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Assessing and evaluating the complexities surroundings copyright infringement in Cameroon: Rethinking the nomenclature of reforming the regulatory environment in Cameroon

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Abstract

Copyright infringement is a detestable act all over the world today causing grave impact and suffering magnet on the right of authors of works. Even at that, copyright infringement keeps sky rocking in Cameroon. The reason for the prolongation of this reprehensible act stems from the fact that the main piece of legislation governing Copyright Law in Cameroon that is the 2000 law on Copyright has failed to define the term copyright infringement, determining what will amount to infringement and assessing the quantum of sanction awarded to persons involve in this outrageous acts thereby opening ways for copyright infringement in Cameroon. Thus the law of copyright with regards to infringement in Cameroon is ineffective and generally lacks implementation. This has led to a slow rate of innovations and creativity. As a result of this, this article assumes that authors of artistic, literary or music works in Cameroon are discouraged and less creative since they believed it will be futile in exercising their arts which will continue suffering from the effect of infringement. However those caught perpetrating these acts are usually sanction both criminal and civil sanction. The findings were conducted analytically making use of primary and secondary data related to the topical issue under consideration. This article recommends that section 80 of the Cameroonian 2000 law on Copyright and Neighbouring Right establishing infringement should precise the term infringement, what will amount to infringement, and the quantum of penalty to be awarded to perpetrators of such misdemeanour, for this will go a long way to alleviate the arts of authors of artistic, literary or musical works.

Keywords: Copyright, infringement, assessing, damages, Cameroonian law

Introduction

Copyright^[1] infringement^[2] has become so severe that it has attracted global consciousness. Infringement of copyrighted works^[3] has portrayed itself in many ways some of which includes; piracy^[4], counterfeiting^[5], copying^[6], just to name but this, without the express consent or authorization of the original author^[7] of the piece of work. This is disastrous to the owner of such work because he does not derive financial benefit from it and consequently it discourages creativity. This has further been and continuously been a danger to economic growth and has stand as a threat to investment in this sector due to the negative impact conceived by individual creators. Copyright plays a significant role in the development of society as it is the motivating factor in most, if not all creative works. Fundamentally, copyright law exist to prevent others from taking unfair advantage of person's creative efforts^[8]. The law on copyright^[9] came just about three Centuries ago where England enacted the World's first modern copyright law known as the Copyright Act 1710^[10], the Statute of Anne granted exclusive right to authors to print and reprint their works for a term of fourteen years^[11]. This legislation was influential and some years later the United States of America. Adopted in their constitution with the powers bestowed on the congress federal copyright regime, and still for years, copyright law remained relegated to the judicial hinterlands; copyright law received scant attention as generation and generation past^[12]. At best, the niceties of copyright legislation and jurisprudence were left in the hands of intellectual property attorneys and academicians and the concern of a limited number of special interest groups representing the movie, music, and publishing industries^[13]. That has changed; today copyright has begun to enjoy a much higher profile due the advent of technology and the explosive growth of the internet. Copyright^[14] had become vital to hundreds of millions of people who download from the Internet to a storage device. In recent years, copyright litigation has impacted the types of books we can read, art we can see, games

we can play, home we can build songs which we can sing and listen movies we can watch and so on ^[15]. In the digital age, we are all regular consumers and producers of copyrighted work. Copyright law therefore plays a profound role in regulating our contemporary lives and shaping our very sense of self ^[16].

However, this increasing interaction with copyright content has made acts, of infringement both more possible and likely ^[17].

Today everyman has the ability to copy and distribute and therefore to potentially infringe copyright in ways both harmful and harmless ^[18].

Infringement of Intellectual Property Rights in general and Copyright in particular has been and continuously been a danger to economic growth and has stand as a threat to investment in the domain of creativity. This poses a drawback to the objective of international trade in general and investment law in particular, which is to encourage investment and contribute to economic growth. On the contrary, it discourages investment due to its negative impacts on trade.

Copyright infringement a common phenomena in legal recognition

Infringement of copyright occurs where without authorization; a work of an author is reproduced, sold or copied. It is a right against copying, as its name suggests; the infringer must have started from the copyright owner's work in some way, though the copying need not be direct. Copyright confers the exclusive right to reproduce the work, issue copies to the public (including a right to rental for some works), perform the work in public, broadcast it or adapt it ^[19]. It is infringed when one of these acts is done without permission. Copyright is infringed by a person who, without the license of the copyright owner, does any of the acts restricted by copyright. Thus, it will infringe copyright in a work to, without permission: copy a work; issue copies to the public; rent or lend a work to the public; perform, show or play a work in public; broadcast a work or include it in a cable programme; or to adapt a literary, dramatic or musical ^[20] work in Cameroon. A copyright owner who has a registered copyright may bring an action for infringement when any of his or her exclusive rights have been infringed by another. Generally, to prevail in an infringement action, a plaintiff must show ownership of copyright and impermissible copying ^[21]. Copying is generally proven by demonstrating that the defendant had access to the work and that the defendant's work is substantially similar to that of the copyright owner. The owner of a copyright has the right to reproduce the work, prepare derivative works based on the original work distribute copies of the work, and to perform and display the work. Generally, violations of such rights are protectable by infringement actions. Nevertheless, there are some defences to copyright infringement that do not constitute infringement, such as use of an insignificant portion of a work for non-commercial purposes or parody of a copyrighted work etc ^[22].

There are various defences a defendant may assert in an infringement action. One of the most common defences is that the defendant's use of the work is a fair use one, permitted use, there was expiration of protection, obscene work, mere ideas are not protected just to name a few. It takes into consideration any creation which could be seen as a sort of asset or a physical property related to individual's

intellect. The work protected from infringement must be original ^[23]. Copyright law however does not protected ideas in themselves but only the forms through which the ideas themselves are expressed. This is partly recognised in section 3(2) (3) and (4) of Law No. 2000/11 of 19 December, 2000 on Copyright and Neighbouring Right in Cameroon. The relevance of this law cannot be over emphasised. However given that it may be lacking in some definition aspects as well as substantive provisions, and taking cognisance of the fact that it must conform to the prescription or recommendations of international conventions related to copyright and neighbouring rights, reference will always be made of the Berne Convention on the Protection of Literary and Artistic Works 1886 as amended by the Paris Act of the Berne Convention of 1971, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisation commonly referred to as the Rome Convention of 1961, the Agreement on Trade-Related Aspects of Intellectual Property and other related statutes.

