AN OVERVIEW OF LEGAL INSTRUMENTS FOR COPYRIGHT PROTECTION IN THE DIGITAL ENVIRONMENT: THE CASE OF CAMEROON

By Asanji Clorine Nyifah

3rd Year Ph.D Student, University of Yaounde ll, Soa, Cameroon

DOI: 10.55662/AJMRR.2023.4403

ABSTRACT

The worldwide improvement of digital technologies has given birth to several new ideas in computer-based works such as databases, computer programs, computer software, and other multimedia works on the internet which are enclosed under the notion of digital copyright law. In the current digital stage, the communication of these novel methods of intellectual property takes place through the internet in no period but the same internet has raised a novel set of difficulties to the copyright regime by increasing the chances of copyright infringement by various advanced means. The Internet in a way presents a wearisome situation for copyright author and holders as the users become mass disseminators of others copyright material and create disequilibrium amongst the authors and users. The purpose of this article is to illustrate on the evolution and conceptual framework on copyright protection in the digital environment. It demonstrates the historical development of copyright law in Cameroon from the WIPO perspectives to the colonial administration under Britain and France. The recognition of the colonial and post-colonial copyright Act could change our perspective on the understanding of the scope of copyright protection in the digital environment and what should be considered as appropriate in protecting the rights of copyright creators. The article examines the theoretical framework in the international, regional and national level for determining what should be the minimum standard of protection and infringement of copyright in the digital environment. It is believed that, with the understanding of these legal instruments, infringers, copyright holders and other stakeholders will be aware of their rights and obligations provided under

international, regional and national laws in order to safeguard rights under copyright protection like the right to use copyrighted works, prevent others from using copyrighted works and authorize the utilization of copyrighted works. It is however suggested that, as the digital environment evolve, copyright laws should equally evolve in order to match the changing realities in the digital environment.

***Keywords*:** Copyright, Protection, Legal Instruments, Digital Environment, Cameroon.

INTRODUCTION

As in all African countries, the notion of copyright was introduced into Cameroon by its Western European colonial masters[i]. Today, copyright has been recognized in the country for almost a century and has really found its grounds in the fabric of the legal machinery even though it is virtually unknown to the ordinary Cameroonian. An understanding of the nature, the content and the practical application of copyright law in the country presupposes a working knowledge of the Cameroonian legal system and a historical purview of the origins and development of copyright law in the country. It is hoped that this rather brief survey of the legal instruments will provide a good groundwork for a better understanding of Cameroon's copyright law[ii].

Unlike in the developing countries where the notion of copyright originated from within the country and has been developed over the years to keep pace with the socioeconomic development of the country, copyright was introduced into Cameroon by its colonial masters at a time when the Cameroonian people themselves knew nothing about it, and probably did not even need it at all. There is absolutely no doubt that the colonial powers that introduced copyright into their dependencies did so not so much to protect copyright works generated in these territories as to protect the works of their nationals that were most likely going to be used by the inhabitants of the dependencies. In the case of Cameroon, the introduction of such laws was definitely in contravention of the League of Nations Mandate Agreements of 1922 and the United Nations Trusteeship Agreements of 1946. Under these agreements, the mandatory power was given the right 'to apply its laws to the territory under the mandate subject to the

modifications required by local conditions."[iii] It is extremely doubtful whether copyright laws introduced into the Cameroons were modified to suit local conditions since it is the same law that applied in France and Britain which was eventually transferred to the territory. The local conditions in France and Britain were obviously different from those in Cameroon and if these laws had been enacted in the former countries to suit their local conditions, then they were simply unsuitable for the Cameroons.[iv]

The advancement of Digital Technology has been one of the finest creations of the human mind[v]. Technology has opened its gates to a wide range of possibilities in various areas like media, entertainment, communication, advertisements and education. However, the easy access to materials available on the Internet has posed a great concern for Copyright infringement. Copyright is one of the most important Intellectual Property Right which denotes the rights possessed by the creators for literary and artistic works. It includes works from books, paintings, computer programs, films, database and maps, to name a few. Digitalisation has made it considerably easy to copy, replicate and sell the works of a copyright owner without his permission and detection of such infringement becomes difficult. This has posed a great threat to the right of the copyright owners or creators[vi].

However, several efforts have been made at both the national and international level to overcome the difficulties planted by the internet and other technological tools against the protection of copyrights in cyberspace[vii]. It is certain that the copyright laws do work for protecting copyrighted material and the recent amendments have brought them more on line but there is still a need to overcome some drawbacks.

