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Regulatory Models for Copyright Protection of Online Musical Works: Should Ghana Follow the EU Approach?

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ABSTRACT

In the era of digitization and internet, the relevance of appropriate copyright laws that would safeguard the rights and interests of musicians and their works on internet platforms cannot be overemphasized, given the tendency for such platforms to facilitate the unauthorized access of copyrighted contents.

In Ghana, the pervasive issues around music copyright and the internet as characterized by unlicensed access to copyrighted works on internet and digital platforms, have been subjected to some intense conversations that border on the potency of the laws, as well as the effectiveness of the various mandated state institutions in responding to such issues.

Utilizing the doctrinal research methodology, this thesis explores the feasibility of implementing a holistic copyright legislation similar to Article 17 of the European Union's (EU) copyright directive in Ghana to help address copyright issues on the various internet platforms.

The use of the EU regulatory model is significant in this research because it is one of the latest copyright regulatory developments that seeks to address the unauthorized use of copyright works on the internet by implementing a compulsory licensing model. Information from various primary and secondary sources have been used to provide a detailed insight on online musical works in Ghana, the protection of online musical works, and Article 17 of the EU's copyright directive. Furthermore, the prospects and challenges associated with implementing a copyright regime like Article 17 of EU's copyright directive are discussed. The thesis concludes by making some recommendations that would inform the formulation of a relevant copyright legislation to adequately address online music copyright issues in Ghana.

DEDICATION

To my parents, Very Rev'd Dr. Isaac Nana Abekah and Mrs. Christina Nana Abekah

To one of the brilliant minds I have ever met in my life – Kwamina Abekah-Carter, my brother. I pray you get more than what you deserve in this life. You are a star.

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"Surely the arm of the Lord is not too short to save, nor his ear too dull to hear" - Isaiah 59:1.

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LIST OF ABBREVIATIONS

WTO	**World Trade Organization**
TRIPS	**Trade-Related Aspects of Intellectual Property Rights**
P2P	**Peer-to-Peer**
WIPO	**World Intellectual Property Organization**
WCT	**WIPO Copyright Treaty**
MMA	**Music Modernization Act**
IFRRO	**International Federation of Reprographic Reproduction Organization**
AEPO	**Association of European Performers Organization**
APRA	**Australasian Performing Right Association**
PPCA	**Phonographic Performance Company of Australia**
ASCAP	**American Society of Composers, Authors and Publishers**
BMI	**Broadcast Music Incorporated**
CMO	**Collective Management Society**
EU	**European Union**

DSM	**Digital Single Market**
EU Copyright Directive	**EC, Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ, L 130**
OCSSP	**Online Content-Sharing Service Provider**
ISP	**Internet Service Provider**

CHAPTER ONE

INTRODUCTION

1.1 Background

Copyright is a category of intellectual property that protects original works of authorship. It grants exclusive rights to creators for their literary and artistic works which include books, music, paintings, sculpture, as well as technology-based works, such as computer programs[1]. The rationale behind copyright is to give exclusive rights to an author such that, they can choose to handle their works as they want and also decide whether or not they will grant others the privilege to use their works, subject to applicable copyright exceptions. Although the impetus behind copyright is held very much similar across the globe, countries have adopted several approaches in response to the issues confronting copyright in their respective settings. While these approaches seem to work for some jurisdictions to an appreciable level, others have tended not to be so successful. Copyright predates modern times. Its position and relevance as it was then, is not what it is today. It has evolved over the years to materially suit the epoch it finds itself. One can only envision that it continues to evolve, as and when circumstances affect it.

Given that a country like Ghana had a "colonial relationship" with the British, one wouldn't be wrong to claim that certain laws that were promulgated by its colonial masters have stayed relevant to them, however implicit or manifest they are. Upon the attainment of independence in 1957, Ghana inherited a copyright system based on the British Copyright Act of 1911, which eventually

[1] Monica Seeber & Richard Balkwill, "Managing Intellectual Property in the Book Publishing Industry: A business-oriented information booklet Creative industries – Booklet No. 1" (2007), online: World Intellectual Property Organization.

was reflected in Ghana's Copyright Ordinance of 1914 (Cap. 126) with its enabling Copyright Regulation of 1918[2]. Protection under the Ordinance focused on literary, dramatic, musical and artistic works. The law made it an offence to sell, make for sale, hire, exhibit, or distribute copyrighted works in the then-colony.

In order to expand the subject matter of what needed to be protected, the Ordinance was replaced by the Copyright Act 85 of 1961. However, it failed to address some pertinent issues. For instance, in the case of *Musicians Union of Ghana v Abraham and Another*[3], it was decided that copyright laws were not clear on the point at which a musician could gain his royalties. In the event of extending the law's scope to also cover foreign-made works, in the light of the International Berne Convention for the protection of Literary and Artistic works, the Provisional National Defence Council Law (PNDCL) 110 was passed to replace Act 85 of 1961. One of the significant changes brought by the PNDCL 110 was extending the terms and duration of protection for most works to be the life of the author plus 50 years. The law was also expanded to cover literary, artistic, musical works, and it established the Copyright Office of Ghana to oversee the Copyright Industry.

The PNDCL 110 eventually became defunct as it lacked some essential legal backings to address emerging issues, such as piracy. As had been the case of *Ellis v Donkor & Another*,[4] the court acknowledged the gaps in the PNDCL 110 with respect to derivative works and at what point it would have been deemed to be infringing on copyright. Consequently, the PNDCL 110 was

[2] Poku Adusei, Kwame Anyimadu-Antwi & Naana Halm,"ACA2K country report: Ghana" in Chris Armstrong, Jeremy de Beer, Dick Kawooya, Achal Prabhala & Tobias Schonwetter, eds, Access to Knowledge in Africa: The role of Copyright. (California: UTC Press, 2010) 57.
[3] Musicians Union of Ghana v Abraham & Another [1982-83] GLR 337.
[4] Ellis v Donkor & Another [1993-94] 2 GLR 17.

repealed to give effect to the current substantive copyright legislation in Ghana – the Copyright Act 2005, Act 690[5], as amended by the Copyright (Amendment) Act, 2009.

Under the Copyright Act 690 of 2005, the intention had been to move Ghana's copyright system onto its assumed international obligations under the WTO TRIPs Agreement[6]; a treaty that addresses trade issues in knowledge and creativity.

In line with this, Ghana's Copyright Act introduced a globally oriented system, which incorporated copyright standards like those that exist under the statutes of most developed countries. Works, such as folklore and computer programs that previously had no form of protection were now expressly protected by the Act.[7] Furthermore, the Act laid abreast with already established provisions of other countries such as; the extension of the duration of copyrighted works to 70 years from the date on which the work was made or first published.[8] This evolution affirms the position that indeed at every point in time, the rising demands of the current situation makes change and adaptation necessary. The Copyright Act, 2005, (Act 690) also makes provision for, and protects neighbouring rights such as performer's rights[9], broadcasting rights[10], and copyright in sound recording[11].

[5] Copyright Act, 2005 (Act 690)
[6] The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization
[7] Adusei, Anyimadu-Antwi & Halm, *supra* note 2
[8] Act 690, *supra* note 5, ss 13.

[9] *Ibid* ss. 28, 29, 30 & 31 which deal, respectively, with "the performer's rights", the "duration of performer's rights", the "performer's right to contract", and the" moral rights of the performer".
[10] *Ibid* ss. 32, 33, 34, 35, & 36 deal, respectively, with "authorization relating to broadcast", "broadcasting organizations"," A broadcasting organization's right in programme carrying signals", "Limitation on the economic rights of broadcasting organization", and the "duration of rights of broadcasting organization".
[11] Section 1 of Act 690 lists "sound recording" as part of the works that are eligible for copyright, while sections 16 & 24 deal, respectively, with "the duration of copyright in sound recordings", and "production of copies of sound recordings".

Digitization is a major means of communication, purchasing, and distributing content across the world. Almost anyone can now develop and share copyrightable contents because digitization has made networks and devises for developing, accessing, exchanging and modifying copyrighted materials readily accessible.[12] Ghana's National Communications Authority, in showing its approval for digital proliferation, has even launched a digital agenda to enhance productivity and efficiency for citizens, agencies, businesses, and the economy as a whole.[13]

In an era of digital revolution, content creators across all countries including Ghana have advocated for the enactment of stringent rights involving copyright, the sale of contents, and royalties. In Ghana, some musicians claim that they fail to make ends meet from their craft largely because of the absence of enforceable copyright policy in the country.[14] Consequently, their main source of income has been through performing at events for remuneration.

The proliferation of digitized and other internet related platforms is therefore essential for Ghanaian musicians in contemporary times. Through these platforms, authors have an opportunity to monetize their contents and potentially earn a living wage. A study conducted in Ghana to explore the impact of digital platforms for music from the perspective of a musician who sells his works on a local digital platform found that, the motivation for settling to sell one's music on such

[12] Law Shelf Educational Media, "Copyright Protection for Digital Content – Module 3 of 5" (2021) at 00h: 02m: 15s, online (Video): https://lawshelf.com.videocoursesmoduleview.copyright-protection-for-digital-content/

[13] National Communications Authority, "Our contributions in 2018 towards Ghana's digital agenda" (2018), at 5, Online (Pdf). https://www.nca.org.gh/assets/Uploads/Key-NCA-Projects-2018.pdf

[14] Robert Blaine Uehlin. *Digitized Ghanaian music: Empowering or imperial?* (Master's thesis University of Oregon, 2013) [Unpublished]

platforms stems out of the fact that it extends an artist's reach to other territories, increases sales, and eliminates all intermediaries between the musician and the customer.[15]

1.2 Statement of Problem

Despite the numerous opportunities internet platforms present to authors with regards to easily sharing their works across the globe or beyond their local audience, selling their creations to consumers, as well as earning residuals, these platforms also serve as mediums through which copyrighted materials are unlawfully distributed. The onset of this dilemma in Ghana has brought about some intense deliberations, especially among music creators, on the relevance of existing laws, as well as the competency of mandated institutions, such as the Ghana Music Rights Organizations (GHAMRO) and the Musicians' Union of Ghana (MUSIGHA), in addressing issues of this nature. The ineffectiveness of such institutions set up to advance the interests of musicians is also a strong premise which many musicians base on to disassociate themselves from them. Consequently, existing Ghanaian legislation and institutions have failed to maintain the pace with the systematic inconsistencies fronted by digitized and internet platforms. Related operations, such as the unauthorized peer-to-peer file sharing which is characterized by the free and mostly untraceable broadcast of musical works, also denies copyright owners their royalties, as well as other economic advantages.

[15] Joseph Budu, Prince Kobby Akakpol,& Richard Boateng, "Completed research: preliminary insights into the impact of digital platforms for music" (2018). SAIS 2018 Proceedings. 39. https://aisel.aisnet.org/sais2018/39 [Aftown.com is a local online digital platform that is into the sale and purchase of only African Music. The Participant in the study, being the C.E.O. of the platform, revealed that due to "prestige" and the desire for global acknowledgement and affiliation, many Ghanaian musicians will prefer utilizing a platform like iTunes over a local digital platform even though the latter could fetch them higher revenue. The study also found that monetary returns influence the decision to continue using an online digital platform, and that its use is convenient as it gets rid of any third-party to the musician and the consumer, thereby increasing the musician's sales revenue.

In Ghana, the pervasive issues around music copyright and the internet as characterized by unlicensed access to copyrighted works on Social Networking Services and other digital platforms, have been subjected to some intense conversations that border on the potency of the laws, as well as the effectiveness of the various mandated state institutions in responding to such issues. Indeed, as chapter three of this thesis will show, it is not the case that the Copyright Act of Ghana does not apply to copyright activities on the internet or works that are shared online, albeit with the absence of an express mention of operative words such as "internet" and "telecommunication". The very obvious gap however, is that currently, Ghana's copyright law regime is difficult to enforce in an internet environment, owing to the absence of a liability regime that would rope in the input of all related online stakeholders. This thus tends to push the brunt on either the copyright holders to individually take legal actions against potential infringers or on societies like GHAMRO, who may not have the right setup to tackle online infringement of music.

The mass patronage of internet platforms where music is illegally uploaded also present another interesting issue. At a digital music conference organized in 2020, a personnel from GHAMRO, who was also a guest speaker at the conference, asserted that, there are some people who sit at vantage points at market places and lorry stations to illegally sell music they have downloaded from websites and other digitized platforms to people in the community.[16] This challenge is however foreseeable, because for a developing country like Ghana that has a relatively low literacy rate[17], there would be the need for the tech-savvy, literate few, who know their way around online

[16] MTN Ghana, "MTN Digital Music Conference" (29 October 2020) at 00h:41m:20s, online (Video): YouTube https://www.youtube.com/watch?v=9zues046MLs

[17] Baile Zua, "Literacy: Gateway to a world of exploits" (2021) 9:1 IJELS 98 at 100. [According to the study, the average adult literacy rate in sub-Saharan Africa (61%) is one of the lowest in the world. Available evidence indicates that, the adult literacy rate in Ghana stands at 79%, and there is also a 10% difference between the literacy rates of males (84%) and females (74%) in the country.]

literacy to feed a larger community that does not have access to digitized platforms. It appears that perpetrators of these acts are taking advantage over the fact that many Ghanaians still do not have access to digitized platforms, so such people who want to have the latest music on their playlist, visit these illegal sellers of music to buy songs from them.

Many stakeholders in Ghana's music business are of the view that the current law has not kept pace with the rapid changes taking place in electronic communications. Coupled with the lacunas in the legislations, is also the judicial, institutional and structural inertia relative to these problems. Therefore, the main purpose behind the conduct of this thesis was to explore regulatory models for the protection of musical works that are made available online.