Questioning and Assessing the Degree of Infringement in Aspects of Copyright

Even though the law provides for the protection of copyrighted articles against, the 2000 law on Copyright and Neighbouring Right in Cameroon is still regarded to be ineffective. It failed to define what infringement of Copyright is, what exactly amounts to infringement, and even what particular acts of the infringer will amount to infringement. The legislators instead concentrated more on the quantum of punishment rather than giving an adequate definition and classification of Copyright infringement offences. For instance section 80 of law No.2000/011 of December 19, 2000 on Copyright and Neighbouring failing to define what infringement of copyright is, it has equally not made mention of what particular act of an infringer will amount or constitute infringement of copyright. This has been a problem as individual authors, infringers and even prosecutors are unable to ascertain the various acts that sums up to copyright infringement ^[24]. The law has neither also provided for the various types of infringements nor the categories of these types of infringement that could either be direct or indirect or otherwise primary and secondary infringement knowing that direct or primary infringement ^[25] cannot be penalized in the same manner like indirect or secondary infringement ^[26]. This is assessed on the basis of an objective test, namely what matters is what a reasonable man would have thought in the relevant circumstances. The law also made provisions with respect to the various fines and penalties that will be awarded to those that infringe copyrighted works without prior authorization however, it failed to indicate the differences between slight and grievous infringement and that the two cannot be penalized equally as the quantum of fine and punishment for grievous infringement overflows that of slight infringement. What will be the position of the law in case where the alleged infringement claimed time limit for protection had expired, or the use was a Permitted one or a fair one, the work was not original, across the international borders? Etc. All the above mentioned defences only prove that the law on the protection of copyright works in Cameroon are ineffective. Consequently, there have been difficulties in establishing

the concept of infringement within the domain of copyright in particular and IPRs in general^[27] in Cameroon.

Infringement of Copyright, an Acceptable Platform under Cameroonian Law

The recent Copyright Law in Cameroon does not exist in ex-nihilo, the law has evolved right up from 1982, 1990 and in 2000. The reasons for the evolution were based on some political, historical and social factors. This inquiry is pertinent because any legislation which does not take into account the historical background of its people is bound to fail^[28]. The importation of foreign law in Cameroon has largely facilitated by colonialism. Long before the arrival of the colonist in Africa, indigenous legal institutions were everywhere^[29] including the territory that became later known as Cameroon. When the colonialist came, they met an indigenous population organised into clans, tribes with distinct system of traditional government. The indigenous communities had primary mechanisms of regulating life as there were no formal court systems as we have today^[30]. Copyright in Cameroon has evolved from under the British and French colonial rule. Cameroon was administered by Britain and France according to Mandate "B" of the League of Nations after they defeated Germany during the First World War who had been applying its laws all over the territory. France took the greater part of the territory, Britain took the smaller share and administer as part of Nigeria. By virtue of the article 9 of the League of Nations Mandate Agreement 1922, Britain and France was empowered to extend their laws in Cameroon^[31]. With respect to the copyright, the French law of 11th March 1957 on Literary and Artistic Property hereinafter referred to as the 1957 law, was extended to the French territory of Cameroon under the French Mandate and remained enforced in Cameroon even after independence^[32].

Practicalities and necessary eventualities in Recognizing Copyright Right Protection in Cameroon

Copyright subsist in certain types of works. Before describing these works, certain basic principles that are not usually embedded in the statutes needs explanation.

An Arsenal and author's need in establishing the ownership of work

There is no statutory definition of 'work', but case law suggests that some Minimum amount of effort must have been expended in the author's creation. The Cameroonian copyright and neighbouring law has not clearly defined work. It only made mention in Section 4(1) of the Cameroonian Copyright law that "A work shall refer to a creation not only in its original form but also in its derivative or composite form". For a work to be said to be infringed, that work must be original and substantive. Copyright protection has been refused to works which are very trivial or very small. In *Sinanide v. La Maison Kosmeo*^[33], the advertising slogan 'Beauty is a social necessity, not a luxury' was held to be too slight a work to found allegations of infringement by use of the rival slogan 'A youthful appearance is a social necessity'. Titles and names have been refused copyright. In *Francis Day and Hunter v Twentieth Century Fox*^[34], no protection was given to the name of the song 'The man who broke the bank at Monte Carlo'. As per Section 4(2) of the Cameroonian Copyright Law, the following shall be protected as composite works,

without prejudice to the copyright in the already existing work: translations, adaptations, arrangements or other alterations of literary or artistic Works; folklore-inspired works etc.

Before a work of literary dramatic and musical is considered infringed, it must be fixed in a tangible form. It is a statutory requirement that work must be fixed in a tangible medium before copyright subsist^[35].

This ensures that there is an entity capable of being regarded substantively as a work in those situations where creation without producing anything external is possible, as, for example, in the composition of music, or a poem or improvised dramatic action^[36]. The other copyright works necessarily have tangible form: films, videos, sound recordings, broadcasts. In instances where there might have been doubt in relation to an artistic work, the requirement that there be a work was applied^[37]. A work^[38] must be recorded and reduce in writing^[39].

The concept of Originality of work in Copyright Protection

Original work is one which, by virtue of its characteristics or expression, can be differentiated from previous works^[40]. Literary, dramatic, musical and artistic works must be original^[41]. 'Originality' is not defined in the statute. This judicially initiated principle has two aspects: a work must spring from its author, and the author must have exercised a degree of 'skill, labour, and judgment' in the work's creation. To be original a work must not be a copy, works may be regarded as original if an element of 'skill, labour and judgment' have been expended in their creation, and this remains so even if the work has been derived from other sources^[42].