INTERNATIONAL LEGAL FRAMEWORK ON COPYRIGHTS PROTECTION

The international protection of copyright and intellectual property rights as a whole has always been a subject of intense debate, the main issues in contention being that while some countries see it as something that is absolutely necessary, others see it as an instrument of exploitation. The debate has always been viewed in a north-south perspective,[viii] even though some of the

industrialized countries of today also regard, or have at some time also regarded the international protection of these rights with disdain.[ix]

Until recently, the global copyright law rested on the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 1995[x]. Subjects relating to sound recordings and performances were addressed in the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961). Since 1974, the global copyright instruments have been accomplished by a special United Nations agency the World Intellectual Property Organization (WIPO)[xi]. Cameroon acceded to the Berne Convention on September 21 1964 and to the UCC on May 1 1973. It is a signatory to the 1971 texts of the both Conventions.[xii]

The Berne Convention 1971

It was in Berne (Switzerland) in the year 1886 that the first step for the protection of copyright was taken when the countries signed the Berne Convention[xiii]. The Berne convention on the protection of literary and artistic works, 1886, as revised in 1971, was subsequently re-negotiated in 1896 (Paris), 1908 (Berlin), 1928 (Rome), 1948 (Brussels), 1967 (Stockholm) and 1971 (Paris). The convention relates to literary and artistic works, which includes films, and the convention requires its member states to provide protection for every production in the literary, scientific and artistic domain. The Berne Convention outlines the various rights being the subject of protection under copyright and neighbouring rights. These include moral rights[xiv], translation[xv], reproduction[xvi], broadcasting and communication to the public[xvii]. The same convention again provides for the protection of adaptations[xviii] and cinematographic adaption[xix]. What is interesting in the prescription of this convention is that by its article 5, the enjoyment of rights in respect of such works is governed by the respective national legislation. Where these rights are not respected and someone was to proceed to make copies without the prior authorization of the right holder, there would be infringement and any product of such infringement would be counterfeit.

The treaty in respect of integrated circuit, 1989, however, is more explicit. It provides with respect to the acts requiring the authorization of the holder of the right in integrated circuits as stated in article 6-(1) (a), (b), and (c). The main concessions made to developing countries

under the Paris Act of the Berne Convention and the 1971 text of the UCC were limitations on the exercise of the translation and the reproduction rights.[xx]

The Berne Convention deals with the protection of works and the rights of their authors. It is based on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them[xxi]. The first and basic principle stated in the Berne Convention speaks of equitable status on the protection of literary and artistic creations that come into being from a contracting state. The second principle of the Berne Convention upholds automatic protection of all works, regardless of any legal formalities for protection. Article 2 of the treaty endeavours to guard the originality of all literary works. The first and basic principle stated in the Berne. The Berne Convention deals with the protection of works and the rights of their authors. It is based on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them[xxii]. Protection must not be conditional upon compliance with any formality (principle of "automatic" protection)[xxiii]. Protection is independent of the existence of protection in the country of origin of the work (principle of "independence" of protection). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases[xxiv].

One of the significant shortcomings of the Berne Convention was that there was no enforcement mechanism for effectively enforcing the binding obligations of the multilateral treaty. This absence of any mechanism rendered the treaty toothless[xxv]. The current Berne Convention and the Paris Act continued to build on the rights- focused foundation established in 1886. While limitations and exceptions also remained a part of the Convention through each revision, it is important to note three significant permanent characteristics associated with the design of limitations and exceptions to copyright under the Berne Convention. First, the evolution of limitations and exceptions did not take place at the same rate or in a corresponding manner to the evolution of rights for authors. Second, while the rights of authors were specifically identified and articulated, limitations to authors' rights were general and ambiguous. Third, the minimum rights provided under the Convention are mandatory, while

limitations and exceptions are discretionary and without any real force in the absence of state action.

The Paris Convention for the Protection of Industrial Property

Article 6 bis of the Paris convention on the protection of IP provides protection for well6known marks.[xxvi] With respect to good unlawfully bearing a mark or trade name the convention provides that they shall be seized on importation into those countries of the union where such marks or trade name is entitled to legal protection[xxvii]. Seizure may also be affected in the country where the unlawful fixation occurred or in the country into which the goods were imported[xxviii] and this will often be at the request of the public prosecutor, or any other competent authority, or any interested party, whether natural or a legal entity, in conformity with the domestic legislation of each country[xxix]. If, however, the legislation of a country does not permit seizure on importation, seizure maybe replaced by prohibition of importation or by seizure inside the country[xxx].