Geographical territories, such as the ones belonging to the European Union (EU) have jointly promulgated a copyright directive that unequivocally frowns on the infringement of copyrighted works over the internet. Specifically, article 17 of the EU Directive on copyright in the Digital Single Market[18] (EU copyright directive) requires internet platforms to obtain licence for contents posted by them and their service users from the right holders, to "ensure the unavailability of specific works identified by right holders, and block contents that have been lawfully taken down from being uploaded on their platforms in the future."[19]

Article 17 of the EU copyright directive places more responsibility on online content sharing platforms to prohibit the unlawful access to copyrighted content by ensuring that a license for

[18] EC, Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ, L 130

[19] Ally Boutelle, & John Villasenor, "The European Copyright Directive: Potential impacts on free expression and privacy." (2021). Retrieved from: https://www.brookings.edu/blog/techtank/2021/02/02/the-european-copyright-directive-potential-impacts-on-free-expression-and-privacy/

every content shared on their platform is obtained from their respective right owners. Indeed, there are apparent differences that exist between the EU and Ghana. One has to do with the political makeup, where the EU in itself is made up of several sovereign states, while Ghana is just a single sovereign state. Another difference lies in their economic policies and strength, where the EU has wider resources necessary to boost its economic demands.[20] Despite these differences, however, it would be useful to still look at the EU regulatory model as a point of reference on how to tackle copyright enforcement on the internet in Ghana. The use of the EU regulatory model was significant in this research because it is one of the latest copyright regulatory developments that seeks to address the unauthorized use of copyright works on the internet by implementing a compulsory licensing and remuneration model. Therefore, ascertaining the feasibility of implementing such a comprehensive liability regime to curb the unlicensed access of copyrighted content on internet platform in Ghana is essential.

Accordingly, this thesis explores the implementation of a liability regime, similar to article 17 of the EU Copyright directive, in Ghana. This thesis could be considered as one of the first studies that have been conducted to explore the possibility of enacting a copyright directive similar to an already existing legislation to advance the rights of music copyright owners in Ghana.

[20] Alexander Huepers, Henock B. Taddese & Filippos T. Filippidis, European Union Citizens' views on development assistance for developing countries, during the recent migrant crisis in Europe (June 2018), online: Globalization and Health. https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-018-0378-1

1.3 Research Objectives/Questions

The main objective of the thesis is to explore issues surrounding Ghana's copyright and moral rights protection of musical works over the internet, as well as how a regulatory model similar to article 17 of the EU Copyright directive in Ghana could be implemented in the country.

The study is guided by the following research questions:

1. How are copyrighted materials unlawfully accessed across various internet platforms?
2. How (in)efficient is traditional private enforcement and Ghana's court system in addressing claims of copyright on the internet?
3. How does Article 17 of the EU Copyright directive address online copyright protection and enforcement in European countries?
4. What are the prospects and challenges of implementing a liability regime, similar to article 17 of the EU Copyright directive in Ghana?

1.4 Significance of Study

Conducting such a study is essential in contemporary times for varied reasons. Firstly, the findings of this research highlight the need for stakeholders (Collection societies, musicians, etc.) in the copyright terrain of Ghana and other jurisdictions to pursue the formulation and implementation of a legislation that would ensure that the economic and moral rights of owners are promoted and protected on internet platforms for the Ghanaian creative terrain. Specifically, it unravels relevant information in areas including: how the operations of digitized platforms contribute to the unlawful access to copyrighted works; the ambiguities in the laws of Ghana on user exemptions to copyright, and how these ambiguities impede on the full realization of the right of music copyright owners; how mandated institutions deal with copyright in the digitized scene; and probable

recommendations to intensify copyright protection against the pervasive nature of digitization and technological advancements.

Furthermore, to the knowledge of the researcher, and having conducted extensive research in this area, no other researcher or research has explored the applicability of an EU model in Ghana. Therefore, this research project would help fill a noticeable literature gap in Ghana, the African continent, and the world at large.

1.5 Research Methodology

This thesis employed a doctrinal research design. It is a research methodology that acknowledges law as a self-contained body of knowledge with its own rules and it specifically encompasses an analysis of existing laws, case laws, and authoritative materials on a specific issue.[21] It aims to systematically elucidate a research problem or question by analysing primary sources, such as legislation, case laws, and secondary sources, such as articles, journals, books, legal glossaries, among others. Conducting doctrinal analysis is relevant because it creates the avenue for the application of statutes, case law, and other secondary sources to provide a legal solution to a question or a problem.[22] Therefore, utilizing this research approach allowed for the use of existing primary and secondary sources of information in a discussion that substantiated the need for Ghana to implement a copyright directive that could effectively address issues of copyright infringement on internet platforms. The primary data used in this study includes Ghana's copyright Act, Article 17 of the EU copyright directive, as well as case laws on copyright infringement in Ghana. The secondary sources of information included books, articles, journals, and other reliable sources that

[21] Amrit Kharel, "Doctrinal legal design." (2018). Electronic Journal, 1-16
[22] Danie Coetsee & Pieter Buys, P. "A doctrinal research perspective of master's degree students in accounting" (2018) 32:1 S. Afr. J. High. Educ., 71-89. https://doi.org/10.20853/32-1-1516

provide information on the music industry in Ghana, copyright infringement on internet platforms in Ghana, and the implementation of the article 17 of the EU copyright directive. Using information from the Ghanaian and European contexts allowed for a comparative analysis to be made.

1.6 Research Outline

This thesis is subdivided into six chapters.

Chapter one provides introductory information aiming to set the road map for the study and facilitate understanding of the study. The chapter is subdivided into thematic areas as inclusive of the Background, Problem Statement, Research objectives, the significance of the study, research methodology, as well as definition of key terms.

Chapter two reviews relevant literature on internet usage and operations in Ghana, online music and business in Ghana, the complexities associated with the protection of musical works on the internet, and copyright Infringement and the internet.

Chapter three provides an overview of the legal landscape of protection of musical works in Ghana. It does so by providing insights into the contents of Ghana's Copyright statute, as well as the operations of the courts and the collective management societies.

Chapter four reviews Article 17 of the EU Copyright Directive relative to a discussion on how copyrighted contents interact with internet usage and operations. The Chapter will discuss arguments for and against the implementation of the EU Copyright Directive to facilitate a discussion on the prospects and challenges when a similar copyright regime is implemented in Ghana.

Chapter five presents a discussion on the possible application of the EU regime to the law in Ghana. It outlines some arguments on how efficient (or otherwise) this regulatory model would be if referenced into Ghana's copyright regime. The chapter further suggests recommendations that may be useful for future law and policy-making.

Chapter six provides a brief conclusion of the study. It also makes reference to areas that are not explored in the thesis and suggest same for future work.

CHAPTER TWO

ONLINE MUSICAL WORKS IN GHANA

This Chapter presents a review of the existing scholarly literature on issues related to the internet and music copyright in Ghana. Specifically, it discusses key topics, including internet usage and its operations in Ghana, music activities and business in the Ghanaian internet space, music copyright on the internet, as well as issues related to copyright infringement and the Internet.

1.1 Internet Usage and Operations in Ghana

This section presents relevant information from extant literature to educate readers on the motivation for internet use in Ghana, as well as the challenges associated with using the internet. It also sets the stage for discussing how music copyright infringement is perpetrated on internet platforms.

In Africa, the introduction of the internet and its usage have over the years, been appreciable, although slow, especially given the peculiar challenges affecting the continent. While African internet users form a small percentage (6.2%) of the entire global internet users, the 2012 Internet World Stats report, recorded significant growth in the number of internet users in Africa from 4,514, 400 to 139, 875, 242 between the years of 2000 and 2011.[23] Osei Brafi and Arthur observed that over that decade in point, more people in Africa had begun to embrace new means of communicating information.[24] Currently, the 2021 Report from Internet World Stats shows an astronomical increase, with the number of users of the internet on the high. With a population of about 33 million, Ghana's number of users of the internet as at 31st December 2020 stands at

[23] Paul Brafi & Charles Arthur, "Internet Use among Students in Tertiary Institutions in the Sunyani Municipality, Ghana" (2013) Libr. Philos. Pract. 1 at 3
[24] *Ibid*

14,767,818.[25] This number indicates a significant rise in the number of internet users in Ghana recorded in 2011 (2,085,501)[26]

The reasons for the worldwide, continental, and national involvement in the operation and usage of the internet are varied. Bekoe, Atiso, Ayoung and Dzandu make the point that, the internet has given people access to a world far beyond their countries' borders, especially by the fact that one might not need a standing permit to reach someone in a different jurisdiction.[27] The authors also opine that in the space of a few years, the internet has fast advanced its ability to inform, connect, enable, and empower humanity.[28] Furthermore, it has permitted people around the world to envisage and construct new possibilities for their livelihood development for themselves, their families, and nations as well as enabling them to lead lives they value.

The internet also serves as a vital avenue for entertainment. In a study that explored internet usage in Ghana, Quarshie and Ami-Narh found that only 12.5% of the respondents did not use the internet for entertainment purposes, with the rest of the percentage using it for this purpose either always, frequently or occasionally.[29]

With internet services almost inextricably intertwined with social media, Matikainen notes that the reasons behind people's decision to share their own contents on such internet-induced platforms include the following: firstly; a will to be a member of the internet community and to develop

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[25] Internet World Stats, "Internet Users Statistics for Africa (Africa Internet Usage, 2021 Population Stats and Facebook Subscribers)" (31 March 2021), online: Internet World Stats <https://www.internetworldstats.com/stats1.htm>

[26]Henry O. Quarshie & James Ami-Narh, "The Growth and Usage of Internet in Ghana" (2012) 3:9 J. emerg. trends comput. inf. sci. 1302 at 1303

[27] Stephen Bekoe, Kodjo Atiso, Daniel A. Ayoung & Lucy Dzandu, "Examining Internet Usage Patterns on Socio-Economic Benefits of Marginalized Communities: The Case of Community Information Centres in Ghana" (2018) Libr. Philos. Pract. 1 at 4

[28] *Ibid* at 3

[29] Quarshie & Ami-Narh, *supra* note 26 at 1304

oneself, secondly; the eagerness by people, especially the young, to share information about their lives, and thirdly; the idea of wanting to belong to the online community and to interact with one another. The author is, however, quick to add that the reasons for people's interest on such platforms could change depending on the platforms used.[30]

It is expedient to note that the operations and the usage of the internet in developing countries including Ghana is saddled with challenges, such as illiteracy, poverty, and high cost of living, among others. Albrini is of the view that the introduction of the internet in most third world nations mainly imposes some economic burden, which in turn exacerbates their economic dependency on developed, western nations.[31]In explaining such dependency relationship, the author observes that the internet, as it is, is a western creation. What it also means is that, unlike their Western counterparts, developing countries tend to lack when it comes to planning and vision as regards the function and cost-effectiveness of network technologies operated in their economies. On these identified discrepancies in developing countries, coupled with the fact that they lack the financial wherewithal and human resources to invest in network technologies, they still need to face the harsh reality of keeping pace with the technologically advanced countries.[32] It is thus, in the implementation of the internet in most developing countries that seem to reinforce the dependency relationship.

Robinson contributes to the "dependency perception" theory by arguing that it is one of the problems the developing world face, and this leads to halfhearted enforcement. Robinson further adds that many developing countries are unwilling to enforce anti-piracy laws because they believe

[30] Janne T. Matikainen, "Motivations for content generation in social media." (2015) 12:1 Participations: Journal of Audience and Reception Studies. 41
[31]Abdulkafi Albirini, "The Internet in developing countries: a medium of economic, cultural and political domination" (2008) 4:1 IJEDICT 49 at 49
[32] *Ibid* at 54

that intellectual property protection is a mechanism that seeks to make them permanently dependent on the creativeness and technology of the industrial world and to impede the formation of local abilities to create and develop. That being so, intellectual property laws, generally, keep products and information necessary for development at unaffordable costs and circumstances that disregard their independence.[33]

According to Danquah and Longe, the emergence of internet and its usage in Ghana comes with the upsurge of corresponding vices, such as fraud, internet swindles, and hacking.[34] In addition to these, Atiso and Kammer make the claim that the unauthorized access of personal and copyrighted information is inevitable.[35]

Access to reliable internet in third-world nations, like Ghana, is occasionally challenging, even in professional or urban settings, including research facilities.[36] This presupposes that with the current state Ghana finds itself, the country cannot keep pace with the demands of internet as this is reflected in Atiso and Kammer's claim that it appears the ICT network was created earlier than regulations and policies that can safeguard the online safety of people.[37] This situation begs the question of how best to develop regulatory frameworks that can keep pace with globally standardized demands relative to online activities, while the fundamental issue is that the country remains grappling with internet and online access.

[33] Liz Robinson, "Music on the Internet: An International Copyright Dilemma" (2000) 23:1 U Haw L Rev 183 at 216.
[34] Paul Danquah, & Olumide Babatope Longe, "Cyber deception and theft: An ethnographic study on cyber criminality from a Ghanaian perspective." (2011) 11:3 IJIT 169
[35] Kodjo Atiso & Jenna Kammer, "User Beware: Determining Vulnerability in Social Media Platforms for Users in Ghana." (2018) Libr. Philos. Pract. 1 at 10
[36] *Ibid* at 9
[37] *Ibid* at 2

1.2 Online Music and business in Ghana

In this section, a discussion of some of the music activities and business models within the online space is presented. A general understanding into the online music activities, such as music distribution as well as commercial transactions of musical works, will inform the relevance of a framework that is meant to regulate such activities. The section also discusses how music activities dictate the business model of the music industry, while revealing the state of collective societies within the internet space.

The internet is an appropriate platform for entertainment and music activities because of the gradual rise in the number of people that use the internet for these purposes. A study conducted by Dzogbenuku and Kumi indicate that in Ghana, the search for academic content is not a strong motivating factor for the youth to surf the internet as much as a desire to fulfill their social and entertainment-driven wants.[38] Given that there is a lot of traction on the internet for music and entertainment related interests, Ghana's internet space is very fertile for music distribution and other related activities.

Demuyakokor examines the advantages and setbacks of digital media in Ghana and points out that the most reliable and efficient means of storing information has been possible as a result of the rapid growth of technology.[39] People are able to upload their files or data on a designated media platform through the internet and have such files kept for as long as they want them. To this extent, the author points out that through digital media, it is easy for people across the globe to connect,

[38]Robert K. Dzogbenuku, &, Desmond K. Kumi, "Exploring the key drivers of internet behavior among the youth of emerging markets the case of Ghana." (2018) 67:8-1 Libr. Rev 486 at 500
[39] John Demuyakor, "Opportunities and Challenges of Digital Media: A Comprehensive Literature Review of Ghana" (2020) 2:2 ERJSSH 95 at 97

share information and express sentiments with several people worldwide on issues of mutual interest compared to television, radio, print, and print media.