For a work to be protected from being infringement, it must be original. This is evident from the provision of section 3(3) of the 2000 Copyright Law. This must be read in line with section 3(1) which talks of the protection of all literary or artistic works^[43]. As per this section, this law shall protect all literary and artistic works, irrespective of their mode, worth, genre or purpose of the expression, notably: Literary works, including computer programs; musical composition with or without lyrics, dramatic, dramatico-musical choreographic works and pantomimes created for the stage; audio visual work; drawings, paintings, lithographs, etchings or wood engravings and other works of the same genre; all kinds of sculptures, bas-reliefs and mosaics; architectural works, including the drawings, models and the construction itself; tapestries and objects created by the arts and applied arts, including the sketches or patterns and the works themselves; maps as well as graphic and plastic drawings and reproductions of a scientific or technical nature; photographic works including works expressed by a process similar to photography. Copyright shall relate to the expression through which ideas are described, explained and illustrated. It shall cover the distinctive features of works, such as the plan of a literary work insofar as it is materially linked to the expression^[44]. This law shall protect only expressions or original distinctive features resulting from a creation^[45].

Questioning the position of literary and artistic work in ensuring protection

The Cameroonian legislators have not made a clear definition of the meaning of literary work. According to the

English, Design Copyright and Patent Act 1985 is helpful when it states that Literary Work is “*any work other than a dramatic or music work, which is written, spoken, or sung*” and this includes a table of compilation. It is worth noting that, the wordings of a song from a literary work distinct from a musical composition, thus the copying of the wordings alone of a song with the intention to make profits^[46], is tantamount to infringement.

Section 3(1) of the 2000 copyright law in Cameroon does not define artistic work. Nevertheless, artistic works are protected. The Cameroonian 2000 Copyright Law merely provides a general list of what may be considered as creative works^[47]. Specific works such as maps as well as plastic drawings and reproductions of a scientific or technical nature are protected^[48]. The English Copyright, Design and Patent Act define artistic work as: a graphic work, photographic, or sculpture, a work of architecture, a building or model of a building; a work of artistic craftsmanship^[49]. Conclusively, Artistic Works includes a work of any of the following descriptions irrespective of their artistic quality-photographs, paintings, drawings, diagrams, maps, charts, plans, engraving, etching, lithographs, wood cuts, prints or similar works, collages or sculptures (including any cast or model made for the purpose of a sculpture), works of architecture, being either buildings or models for building and works of artistic craftsmanship.

Establishing the Complexities and Defilement Affecting Ownership, a mere disaster affecting author's protection

Irrespective of the fact that original works are protected under the 2000 Copyright Law, there are some works that does not warrant to be protected under the law supra. According to Article 2 bis of the Paris Article of the Berne Convention 1971, the 2000 copyright law in Cameroon make provision for some instances where reproduction is justified or accepted^[50]. Copyright has a specific duration after which it enters into public domain and copyright is also limited geographically.

From the above paragraph, following the 2000 copyright law in Cameroon, exceptionally, there are works that do not need protection depending on the circumstances. Such circumstances are generally understood to mean exploiters do not accrue any financial benefits from such works. Most often, such works are for educational purposes which go a long way to improve knowledge for the betterment of the society. After the term of protection has lapsed, the work will be considered as “work belonging to the public domain^[51]” (public Property). Nevertheless, the right holder shall be entitled to a substantial protection fixed by law for the public exploitation of the said work^[52]. Upon expiry of the protection time lime of a work, the exclusive right shall become public property^[53].

Matters of Expiration of work, a common deterrence destroying protection

The law provides for a period of time during which the rights of the copyright holder exist. After such a, reproduction of the work on a tangible object for an economic purpose will not amount to infringement. The above mentioned period begins with the creation of the work, and ends sometimes after the author's death^[54]. The patrimonial right of an author shall last for his life time^[55]. They shall subsist after his death throughout the current

calendar year and for the next 50 years. They shall also subsist for all his successors or rightful claimants during the year of the death of the last surviving co-author plus 50years for joint works^[56]. The fact that duration is limited to patrimonial rights is justified by the characteristic nature of moral rights which are imprescriptability, inalienability and perpetuality. The purpose of this duration is to enable the author's successor to benefit economically from the exploitation of the work the author's death. The duration of protection afforded by the Berne Convention of copyright is not less than 50 years after the death of the author^[57]. The convention also establishes the period of protection of 50 years after the work is made available to the public or from the making of such works for anonymous, posthumous and cinematographic works for which duration cannot be based on the life a single human author^[58]. This provision is reiterated in the TRIPS Agreement, and retaken in the 2000 copyright as afore mention^[59].

The Situation of Non-Material Works and obscene works

Copyright Law does not protect ideas in themselves but the material object in which the idea is expressed. This limitation is contained in section 3(4) (a). This section is to the effect that “*copyright shall not protect ideas in themselves*”. The rational here is that it is difficult to know an individual bears in his or her mind, as Brain CJ observed in the case of *Brogden v. Metropolitan Railway Co*^[60]. “*The human mind is not triable for the devil himself knows not the thought of man*”. This therefore means that for an idea to be protected within the context of copyright, it must be expressed in a material form.

Obscene works are both illegal and immoral in their nature, therefore cannot be protected. Such works are likely to corrupt the moral standing of individuals. The 2000 copyright law is silent on the question as to whether or not there is copyright in an obscene work, yet the general rules relating to illegal contract prevail. Obscene works are not subjected to protection rendering them null and void. Anybody who with a view to trade, manufactures, keeps, imports, transports or export, and whether publicly or not exhibits or distributes any writing, picture, painting, drawing or others to corrupt morals shall be prosecuted for obscene publications. The problem of obscene works was couched in England by the “spy catcher cases”. Also in the case of *Stock-Value v. Onwhy* where the plaintiff was refused relief for the infringement of his book entitled “*The Memoire of Harrirtte Willson*” which the court considered was not only obscene but was also slanderous.

The aspect of permitted works to be used

The 2000 copyright law prohibits the exploitation of a work by any person other than the author except where a written authorization is sought from the author. The authorization must be in writing, on pain of nullity^[61]. However, not all works require the authorization of the copyright owner before exploitation. Certain acts normally restricted by copyright may, in circumstances specific by law, be done without amounting to piracy. This is exemplified by doctrines of *faire use* or dealing.

Copyright protects the form in which ideas are expressed and not ideas in themselves. In Cameroon, works are excluded from protection they are not fixed in some material form^[62]. This is in line with the fact that, mere ideas or non-

material works not expressed stand not to be protected as nobody can read the mind of an individual if he or she does not put such idea in form or making it tangible for others to understand^[63].