Article 10(1) of the convention on its parts, rather prefers the phrase. What the above provision state is that involvement by any person in the conduct described therein would be tantamount to infringement of either the patent or the trademark rights or any other industrial property rights such as for example, geographical indications[xxxi]. What the provisions do not state, and which ought to have been stated, however, is that once such goods are put in the market, they are counterfeited. They are counterfeit because their fabrication entailed the non-respect of the patented invention, be it a product or a process, the mark or the trade name of another, or any other industries property rights. This is so even if the violation took place on one territory but the effects are felt in another[xxxii].

The Universal Copyright Convention

This convention was signed in 1952 and it resolved to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture[xxxiii]. The term of copyright protection was set up till the lifetime of the author and 25 years after his death.

The Universal Copyright Convention of 1952 provides a simple and ingenious solution to the problem of infringement of copyrighted work in different legal jurisdictions. It prescribes that the formalities required by the national law of a contracting state shall be considered to be satisfied if all the copies of a work originating in another contracting state carry the symbol ©, accompanied by the name of the copyright owner and the year of first publication.

The 1952 Convention satisfies these two conditions. Its protective norms are expressed in the form of general principles which can be given different shades of interpretation depending on the specific identity of each state. The Convention limits the term of protection of copyright to twenty-five years after an author's death, thus permitting the accession of the USSR. But correlatively the Convention provides for the works of the citizens of each contracting state the same protection in other contracting states as it does for the works of authors belonging to those states. The prohibition of any discrimination in a given state between authors who are nationals of that state and foreign authors who may invoke the Convention is evidence of a universal concept of the protection of intellectual works. The 1952 Convention created a legal structure which could accommodate the United States, the USSR, the industrially developed countries and the developing countries. It also influenced its predecessor, the Berne Convention. Fruitful cooperation led to the closer alignment of the two Conventions, which were revised in 1971. This revision gave concrete form to the twofold movement initiated in 1952 by the UCC: furtherance of the legal rights of creators and acknowledgement of the specific needs of developing countries.

With the rapid growth and development of technology, there is a lot of communication and exchange of creative works beyond the national borders. That is why international copyright protection becomes an essential aspect of intellectual property protection, to ensure that the creative works are able to retain their value. The Universal Copyright Convention was set up as an alternative to the Berne Convention, to meet the following purposes: Ensure that more countries are part of the international copyright community more flexible and easier to comply with compared to the Berne Convention. The Universal Copyright Convention was set up as an alternative to the Berne Convention[xxxiv], to meet the following purposes: ensure that more countries are part of the international copyright community; more flexible and easier to comply with compared to the Berne Convention and ease in compliance for developing countries. This revision gave concrete form to the twofold movement initiated in 1952 by the UCC: furtherance

of the legal rights of creators and acknowledgement of the specific needs of developing countries.

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisation

The Rome Convention took place in 1961and it expands the ambit of the Berne Convention by securing the rights of performers, producers of sound recording, broadcasters and several others along with protection of literary, artistic and cinematographic works[xxxv]. Presently, the World Intellectual Property Organization is responsible for the administration of the convention jointly with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The fundamental problem with the Rome Convention is that, while it generally imposes a national treatment obligation, it permits a number of reservations and exceptions that allow a Member to avoid that obligation for important rights otherwise provided for in the Convention. Article 3.1 of the TRIPs Agreement provides that "in respect of performers, producers of phonograms and broadcasting organizations, this obligation [national treatment] only applies in respect of the rights provided under this Agreement."[xxxvi] It also provides that a Member may avail itself of the "possibilities provided in . . . paragraph 1(b) of Article 16 of the Rome Convention . . ." relating to reciprocity for the broadcasting right in respect of phonograms.[xxxvii]

In the Rome Convention, “phonograms” means any exclusively aural fixation of sounds of a performance or of other sounds. Where a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, to the producers of the phonograms, or to both. Contracting States are free, however, not to apply this rule or to limit its application[xxxviii].

Furthermore, once a performer has consented to the incorporation of a performance in a visual or audio-visual fixation, the provisions on performers' rights have no further application[xxxix].As to duration, protection must last at least until the end of a 20-year period with specific conditions.[xl].

WIPO is responsible, jointly with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), for the administration of the Rome Convention. These three organizations constitute the Secretariat of the Intergovernmental Committee set up under the Convention consisting of the representatives of 12 Contracting States.

The Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms

By the mid-1950s, the Berne Convention for the Protection of Literary and Artistic Works, the Buenos Aires Convention and Universal Copyright Convention granted strong rights to creators of printed or artistic content – and also to composers and performers of music – in most first world countries. The publisher of a book could prosecute a maker of unauthorized copies even if they operated in a different country. But there was no equivalent protection for sound recordings.[xli] The 1961 Rome Convention for the first time granted international recognition for copyright in sound recordings. Now music labels were recognized as having a copyright interest in the recording itself, separately from the composer and performer. This gave them standing to prosecute makers of unauthorized copies of their tapes or records in other countries.[xlii]

The Phonograms Convention, adopted in Geneva in October 1971, provides for the obligation of each Contracting State to protect a producer of phonograms who is a national of another Contracting State against the making of duplicates without that producer's consent, against the importation of such duplicates, where the making or importation is for the purpose of distribution to the public; and against the distribution of such duplicates to the public. The 1971 convention granted record producers the international right to block imports of counterfeit music recordings, and to take action against distributors and retailers who sold them[xliii].

To secure protection under this convention, copies of the sound recording must carry a copyright notice, one exclusively for sound recordings. The notice consists of the phonogram copyright symbol, "℗" which is the upper-case letter "P" in a circle, the year of publication, and the copyright owner's name. In this way, the Geneva Phonograms Convention is similar to the notice requirement of the Universal Copyright Convention. As the digital space has become more predominant, the need for copyright protection has also become a necessity. Today,

copyright regulation has been modified to protect Internet items, just as it has been improved through the years to protect various other new mediums. It protects original work or work that is secure in a tangible medium, meaning it is written, typed, or recorded. But because it was not designed precisely for the Internet, in some areas copyright law on the Internet can be as clear as mud. However, States throughout the world have encouraged the protection of copyright by giving a harmonious answer to the international treaties from time to time. These treaties lay down minimum standards of protection and in consonance, to them each signatory country domesticates such standards in their domestic laws.

Copyrights Protection in the Digital Environment under the TRIPs Agreement

An Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPs) is arguably the most important and comprehensive international agreement on intellectual property rights[xliv]. The 1994 Uruguay Round of General Agreement on Tariffs and Trade ("GATT") produced TRIPs and was administered by the World Trade Organization. The most significant features of TRIPs are: linking of intellectual property rights to trade for the first time in a multilateral intellectual property agreement and requiring member countries to implement and enforce minimum standards of protecting intellectual property rights. The TRIPS Agreement adopts portions of the Berne, Rome and Paris Conventions in enunciating norms for intellectual property laws. It holds that copyright protection shall extend to expressions and not to ideas, procedures, and method of operation or mathematical concepts as such. Article 9 asks the member countries to follow Articles1-21 of the Berne Convention except for Article 6 *bis* in respect of which "members shall not have rights or obligations under TRIPs Agreement". Article 10 talks about computer programs and data compilation protecting them under copyright as literary works.

The TRIPS Agreement adopts portions of the Bern, Rome and Paris Conventions in enunciating norms for intellectual property laws. Article 9.1 of TRIPS Agreement provides that, "Members shall comply with Articles 1 through 21 of the Bern Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived there from."

So, it is clear that the approach taken in the copyright provisions of the TRIPS Agreement is to adopt the regime of copyright protection provided in the Bern Convention[xlv]. This is further explained in article 10. With the rapid development of new technologies in the 20th century, the proportion of goods and services in international trade consisting of intellectual property also increased dramatically[xlvi]. It was soon realized by the international community that without proper and uniform intellectual property protection, there was a danger of distorting the international trade order. For these reasons, the TRIPS Agreement came into force on 1st January 1995[xlvii].

The TRIPS Agreement consolidated the existing treaties as well as introduced additional obligations in areas, which were not addressed in these conventions, or were thought not to be sufficiently addressed in them. Therefore, it is also sometimes referred to as a "Berne and Paris-plus" Agreement.

However, the most coveted achievement of the agreement is its dual enforcement mechanism as laid down under Article 41 to 49 and in the General Agreement of Trade and Tariffs (GATT). An aggrieved member state can go for WTO's dispute resolution machinery set out in GATT over and above the machinery provided under the TRIPS Agreement. It also gives necessary and efficacy and teeth missing in Berne and Paris Conventions by subjecting the violations of these treaties to WTO's dispute resolution mechanism[xlviii].

Protection of Copyright Under the WIPO Copyright Treaty

WIPO Copyright Treaty was adopted by the Diplomatic Conference at Geneva in December 1996 and entered into force in 2002. It is a special agreement under the Berne Convention that works upon the protection of copyright and the rights of authors in a digital environment. Furthermore, the WCT mentions two subject matters to be protected by copyright: (i) computer programs, whatever the mode or form of their expression; and (ii) compilations of data or other material ("databases"), in any form, which, by reason of the selection or arrangement of their contents, constitute intellectual creations[xlix].