Wiafe examined the activities of music business in Ghana relative to the adoption of the internet and online transaction (e-commerce) and found some of the concerns regarding the acceptance of e-commerce in the country's music record industry. Wiafe posits that some key players in the business are hesitant to endorse e-commerce as they fear it could take over the role of retailers, disintegrate traditional music distribution channels, and decrease the significance of record institutions.[40] On the other hand, some internet and digital media experts claim that the players in the traditional media space have not entirely been obsolete in the digital media space as they and their roles have metamorphosed to complement the activities of digital media although it is possible these changes have not caught up in other places like Ghana. Qi observes that each time when technology changes the business model of the music industry, there are always new participants joining in; publishers with printing, broadcasters with broadcasting, producers of phonograms with sound recording, and now internet service providers with network technology.[41]

Galuski posits that contrary to popular opinion, the introduction of the internet has not made intermediaries in the music industry archaic. In fact, solo musicians and independent record companies who want to sell their content digitally, must distribute their musical works through mediator agencies called music aggregators.[42] The role of these aggregators is to bundle digital rights, from sound recordings and performers' rights to copyright, and provide them to digital

[40]Samuel Wiafe, "Examining Internet and E-Commerce Adoption in the Music Records Business A case study of the Ghana's Hiplife and Gospel songs." (Master's thesis, Blekinge Institute of Technology, 2012) at 56.
[41] Xiong Qi, "Music Copyright Reform in China" (2017) 4 Renmin Chinese L Rev 214 at 217.
[42] Patryk Galuszka, "Music Aggregators and Intermediation of the Digital Music Market", (2015) Int. J. Commun. 254

music platforms. The author however, points out what mostly attract partnership digital music platforms it is the size of the bundle of digital rights collected by the aggregator. And that is to say that aggregators are enthused to search for rights owners whose records are not yet vended online because apart from the opportunity to make profit, aggregators earn the chance to become a more appealing partner for digital music stores.

Research conducted by Wiafe on the music business on the internet in Ghana revealed that the challenges confronting online music and the implementation of e-commerce in the music business was the difficulty that came with monetizing online music content.[43] The author reported that the prime cause for such difficulty had to do with inadequate legal and regulatory mechanisms to oversee the activities of digital music stores, as well as the uncertain taxation rules facing the business outlooks.[44]

Acquah and Acquah-Nunoo corroborate this position in their analysis of the state of royalties in the music industry in Ghana and further highlight some of the factors responsible for pirating of many music productions in Ghana.[45] The authors observed that the laws on the collection of royalties by collective societies for musicians' intellectual and professional property were not properly enforced. And this is owed to the structural and infrastructural effectiveness of the collective societies themselves which is a great source of complaint from their registered members. The study also revealed that revenue streams were narrow as a result of infrastructural problems and so people did not make money from making music. Also, musicians who start their careers outside Ghana, in Europe or America, are seen as fortunate as they are able to receive royalties

[43] Wiafe *supra* note 40 at 20
[44] *Ibid* at 64
[45] Emmanuel O. Acquah & Matilda O. Acquah-Nunoo, "The state of royalties in the music industry in Ghana." (2021). 2:2 QJSSH 65 -73.

from the Music Rights Organization that takes care of profits they make from their music overseas.[46]

1.3 The complexities associated with the protection of musical works on the internet

This section discusses the nature of copyright protection of musical works on the internet, and how the rights of music owners and consumers are upheld within this space. It also discusses the role of Internet Service Providers (ISPs) as one of the main actors responsible for copyright promotion and enforcement on the internet. An understanding of ISPs will inform their relevance within an online regulatory framework for music content.

In any growing economy, the laws regulating musical works are susceptible to change, and the relevance of a particular law on copyright protection of musical works in a given period would be tested by the present regulatory framework at the time as well as the developments and inferences that would be drawn in context. Qi points out that based on the historical advancement of the music sector and its matching procedure of recurrent changes in regulations, the protection of musical works is amongst the most complicated structures in copyright law and it is manifested in some prominent instances. The major instance has to do with the fact that the matters of music copyright encompass musical works and sound recordings, and other related rights such as the performer's performance rights, with each having its own guidelines of protection and transfer. Likened with other copyright subjects, there are diverse forms of copyrights on musical works and sound recordings, and the borderline of digital performance rights remains one of the most debatable issues in copyright reform across the globe.[47] To this extent, a lot more circumspect is needed when seeking regulatory models for it, and that, a good insight and understanding into the forms

[46] *Ibid* at 66
[47] Qi *supra* note 41 at 214

and layers that are inherent in musical works will go a long way to assess and seek what suitable regulatory model can apply. Tribulski explains that every musical work has two copyrights: "*the musical composition copyright and the sound recording copyright*". Whereas the musical composition copyright covers the primary musical content, which is made up of the lyrics, melody, chords, among other elements that would be seen on sheet music, indicating that the owner of the musical composition copyright would usually be the composer or publisher, the sound recording copyright covers the concrete recording of a song's performance.[48]

The third instance which Qi provides to have contributed to the complex nature of copyright protection of musical works is in light of the printing era gradually moving to the era of the internet, where there are numerous copyright holders and mediators that cause copyright protection of music atomism.[49] On this point, it can be seen that the advancement of technology and the internet has expanded the crop of individuals or players and also provided them with definitive roles and rights in the music industry. Some of these players include composers, music publishers, as well as collective rights organizations.

Qi also observes that not only has the internet fundamentally shifted the way music is delivered and accessed but also, it has altered the business model of the music industry, which largely stems out of how internet service providers would prefer to run the business model as necessarily against how the music industry would prefer. The author provides that the business model that internet service providers prefer is based on the quantity of end users and their adhesion to the service which would mean that they would like to provide digital phonograms without copyright limits so as to attract end users. This disparity results in the internet service providers on one hand, refusing

[48] Emily Tribulski "Look What You Made Her Do: How Swift, Streaming, and Social Media Can Increase Artists' Bargaining Power" (2021) 19 DLTR 91 at 103
[49] Qi *supra* note 41 at 214

to expand copyright protection of musical works that would discourage end users to access music online without limits while the music industry on the other hand would stick to the traditional business model, trying to profit out of every kind of dissemination.

One of the ways that goes to show ISPs' unwillingness to expand music copyright protection is when they fail or refuse to disclose information about potential copyright infringers who use their services. The refusal to disclose may not be legally sanctioned necessarily, and promulgating laws to compel ISPs to provide details about its users may not be a prudent call either. Richardson discusses the moral and legal arguments for and against issues of privacy on the internet, and having observed that internet users have the proclivity to use the internet to breach copyright, concludes that forcing online service platforms to provide evidence about the activities of their service users can amount to major privacy infringements.[50] However, in their assessment of the Digital Millenium Copyright Act of 1998, (DMCA) which was enacted purposely to block the sites that provide infringing materials, Kerry establishes that in that bid to thread carefully on issues of privacy on the internet, the enactment of the DMCA appeared to be the only means through which illegal sites could be restricted as it would be challenging to track the people who illegally downloaded the musical works.[51] The author acknowledged that the DMCA was significant for its purpose because internet service providers are better positioned to acquire insight into stop infringing acts given the business rapport with their clients, the infringing parties, and for the fact that this relationship grants the online platform the power to control the activities of its users. The general observation from the author is that, it is reasonable to hold internet service

[50] Megan Richardson, "Downloading Music off the Internet: Copyright and Privacy in Conflict" (2002) 13 JL & Inf Sci 90 at 97.
[51] Kimberly Kerry, "Music on the Internet: Is Technology Moving Faster Than Copyright Law?" (2002) 42:3 Santa Clara L Rev 967 at 975.

providers and platforms accountable because they should not be making any profit at the expense of the copyright holder.[52]

A study conducted by Aguiar and Martens advance the point that the digitization of the music sector has considerably altered the manner by which people consume music. It has led to the establishment of other modes of music consumption, including online music streaming and subscription services.[53]

Aguiar and Martens claim that although there is the infringement of copyright, there is unlikely to be much damage done on digital music proceeds. It may however, appear that there is a defect in this argument especially when we put it in context. Indeed, it is foreseeable that by virtue of the current trend of digital music and online music purchase, revenues only in this regard, would increase but this increase may not necessarily be translated into its full potential value. Similarly, in the face of the internet and digitization in the music industry, other areas of the music industry have been negatively impacted to the detriment of musicians' revenue. Breeland posits that the music business is dealing with a crisis where proceeds are always on the decline with the internet streaming services being the constant culprits.[54] The author observes that with the arrival of websites, the music industry is yet to discover a successful solution to address issues regarding profit hemorrhage. Other profitable areas such as the sale of albums, merchandise and concert ticket sales have also declined through internet streaming services. [55]

[52] *Ibid* at 976
[53] Luis Aguiar & Bertin Martens, "Digital music consumption on the Internet: Evidence from clickstream data" (2016) 34:1 Inf. Econ. Policy 27 at 28
[54] Nikki R Breeland, "Bad Blood: Reconciling the Recording Industry and Copyright Protections on the Internet" (2019) 19:2 Fla Coastal L Rev 169.
[55] *Ibid*

In coming up with plausible reform policies which will address copyright issues on the internet, Qi, foremost, acknowledged that the greatest problem confronting the music industry all over the world is its inability to find an effective way to eliminate illegal digital phonorecord delivery and downloading.[56] The author points out that the failure of the current music copyright system is not because the stakeholders in the industry could not find an effective response to illegal music downloading, rather, both the music and internet industries tend to stick to their own business models and try to counteract each other with their own legislative and institutional controls so that they can keep on making profits.[57]

Qi further observes that as compared to the American legislative mode in which the music industry drives the legislation of copyright protection of musical works, other jurisdictions like China, rather have their governments fronting the promotion of related systems. This, according to the author, meant that some sectors, such as the collective management of copyright and other intermediary organizations and service agencies are established by the government, and have been given a legal monopoly[58] with no element of diversity.

1.4 Copyright Infringement and the Internet

This section presents an understanding into the dynamics of infringements of copyright on the internet as well as their corresponding consequences.

[56]Qi *supra* note 41 at 217
[57] *Ibid* 215
[58] *Ibid* 219

Copyright infringement over a digital audio file is infringed where a person creates, reproduces or distributes such music without the license or authorization of the owner of the copyright.[59] Atanasova provides some instances of copyright infringement in the digital environment to largely include the illegal downloading of copyrighted content and distribution of recorded musical work on online platforms, often in the form of MP3 files; as well as the duplicating a CD or other recorded media containing a copyrighted work without seeking authorization from the copyright owner.[60] Thus, if anyone perpetrates any act that is supposed to go against the exclusive right of the author, then it would be said that the person has infringed on the author's copyright.

Potluri, Tummala and Bolla assert that once the intellectual property is made accessible online to masses that use the internet, copyright infringement within the cyber space is expected.[61] As Ibekwe and Owunabo note, the internet provides readily available digital audio files to users who can access same through their laptops and mobile phones.[62] The authors explain how the nature of new technology has facilitated the easy creation, reproduction and distribution of music files online without compensating the copyright holders, and how many websites and online platforms are known for this practice.[63] Also, digital audio files are one of the most pirated works online mostly because of the small size of mp3 files.

What has also contributed to the rise of online copyright infringement is the fact that people do not take it seriously that it ought to be in the sense of a crime per se.[64]

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[59] Chineze S. Ibekwe & Boma N. Owunabo, "Copyright Infringement over Digital Audio Files on the Internet." (2021) 8:2 NAU.JCPL 1 at 6
[60] Irina Atanasova, "Copyright Infringement in Digital Environment." (2019) 1:1 Econ. Law 13 at 17
[61] Varun Potluri, Sai S. Potluri, Ganesh Tummala & Sharvani Bolla, "Online Copyright Infringement" (2021) 10:3 IJERT 127 at 132
[62] Ibekwe & Owunabo *supra* note 59 at 6
[63] *Ibid*
[64] *Ibid*

It may look as though people tend to justify their acts of infringements and trivialize the seriousness of the offences through the construction of types or forms and degrees of infringements.

Bell and Parchomovsky acknowledge as a general rule that copyright law does not distinguish among the various forms of infringement. Neither does it open to the notion that accountability should be classified based on the degree of an infringer's wrongdoing, essentially because all infringers are susceptible to the full force of financial remedies and relief of injunction.[65] However, the authors maintain that the differences in the kinds of copyright infringements must inform the liability regime so as to not cause overdeterrence and then discourage future creativity even for the slightest inadvertent infringers.[66] To this end, the authors group the several kinds of infringements under three categories to make the point of which infringement requires a sterner enforcement.

The first category the authors provide refers to inadvertent infringement which covers all cases in which the infringer was not aware and could not have sensibly become cognizant of the invading nature of her activity. These infringers are themselves "victims" of the informal uncertainties that surround copyright law.[67]The second category is the standard infringement which essentially entails all cases of infringement where the culprit had a rational basis to trust that their act was not infringing.[68] The authors point out that in order to impute culpability on such individuals, the reasonableness standard, as used in the law of torts, must be used. The difference between the standard infringers and inadvertent infringers is the degree of culpability. The third category, which the authors believe the law must combat most strongly has to do with willful infringements. This category covers all those cases involving obvious disrespect of copyright guidelines. The

[65] Abraham Bell & Gideon Parchomovsky, "Restructuring Copyright Infringement" (2020) 98:4 Tex L Rev 679 at 683
[66] *Ibid* at 720
[67] *Ibid*
[68] *Ibid*

authors explain that infringements coming under this heading can be seen in instances in whereby the culprit had no rational basis to believe that she was not in violation of the rules or was covered by a defense.[69]

What the authors, however, fail to discuss in their study of copyright infringement is how these types of infringements interact with copyright exemptions and limitations, and even more significantly, suggesting the possible recommendations for sanctions for each form of infringement. As it were, copyright infringement does not include any unauthorized copying of a music author's work which is done for one's private use or for teaching and research purposes.[70] Equally, it would not amount to a copyright infringement if short excerpts of a performance or sound recording are used for commentary, criticism, parody or informative purposes.[71]

From the foregoing, Bell and Parchomovsky's categorization may be problematic. A continuing infringed copyrighted work that is not removed from the platform that is causing the infringement, for reasons such as inability to promptly identify its owner, will still most likely cause the damage it is bound to cause irrespective of the levity attached to the infringing act.