This is the authorization given out by law to permit other persons to exploit authorial works without the authorization of the copyright holder subject to compensation. This licence is only granted in exceptional circumstances for public interest. For instance where a new technology for the dissemination of a work to the public has emerged and when the national legislature fears that owners of rights will prevent the development of new technology by refusing to authorise the use of works^[64].

The notion of territoriality of Copyright Protection

Protection comes with territoriality as the law is not universal. Different countries have their respective laws in as far as copyright protection is concerned. They differ from country to country and the terms of protection and must not be the same. There might be similarities but the differences are obvious. For protection against acts of copyright piracy or infringement, done in another country, reference must be made to the law of that country. If both countries belong to the same international convention on copyright, the practical problems arising from these territorial limitations are solved.

The procedure to acquire copyright protection in Cameroon

The authors of creative work shall in respect of such work and by reason of their creation enjoy right of exclusive ownership vis-a-vis all other persons referred to as "copyright" the protection of which shall be organized by this law^[65]. This implies that an author by reason of her creation of a literary or artistic property is entitled to an automatic protection. Protection is automatic here because the author does not need to register the said piece of work unlike in some other jurisdiction where registration becomes mandatory. In Cameroon, registration of a created work is not a fundamental condition for protection. Registration must be effected in front of the competent collective management body. Registration in any collective management body merely serves as proof of who is the right author in case of infringement and proof with respect to the originality of the said piece of work.

Infringement of Copyright a difficult and frustrating Environment for Enforcement under the Cameroon Copyright System

Chapter five (5) of the Cameroonian 2000 Copyright and Neighbouring Right Law is entitled Infringement, penalties and procedures. The section has not defined what will amount to infringement it merely provided a list of what constitutes infringement. Copyright Infringement according to CDPA of 1988 is infringed by a person who, without the licence of the copyright owner, does any of the acts restricted by copyright^[66]. Infringement is confined to doing primary acts of infringement, by doing restricted acts and acts of secondary infringement, which may be broadly described as dealings with infringing copies of a work^[67]. A copyright owner who has a registered copyright may bring an action for infringement when any of his or her exclusive rights have been infringed by another. Generally, to prevail in an infringement action, a plaintiff must show ownership

of copyright and impermissible copying. Copying is generally proven by demonstrating that the defendant had access to the work and that the defendant's work is substantially similar to that of the copyright owner.

The unauthorised copying of copyrighted works for commercial purposes without the prior consent of the copyright owner is copyright infringement, irrespective of whether the infringer acted intentionally or not, thus innocent infringement is no defence^[68].

The situation of Primary Infringement and establishing the aspect of infringement: A difficult dilemmas

Primary infringement is concerned with persons who directly reproduce, distribute, broadcast or ensure the public performance of copyright works without the author's consent. Infringement need not be direct^[69]. Nor need the infringing act encompass the whole of a work^[70]. In primary infringement, the burden of proof lies on the plaintiff to prove that there work is similar, stolen and has been imitate without the author's consent.

What amounts to copying varies depending on the nature of the work in question. Copying means reproducing the original work in any material form: it may be in hundreds of copies by mechanical means, but a transient electronic copy in a computer memory or a single handwritten copy equally infringe. Where reproduction is not exact, similarity is a question of fact. Where reproduction is non-literal because either not all of a work's substance or quantity is taken, infringement may be found provided that the part copied is 'substantial'^[71]. Consequently, a two-step inquiry is made: first, as to the presence of similarity between the two works from which copying may be inferred; and, secondly, whether the extent of the similarities identified amount to a substantial part of the copyright work. Determining similarity in relation to non-literal copying of computer programs, in particular, has proved difficult, under Cameroonian law but is not confined to the text of computer code^[72]. It must be shown that the defendant's work has originated in the plaintiff's; similarity alone will not suffice to constitute reproduction^[73]. The burden of proof then shifts to the defendant to provide some non-infringing explanation for the similarity of his work to the plaintiff's^[74].

To show infringement the plaintiff must first prove that the defendant has copied either intentionally or unintentionally. Once a case is made out, the burden of proof shifts to the defendant, who must then give an explanation of why there are similarities between the works. Altered copying if the defendant has copied the whole of a work there is little problem apart from proof. If there have been considerable alterations it is more difficult to prove. The court has to decide whether the defendant's work incorporates a substantial part of the skill and labour involved in the creation of the claimant's work^[75].

Substantial Direct and Indirect Infringement

If an article such as a drawer is made according to a drawing, unauthorised copies of the drawer will indirectly infringe the copyright subsisting in the drawing. Not only copying the whole, but also copying a substantial amount of the work, will amount to infringement.

The copying must be in relation to the work as a whole or any substantial part of it and can occur either directly or indirectly^[76].

Copyright may be infringed by the execution of a restricted act in relation to the work either directly, or indirectly^[77]. Indirect copying can be best illustrated by the cases of *Plix Products v. Winstone*^[78]. A chain of causal connection can be traced back from the defendant's trays through the description, the regulations and the plaintiff's product, to the copyright works infringed, because the works gave rise to the product, the product to the regulations, the regulations to the description and the description to the competing trays. The House of Lords affirmed that 'reverse engineering' constituted indirect copying in *British Leyland v Armstrong Patents*^[79]. The statute provides that the intervening steps in a chain of indirect infringement need not be infringements in themselves. The owner may grant a licence to another to do any of these restricted acts.

Authorization

Not only is it an infringement to perform one of the restricted acts but also to authorize another to do so. In other jurisdictions libraries have been held to have authorized copyright infringement by providing photocopiers without any warnings to the users or supervision against copyright infringement. However, in the in Cameroon merely making copying equipment available will only amount to authorization if there has actually been some encouragement or at least turning a blind eye to infringement^[80].

Indirect Infringement or Secondary Infringement

Secondary infringement is all about commercial 'dealing' with infringing copies. It includes providing premises for the performance of, apparatus for making or transmitting an infringing article in the course of a business. Secondary and primary infringement does not have to have been committed by the same person. For a secondary infringement the person responsible must have knowledge or reason to believe that the copies are infringing copies and that what they are doing involves a secondary infringement. The main issue here to be considered is the knowledge needed by the secondary infringer^[81]. The test must be objective: whether the reasonable man, with knowledge of the facts known to the defendant, would have formed the belief that the item was an infringing copy^[82].