As a specialized agency of the United Nations, WIPO provides a forum for its member states to create and harmonize rules and practices for protecting IP rights. Many member states have protection systems that are centuries old, although those systems may require updating to address rapid technological change, while other countries continue to develop new legal and

administrative frameworks to protect their patents, trademarks and copyright. WIPO assists its member states in developing these new systems through treaty negotiation, legal and technical assistance, and training in various forms, including in the area of enforcement of IP rights. The field of copyright and related rights has expanded dramatically as technological developments have enabled new ways of disseminating creations worldwide through such means as satellite broadcasting, compact discs, DVDs, and streaming and downloading from the Internet. WIPO is closely involved in the ongoing international debate to shape new standards for copyright protection in cyberspace[l].

This treaty deals with two kinds of beneficiaries in the digital world, firstly the performers namely actors, singers, musicians etc., secondly producers of phonograms. It also lays down the economic rights of distribution, renting and communication by the performers with the public and for the producers of phonograms the economic rights of reproduction, right of distribution, right of rental and right of making available[li]. The treaty assures protection to the performers and producer of phonograms for a period of at least 50 years.

The treaties also require the member countries to provide two types of technological adjuncts to the rights so that the owners of copyright can protect their rights and get the works licensed by effective use of technology.

The first, known as the "anti-circumvention" provision which tackles the problem of "hacking" and requires countries to provide adequate legal protection and effective remedies against the circumvention of technological measures (such as encryption) used by right holders to protect their rights and the second type of technological adjuncts safeguard the reliability and integrity of the online marketplace by requiring countries to prohibit the deliberate alteration or deletion of electronic "rights management information" means information which accompanies any protected material, and which identifies the work, its creators, performer, or owner, and the terms and conditions for its use.

REGIONAL PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

The regional legal frameworks used in the protection of intellectual property in the digital space, and trademarks utility models include the Bangui Agreement of March 1977 as amended on February 24, 1999 and the OAPI which shall be discussed below.

The Bangui Agreement of March 1977 as amended on February 24, 1999

The Bangui Agreement[lii] regulates the protection of Intellectual Property rights in patents of invention, utility models, trademarks and service marks, industrial models/designs, trade names, geographical indications and appellations of origin, literary and artistic property, protection against unfair competition, topographies of integrated circuits and protection of plant varieties. It also provides for plant varieties[liii]. It also provides for the recordal of licenses, assignments, changes of name, and changes of address in the special register. Yet the same law governs searches of anteriority, searches of identity, renewals of rights, and extension of coverage to and from new adherents to the organization[liv].

The principle of anteriority in OAPI is first to file (and not first in use). This simply means it is the first person to submit his complete application file to the office who is deemed legally to be the owner of the trademark (or another IP right) in the trademark (or another IP right) in question[lv]. The fact that another person commercialized the product or service before the filing or he is even the creator or inventor is immaterial. This principle of first to file (not first in use) is rather bizarre and frustrating for the creative mind for two things[lvi]. For one thing, intellectual property rights matter thing, intellectual property rights matter because it is both just and appropriate that the person putting in the work and effort into an intellectual creation has some benefit as a result of his endeavour. For another thing, by giving protection to intellectual property, many such endeavours are encouraged and industries based on such work can grow, as people see that such work brings financial return. But unfortunately, the situation with the first-to-file system is that the "free-riding" of competitors stands to be encouraged more or less. In the face of this, however, the advice is usually for the creators of intellectual property to have their creations have official recognition forthwith to avoid any unpleasant surprises springing[lvii].

Agreement revising the Bangui Agreement of 2nd March 1977, after the creation of the African Intellectual Property Organization on 24th February 1999, gave trademark protection for10 years, renewable for consecutive periods of 10 years. Also, with regards to design, the agreement Revising the Bangui Agreement of March 2, 1977, on the Creation of an African Intellectual Property Organization, February 24, 1999: gave 5 years protection, renewable for two further consecutive periods of 5 years. While industrial model and patent 20 years[lviii].

The African Intellectual Property Organisation Agreement

This Organization was set up in 1962 as the African and Malagasy Industrial Property Office.[lix] In 1977, it was restructured and renamed the African Intellectual Property Organization.[lx] The Organization functions as a central intellectual property office for all its Member States, with a central administrative and legislative unit. It is involved in the protection of all intellectual property rights, that is patents, industrial designs, utility models, trademarks, trade names, appellations of origin and copyright. The protection of copyright is left in the hands of each Member State because the Copyright Department of the Organization has not yet been set up.