In the music industry, piracy (i.e., literal copyright infringement) is the most prevalent form of copyright infringement. Ibekwe and Owunabo provide that, in the hierarchy of intellectual property rights infringements, piracy in the entertainment sector is considered to be particularly reprehensible because not only does it deny an artist the opportunity to reap the rewards of his

[69] *Ibid*
[70] Nasiru D B Deen, "Copyright Infringements and the Gambian Music Industry" (2018) 1 GLR 150 at 152.
[71] *Ibid*

labor, investment and creativity; it stifles inventiveness and entrepreneurship and which in consequence would cripple a nation's economy.[72]

Beekhuyzen, Hellens and Nielsen point out that indeed, what is referred to as piracy is essentially unauthorized file sharing and that most scholars refrain from defining piracy because it is challenging to develop an internationally acceptable definition.[73] For the purposes of this study some operational definitions have been cited. Ibekwe and Owunabo have already provided that piracy is the act or process of illegally copying and reproducing for commercial purposes, copyrighted materials such as music, films, online content, computer programs and books. [74]

When it comes to the music context, Deen establishes that music piracy refers to the copying and distribution of a musical work for which the creator, recording artist or copyright holding agency did not grant permission.[75]

At present, Oganyan, Vinogradova and Volkov make the point that in the digital space there is the most dangerous social phenomenon for authors and copyright owners, and that has to do with internet piracy. What internet piracy does is to absorb all the advantages of modern technologies, which creates a high level of threat to the preservation of copyright on the internet.[76] The authors also make an important point that, in light of internet piracy, it is the attitude of internet users that largely favors the distribution of the copyright objects.[77]

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[72] Ibekwe and Owunabo *supra* note 59 at 1
[73] Jenine Beekhuyzen, Liisa von Hellens & Sue Nielsen, "Illuminating the underground: the reality of unauthorized file sharing." (2015) 25:3 Inf. Syst. 171
[74] Ibekwe and Owunabo *supra* note 59 at 1
[75] Deen *supra* note 70 at 153
[76] Valery A. Oganyan, Marina V. Vinogradova, Denis V. Volkov, "Internet Piracy and Vulnerability of Digital Content." (2018) 21:4 Eur. Res. Stud. 735 at 742
[77] *Ibid*

1.4.1 Impact of online copyright infringement in the music Industry

In a study to assess copyright dynamics in the Gambian Music Industry, Deen evaluates the effects of copyright infringement. Of the examples that are provided, the author states that the loss of potential income stands out as the biggest effect of copyright infringement, and appears to cut across jurisdictions.[78] The author points out that people create musical works, by using their various musical talents often with the hope to earn a living, however the music industry is unable to generate enough revenue to boost its growth with most of the money being lost due to endemic piracy, peer-to-peer file sharing and poor royalty collection mechanisms.[79]

Bell and Parchomovsky state that the presence of, and increase in "orphan works", which generally is characterized by the challenge in finding owners of copyrighted contents and as such becomes almost impossible to locate and notify copyright holders, increases copyright infringement.[80] The authors observe that contemporary changes made in copyright law could be somewhat blamed for this situation. This is because, before 1978, copyright law required notice of copyright ownership to go along with public distributions of the work.[81] However, this notice requirement does not exist in modern times, suggesting that copyrighted materials can have no indication whatsoever of the right holder's identity, or even to show that the content is sheltered by copyright law, yet still enjoy the full defense of copyright law.[82] The authors highlight the point that the problem of orphan works is worse when it is confronted by the layered nature of copyrighted works. It is explained that a copyrighted material holds within itself other copyrighted contents where for example, sound recording rights may be owned by an individual whereas the performing rights may be owned by

[78] Deen *supra* note 70 at 157
[79] *Ibid*
[80] Bell & Parchomovsky *supra* note 65 at 706
[81] *Ibid*
[82] *Ibid*

another. Thus, if a user desires to use a section of the work whose copyright owner is recognized, he or she will still have to be concerned about whether the work incorporates other components whose rights is owned by someone else.

Atanasova assesses the enforcement of online copyright infringement and makes some recommendations on how to solve it. The foremost has to do with introducing new statutory liability with diverse degree of seriousness. Under this proposal, the author provides some possible options to make it work. The first one has to do with forbid all downloading acts carried out without permission from the precise copyright owners.[83] Accordingly, as the study implies, anyone who uses a P2P software to copy a song or movie or who downloads an editorial, picture or graphics on the Internet without seeking consent from their owners will face criminal sanctions.[84] The second choice, according to the study is to outlaw only those illegal downloading and content sharing activities that are carried out for direct commercial purposes or are significant in scale.[85]It may seem as though the difference between these two options would be the nature or purpose for which the contents are downloaded. Thus whereas, the former is broad in its natures, the latter provides a limited nature – i.e., commercial purposes.

The author also recommends the active involvement and support from the online service platforms to curb Internet piracy. It is further explained that there is the need for Online Service Providers to establish, in collaboration with copyright owners, relevant regulations on acceptable industry codes of practice that would mandate all operators to prevent online piracy activities[86].

[83] Atanasova *supra* note 60 at 19
[84] *Ibid*
[85] *Ibid*
[86] *Ibid*

Assessment

This chapter has provided the reader a general overview of the motivation behind internet use in Ghana with the associated benefits and challenges. It has also given a general understanding into the online music activities and related models as well as how the rights of music owners and consumers interplay, with special reference to the dynamics of copyright infringements when it comes to internet activities.

An overview of the operations and usage of the internet, and their related activities hereby given, the next chapter will provide for the incidents with respect to the protection of musical works on the internet in Ghana.

CHAPTER THREE

THE PROTECTION OF ONLINE MUSICAL WORKS IN GHANA

This chapter provides an overview on Ghana's copyright regime particularly in light of musical works that are streamed, shared or downloaded on the internet. The chapter essentially provides an insight into the legal landscape of protection of musical works in Ghana, as through statutes, the courts, as well as the operations of collective management societies, with particular reference to Ghana's collective management society for music – Ghana Music Rights Organization (GHAMRO).

To help readers understand the current state of protection of musical works, the chapter also discusses how Ghana's Copyright Act, Act 690, and the Copyright Regulations of 2010 (L.I. 1962) tackle musical works on the internet and, significantly, the exclusive rights that are accompanied, with particular reference to the right of communication to the public.

1.1 Copyright Protection and Enforcement of Musical Works

Generally, under music copyright, a musician who composes and records a song is seen to have triggered and acquired two main rights – that which is established in the musical work itself and one for the underlying sound recording.[87] While Sound recordings would mostly entail the actual sounds as embodied in the recording or as would have been fixed in a recorded or digital file, the musical work copyright involves the key elements of the song, which would include the rhythm, tempo, lyrics, as well as notes and phrase arrangements.

[87] Act 690, *supra* note 5, ss 1(c) and (d) provide for "Musical Works" and "Sound Recordings" as copyrightable subject matter.

The laws that mainly form the copyright framework of Ghana are the Copyright Act of 2005 (Act 690) and the Copyright Regulations of 2010,[88] which is a legislative instrument. Act 690, which is the designated statute for copyright in Ghana, was passed to replace the 1985 Copyright Law which was enacted at a time when Ghana was under military rule.[89]

Ghana's adherence to international treaties and conventions should not be overlooked. Indeed, in the attempt to standardize copyright laws among participating states, the international community over the period have developed treaties, conventions and agreements. These treaties and conventions are mostly developed to ensure the existence of minimum standards and reciprocity between member states. The doctrine of incorporation in international law, thus, becomes important in the discussion to facilitate the understanding of the effect of international treaties on Ghanaian law.[90] The doctrine postulates that a state party to an international treaty, is obligated to see to it that its own domestic law and practice adopt provisions that have been set out in international conventions and/or are consistent with the demands of the treaty entered into.[91] Thus, these treaties would mean nothing if the parliament of Ghana does not ratify them or enact domestic legislation to implement changes before they are adhered to. Ghana's constitution empowers the president to "execute or cause to be executed treaties, agreements or conventions in the name of Ghana" subject to ratification by parliament.[92]

[88] Copyright Regulations of 2010, ((L.I. 1962).
[89] The Provisional National Defence Council Law 1985 (PNDCL110); Gertrude Torkornoo, "Creating Capital from Culture - Re-Thinking the Provisions on Expressions of Folklore in Ghana's Copyright Law" (2012) 18 Ann Surv Int'l & Comp L 1 at 2.
[90] See Jose M. Roy III, "A Note on Incorporation: Creating Municipal Jurisprudence from International Law" (2001) 46:3 Ateneo LJ 635 at 635
[91] *Ibid* at 635
[92] The Constitution of the Republic of Ghana, 1992, article 75.

When it comes to the laws of Ghana that are consistent with international treaties, Ghana has accepted the international obligations in respect of copyright protection. Ghana is a member state of the following Conventions on Copyright and Neighboring Rights:

1. Berne Convention, 1886 for the Protection of Literary and Artistic Works.[93]
2. Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms.[94]
3. World Trade Organization (WTO) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)[95]
4. WIPO Performances and Phonograms Treaty[96]
5. WIPO Copyright Treaty[97]

[93] World Intellectual Property Organization. (1982). *Berne Convention for the Protection of Literary and Artistic Works*: Texts. Geneva: World Intellectual Property Organization.; Ghana became a member of the Convention on October 11, 1991, see: [WIPO, "Berne Notification No. 135, Berne Convention for the Protection of Literary and Artistic Works: Accession by the Republic of Ghana" (11 July 1991), online: *World Intellectual Property Organization* https://www.wipo.int/treaties/en/notifications/berne/treaty_berne_135.html].

[94] *Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms*, 29 October 1971, Geneva: World Intellectual Property Organization.; The Convention entered into force in Ghana on February 10, 2017, see: [WIPO, "WIPO-Administered Treaties", online: WIPO IP Portal https://wipolex.wipo.int/en/treaties/ShowResults?search_what=C&treaty_id=18

[95] WTO, *Agreement on Trade-Related Aspects of Intellectual Property Rights* 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization.; Ghana has been a member since January 1, 1995. See: [WTO, "Understanding the WTO; The Organization: Members and Observers", online: World Trade Organization <https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm>]

[96] Ratified by Ghana on 16 November 2012; See: [WIPO, "WPPT Notification No. 83, WIPO Performances and Phonograms Treaty: Ratification by the Republic of Ghana", (16 November 2012), online: *World Intellectual Property Organization* https://www.wipo.int/treaties/en/notifications/wppt/treaty_wppt_83.html

[97] Ratified by Ghana on 18 August 2006; See: [WIPO, "WCT Notification No. 62, WIPO Copyright Treaty Ratification by the Republic of Ghana", (18 August 2006), online: World Intellectual Property Organization https://www.wipo.int/treaties/en/notifications/wct/treaty_wct_62.html]

In Ghana, prior to 1985, as with the Copyright Law of 1985 (PNDCL 110) and then to the subsequent and current Act 690, a work in writing was a prerequisite for protection of musical works. In the case of *CFAO v Archibold*[98] the supreme court of Ghana held that "*it is fundamental to the subsistence of copyright in any form of literary composition, musical or otherwise, that there is a composition in writing to which the right relates or is thereto appurtenant*."[99] Indeed, this requirement was an affront to the interests of Ghanaian illiterate composers. Act 690 now ensures a more flexible requirement of fixation as against the strict requirement of writing.[100]

With regards to authorship or the personalities involved, a musical work can be ascribed to a songwriter, composer or a lyricist.[101] It is also possible for the songwriter to transfer all or part of their rights to a music publisher in which case the publisher may be the owner of the musical work. Thus, in terms of rights in musical works, a songwriter or a publisher is entitled to royalties in the event that the musical work is copied, distributed or used for commercial purposes.[102]

Sound recording is defined as any work that results from the fixation of a series of musical, spoken or other sound, or of a representation of sounds, but does not include sounds accompanying a motion picture or other audio-visual work regardless of the nature of the material objects in which those sounds are embodied.[103] This definition is also provided verbatim in Title 17 of the United States Code[104] however, in other Copyright Acts, when it comes to works which are excluded as sound recording, the definition is meant to generally entail "any soundtrack of a cinematic work

[98] CFAO v Archibold [1964] GLR 718
[99] *Ibid* at para 10 Judgment made by Adumua-Bossman JSC
[100] Act 690, *supra* note 5, ss 1 (2)(b))
[101] Jui Uday Dongare & Tulika Kaul, "Music Modernization Act in the United States" (2019) 6:8 Ct Uncourt 2 at 2
[102] Act 690, *supra* note 5, ss. 9
[103] *Ibid* ss. 76
[104] See § 101 of Title 17 of the United States Code.

where it accompanies the cinematic work"[105] Such that the elements of motion picture or audio visual works as given in other statutes are rather subsumed under cinematic work.

As Armstrong has observed, sound recordings, performances and radio broadcasts are non-traditional elements and as in the traditional sense of the word, lack an author. Thus, on the basis of its unconventional nature, they do not necessarily qualify as "works".[106] Act 690 makes prominent mentions of "copyright and related rights" to give effect to such neighboring rights under copyright law.

In Ghana, it was not until 1985, through the Copyright Law of 1985 (PNDCL 110)[107] that the inclusion of sound recordings as a subject matter for copyright came into existence. The copyright law in itself extended the protection for works to cover foreign-made works so as to fulfill its purpose of being in compliance with the Berne Convention. With regards to the legislative history on copyright, Ghana inherited a copyright system based on the British Copyright Act of 1911, which happens to be the first copyright legislation in Ghana.[108] All the subsequent Acts[109] up until the year 1985 did not include sound recordings as a subject matter for copyright.

With respect to the US, although sound technology had existed over time, Kubik remarks that it was not until 1971, that Congress recognized sound recordings as a copyrightable subject matter. This was made possible through a prior Act, the Sound Recording Act (SRA), an Act that was

[105] See Copyright of Canada (R.S.C., 1985, c. C-42), ss. 2
[106] See Robert Armstrong, *Broadcasting policy in Canada* (Toronto: University of Toronto Press, 2016) at 207-209
[107] The Provisional National Defence Council Law (PNDCL 110),
[108] Copyright Ordinance of 1914 (Cap. 126); Also see Andrew Ofoe Amegatcher, "Ghanaian Law of Copyright" (UK: Omega Publishing, 2013) at 4
[109] From 1911, subsequent Copyright Acts have included, Copyright Ordinance of 1914 (Cap. 126) with its enabling Copyright Regulation of 1918; The Copyright Act 85 of 1961; Copyright Law of 1985 (PNDCL 110); and the current Copyright Act 690 of 2005.

purposed to "create a limited copyright in sound recordings for the purpose of protecting against unauthorized duplication and piracy of sound recording."[110] This, in a sense, speaks to the level of attention that was (and even still is) given to neighboring rights like sound recording in Ghana compared to other jurisdictions like that of the United States where there was a special SRA to, head-on, address the issues confronting sound recordings.

