday, April 25, 2008

<sup>184</sup> Act No. 7 of 1999

<sup>185</sup> Ms Zukra Msangi a Police Office at Kawe Police Post During the Interview on 16<sup>th</sup> August, 2008

- (vii) As it has been noted that traditional music is rapidly being lost as a result of degrading local protection by integrated traditional communities into even wider society. A debate in international forum concerning appropriation and sharing of the benefits derived from the use of local music through dances should be encouraged for the world to set guidelines for folklore protection. The better understanding of the need to have traditional music holders and dialogue or exchange information on the effectiveness of existing system of protection such as customary law, copyrights, access and benefits sharing mechanism, voluntary measures based on mutual understanding and documentation have to be in the place both at national and international<sup>186</sup>.
- (viii) The government should put a great focus on the standard music industry structure and stressed the need to regulate manufacturing, distribution both retail and wholesale and production<sup>187</sup>. In connection to the presence of corruption in the music industry, the media should address the problem since DJs do not play the songs of those who have not paid them, or who do not agree to appoint them be their managers<sup>188</sup>. This is truly against business ethics and against the war on corruption as promulgated by our dear President J. M. Kikwete<sup>189</sup>.
- (ix) The introduction of Banderole system in Malawi reduced piracy especially of the local works and assists in mechanical rights royalty collections<sup>190</sup>. For

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<sup>186</sup> Analyze generally: Food and Agriculture Organization (FAO) Commission on Generic Resources for food and Agriculture 1983

<sup>187</sup> Mr. Ruge Mutahaba loc. cit

<sup>188</sup> Paka Paka, Underground Musician During Interview on 19/06/2008

<sup>189</sup> President J. M. Kikwete When Opening the Parliament on 30<sup>th</sup> December, 2005

<sup>190</sup> Munkhondia, M loc. cit

sure this system if applicable to Tanzania it can help much in the war against piracy in music works since the public will be able to differentiate genuine products from pirated ones. Or else holograms marks should be encouraged to be put in all music products.

(x) The government through COSOTA should form an Anti-Piracy Task Force in all the regions. Moreover, COSOTA should launch a National Anti-Piracy Campaign which will include many activities such as street marches, music festivals, radio programmes, posters, etc<sup>191</sup>. Furthermore, the campaign should be in global perspective<sup>192</sup>.

(xi) Music is being downloaded courtesy through latest technologies. Internet cafes have been putting music tunes in cell phones, CDs, I pods, computers, etc. People do not pay for music anymore and they do not understand that what they are doing is theft<sup>193</sup>. Therefore, there is a need for COSOTA to make a thorough search and fine all who are doing this business at the cost of poor musicians.

It is my belief that if the above proposals are positively considered, all the listed challenges could be easily solved and eventually stakeholders' interest be sustainably protected. Moreover, the government objective to create jobs especially to youth and increase revenue will be achieved.

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<sup>191</sup> Presentation of Mr. A. Millinga: Semina kwa Wabunge Kuhusu Tasnia ya Muziki op. cit

<sup>192</sup> Argument of Phil Collins in the case (his) of Collins Vs. Imtrat Handelsgesellschaft mbh (1994) FSR 116

<sup>193</sup> Oliver Mtukudzi a Grand Master of Zimbabwean Traditional Pop Interviewed by the African Newspaper Friday, February 8, 2008

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