The law regulating intellectual property practice in Cameroon is the Bangui Accord of 02 March 1977 as amended on 24 February 1999. This law is essentially an agreement between 16 west and central African countries (Benin, Burkina Faso, Cameroon (headquarters), Central African Republic, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea Bissau, Guinea Conakry, Mali, Mauritania, Niger, Senegal, Chad, and Togo) to create a regional IP system, to wit "The African Intellectual Property Organization (AIPO) most commonly known and called by its French acronym, OAPI[lxi].

As far as copyright is concerned, the Organization's policy is to contribute towards the promotion of literary and artistic property and to highlight it as a means of expressing cultural and social values[lxii]. Copyright is protected along with the cultural heritage under Annex VII of the 1977 Agreement which set up the Organisation. Copyright is protected under Part I of the Annex and the cultural heritage under Part II. The provisions on copyright are basically the same as those of the French Copyright Act of 1957 discussed above.[lxiii] To avoid unnecessary repetition, we shall focus our attention on the provisions on the protection of the cultural heritage which stand as a good example of an attempt by the Organization to enact regulations

that would also protect the intellectual property rights that are generated within the sub-region, something which has been systematically side-lined by the wider international community.

NATIONAL LEGAL FRAMEWORK ON COPYRIGHTS IN CAMEROON

Cameroon has 4 international copyright agreements, such as the Berne Convention for the Protection of Literary and Artistic Works of 21 September 1964; Universal Copyright Convention (Geneva) of 01 May 1973; Universal Copyright Convention (Paris) of 10 July 1974 and, the Agreement on Trade-Related Aspects of Intellectual Property Rights of 13 December 1995. The Copyright Index operates in Cameroon under international copyright agreements and is recognized in countries all around the world as a copyright authority providing official copyright registration. The law regulating copyright in Cameroon is Law No. 2011/11 of 19 December 2011 on Copyright and Neighbouring Right in Cameroon. However, in this day and age of the internet, the world is a very small place, and work can be copied easily[lxiv].

Talking about the mechanisms for the protection of copyright in Cameroon, this shall examine at the national and international level. At the national level, we shall be examining the Cameroonian 2000 law on copyright, the Cameroonian Penal Code and the Bangui Agreement of February 24, 1999. On the other hand, at the international level, we have the Paris Convention for the Protection of Intellectual Property, 1883, the Berne Convention for the Protection of Industrial and Artistic Works 1886, as revised in 19971, Intellectual Property Rights and the OAPI and the WIPO Copyright Treaty adopted in 1991 to protect copyright.

As noted above, the first attempt by the Cameroonian legislator to enact a copyright law was made in 1982. Eight years later, this Act was repealed and replaced with the Copyright and Neighbouring Rights Act, 1990[lxv], and in the year 2000, Law No. 2000/011 of December 19, 2000, on Copyright and Neighbouring Rights was enacted followed by Decree No. 2001/956/PM of November 1, 2001, on the Implementation of Law No. 2000/11 of December 19, 2000, on Copyright and Neighbouring Rights. This legislative action was prompted by a desire to increase the level of copyright protection in the country and, in particular, to extend the scope of the law to cover entrepreneurial works.

The 2000 Copyright and Neighbouring Rights in Cameroon

The second piece of the Cameroonian legislation having a bearing on counterfeiting is the 2000 law on copyright and neighbouring rights. It is true that this legislation was enacted following the prescription of the TRIPs agreement which obligated member states, especially developing countries, to adapt their laws to meet its recommendations with regard to their level of development. In fact, we could say that the recommendation of the TRIPs took the form of a package deal‖ where the member states had to take it in its entirety or leave it. What is disconcerting about the TRIPs agreement is that the industrialized countries took interest only in imposing on developing countries universal standards on IP protection which they had incorporated in their legislation after attaining a high level of technological and industrial capacity[lxvi] without a corresponding interest in the standardization of the terminology.

The Cameroonian 2000 copyright law has dedicated its part VI to infringement, penalties and producers. Section 80 and 81 focused on counterfeiting. The primary purpose of copyright law is not so much to protect the interest of the authors/creators, but to promote the progress of science and the useful arts which is knowledge[lxvii]. The framers of the 2000 copyright law believed that securing for limited times the exclusive rights of authors to their literary or artistic works would promote the progress of science and useful arts. Thus, the primary purpose of copyright law is to induce and reward authors, through the provision of property rights, to create new literary and artistic works and to make those works available to the public to enjoy.