Generally, the rights in sound recording are owned by the "maker" or "author"[111] of the sound recording. The word "maker" is used to encompass non-physical entities who are said to own the equipment for the sound recording, as seen in instances such as record labels, recording studios, production companies, among others. The *Copyright, Designs and Patents Act* of the UK makes it emphatic that the owner or author in a sound recording is the Producer.[112]

It is also possible that performers in a sound recording may also own copyright in the sound recording. The performer has the exclusive right to authorize the first fixation of their work and its reproduction. The related performance right in sound recording copyright could be that which is divided into producers' right, on one part, and the performers' rights, on the other part. It is also

[110] Michael G. Kubik, "Rejecting the De Minimis Defense to Infringement of Sound Recording Copyrights" (2018) 93:4 Notre Dame L Rev 1699 at 1702

[111] Ghana's Act 690 in section 76 makes reference to the "author" as the person by whom the arrangements for the making of the work or recording is undertaken.

[112] See, The Copyright, Designs and Patents Act 1988, sections 9 and 178. Under section 178, a producer is further explained to be the person by whom the arrangements necessary for the making of the sound recording are undertaken. By the definition, a record label or production company, or any person at all, is well to fit in, insofar as it pays and provides for the recording to be made. When it comes to Act 690, the definition as regards "authorship in sound recording" is not different from that of UK's definition, save for the differences in nomenclature. The word "author" Act 690 appears to have double meanings. On one hand, there is the "author" as one who creates a work, which has the same meaning in Section 9 of The Copyright, Designs and Patents Act 1988. On the other hand, there is "author" in the case of sound recording as the person by whom the arrangements for the making of the recording is undertaken. The name referred to such definition in the UK's Act is Producer, whereas Canada's Copyright Act refers to it as a "Maker". Note that a Producer in Act 690 is a person or an entity that finances or organizes production or undertakes the fixation of sound recording. The duties and even rights of the "author" and "Producer" interplay depending on the angle it is taken from.

probable that the performer may transfer a portion or all of his rights to a record label. Given the, sometimes, muddled conceptions as to the legislative status on the authorship in sound recording copyright, the English case of *Robin Ray v Classic FM*[113] reminds us that, "the vital necessity for provision of these rights to be reduced into an agreement."[114]

In related instances on the identity of a performer, Dongare and Kaul provide the example of featured artists or musicians and non-featured musicians. The former is a singer or a member of a band featured in the sound recording, while the latter represent those that have been recruited to enrich the sound recording with their talents, such as backing vocalists and instrumentalists. With these two categories, their economic interests in the copyrighted work appear to be different in the sense that whereas the featured artist is paid on the basis of a recording contract, the non-featured artist is paid on a time set model.[115]

The owner of the related rights as in performance, broadcasting or sound recording has the exclusive right to cause or prevent the sound recording to be communicated to the public, distributed, broadcasted or cause reproduction of the sound recording in any manner or form.[116] What this also means is that when an author or a "maker" authorizes others to make use of a sound recording or performer's performance, the author deserves to receive royalties or payment for the permission or license granted. In Ghana, any person who wishes to perform or cause the work of an author to be performed in public, or cause any act in respect of work protected under Act 690

[113] (1998) F.S.R. 622
[114] *Ibid*
[115] Dongare and Kaul, *supra* note 101 at 2.
[116] Act 690, *supra* note 5, ss. 5, 28 and 33.

shall apply to the collective society in charge for a license. And the society shall then go ahead to charge royalties in respect of the license granted.[117]

Act 690 provides that authors and joint authors are entitled to copyright protection under Ghanaian law for the music they create.[118] By virtue of such copyright protection, the law affords creators of musical works the exclusive right to do or authorize the reproduction, translation, transformation, distribution or broadcasting to the public, or public performance of the work.[119] More so, authors of musical works have, in addition to the economic rights, the sole moral right to claim authorship of those works and also object to any distortion or modification to such works, which could be prejudicial to their reputation.[120]

What the forgoing implies, as per Act 690, is that any act that is committed by any other person aside the rightsholder, be it a reproduction, communication or distribution of the musical work, sound recording, or performer's performance to any platform, without the authorization of the author or performer, constitutes an infringement and a violation of the Copyright law of Ghana.[121]

The sanction against the infringer is a fine between five hundred to one thousand penalty units[122] or a term of imprisonment of not more than three years, or both. Apart from such punitive measures, the Act provides that in the event where any economic value arises as a result of an infringement, the victim shall be compensated by that in the form of damages.[123] Indeed, there are

[117]L.I. 1962, *supra* note 88 Regulations 36 and 37.
[118] Act 690, *supra* note 5, ss. 1
[119] *Ibid* ss 5
[120] *Ibid* ss 5; And by virtue of section 6 and 31, moral right of the authors of sound recordings and performers, respectively.
[121] *Ibid* ss. 41 and 42
[122] *Ibid*, ss 43; According to the Fines (Penalty Units) Act 2000 (Act 572), one penalty unit is equivalent to twelve (12) Ghana cedis. Thus, 500 – 1,000 penalty units is approximately $1000 – $2000 US dollars.]
[123] Act 690, *supra* note 5 ss. 46

other civil remedies the law provides in the event of a copyright infringement which may be in the forms of an injunction to prevent the infringement or prohibit the continuation of the infringement or the recovery of damages for the infringement.[124]

Act 690 provides that an act will not amount to copyright infringement if the unauthorized copying of an author's musical work, or sound recording or performer's performance is done for one's private use or for teaching and research purposes, or the purported unauthorized act of reproduction or communication to the public is for the reporting of current events, which involves the use of only short excerpts of a performance, sound recording, audio visual work or broadcast.[125] And in light of the substantial part doctrine,[126] it would also not amount to copyright infringement if short excerpts of a performance or sound recording, audio-visual work or broadcast, are used although they are to be compatible with fair practice and are justified by the informative purpose of those quotations.[127] Thus, in Ghana, with regards to Act 690, the caveat given, and on the account of the substantial part doctrine, is that where there is a reproduction of the whole or substantial part of the work, the authorization of the right holder is required for any such purpose.[128]

1.2 Copyright owner's exclusive right of 'Communication to the Public

It has become incumbent on states (either by their legislatures or courts) and international organizations to, day-in-day-out, make adjustments to the scope of the exclusive rights and exceptions under copyright, as a way of dealing with new forms of communication technology

[124] Act 690, *supra* note 5, ss 47
[125] Ibid ss 35 and 19
[126] See: Cinar Corporation v. Robinson, (2013) SCC 73 para 26
[127] Act 690, *supra* note 5, ss 19(3)
[128] *Ibid* ss 19 (20)(b)

that tend to pose challenges to the copyright regime. These new forms of communication technology could be in the instance of the various modes of online access and distribution. As Lim and Chik have stressed, it is important that internet platforms who are in the business of providing online recording as well as 'live' streaming services ought to be informed of the copyright owner's exclusive right of communication to the public.[129]

With regards to copyrighted works and their related activities as well as their potential infringements on the internet, the right of 'communication to the public' stands out and becomes important to discuss.

What the right of "communication to the public" does is that it provides authors or owners of copyrighted works the exclusive right of "authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them."[130]

Act 690 defines *communication to the public* as "the transmission, other than broadcasting, by wire or without wire, of the images or sounds or both of a work, a performance or a sound recording in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that without the transmission, the images or sounds would not be

[129] Saw Cheng Lim & Warren B. Chik, "Whither the Future of Internet Streaming and Time-Shifting: Revisiting the Rights of Reproduction and Communication to the Public in Copyright Law after Aereo" (2015) 23:1 Int'l JL & Info Tech 53 at 62.
[130] See Article 8 of WIPO Copyright Treaty (WCT) (1996); or Articles 10 and 14 of the WIPO Performances and Phonograms Treaty 1996; and in reference to the European Union, Article 3(1) of The Information Society (InfoSoc) Directive of 2001.

perceivable irrespective of whether the person can receive images or sounds at the same place and time, or at different places or times individually chosen by them".[131]

Ghana's copyright regime is not specifically and/or intentionally responsive to operations of musical works on the internet. Act 690, from its last amendment in the year 2009, is deficient when it comes to laws that specifically or strictly address communication to the public, reproduction or distribution of online musical works. It leaves the looming question of whether the current Act, having been in existence for over a decade, sufficiently covers music online, particularly with reference to issues of protection and enforcement of the exclusive right to communicate to the public by telecommunication.

The Music Modernization Act (MMA)[132] of the United States of America is one legislation that aims to modernize copyright-related issues for musical works and sound recordings, so as to adapt to the various forms of technology brought by the current age. What the Act significantly does, is to create a blanket license for digital music providers to make and distribute digital phonorecord deliveries in the various forms such as permanent downloads, limited downloads and interactive streams.[133] Dongare and Kaul are of the opinion that under the MMA, compensation to songwriters is improved as it is able to streamline how music is licensed. Thus, composers and producers who contributed to the creation of the musical recordings are financially rewarded when their works are streamed online or even played on internet radio.[134] Although not well-patronized by musicians, the president of the Ghana Music Rights Organization (GHAMRO), has pointed out

[131] Act 690, *supra* note 5 ss 76.
[132] Musical Works Modernization Act of 2018.
[133] See section 115 of Title I of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act, the Musical Works Modernization Act, 2018. The section provides for the Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords.
[134] Dongare and Kaul, *supra* note 101 at 5

that the collective society has developed a split sheet system where musicians fill out a standard form indicating traceable details of persons who have contributed to the creation of the musical work. This allows persons who have been involved in the creation process to financially benefit in the form of royalties.[135]

The scope of operations of collective management societies or organizations will be addressed in the next section to give reader an understanding into their roles and position when it comes to securing the economic interest of the right holder.

2.1 The Scope of the operations of Collective Management Societies or Organizations

The need to gain permission to access an author's work is also applicable to digital music stores.

Galuska remarks that, in addition to obtaining permission to sell digital copies from owners of copyright in sound recordings, it also becomes imperative for digital music stores to also secure permission from songwriters or organizations that represent them.[136]

The role of Collective Management Organizations (CMOs) is essentially to serve as agents for the members they represent by virtue of the members yielding authority voluntarily to them through licensing agreement.

What the CMOs basically do as agents of copyright holders, who are members of their societies, is to negotiate and grant licenses, collect data and also allocate royalties to members. And in augmenting their efficiency in operation, Emokpae relates that CMOs rely on two main kinds of

[135] The Vaultz News *There is a lot of ignorance in our space – Rex Omar Speaks on Split Sheets* (March 2021), online: The Vaultz News <https://thevaultznews.com/entertainment/there-is-a-lot-of-ignorance-in-our-space-rex-omar-speaks-on-split-sheets/>
[136] Galuszka *supra* note 42 at 261.

information – that is, the information as related to identification, and the information which is related to owners.[137] Indeed, the rationale for the idea of a system as Collective Management of Copyright and its related rights is essentially premised on the impracticability of rights holder to personally manage and monitor as well as enforce his or her rights in every single instance where the work is used or performed.

The scope of CMO's role and duty to their members is dependent on the agreement that exists between then the members. For instance, rightsholders in an agreement may subscribe to limited membership in the societies, in which case the right holders select the work they would want the CMOs to administer on their behalf. Alternatively, it is also possible for right holders to transfer the rights to all their works to the CMO.

The copyright in the actual musical work and all of the related rights, as inclusive of the rights to public performance, broadcasting, as well as the rights of performers and authors of sound recordings, and even mechanical rights in musical works, are all rights that CMOs protect.[138]

2.2 Regulation of Collective Management Organizations in Ghana

The operational and regulatory framework for the collective administration of copyright in Ghana is provided for under Act 690[139] and the Copyright Regulations of 2010, (L.I. 1962). The Copyright Act of Ghana has had only one amendment made to it – the Copyright (Amendment) Act, 2009 (Act 788). One of the reasons for the amendment of Act 690 was to provide an

[137] Michelle E. Emokpae, "The Role of Collective Management Organization in the Evolution of the Nigerian Music Industry." (2018) at 10 Available at SSRN: https://ssrn.com/abstract=3179727 or http://dx.doi.org/10.2139/ssrn.3179727
[138] WIPO, WIPO Good Practice Toolkits for CMOs (January, 2018) [A working Document] at 3
[139] Act 690, *supra* note 5, ss 46

arrangement for the collection of royalties and for related matters.[140] Act 690 was amended so as to enable Ghana to be in compliance with World Trade Organization (WTO) Agreement on Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).[141]

Act 690 entitles authors, performers and producers of sound recordings and other copyright works the right to royalties where in any public place, by means of broadcasting, cinematography, jukebox or other apparatus, a sound recording or audio-visual work is used.[142] The owner of copyright is also entitled to collect royalties for the live performance of the copyright work or for the public performance of the recorded copyright work.[143]

This means that, musicians are entitled to royalty payment whenever their songs are used by persons or platforms such as TV and radio stations as well as internet platforms, especially for commercial gains.

There are currently three (3) CMOs in Ghana, and they include, Ghana Music Rights Organization (GHAMRO), which manages the rights of music rightsholders; Audiovisual Rights Society of Ghana (ARSOG), which manages the rights of audiovisual rightsholders; and CopyGhana (Reprographic Rights Organization) which manages the rights of literary rightsholders.

[140] Long Title to the Copyright (Amendment) Act, 2009 (Act 788).
[141] IFLA, "Country Report Ghana, Annual report to the IFLA CLM committee" (2012) Helsinki Finland. https://www.ifla.org/wp-content/uploads/2019/05/assets/clm/country-reports/2012/ghana-2012.pdf
[142] Act 690, *supra* note 5, ss 37
[143] *Ibid*

2.3 GHAMRO and its Rights Management Responsibility

Act 690 provides for the establishment of a collective administrative society that will act on the authority of the copyright owner to collect and distribute royalties and other remuneration accruing to the owner.[144] The expression in that provision of Act 690 that "Authors, producers, performers and publishers may form collective administrative societies for the promotion and protection of their interest"[145] appears to provide that leeway for individuals and groups to form their own collecting society instead of joining a centralized scheme. Nonetheless, in light of the operations of collective administration societies, Act 690 establishes that the minister of justice, whose office has now joined the office of the Attorney-General to make the Office of the Attorney General and the Ministry of Justice, may by a legislative instrument make Regulations for the formation, operation and administration of societies.[146] The Copyright Regulations of 2010, (L.I. 1962) is one such legislative instrument, and it is clear in the legislative instrument that collective societies ought to get approval from the minister before they can operate.[147] Thus, even though individuals and groups appear to have the right to form their own collective societies, L.I 1962 provides that such prospective collective societies must be subjected to an approval from the minister. This helps to add more structure to the operations of copyright societies in Ghana.