These acts may not be performed by the person who is the primary infringer, and differ from primary infringement, where liability is strict, in a requirement for knowledge on the part of the infringer. The acts of secondary infringement may be utilised against Internet service providers and bulletin board operators, provided the requisite knowledge is proved. There is no provision for the authorisation of an act of secondary infringement, but an 'authoriser' may be joined as a joint defendant. All the acts of secondary infringement must have been performed without the licence of the copyright owner^[83].

Reasonable knowledge

It is required in Copyright^[84] that secondary infringers had actual knowledge of their infringement, the requisite knowledge is said to include reasonable inferences that the person should draw from the facts^[85]. Secondary infringer either knows or has reason to believe that he is dealing with infringing copies^[86]. This, although primarily an objective test, includes a subjective element in that the belief is personal to the defendant; a belief reasonable to him, as well as the reasonable man. This should include all his

knowledge and experience, rather than that of the reasonable man. This test was considered in *LA Gear Inc v Hi Tec Sports plc*^[87].

The Complexities and common predicaments surrounding the understanding of Copyright Infringement under Cameroonian Copyright Law

The Cameroon Copyright Laws have not lost sight on acts on acts that may be qualified as copyright infringement. What constitute copyright infringement is confined in the 2000 Copyright Law and the new penal code. For example, section 80 of the 2000 Copyright Law. This section provides that:

"The following shall constitute forgery:

- (a) Any exploitation of a literary or artistic work done in violation of this law, through
- (b) Any reproduction, communication or supply to the public through sale, exchange, rental of a recording, a phonogram, videogram, undertaken without the authorization of the performer, phonogram or videogram producer, or the audiovisual communication firm, where such authorization is required;
- (c) Any infringement of moral rights through violation of the right of disclosure, the right of authorship or the right to respect of a literary or artistic work;
- (d) Any infringement of the right of authorship and the right of integrity of a performance."

Section 81 states that:

The following shall also be considered forgery:

- a) The importation, exportation, sale or putting up for sale of forged objects;
- b) The importation or exportation of phonograms or video grams produced without the authorization of their performer or producer, where such authorization is required;
- c) Manufacturing or importing, with the intention of selling or renting or setting up equipment, material, device or instrument entirely or partially designed to fraudulently record
- d) programmes broadcast where such programmes are reserved for a specific public that receives them in return for a fee paid to their operator or his legal representatives;
- e) The fraudulent neutralization of effective technical measures used by owners of copyrights or neighbouring rights to protect their works against unauthorized acts;
- f) Allowing the irregular reproduction or performance in one's establishment of works protected by this law;
- g) Failure to pay or unjustified late payment of a fee as provided for by this law;
- h) Carrying out the following acts, knowingly or, for civil sanctions, having good reason to believe that this act will lead to, enable, facilitate or conceal infringement of a right provided for in this law:
 - Unauthorized removal or alteration of any electronic information relating to the copyright regime;
 - The distribution, importation for distribution, unauthorized communication of originals or copies of works, performances, video-grams, phonograms, programmes, while knowing that the electronic information relating to the copyright regime has been removed or altered without authorization.

The such as infringement, piracy, copyright are not defined under the 2000 Copyright Law as well as the Cameroonian Penal Code ^[88]. Under the Cameroonian Penal Code, acts of infringement are enshrined in Section 327, similar to those provided for by the 2000 Copy Right Law as mentioned above. It follows that, any infringing activity which occurs on the internet without the right holders consent, constitutes prima facie infringement. Indeed, Authorization is a sine qua non to use any copyright work protected in Cameroon. As a result, the 2000 Copyright Law states as follows:

“Exploitation of a work by a person other than the author may not be allowed without the latter’s written authorization or that of his rightful claimant in writing including any electronic devices” ^[89].

Despite the existence of copyright treaties and copyright law the in Cameroon, the protection of copyright works is still not guaranteed. This is because the citizens are not aware of the existence of copyright law and even though it exist the law regulating it is ineffective. For instance, Cameroon has limited its protection to a very narrow subject area, and which generally lack enforcement.

Also, even though the law provides for the protection of copyright infringement, the 2000 law on Copyright and Neighbouring Right in Cameroon is still regarded to be ineffective. It failed to define what infringement of Copyright is, what exactly amounts to infringement, and even what particular acts of the infringer will amount to infringement. The legislators concentrated more on the quantum of punishment rather than giving an adequate definition and classification of Copyright infringement offences. For instance section 80 of law No.2000/011 of December 19, 2000 on Copyright and Neighbouring failing to define what infringement of copyright is, it has equally not made mention of what particular act of an infringer will amount or constitute infringement of copyright. This has been a problem as individual authors, infringers and even prosecutors are unable to ascertain the various acts that sums up to copyright infringement in Cameroon ^[90]. The law also made provisions with respect to the various fines and penalties that will be awarded to those that infringe copyrighted works without prior authorization however, it failed to indicate the differences between slight and grievous infringement and that the two cannot be penalized equally as the quantum of fine and punishment for grievous infringement overflows that of slight infringement.

The authorization must be written under pain of nullity and it must determine the mode, duration and place of exploitation. Despite the fact that the Cameroonian law makers have provided much literature on copyright infringement, it has not defined infringement, and has not clearly severed primary and secondary infringement which is very essential when faced for copyright infringement. In contrast, the Copyright Designs and Patent Act 1988(CDPA) regulating copyright in England in its part one (chapter two), clearly distinguishes secondary infringement of copyright from other acts restricted by copyright which turns out to facilitate the determination of the type of infringement involved in the case pending trial.

The need in Providing Possible Remedies for Infringement of Copyright

The remedies available for in copyright infringement are both civil and criminal. The remedies applicable to civil infringement include injunctions, damages or an account of

profits, delivery up and destruction orders. A maximum term 5 to 10 years’ imprisonment is available for criminal offences. If there is a very strong case to suspect copyright infringement and a likelihood of serious damage, the copyright owner should apply for a search order. Such an order will be granted if it is necessary to prevent the destruction of the evidence.