From the above analysis, it could be summarised that the 2000 Cameroon copyright law has as objectives to ensure: Economic and reproduction rights of authors in its section 15 (1), right of distribution and Moral rights of authors according to section 19 of the law, authors right of public performance, broadcasting and communication to the public which is envisaged in section 14 of the Trips agreement of 1994 is referred to under the 2000 copyright law as the right of representation in section 16, authors translation and adaptation rights**;** the act of translating a work protected by copyright is recognized in section 4(2) of 2000 copyright law,

The subject matter of copyright protection in Cameroon is stated in Section 3 (1). According to this section, copyright protects all works in the literary and artistic domain irrespective of their mode, genre, the purpose of expression, or worth[lxviii].

Although the subject matter of copyright is said to be on the original creation, sections 4 (1) and (2) extend the protection to derivative or composite works without prejudice to the copyright in the original works[lxix]. However, section 3 (4) has placed some exclusions on works not eligible for protection under the 2000 Copyright and neighbouring rights in Cameroon such as; (a) ideas in themselves; (b) laws, court judgments, and other official instruments, as well as their official translations and (c) coats of arms, decorations, currency marks, and other official insignia.

However, it should be noted that the criteria for copyright and neighbouring rights protection in Cameroon require that for a work to attract protection, the work must exist in a tangible form, the work must be original and the work must have been created and it must consist of a literary or artistic work[lxx]. Eligibility for copyright protection has to do with the requirement for literary or artistic works to be protected. The first standard for copyright protection has to do with the originality of the work. Originality standard is determined following the investment put in by the intellectual property creator, the skill, and the judgment.

Punishment provided by the 2000 Copyright law on infringement of copyrighted work even in the digital environment is mentioned in sections 82, 83, and 84.

Decree Implementing the Law on Copyright and Neighbouring Rights

Article 1 of this Decree implements Law No. 2000/11 of December 19, 2000, on Copyright and Neighbouring Rights. The importance of this decree in the protection of intellectual property rights in the digital space is on the fact that it reiterated the issue of Droit de suit[lxxi]

It states that the rate of the droit de suite shall be five percent (5%) of the resale price of an original graphic or three-dimensional work or of a manuscript, without any tax allowance[lxxii]. The sum specified in Article 3 is collected and paid to the author or his or her successors in title, as appropriate, by the merchant or public or ministerial official who participated in the sale[lxxiii]. Lastly, the beneficiary may require the merchant or public or ministerial official to inform him of the name and address of the vendor and the sale price[lxxiv].

With regards to dispute settlement, the decree emphasized the Arbitration Commission provided for in Article 62, paragraph 2, of Law No. 2000/11 of December 19, 2000, on Copyright and Neighbouring Rights that, it shall be chaired by a judge appointed by the

President of the Supreme Court. This decree also makes mention of the composition of the Arbitration Commission[lxxv]. The importance of this is the fact that any intellectual property creator whose rights are infringed are certain on both the procedures, the court, and the composition of the Arbitration Commission.

The 2016 Cameroon Penal Code

The Penal Code of the Republic of Cameroon is provided by Law N°2016/007 of the 12 July 2016 and enacted by Decree No. 2016/319 of 12 July 2016.[lxxvi]

Any exploitation of a literary or artistic work done in violation of this law, through performance, reproduction, transformation or distribution by any means whatsoever or the importation exportation, sale or putting up for sale of forged objects; shall constitute Copyright infringement.[lxxvii] Again, the violation of the right of disclosure, the right of authorship or the right to respect of a literary or artistic work shall equally constitute infringement.[lxxviii] Also, the fraudulent neutralization of effective technical measures used by owners of copyrights or neighbouring rights to protect their works against unauthorized acts shall also constitute infringement. [lxxix] Moreover, the unauthorized removal or alteration of any electronic information relating to the copyright regime and 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, shall constitute infringement.[lxxx] The 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 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 shall be considered as violation of Copyrights.[lxxxi] Infringement of Copyrighted work shall be punishable by imprisonment of from 5 (five) to 10 (ten) years or a fine of from 500,000 to 10,000,000 CFA francs or both such imprisonment and fine.[lxxxii] In any case, the court may order the confiscation of forged copies, the equipment used to commit the offence as well as proceeds derived therefrom.[lxxxiii]The equipment used by the forger and forged copies may be destroyed and the publication of the judgement as provided for by Section 33 of this Code.[lxxxiv]

Under section 327 of the Cameroon Penal Code, criminal infringement of copyright is punishable with imprisonment for from five to ten years or with a fine of from 500,000Francs CFA to 10, million or with both such fine and imprisonment. Section 327 has twelve major forms of criminal copyright infringement. It is important to state here that, section 327 (3) doubling the penalty in situations where the offender is a co-contractor (partner) of the owner of the copyright. The law in subsection 4 makes provision for the court to confiscate counterfeited copies, equipment used to commit the offense as well as the proceeds derived therefrom. The court may also order the annihilation of the equipment used to counterfeit copies of the work as well as copies of the counterfeited works.