At present, as Acquah and Acquah-Nunoo have assessed, the Ghana Music Rights Organization (GHAMRO) is the collective administrative society that is statutorily mandated, by virtue of

[144] Act 690, *supra* note 5, ss 49(2)
[145] *Ibid*
[146] *Ibid*, 49(3)
[147] L.I 1962, *supra 88* Regulation 20

section 49 of 690 and L.I. 1962 to collect and distribute royalties accruing to authors and owners of copyright and neighboring rights.[148]

GHAMRO enjoys this statutory monopoly only because at present, it is the only music CMO that has received approval from the minister in accordance with regulations 20 of L.I. 1962. In pursuance of its duties of licensing rights, GHAMRO has engaged in licensing rights to various bodies and institutions in the country. It has also made steps in that regard on the international plane. Recently, GHAMRO has formed an agreement with Capasso, a digital rights licensing company, to collect the digital royalties for artists and right owners. The company provides monitoring systems to help track songs of Ghanaian right owners on digital platforms.[149]

Because Act 690 provides for civil proceedings and sanctions against infringers of copyrights, GHAMRO is enabled by the Act to enforce rights of its members. In a recent court action in 2021,GHAMRO, as a way to establish more rights for its members, was able to successfully hold a civil action against major telecommunication companies (Telcos).[150] Some of the reliefs that were granted by the court included the collection of royalties from the Telcos for public performance, accounting for revenues as generated from the public performance, the payment of 10% copyright royalties on revenues generated from the use of works that belonged to members of GHAMRO, among others.

[148] Acquah and Acquah-Nunoo, *supra* note 45 at 67.
[149] Kwame Dadzie, "GHAMRO partners other firms to track usage of songs produced by Ghanaians" *CITI NEWSROOM* (31 August 2021), online: https://citinewsroom.com/2021/08/ghamro-partners-other-firms-to-track-usage-of-songs-produced-by-ghanaians/
[150] Gabriel Myers Hansen, "Ghana: GHAMRO wins copyright case against telcos" Music in Africa (10 May 2021), online: https://www.musicinafrica.net/magazine/ghana-ghamro-wins-copyright-case-against-telcos

Acquah and Acquah-Nunoo reveal that as institutionalized as GHAMRO is within the copyright framework of Ghana, its functions appear to be inadequate because of major reasons like – the lack of financial capacity to fuel their objectives, the attitude and responses of its present and prospective members, and also the lapses when it comes to the enforcement of royalty allocations and distributions..[151] The authors reveal that not every musician understands the processes involved in how royalty payments work, and that even informs their decision to not be part of the membership of the organization. There are also a lot of passive members in the organization who do not register their new works with the organization, to help it easily track the usage of songs.[152] The study further revealed that GHAMRO can only be efficient if musicians register to enable the organization meet the needs of their members. Up-to-date equipment and software are needed to help fast track the collection of royalties on all platforms especially because, the absence of the equipment and the software makes tracking the usage in every part of the country very difficult.[153]

De Beukelaer and Fredriksson, on the other hand, reveal in their study that copyright revenues across African countries are both limited and hard to gauge.[154] They point out that there is a regulatory context that exists on paper, but it does not sufficiently nor adequately capture and reward the use of copyrighted works.[155] Where collective management organizations (CMOs) exist, they do not always communicate their revenues, operating costs and payments in a transparent and accountable manner.[156]

[151] Acquah and Acquah-Nunoo, *supra* note 45 at 70.
[152] *Ibid*
[153] *Ibid*
[154] Christiaan De Beukelaer & Martin Fredriksson, "The political economy of intellectual property rights: the paradox of Article 27 exemplified in Ghana" (2018) 46:161 Rev. Afr. Political Econ. 459 at 3
[155] *Ibid* at 3
[156] *Ibid* at 3

Adoma, assesses Ghana's regulatory framework for Intellectual Property (IP), including Act 690 and L.I. 1962 and points out that inasmuch as the country has the potential of exploiting the country's IP system to harness its domestic creativity and innovation, Ghana's IP protection and enforcement mechanism are weak and unable to tackle IP violations so as to create the space for owners to undertake more creative works.[157] The weak IP system and enforcement mechanism have thus resulted in incessant piracy of the country's IP products, music production..[158]

In one light, the weak IP system and enforcement mechanism can be attributed to the level of attention that is given to this branch of law by all the relevant stakeholders such as the courts, legislators, and even legal scholars. In an assessment of how the Ghanaian courts have, over the years, dealt with copyright jurisprudence in Ghana, McDave and Hackman argue that though copyright law is at its inception stage in Ghana, its development depends, to a large extent, on the attitude of the Ghanaian courts.[159] The authors then reveal that copyright laws in Ghana are yet to reflect the digital age, and this comment also goes to show how Ghanaian courts handle copyright cases as well, so that, for example, in the instance where a matter, brought before the courts, is not covered by the letter of the law, it is the attitude of the court that will draw us to a result. [160]

In other developing countries that are also yet to adopt appropriate copyright laws that will reflect the present challenges, attempts have been made by the courts to engage this branch of law in this era of internet and digital activities. Ibekwe and Owunabo observe that while the extant Copyright Act of Nigeria provides for the protection of copyright over musical works and sound recordings,

[157] Dennis Adoma, "The Role of Intellectual Property Rights Protection in Stimulating Creativity and Innovation: The Case of Ghana" (Master's Thesis University of Ghana, 2016) at 66
[158] *Ibid* at 67
[159] Kujo E McDave & Alexander Hackman-Aidoo, "Developing Copyright Law in Ghana: The Role of the Courts" (2019) 16:8 US-China L Rev 324.
[160] *Ibid* at 336

it still does not adequately provide for and cover the modern realities of the current digital era. That said, the courts are able to make interpretations on copyright infringements relative to digital audio files and works on the internet.[161] An example is given in the Federal High Court case of *Nigerian Copyright Commission v. Ononuju*[162] where it was held that downloading songs from the internet was an act of reproduction and as such, puts the person who downloads such works under liability where no authorization was sought. As it were, the principle in the decision reasons that the person who downloaded the song would have made a copy out of the original copy without seeking consent from the original right holder. It is this concept that makes it possible for online users to be liable for the infringement of copyright. It however begs the questions of what liability will be imposed on the platform owner.

2.4 CMOs on the International Front

Music is everywhere and it has the propensity to "unknowingly" travel to other parts of the globe. Its ubiquity is urged by the existence of digital production and distribution, which in turn makes it difficult to individually manage the rights of right holders. Local collective management organizations become members of international collective management societies so as to enable individual copyright owners to trace and collect remunerations due. A major example of International Collective Management Societies has to do with the International Confederation of Societies and Composers (CISAC).[163] International Collective Management Societies also rely on

[161] Ibekwe and Owunabo *supra* note 59 at 9
[162] (FHC/IL/1C/2013)
[163] Unlike Canada's Society of Composers, Authors and Music Publishers of Canada (SOCAN) which is a full-time member, Ghana's GHAMRO is only a Provisional member subject to the full-time admission by the organization. See; CISAC, *Member Directory* 2022. Online:

worldwide databases of identification data which is to enable members to identify the various works that have been licensed to them under reciprocal representation agreements with other CMOs that are in other territories. As Emokpae has provided, when reciprocal agreements as under the International CMOs are in place, what happens is that in the event where musical works cross boarders, the foreign CMO is able to match the dataset against ownership data so as to attribute the royalties to its local CMO, who then transfers it to its rightful owner.[164]

As a unique response to the existing fact that online music is accessible across the globe, and that all right holders in a musical work are entitled to the use of their works across territories, it has become imperative for CMOs to enter into multi-territorial licensing.

Panda and Patel observe that for instance, the 1961 Rome Convention for the Protection of Performers, Producer of Phonograms and Broadcasting Organizations was established to expand the coverage of individuals who also have an interest in musical works, since the Berne Convention especially emphasizes mainly on authorship without the interests of other contributors involved in the creative process.[165]

Thus, over the period international CMOs such as the CISAC, IFRRO[166], and at the European level, the AEOP[167] have sprung up to galvanize the economic interest of a much larger base of copyright owners, including performers, in the digital environment. Locally, in Ghana, GHAMRO combines the administration of the different rights for various copyright owners, such as

https://members.cisac.org/CisacPortal/annuaire.do?method=membersDirectoryList&by=country&domain=&alpha=C

[164] Emokpae *supra* note 137 at 12

[165] Aurobinda Panda & Atul Patel, "Role of Collective Management Organizations for Protection of Performers' Right in Music Industry: In the Era of Digitalization" (2012) 15:2 J World Intell Prop 155.

[166] The International Federation of Reprographic Reproduction Organization (IFRRO)

[167] The Association of European Performers Organizations (AEPO)

composers, performers, record companies, producers, among others. This is significantly different from other Jurisdictions, like Australia and the United States of America, who have organizations purposely set to manage the interests of individuals within the area of performing right.[168]

3.1 The Role of the Court in the Protection and Enforcement of musical works

In Ghana, the formation of a general copyright law regime that recognizes the works and creative abilities of Ghanaian authors and owners has been a slow and laborious process that is characterized by the incessant demands by stakeholders for stronger legal regime within this area of law. Amegatcher points out that, literacy in Ghana took a much slower pace in coming, and this pace in turn influenced the point at which the understanding of copyright protection could make any headway in Ghana..[169] The Ghanaian copyright regime traces its foundation from the British Parliament, through the Imperial Copyright Act of 1911, and as would be expected, the Act did not have any impact on local situations.[170] The fixation of the people or the state of affairs in the country settled on land cases, succession and contract as this was evident in the law reports at the time.[171] Consequently, Ghanaian law reports were scarce on issues and cases of copyright, and it was not until 1964 that copyright cases were reported in the law reports.[172]It is undeniable that

[168] For Australia, there are the Australasian Performing Right Association (APRA) and the Phonographic Performance Company of Australia (PPCA); in the US, there are the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music Inc (BMI);
See: Jui Uday Dongare & Tulika Kaul, "Music Modernization Act in the United States" (2019) 6:8 Ct Uncourt 2.
[169] Andrew O. Amegatcher, *Ghanaian Law of Copyright*, 2nd ed (Accra: Omega Law Publishers, 2013) at 4
[170] *Ibid*
[171] *ibid*
[172] *ibid*

there remains a number of areas that still requires attention and effective construction and structure, even particularly with the protection of musical works.

Indeed, the role of the judicial system must not be underestimated in that search for an effective legal regime.[173] It thus becomes also imperative to emphasize that the judicial practice of the courts in Ghana on the development of an autonomous, effective copyright law for the benefit of music owners cannot be denied.

The role of the court to contribute to a stronger copyright regime through interpretation and judicial opinion can be well assessed when it is gauged with the volume of cases that are brought before it.[174] Indeed, the court's role can either provide precedents to regulate similar subsequent copyright activities, or assist the legislature to fill the gaps it had previously left. As it stands, currently, the volume of cases on copyright, and specifically copyright of musical works, is very small, compared to other cases of the other areas of law that are decided on by the court.[175] This can inform us about the relatively small contribution of the Ghanaian courts in the advancement of a copyright regime.

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[173] Martin Senftleben, "Bermuda Triangle – Licensing, Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market." (April 4, 2019). at 16 Available at SSRN: https://ssrn.com/abstract=3367219 or http://dx.doi.org/10.2139/ssrn.3367219

[174] See, Iskra Akimovska Maletic & Dragan Gocevski, "Second Instance Administrative Commissions and Administrative Commissions and the Administrative Courts Efficiency in the Republic of North Macedonia" (2020) 6:2 J Liberty & Int'l Aff 10

[175] The author received an official report from the Registrar of the High Court Registry, Accra, Commercial Court Division (Mr. Stephen Afotey) from November -December 2021. The report indicated that Intellectual Property, Patent, and Copyright are subsumed into one category. In November 2021, no case was filed at the Pre-Trial stage nor was there a case filed at the Trial stage. As at December 2021, only 3 cases were pending at the pre-trial stage and 12 cases were pending at the trial stage, just 1 case that was disposed off.;
A cursory search on one of Ghana's legal databases, Dennis Law, with the keyword "Copyright Music" reveals that only 16 cases make such reference, all of which are from the superior court. Out of the 16 cases 3 of the cases are made relevant in this research – CFAO v Archibald, Copyright Society of Ghana v Afreh, Tornye Amedume v Juliet Asante and Eagle Production and Charles Uche Ayika Chinedu Samuel Uguchukwu v Mr. Kwesi Twum Multimedia Group Limited.

That notwithstanding, the courts are given the genuine task through the available cases that are brought before it to put their judicial and interpretative spin on it albeit the limited scope it tends to grapple with. Over time, this becomes useful especially in the instances where ambiguities in the law and gaps that are left by the legislature are detected, as the courts are given the opportunity to rectify the challenge with the ultimate goal of facilitating the adaptation of the legal regime to new circumstances. As it were, these ambiguities and gaps in the law can come about when the intent of the drafters did not take into account the occurrence of certain events in the future that ultimately influence the regime.

With a limitation of the dearth of case laws on the copyright protection of musical works, the development of this section will, nonetheless, be done by the identification and analysis of selected cases that touch on or make reference to relevant areas such as the exclusive rights of communication to the public, as well as the economic interests of owners through the operations of royalties. This will be key in giving the reader an idea on the extent of protection for musical works. The light will also be thrown on the attitude of the court when it is confronted with instances where gaps and ambiguities in the law are detected. An appreciation of the attitude of the court can assist in drawing an inference on where the court stands when it come to the development of the copyright regime in Ghana.

3.2 The scope of protection of musical works in the view of the courts

In *Rex Owusu Marfo v Joy Industries Ltd,*[176] the court recognized the power of internet and radio station to enable the worldwide coverage of musical works, and as such saw the need to determine

[176] Rex Owusu Marfo v Joy Industries Ltd (2021) JELR 108998 (CA) [*Joy Industries*]

the question of copyright infringement that costs the economic interest of the owner whose work has been communicated to a large public.