The notion of Civil Remedies

A copyright owner can take civil action against any person who infringes the copyright in the work. The copyright owner is entitled to remedies by way of injunctions, damages and accounts.

An Extended Ground and Situation of Injunction

An injunction ^[91] may order a person to stop making infringing copies or to destroy ^[92] something which is used for making infringing copies. Injunctions are equitable and therefore discretionary. The court must feel that there is a serious issue to be tried.

Injunctions are unlikely to be granted if damages would be an adequate remedy. As per the Cameroonian Copyright Law, the president of the civil court with jurisdiction may, by a ruling on petition, may order: the suspension of any on-going manufacture that may lead to the unlawful reproduction of a work ^[93], the suspension of unauthorized public performances or shows ^[94].

Damages, a usual position in redressing the right of the author

Damages are awarded, if not too remote, in order to compensate the copyright owner for any actual loss suffered. These may be based on a likely royalty or lost sales. Liability of the defendant is strict for the ‘primary’ infringements but damages will not be awarded against the defendant if they did not know, and had no reason to believe, that copyright subsisted in the work ^[95]. It is made mentioned by the Cameroonian Copyright law that where the proceeds from exploitation due the owner of copyright and neighbouring rights have been seized, the president of the civil court with jurisdiction shall order the payment of some amount or specific quota of the amount seized, to the author for subsistence ^[96].

What Amounts to Damage

In order to make and award in a copyright infringement cases, the court usually takes into consideration actual and statutory damages.

Actual Damages

Sometimes known as compensatory damages, “actual damages” consist of the total amount of any demonstrable loss the copyright owner suffered as a result of the resulting infringement. The lost could be sales, or any other provable financial loss directly attributable to the infringement ^[97]. In this situation, the court can order for the payment of the actual damages to the author of the work that has been infringed ^[98]. This provision has equally been reintegrated by Article 45(1) of the TRIPs Agreement ^[99]. In establishing the infringer’s profit, the copyright owner is required to present proof only of the infringer’s gross revenue, and the infringers is required to prove his or her deductible expenses and the elements of profit attributed to factors other than the copyrighted work ^[100].

Profits of the Infringer

Apart from actual damages, copyright owner can also seek for infringer's profits made from infringing on the copyright article ^[101]. The infringer should not be allowed to keep the benefit of their wrongful actions. These damages are awarded only if they exceed the actual damages as a result of the infringement.

Statutory Damages

Statutory damages provide a clearly defined remedy for victims of infringement without the fogginess and uncertainty of the first two categories of damages. These damages may be awarded by a judge or a jury. Article 45(2) of the TRIPS Agreement provides that in "appropriate cases," judicial authorities may award "profits and/or payment of pre-established damages even where the infringer did not knowingly or with reasonable grounds to know, engage in infringing activity" ^[102]. It is specified under the Cameroon 2000 Copyright Law that the infringer of copyright shall be punishable by imprisonment of from 5 (five) to 10 (ten) years or a fine of from 500,000 to 10,000,000 CF Afrancs or both such imprisonment and fine ^[103].

Permitted Acts

The Cameroonian 2000 copyright Law sets out an extensive list of acts of infringement which are given statutory permission. In some cases, this only applies where copyright owners have not set up a collective licensing scheme and provides an incentive for authors to do so. It is interesting to consider these permitted acts within their context. They cater, broadly, for particular interests in copyright works, such as news, entertainment and media, education, public administration, industrial design copying, private copying for home use. The Permission for private copying is however subject to remuneration as provided for under sections 69 and 72 of the copyright laws and under sections 13 to 17 under chapter IV of Decree No. 2001/956/PM of November 1, 2001 implementing Law No. 2000/11 of December 19, 2000 on Copyright and Neighbouring Rights. A question that crops up here is whether collective use as referred to above includes all the members of a family ^[104]. The justification for these permitted acts is that it provides a fair balance between the rights of the copyright owner and the rights of society at large. In these circumstances there will have been an infringement of a work, but the copyright owner's commercial exploitation of the work is deemed not to have been unduly harmed.

Public Domain Work(s)

When the term of protection of a work has lapsed, the work is said to have entered the public domain and anybody can copy without authorization or compensation provided that the author is accredited at the moment the work is used or copied. In other words, the author's integrity and paternity remains attached to the work sine die. Under the Cameroonian Copyright law, patrimonial right subsist in a work throughout the life time of the author and extends to fifty years after his/her death (post motem auctoris).

Future perspective and the expectations of an adequate Copyright Protection in Cameroon

The importance of Copyrighted works in the world in general and Cameroon in particular should not be over

emphasised, due to this inclination there have been eminent laws aimed at protecting the Copyrighted articles from being infringed so that the authors of such works can rib from their labour. This is aimed at encouraging creativity and to give copyright the place it deserves in the society.

It is rather unfortunate that the main piece of legislation regulating copyright in Cameroon have not define what copyright is all about and what amounts to infringement. To this length we recommend that the legislators amend the law regulating copyright in Cameroon and extent the scope of what amounts to infringement.

Equally, the 2000 copyright law has provided provisions sufficient enough to protect and ensure the enforcement of copyright infringement in Cameroon. Despite the enactment of this law, the enforcement copyright law in Cameroon is still far fetch, the country has recorded high rate of copyright infringement due to the slow implementation of the law.

Thus it is recommended that section 80 of the Cameroonian 2000 law on Copyright and Neighbouring Right which is concerned with infringement, penalties and procedure should be amended and given a more precise definition of the term infringement, what will amount to infringement, and the quantum of penalty to be awarded to perpetrators of such misdemeanour, for this will go a long way to alleviate the arts of authors thereby making the country's creators of artistic, literary or musical works to be more creative and innovative, as this will promote economic growth and development.

It is also recommended that, wider power should be given to judicial authorities such as the police to limit the rate of infringement of copyrighted works in Cameroon. Even though the police can act on their own to seize pirated product under the copyright laws, and in fact, are obliged to do so under the Criminal Procedure Code ^[105], the police in many cities simply refuse to act ex-officio and invariably require a complaint from the right holder. There is the need for the extension of the competence of the force of law and order to impound infringed copies and equipment used for making infringing copies.