Patent infringement in Cameroon is regulated by section 328 (1 to 5) of the Penal Code[lxxxv]. Section 328 has made it an offense to either unknowingly use a patent, as well as sell, export, conceal, or use any item that constitutes an infringement of a patent. With regards to the infringement of industrial designs, the regulation is enshrined under section 329 (1 to7) of the Penal Code[lxxxvi]. Section 330 (1 to 5) of the Cameroon Penal Code has made it a criminal offense for anyone who dares to forge a registered trademark. Also, section 330 criminally sanction anyone who sells, conceal, import, export or uses any object that constitutes an infringement of a registered trademark. The sanction for such an offense is punitive and incorporates fines of from 1000 000 CFAF (1 million) to 6 000 000CFAF (six million) or with both imprisonment and fine

CONCLUSION

Since the digital environment cuts across different jurisdictions, it was important for us to look at the different international, regional and legal instruments which could be used to tackle copyright infringement and protection in the digital environment. It should be noted that, these international legal instruments are applicable in Cameroon thanks to article 45 of its Constitution which grants the president the ability to negotiate and ratify treaties and international agreements and places such treaties over conflicting national law. From the above overview, we can see that specific legal instruments to tackle copyright protection in the digital environment are few since most of these instruments were enacted in an era different from

today's realities. So it is suggested that the existing legal instruments should be updated to fit with modern challenges in regulating copyright in the digital environment.

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[ii] Adama Sale, (2021), ‘’Obtaining Effective Remedies for Copyright infringement in Cameroon: identifying contemporary legal challenges’’, Journal of Intellectual Property Rights Law 4(1), 15-26.

[iii]Emphasis added. See art. 9 of the Mandates Agreement of 1922 and Art 5 of the Trusteeship Agreements of 1946.

[iv] Moreira da Silva, 'Copyright and Africa' (1969) 47 RIDA 4 at 12.

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[xiv] Article 6bis

[xv] Article 8

[xvi] Article 9

[xvii] Article 11bis

[xviii] Article 13

[xix] Article 14

[xx] See generally arts. V^s to V quater of the UCC, 1971 and arts. I to VI of the Appendix to the Berne Convention, 1971. See also, S.M. Stewart, International Copyright and Neighbouring Rights, London 1983, paras. 6.38 ff.

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[xxii] Jeremy Philips, (1986), ‘’The Berne Convention and the Public Interest’’, Columbia Journal of Law and Arts 11, 165.

[xxiii] idem
[xxiv] idem
[xxv] Sara Bannerman, (2009), Canada and the Berne Convention, 3rd edition, Carleton University Press, P.171.
[xxvi] Sam Ricketson, (2015), The Paris Convention for the protection of industrial property : A commentary, 1st edition, Oxford University Press, P.24.
[xxvii] Paris convention, 1967, article 9(1)
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[xxxvii] idem
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[xxxix] Herman Cohen, (1990), ''The nature of neighboring rights of performing artists, phonogram producers and broadcasting organizations'', Columbia Journal of Law and Arts, 15, 75.
[xl] ibid
[xli] Article 9(1): "(1) This Convention shall be deposited with the Secretary–General of the United Nations. (...)"; Article 9(3): "Instruments of ratification, acceptance or accession shall be deposited with the Secretary–General of the United Nations."
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[lxv] Law No. 90/11 of August 10, 1990. This Law shall be referred to in this work as the Copyright Act, 1990.
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[lxvii] Adamu Sale, (2021), ''Obtaining Effective Remedies for copyright infringement in Cameroon: Identifying Contemporary Legal Challenges'', Journal of Intellectual Property Rights Law 4 (1), 15-26.
[lxviii] As illustrated in section 3 (1), of the 2000 copyright law in Cameroon

a. tapestries and objects created by the arts and applied arts, including the sketches or patterns and the works themselves;
b. maps as well as graphic and plastic drawings and reproductions of a scientific or technical nature;
c. photographic works including works expressed by a process similar to photography

[lxix] This comprises:

a. translations, adaptations, arrangements, or other alterations of literary or artistic works;
b. collections of works, including those which express folklore or simple facts or data, such as encyclopædias, anthologies, compiled data, which are reproduced either on machine-readable mediums or on any other form which, by the choice or arrangement of their contents, constitute original works;
c. folklore-inspired works.

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[lxxiv]Ibid Article 6.
[lxxv] Ibid. Article 11 (1)
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[lxxvii] Section 327 of the Cameroon Penal Code.
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