In this case the respondent claimed that the appellant's failure to obtain permission or license from him before using part of his work to advertise its product on the internet and on radio stations constituted a breach of his copyright. The appellant claimed that even though, admittedly, the tune or melody of the song for the advertisement was the same as that of the respondents, to the extent that the lyrics of both works were different, the appellant couldn't be said to have infringed on the copyright of the respondent to the melody. Thus, to arrive at a decision, the court of appeal had to determine whether the copying of the tune of another's song with a change of the lyrics amounted to copyright infringement. The court stated that in order to determine whether a song of one person has been reproduced by another person, it is the tune which is the most important consideration.[177] To this effect, the court ruled in favor of the respondent, on the basis that his tune and music had been reproduced and as such deserved to be compensated by way of damages for broadcasting his works on the various media platforms without his permission. As the court put it, once a case of infringement of copyright is established, the right owner is entitled to damages per se, without proof of actual damage.[178]

From this case, it will be interesting to know how the court would have ruled in respect of a copyright infringer on the internet whose identity was unknown or even if known, was not a Ghanaian person or company. In this case, the court did not have to grapple with the difficulty of having to enforce copyright against an infringer whose identity was unknown since the parties involved were known and were Ghanaians as well. And again, the defendant could be easily traced,

[177] *Ibid* at para 17
[178] *Ibid* at para 27, per Anthony Oppong JA.

sued and made to pay for the damages. The court's jurisdiction to even rule on the matter would have been called into question had there been the case that the infringers were foreign nationals and were using their platform to advance the infringement in question.

Indeed, the reliance of information of the ownership of copyright is vital in the role collective societies play in royalty apportionment given as they are required to trace the owners of workers whose works are identified on any platform.[179]

Bearing in mind that it is possible for a party to assign or transfer the copyright in a work to another, the courts pay attention to the kind of agreement between parties in order to determine the owner of a musical work at any point. As the courts have ruled, this becomes necessary so that on any platform or distribution stage that a musical work is found, the rights, royalties and any other benefits that come with copyrighted works are assigned to their rightful owners. In *Musicians Union of Ghana v Abraham and Another*,[180] the high court advised that it is not necessarily the case that a person who composed a musical work was, in all circumstances, the owner of the work. In this case, where a group of bandsmen had been employed by a company to be put into a band, managed and sponsored by the band to compose and perform songs, the court held that the musicians as individuals or collectively could not own the band.[181] As it were, the copyright remained in the employer and as such is the one entitled to receive royalties when the work is played or published.

This position is now given a statutory backing in section 7 of the current copyright law, Act 690, and over three decades later from when the principle was referenced, the court of appeal in *Tornye*

[179] Emokpae, *supra* note 137 at 10
[180]Musicians Union of Ghana v Abraham and Another (1980) JELR 64217 (HC)
[181] *Ibid* at para 8

Amedume v Juliet Asante and Eagle Production[182] noted that as an exception to the ownership of copyright, which by law is vested in the author or the person who created the works, in the absence of an agreement or contract to the contrary, the economic rights of a work shall vest in an employer or a person who commissions the works in the instance where the work was created in the course of the employment or commission.[183]

Also on the issue of defining the scope of persons who are entitled to royalties of a musical work, for which GHAMRO were to pay particular attention to when performing their duty of issuing royalties to copyright owners, the High Court in *Bright Onyina v Mr. Kwarteng Waked*[184] reasoned that through a license agreement, section 9 which provided for the transfer of copyright, was clear on the point that apart from moral rights, the owner of copyright could transfer his economic rights to another person. In this case, one of the specific issues that was to be addressed by the court was whether or not upon the intestacy of the owner of a musical work, a customary successor, who was appointed by the family[185] and whose rights and duties were recognized under customary law was entitled to receive royalties from GHAMRO.

The court specifically pointed out that indeed, according to section 9(3) of Act 690, copyright may be transferred by a testamentary disposition or by operation of law in the event that the owner of the work is deceased. Thus, in the absence of an actual transfer of copyright by the owner who dies intestate, it is the operation of law that must prevail. The court ruled that a customary successor does not automatically become the copyright owner of a deceased person's protected works. The

[182] Tornye Amedume v Juliet Asante and Eagle Production DennisLaw [2013] DLCA8146
[183] *Ibid* at para 32
[184] Bright Oyina v Mr. Kwarteng Wakedi (2018) JELR 69690 (HC) [*Bright Oyina*]
[185] The concept of family in the Ghanaian customary sense extends beyond the nuclear family to include individuals found in the lineage of a person. See the Ghanaian case of: Oppong Kofi and others v Awulae Attibrukusu III [2011] 1 SCGLR 176; Okwan v Amankwa II [1981] GLR 417.

rationale the court gave was that, so long as the rights are by virtue of section 12 of Act 690 protected for seventy year after the death of the author, by operation of law, it is the beneficiaries of the deceased who are entitled to the economic rights, and not the customary successor.[186] To give effect to the operation of law that purposively covered the beneficiaries to the deceased's musical works, the court applied the Intestate Succession Law[187] to hold that a customary successor could not bypass a surviving spouse, children or parent to receive royalties from GHAMRO.

3.3 Gaps and Ambiguities in the Copyright Law: The Attitude of the Court

In the absence of a specific law or provision in a statute that would directly tackle specific issues of public performance and/or communication to the public of musical works, which in effect will secure the collection of royalties by collective management societies for owners of musical works, the court is seen to prioritize the economic interest of the owners. In *Copyright Society of Ghana v Afreh,*[188] the copyright society of Ghana (COSGA), the erstwhile statutorily-backed collective management society, filed an action in court for the determination of whether it had the power to levy a beer bar keeper for playing recorded music at the beer bar. The position of the respondent that COSGA was not entitled to collect any such levy was grounded on the following; i) that beer bar operators pay purchase tax on each musical work, ii) that the bar operators also pay income tax and local administration fees, and that iii) the operators do not stage concert at beer bars. Thus, just on the basis of those grounds, COSGA's attempt to collect any form of royalty or levy from

[186] Bright Onyina *supra* note 184 at para 72
[187] Intestate Succession Law, 1985 (PNDCL 111); ss 13
[188] Copyright Society of Ghana v Afreh [1999-2000] 1 GLR 135

them would amount to double taxation. The trial judge, remarked that the copyright legislation at the time, i.e., PNDCL 110, did not contain any clear-cut provision on the question of law before her, – the question of law being, whether drinking bar operators were liable to pay royalties for playing musical work on radio cassettes under the law. Consequently, the judge ruled that in giving effect to the laws at the time, no author of a musical work or any CMO, for that matter, has any right to claim royalties for any musical work from any member of the Drinking Bar Operators Association of Ghana.

On appeal, the court of appeal in giving effect to the authorial intent at the core of the copyright law set aside the decision of the Trial Judge. The court per Twumasi JA, pointed out that the best approach to the determination of the question of law posed by the appeal called for a holistic interpretation of the copyright law. To do so the court assessed the combined legal effect of *section 1 of PNDCL 110* which provided that, "the author of any work as specified in the law shall be entitled to copyright"[189], and section 6 (1) of PNDCL 110 which confers on all authors of musical works "the exclusive right to authorize the communication of their musical works to the public by performance, broadcasting or any other means." The court concluded the analysis by making reference to section 42 of the PNDCL 110 which essentially recognized the remuneration, in the form of royalties, that any person who creates a musical work is entitled to. From the forgoing, the court held that on a "proper construction"[190] of section 6(1)(C) of PNDCL 110, "COSGA had every right to surcharge any drinking bar operator or hotelier or any business of such kind, royalties

[189] *Ibid* at para 11

[190] The phrase "proper construction" used by the court of appeal in its bid to make a sound decision, while being cognizant of the fact that there were no specific laws applicable to the matter, goes reinforce the point on how the court even in the absence of specific provision are to interpret the law to give effect to its purpose.

for playing musical work on a radio cassette or any other means at the such places."[191] The rationale given by the court was that playing music to the hearing of members of the public buying and drinking at the said places constitutes communication of musical work to the public.[192] The court of appeal maintained what the beer bar did amounted to public performance which attracted copyright infringement when such performance is unauthorized.

On how the courts went about in construing the provisions in the copyright legislation to arrive at a decision, it is, nonetheless, worthy to point out the attitude of the trial court in the course of rendering a decision, the object of the appeal. This can be essential in the ongoing discussion on finding solutions to strengthen the copyright regime in Ghana. The trial court could not rule in favor of the COSGA because according to the learned judge, and possibly using a literalist interpretative approach, the law did not contain any clear-cut provision that was to make bar operators and businesses of such kind to pay royalties. The point having been made, however, and even granted that indeed it could not improvise any purposive interpretative spin to the case before it, the trial court still saw the need in its decision to advocate for copyright reform in the country to fill gaps that was identified.

When it comes to the solution to the problem of enforcing the rights of authors whose works have crossed boundaries and used in other jurisdictions, the court of appeal in *Charles Uche Ayika Chinedu Samuel Uguchukwu v Mr. Kwesi Twum Multimedia Group Limited*[193] stressed that it is significant for the domestic laws on copyright to be extended to other jurisdictions through multi-

[191] Afreh *supra* note 187 at para 17
[192] *Ibid*
[193] Charles Uche Ayika Chinedu Samuel Uguchukwu v Mr. Kwesi Twum Multimedia Group Limited (2019) JELR 64818 (CA)

national agreements and compliance to international standards so as to give effect to rights that are accrued on other jurisdictions.

Assessment

An assessment on how the copyright laws of Ghana protect musical works on internet has been provided for in this Chapter. What this chapter has significantly revealed is that, the Copyright Act of Ghana, 2005 (Act 690), does not specifically address copyright activities and infringements, on the internet, nor the exclusive right of communication to the public by telecommunication. That notwithstanding, for the past 17 years since Act 690 came into existence, the interpretative duty of the courts has come in handy, but only in just a few instances. The questions still remains whether or not Ghana's copyright regime does an effective job with respect to a potent response to copyright activities and infringements on the internet. The next chapter, will give an account of how the European Union's Copyright regime addresses copyright issues on the internet. This will provide a comparative measure in a discussion of the appropriate copyright regime for Ghana when it comes to online works.

CHAPTER FOUR

ARTICLE 17 OF EU'S COPYRIGHT DIRECTIVE

Introduction

The European Union (EU) Directive on the Copyright and related rights in the Digital Single Market, lays down rules to harmonize pertinent rules of copyright and associated rights in the context of the internal market, considering digital and cross-border usages of copyrighted contents. Thus, Article 17 basically presents a provision that seeks to prohibit unauthorized online copyrighted materials.

This section examines Article 17 of EU's Copyright Directive to inform readers on the scope of the provision, its applicability and relevance, as well as the constraints or otherwise in its implementation. The overall aim of this section is to assist later discussions on finding the ideal copyright framework for Ghana. This aim is predominantly informed by the fact that Article 17 of the EU Copyright Directive introduces a new separate exclusive right to communicate to the public by telecommunication whenever works are made accessible through an online platform.

1.1 Article 17: The Direct acts of Communication to the Public by OCSSPs

Given the sensitive role it seeks to play, especially in a rather prevalent time where internet and its activities is the order of the day, Majumdar is clear on the position that Article 17 of the EU's

Directive on Copyright in the Digital Single Market (CDSM Directive)[194] constitutes one of the controversial parts of the Directive.[195] The European Copyright Society remarks that to the extent that EU Member Nations must reflect the provision into their domestic law, Article 17 remains most controversial.[196] In spite of such controversies and complexities, Article 17 is held to be a very essential provision that addresses the pervasive copyright issues on the internet. On this point, Husovec and Quintais provide that Article 17 is comparable to a major policy experiment whose goal is to tackle the "value gap" which is seen in the disparity between the value derived by Online Content-Sharing Service Platforms (OCSSPs) that permit their users to upload copyright-protected works, and the revenue they pay to right holders.[197] The authors maintain that the overarching aim of the provision is to compel OCSSPs into licensing arrangements so as to redistribute the profit generated.[198]

According to Majumdar, one of the significant mechanisms by which Article 17 of the Directive attempts to bridge the value gap is by holding online contents sharing providers accountable for copyright infringement for having copyrighted contents on their platforms.[199] In the discussion of the conditions that mandates online intermediaries are to take measures to ensure that copyright violations are not perpetrated through their services, Geiger and Jutte also add that Article 17

[194] EC, *Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC* [2019] OJ, L 130
[195] Sandip Majumdar, "Directive (EU) 2019/790 of the European Parliament and of the Council: Overhaul of European Union's Copyright Rules: A Study." (2020) Libr. Hi Tech News 11 at 11.
[196] European Copyright Society, "Comment of the European Copyright Society on Selected Aspects of Implementing Article 17 of the Directive on Copyright in the Digital Single Market into National Law" (2020) 11:2 J Intell Prop Info Tech & Elec Com L 115 at 115.
[197] Martin Husovec & João P. Quintais, "How to License Article 17? Exploring the Implementation Options for the New EU Rules on Content-Sharing Platforms under the Copyright in the Digital Single Market Directive." (2021) 70:4 GRUR Int. 325 at 326
[198] *Ibid* at 326
[199] Majumdar *supra* note 195 at 12

CDSM Directive redesigned the liability regime for Online-Content sharing Providers and made them a specific class of intermediaries.[200] This is so because, as Husovec and Quintas have observed, while these platforms generate valuable economic and social benefits, they have also contributed to the unauthorized distribution of copyrighted contents.[201]

Ultimately, Dusollier remarks that even though the success in safeguarding the digital single market it promises might come slow, the Directive has much more to offer in the sense of how Article 17 is positioned to lessen a perceived injustice in the exploitation of contents online.[202]

Article 17 (1)[203] provides:

"Member States shall provide that an online content-sharing service provider performs an act of communication to the public or an act of making available to the public for the purposes of this Directive when it gives the public access to copyright-protected works or other protected subject matter uploaded by its users."

"An online content-sharing service provider shall therefore obtain an authorisation from the right holders by concluding a licensing agreement, in order to communicate to the public or make available to the public works or other subject matter."

According to Geiger and Jutte, Article 17 of the Directive mainly creates a legal system based on collaboration between right owners and online users.[204] The authors further posit that pursuant to

[200] Christophe Geiger & Bernd J. Jütte, "Platform Liability Under Article 17 of the Copyright in the Digital Single Market Directive, Automated Filtering and Fundamental Rights: An Impossible Match." (2021) 70:6 GRUR Int. 517 at 519.
[201] Hovec and Quintas *supra* note 197 at 325
[202] Séverine Dusollier, "The 2019 Directive on Copyright in The Digital Single Market: Some Progress, A Few Bad Choices, And an Overall Failed Ambition." (2020) 57:4 Common Mark. Law Rev. 979 at 1008
[203] EU Copyright Directive *supra* note 18
[204] Geiger and Jutte *supra* note 200 at 519

Article 17(1), one of the roles of Online-Service Providers (OCSSPs) in this cooperative venture is seen in their performance of pertinent acts of communication to the public relative to contents that are shared on the platforms by users.