At this point it is equally important that the provisions of copyright law be interpreted so as to avoid ambiguity in law. The problem of copyright infringement needs to be addressed from its roots if there is hope for a better protection. This necessitates a rethink in the mind of the legislator while improving efforts to combat infringement at the national governmental level. Two of the principal challenges remain finding ways to enhance enforcement and raising awareness of copyright infringement issues. More need to be done to detect and undermine copyright infringement at the point where infringement originates. Actions are also required to keep the internet from becoming an even more prominent distribution channel for infringement of copyright.

The reason for the high rate of copyright infringement in Cameroon has been largely promoted by the tax system in Cameroon. Since copyright infringement is a clandestine activity, the profits derived by infringers are normally not subject to tax collection. Rather, the best than can be done with such is confiscation; unfortunately, this is not the case in Cameroon. The Cameroon General Tax Code (No.2019/023 of 24 December 2019 Finance Law of the Republic of Cameroon for the 2020 Financial Year) in its section 2 provides for the taxation of income without

considering the legality of the activities. Copyright infringed goods fall under the framework of taxable products in Cameroon. All that interest the tax collector in Cameroon is the income and not the legal status of the business or activity that generates income, to an extent, the tax collectors are not to be blame. Rather, it is necessary for the legislator in the domain of to ameliorate the provision of the tax law to this effect. By so doing, the legislator must have assisted in the struggle to curb copyright infringement in an indirect manner, and thus, encouraging creativity, which in the long run will still provide its income through legal taxes. That notwithstanding, the task of identifying illegal products is on the Ministry of Commence.

The legislators need to harmonised the text regulating civil procedure in Cameroon since the law regulating copyright is uniform, its procedure should also be uniform in the two segment of the country; to give a second thought to the exception of copying for private use; as well as to oblige authors join collective management bodies for protection to be facilitated. Thus the law should replace the conditional 'may' with an obligatory 'must' in its section 75(1). The effective implementation of the 2000 Copyright Law can only be achieved if it is read alongside section 74 of the Cameroonian Penal Code.

Conclusion

The use of a copyrighted work without the owner's permission is known as Copyright infringement. For an author to establish ownership of a valid copyright, the plaintiff must demonstrate that the work is original, and that it is subject to legal protection. Copyright protects original works of authorship that exist or could exist in a tangible medium of expression; this includes literary and artistic works. The plaintiff in a copyright lawsuit therefore has two elements to prove instances of copyright infringement that is; that he owns a copy right and that it has been infringed. In such a case there are both civil and criminal remedies available to the claimant, the plaintiff can also sue for an injunction to prohibit further unauthorized use of the copyright materials by the defendant and go to recover damages. As important as copyrighted work is it to the world in general and Cameroon in particular, there is the need to curb copyright infringement so as to encourage creativity. The question one need to be asking is in knowing the duration that authors will continue to suffer from their infringed works? This is a school of thought for the competent authorities in looking the way forward in ending this longtime dilemmas on authors right in Cameroon.

References

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2. Infringement is confining to doing primary acts (those within the exclusive rights) and acts of secondary infringement, which may be broadly describe as dealings with infringing copies of a work. See Catherine C. Principles of Intellectual Property Law, Great Britain, Cavendish Publishing Limited 1999, 219.
3. Article 5 (1) of the Agreement Revising the Bangui Agreement of March 2, 1977, on the Creation of an African Intellectual Property Organization (Bangui (Central African Republic) February 24 1999) provides that "this Annex shall apply to literary and artistic works, hereinafter referred to as "works", constituting original creations of the mind in literary, artistic and scientific fields.
4. Hornby AS. Oxford Advanced Learner's Dictionary of Current English 6th Edition Oxford University Press, In p. 264 defines Piracy as the act of making illegal copies of video tapes, computer programmes, books and so on, for economic reasons (to sell) 2001.
5. The World Intellectual Property Handbook: Policy and Use. WIPO Publication, Geneva, P. 216-217, Counterfeiting are usually exact copies of a sound or video disk, or tapes, with, for instance, exactly the same packaging as the original, including usually also the trademark. The copies could be either tapes or more sophisticated industrially manufactured CDs (Cameroon streets, markets, and Cities are flooded with counterfeiting CDs and video tapes from Nigeria and Cameroon inclusive. the sale of these products have become the main source of employment for many youths today in Cameroon, as they move about the villages towns and cities in search for available markets. The main surprisingly issue about this is that then source of these products are never disclose by them 2001.
6. Article 2(xxi), "Copy" means the outcome of any act of reproduction of a work already fixed on a medium.
7. An author of a work is the person who created the work or the person or business who pays another to create the work in the employment context, or the person or business that commissions the work under a valid work made for hire contract. For example, a songwriter may author a song, a movie producer may author a movie, a computer programmer may author a program, and a toy designer may author a toy (unique toys with designs unrelated to their functions are protectable by copyright) In all these situation, however, if the creator does not work independently but creates the work in an employment relationship or under a valid work made for hire contract, the employer or person paying for the work is the author for copyright purpose. For further reading see Anthony Richard Stim. Patents, Copyright & Trademark, 9th Edition, Consolidated Printing Inc 2007, 200-201.
8. David IB. Intellectual Property, 9th edition, Great Britain, Pitman Publishing Inpring 2012, 41.
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10. The statute of Anne also known as the Copyright Act 1710, is an Act of the Parliament of Great Britain passed in 1710, which was the first statute to provide for copyright regulated by the government and courts, rather than by private parties.
11. The copyright Act of the 1970 was the first federal copyright act to be instituted in the United States, though most of the states had passed legislation securing copyright in the years immediately following the Revolutionary War. The stated objective of the act

- was the “encouragement of learning” and it achieved this by securing authors the “sole right and liberty of printing, reprinting, publishing and vending” the copies of their “maps, charts and books” for a term of fourteen years, with the right to renew for one additional fourteen years term should the copyright holder still be alive. Also see <https://en.m.wikipedia.org>, accessed on 11/04/2020 10:19 Am.
12. John Tehranian. *Infringement Nation*, New York, Oxford University Press. Inc 2011, XVI.
 13. Ibid.
 14. Copyright subsist in authors the moment they fix a tangible medium.
 15. Madhavi Sunder. *Intellectual Property and Identity Politics with Fire*, 59TAND. L. REV 2006, 617.
 16. Ibid.
 17. Tim Wu. *Tolerated Uses* COLUM. J.L & ARTS 2008, 617.
 18. John T. Op cit., p xvi.
 19. Catherine C. *Principles of Intellectual Property Law*, Great Britain, Cavendish Publishing Limited 1999, 4.
 20. Ibid 219.
 21. Ibid.
 22. Deborah E. *Intellectual Property: The Law of Trademarks, Copyrights, Patents and Trade Secrets*, Delmar Cengage Learning, 5 Maxwell Drive, Clifton Park New York, 4th Edition 2013, 5.
 23. For there to be copyright, there must be a work, fixed in form and it must be original in essence, copyright protects the form in which the ideas are expressed and not ideas in themselves in Cameroon work is not protected if the work is not in a material form.
 24. Section 80 of the 2000 copyright law in Cameroon provides that the following shall constitute forgery: (a) any exploitation of a literary or artistic work done in violation of this law, through performance, reproduction, transformation or distribution by any means whatsoever; (b) any reproduction, communication or supply to the public through sale, exchange, rental of a recording, a phonogram, videogram, undertaken without the authorization of the performer, phonogram or videogram producer, or the audiovisual communication firm, where such authorization is required; (c) any infringement of moral rights through violation of the right of disclosure, the right of authorship or the right to respect of a literary or artistic work; (d) any infringement of the right of authorship and the right of integrity of a performance.
 25. In primary infringement, the defendants are directly involved in copying, performing, and issuing to the public the copyright work.
 26. Secondary infringement involves people who deal with infringing copies, or facilitate such copying or others activities that are restricted by copyright. Unlike primary infringement that does not require knowledge or intention to infringe on the part of the alleged infringer and is hence subject to strict liability, secondly infringement occurs where the defendant knew or had reason to believe that activities in question are wrongful.
 27. Lanyuh NB. Opcit 11.
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 29. Allot Anthony. *New Essays in Africa Law* Butterworth, London 1970, 10.
 30. Tanyi George N. *The Domestic Implementation of International Humans Instrument in the Protection of the Right of Juvenile Offenders in Cameroon* Ph.D. Thesis, Faculty of Law and Political Science, University of Dschang 2017, 39.
 31. The republic of Cameroon is a bi-jural and bilingual country made up of ten regions. See article 1 and article 61(1) of the constitution of the Republic of Cameroon of June 2, 1972 amended by law N0 96/6 of January 1996 and law N0. 2008/1 of 14 April 2008. It should be noted that two of these regions, that is North West and South West regions are English speaking, while the remaining regions including the capital of the country are French speaking. The Republic of Cameroon occupies an approximated area of 476.726 square kilometres with a population of about 20.000.000 inhabitants. The which country is triangular in shape is bounded to with lake chad at its apex; the Federal Republic of Nigeria in the West, the Central African Republic to the east, and to the south by the Republic of Gabon and Democratic Republic of Congo respectively.
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 33. 44 TLR 1928, 371.
 34. AC 1940, 112.
 35. Section 3(2) of CDPA 1988.
 36. Cathrine Colston. *Principles of Intellectual Property Law*, Great Britain, Cavendish Publishing Limited 1999, 169.
 37. *Merchandising Corp of America v Harpbond* FSR 1983.
 38. Section 4(1) of the Cameroonian 2000 Copyright and Neighboring Right Law.
 39. Writing is defined in Section 178 of the CDPA 1988.
 40. Section 1(2) of the Cameroonian Copyright and Neighboring Right Law op. cit
 41. Section 1(1) of CDPA 1988.
 42. *University of London Press v University Tutorial Press* Ch 1916.
 43. Section 3(3) of the Cameroonian 2000 Copyright Law. This must be read alongside section 3(1) which talks of the protection of all literary or artistic works.
 44. Section 3(2) of the Cameroonian Copyright Law
 45. Section 3(3) *ibid*.
 46. Section 3(1) of the English Copyright, Design and Patent Act 1985.
 47. Section 3 and 4 of the 2000 copyright law, op. cit.
 48. *Ibid*, Section 3(1)(1), photographic works, including works expressed by a process similar to photography.
 49. Section 4(1) of the English Copyright, Design and Patent Act 1988.
 50. The provisions of Article 2 bis of the Paris Article of the Berne Convention 1971, the 2000 copyright law in Cameroon makes provision for some instances where reproduction is justified or accepted. (Permitted use).

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52. Section 8(3) of the 2015 Decree states, “royalties owed in respect of the expiration of works in the public domain shall be fifty percent (50 percent) of those which were usually paid when the work was still protected.
53. Section 39 (1) (2) (3) of the 2000 Cameroonian Copyright Law.
54. Section 37 (1) of the 2000 copyright law makes provision with respect to patrimonial rights amongst others.
55. Ibid.
56. Ibid section 37(2) highlights audiovisual works, works of applied arts and collective works.
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60. (1876-77) L.R. 2app Cas 666, HL(E).
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81. LA Gear Inc v. Hi-Tec Sports plc. FSr 121, Ca 1992.
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84. Copyright Act 1956.
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86. Sillitoe v McGraw Hill. FSR 1983, 545.
87. FSR 1992, 121.
88. The Cameroonian Penal Code of Law No 2019/020 of 24 December 2019 to amend and supplement some provisions of Law No. 2016/7 of 12 July 2016 relating to the Penal Code.
89. The 2000 Cameroonian Copyright Law, op. cit Section 22(1).
90. Section 80 of the 2000 copyright law in Cameroon provides that the following shall constitute forgery: (a) any exploitation of a literary or artistic work done in violation of this law, through performance, reproduction, transformation or distribution by any means whatsoever; (b) any reproduction, communication or supply to the public through sale, exchange, rental of a recording, a phonogram, videogram, undertaken without the authorization of the performer, phonogram or videogram producer, or the audiovisual communication firm, where such authorization is required; (c) any infringement of moral rights through violation of the right of disclosure, the right of authorship or the right to respect of a literary or artistic work; (d) any infringement of the right of authorship and the right of integrity of a performance.
91. An injunction is an order of the court which prohibits an act or the commencement or continuance of an act. Alternatively, an injunction might order a person to perform some act.
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