The definition for an Online Content-Sharing Provider is provided under section 2(6) of the Copyright Directive. It states that:

"Online content-sharing service provider' means a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes"[205]

To make the definition complete, the provision further excludes some providers of services from being an OCSSP properly so called within the remit of the provision. These providers include non -profit online encyclopedias, non-profit scientific and educational sources, open-source software-developing and sharing internet spaces, electronic communications service platforms as explained in Directive (EU) 2018/1972, online markets, business-to-business cloud services, and other cloud platforms that permit customers to upload their personal content.[206] Dusollier stresses on the point that the exclusion of these providers does not automatically put them in the spot where if such platforms allow access to copyright-protected content online, they could not be found culpable for violating copyright laws..[207] Stedman also provides that there might be other services which are

[205] EU Copyright Directive *supra*, note 18
[206] *Ibid*
[207] Dusollier *supra* note 202 at 1012

not explicitly stated to be excluded OCSSPs per se but due to the nature of their existence, they would fall outside of the definition.[208]

Dusollier gleans from the definition in Article 2(6) to make the point that, a provider must meet two vital requirements in order to qualify as an OCSSP. Firstly, the primary aim of the service is to provide access to a large amount of contents shared by users. Furthermore, these publicly shared contents are structured and promoted for the purposes of making profit.[209] However, the author provides that the reference to a "large amount" of copyrighted contents appears to be unclear and uncertain which gives room for several interpretations which in the end may defeat the potency of the liability regime the Directive seeks to create. Nonetheless, Dusollier reasons that the determination of whether a service is captured by the definition would be concluded on a case-by-case basis and be dependent on several elements, such as the audience of the service and the number of copyrighted works it grants access to.[210] The reference to "a large amount of copyright-protected works or other subject matter" shows that not every online platform with certain User-Generated Content (UGC) characteristics is by default, subject to the new liability rule following from Article 17 DSMD.[211]

Husovec and Quintais make the point that by virtue of the definition of OCSSPs as platforms with a profit-making goal that keep and grant the public access to a large number of contents, a perfect example will include YouTube as well as other social networking platforms with similar functionalities such as Facebook.[212] Quintais confirms the inclusion of Youtube and Facebook and

[208] Michael Stedman, "Mind the Value Gap: Article 17 of the Directive on Copyright in the Digital Single Market." (September 1, 2019). at 17 Available at SSRN: https://ssrn.com/abstract=3810144 or http://dx.doi.org/10.2139/ssrn.3810144
[209] Dusollier *supra* note 202 at 1011
[210] Ibid at 1011
[211] European Copyright Society *supra* note 196 at 117
[212] Husovec and Quintais *supra* note 197 at 327

also broadens the inclusion for platforms, such as Vimeo and other of user-upload platforms that fall under this extensive definition and is particularly not exempted in the provision's non-exhaustive list.[213]

Gieger and Jutte, on their interpretation to Article 17(1) provide that the law will deem certain acts performed by OCSSPs as acts of communication to the entire public or making accessible when their customers upload works that are copyright protected.[214] Thus, for such actions, it is imperative on them to obtain from the actual rightsholders of the work who could either be the users themselves or third parties. And such authorization, which could be by means of licensing will shield acts of communication to the public by the users of online platforms.

Husovec and Quintais on their comparative analysis of the various EU copyright legislations observe that, prior to the new Directive in which Article 17(1) applies, user-upload avenues were mainly qualified as hosting service providers with no legally mandated role of seeking authorization from rightsholders.[215] These platforms were not directly responsible for communicating protected works to the public. What it rather meant was that rightsholders would usually have to be the one to identify and alert invading contents, while providers assessed these notifications and remove the content where necessary. However, the authors observe that due to the changes introduced by Article 17, OCSSPs are directly responsible for their users' uploads independently of their awareness of the illegality of the act. As a result, the provision forces OCSSPs into licensing negotiations.

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[213] João P. Quintais, "The New Copyright in the Digital Single Market Directive: A Critical Look." (2019) 2020(1) (Forthcoming) EIPR at 17. Available at SSRN: https://ssrn.com/abstract=3424770 or http://dx.doi.org/10.2139/ssrn.3424770

[214] Geiger and Jutte *supra* note 200 at 530

[215] Husovec and Quintais *supr*a note 197 at 327

Moreno thus draws in the point that pursuant to Article 17 (1), signatory countries must clearly state in their national regulations that an OCSSP could be said to have made a copyrighted content or other subject matter public if it grants the public access to these uploaded works.[216]

1.2 Mandatory Licensing Agreement between OCSSPs and Rightsholders

Significantly, the second part of Article 17 (1) and the whole of Article 17(2) require OCSSPs to attain permission from rightsholders including by reaching a licensing agreement with them. According to Dusollier, this licensing agreement gives the copyright owner that leverage to retrieve compensation for the use of the worth of their work on the platforms. By virtue of that, the author adds that the licensing agreement relieves the present imbalances between the remunerations yielded by some online platforms and the absent or inadequate compensation received by the creator.[217]

Senftleben, however, exposes a downside that comes with the licensing negotiation process. The author remarks that an online platform that has to secure a license for UGC is burdened with a massive licensing duty essentially due to the fact that whereas it is impossible to predict the content users will upload, the license is expected to include the whole range of potential posts.[218] And so, while the licensing obligation placed on the online content platform may be useful for users (whose actions would be within the scope of the license and, thereby, not making it an infringement), it creates a rights clearance assignment which online service providers may be unable to complete.[219]

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[216] Felipe R. Moreno, "'Upload filters' and human rights: implementing Article 17 of the Directive on Copyright in the Digital Single Market" (2020) 34:2 Int. Rev. Law, Comput. 153 at 155
[217] Dusollier *supra* note 202 at 1013
[218] Senftleben *supra* note 173 at 3
[219] *Ibid* at 3

Even Dusollier acknowledges this downside whereby the process of obtaining a license might be difficult for OCSSPs. The author argues that in the sense of an exclusive right, it stands to reason that the approval needs to be acquired before indulging in the, otherwise infringing, activity. Nonetheless, the operator whose responsibility is to obtain the license is not the one partaking in the activity, and will likely not be in the best of positions to be aware before the content is uploaded to the platform by an online user whether or not it is subject to copyright and consequently would need to be cleared. This would then create daunting activities during the licensing negotiation phase. To this end, the author makes it clear that obtaining a license for all contents that could be uploaded by users, for all rights involved and from all key rightsholders, is an enormous task.[220]

According to Bernal, there are diverse likelihoods for licensing, and they include the following: "*1) direct single licensing from copyright-holders to OCSSPs, which would automatically include users (Article 17.2); (2) indirect single licensing from copyright-holders to users; and (3) collective licensing, by voluntary licensing and extended collective licensing, mandatory collective licensing, and statutory licensing and hybrid remuneration*". The author argues that a mixture of these approaches is essential to license majority of the content that users put on the platforms of OCSSPs.[221] For as it were, direct or indirect single licensing is impractical to obtain such an umbrella license. Consequently, the attitude of gravitating to a blend of these and collective licensing by willingly licensing and extended collective licensing must be ideal way to go.

[220] Dusollier *supra* note 202 at 1014
[221] Michael S. Bernal, "Mind the Value Gap: Article 17 of the Directive on Copyright in the Digital Single Market" (2019) at 29. Available at SSNR: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3810144

1.3 Avoiding Liability under the "Best Effort" principle

The core duties of OCSSPs have been made clear that they shall secure an authorization from rightsholders if they do not want to be held liable. This duty makes them directly liable for all infringements committed by their users as compared to when they would have been merely secondarily liable for those infringements in the previous Copyright Directive. However, as the comments of the European Copyright Society have shown, if Article 17(1) and 17(4) (a) are considered together the rights and responsibilities of the rightsholder and the OCSSP appear to be more nuanced.[222]

Article 17 (4)[223] states:

"If no authorization is granted, online content-sharing service providers shall be liable for unauthorized acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter, unless the service providers demonstrate that they have: (a) made best efforts to obtain an authorization; and (b) made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information; and in any event; (c) acted expeditiously, upon receiving a sufficiently substantiated notice from the rightholders, to disable access to, or to remove from their websites, the notified works or other subject matter, and made best efforts to prevent their future uploads in accordance with point (b)".

[222] European Copyright Society *supra* note 196 at 118
[223] EU Copyright Directive, *supra* note 18

Husovec and Quintais provide in their study that per the Article 17, direct liability for all contents uploaded on online platforms are imposed on OCSSPs. Nonetheless, two significant avenues avail OCSSPs to avoid liability; The first avenue has to do with the legal default which consists of an OCSSP gaining an authorization to share to the public the content uploaded by online users, which is established in Article 17(1). On the other hand, however, if no authorization is obtained, OCSSPs can depend on an alternative avenue, what they call preventative obligation, to evade direct liability – that is, they must adhere to the three conditions in Article 17(4).[224]

These avenues are essentially what Geiger and Jutte mean when they state that "*Article 17(1) and (4) are systematically linked, whereby the former establishes primary liability for acts of communication to the public jointly committed by the OCSSP and its users, which morphs into secondary liability if the OCSSP has failed to obtain the necessary licenses*".[225]

The European Copyright Society provides a situation in which Article 17 (4) (a) may be applicable, and that would have to do with if the OCSSP has reached an agreement regarding licensing. In such a case, it may not be subject to liability - and as a result keep copyrighted contents on its platform without authorization" – so long as it strives to obtains a licence through best efforts.[226]

Husovec and Quintais reveal that it stands to reason that obtaining direct authorizations from all potential rightsholders in the world whose content may be uploaded by a user of a platform is difficult. That may require clearing authorizations for several works of diverse kinds uploaded by online users.[227] They thus reason that, since OCSSPs may have no knowledge on the content users

[224] Husovec and Quintais *supra* note 197 at 329
[225] Geiger and Jutte *supra* note 200 at 530
[226] EU Copyright Society *supra* note 196 at 119
[227] Husovec and Quintais *supra* note 197 at 329

may upload on their platforms, their responsibility to license is restricted by an idea of “best efforts to attain an authorization” in Article 17(4)(a).[228]

The concern now becomes what possible constituents fall within the question “best efforts” in this regard. The European Copyright Society remarks that a position is for the OCSSP to actively identify every item of protected material and its rightsholder and offer adequate license conditions.[229] This would include a general monitoring commitment for all contents that are uploaded. Whereas the other extreme position is to compel the rightsholders always to make the initial effort to inform the OCSSP that the copyrighted content is accessible without a license (or even offer a license?). To this end, the society states that, this may result to an elucidation of "best efforts" which would permit OCSSPs simply to respond to rightsholders. The Society is, however, quick to announce that it is important for Legislators and judges, in their implementation of the provision to evade such extreme positions and rather outline feasible methods, which stabilize the interests of all stakeholders. In that vein, a possible consensus could be that OCSSPs must communicate with rightsholders who are publicly known and begin negotiations on the terms of licensing.[230] This would encompass collective management organizations (CMOs) but also key rightsholders, which are recognized in the market space for those contents. Once the OCSSP has provided thoughtful negotiations on license agreements, the discretion lies with the rightsholder to offer the OCSSP with the requisite data on the content owned or being represented. The society further provide that in the event that the protected content and the specific rightsholder are not known to the public, for instance as a result of the fact that the rights are held by small companies or even due to the fact the rightsholders in question have no collective representation, the concept

[228] *Ibid*.
[229] European Copyright Society *supra* note 196 at 119
[230] *Ibid*

of “best efforts” should not warrant far-reaching monitoring and examination actions. It will be enough if the OCSSPs respond promptly to a notice by the rightsholder. The advantage is that small rights holders will be encouraged to get representation in Collective Management Organizations or other collective entities.

According to Dusollier, Article 17(4)(b), which is the second standard of the duty of care OCSSPs front when it comes to their relation with rightsholders, ensures that OCSSPs have to stop contents and other subject matter that have been properly identified and objected to by rightsholders from being uploaded.[231] To this end, Dusollier articulates that this provision in question has been equated to content filtering.[232] The European Copyright Society provide that Article 17(4)(b) utilizes a broad, technology impartial language.[233] The society further remarks that, per the provision of Article 17(4)(b), all signatory countries will be counseled to enforce a technology-neutral provision which may encompass filtering technologies so far as they are a representation of high industry standard of professional diligence. The society also cautions that member states should desist from labelling filtering technologies as the only available means to conform with Article 17(4)(b).

The European Copyright Society explains that Article 7 (4) (c) is comparable to the known concept of notice-and-take-down where the OCSSPs is required to disable access to copyrighted works after they have been notified by the rightsholder that their works are being infringed upon. The society further explains that according to Article 7(4)(C), OCSSPs must not only restrict access to the precise material reported by the rightsholder but they must also work to stop these contents

[231] Dusollier *supra* note 202 at 1016
[232] *Ibid*
[233] European Copyright Society *supra* note 196 at 120

from being uploaded in the future, and they can be temporarily achieved using filtering technologies.[234]

Geiger and Jutte remark that this attitude establishes a system known as "notice and stay down" mechanism. To wit, after receiving validated notification from the rightsholder, an OCSSP must immediately act to restrict access to, or delete from their platforms, the notified contents, and make efforts to block future uploads of the contents.[235]

It also becomes important to establish the conditions the OCSSPs must take into account in order to satisfy the obligations under Article 17 (4), and this dovetails into Article 17(5) which provide that:

"In determining whether the service provider has complied with its obligations under paragraph 4, and in light of the principle of proportionality, the following elements, among others, shall be taken into account: (a) the type, the audience and the size of the service and the type of works or other subject matter uploaded by the users of the service; and (b) the availability of suitable and effective means and their cost for service providers."

Moreno draws in the code of proportionality as the principle that fronts Article 17(5) because it takes into the account the fact that industry and work standards may be different comparatively and as such this principle informs stakeholders on how to manage copyright infringement cases.[236] That is also to say that relying on the type of work and its respective consumers, various means to preclude unlawful material could be suitable and balanced.

[234] *Ibid* at 122
[235] Geiger and Jutte *supra* note 200 at 530
[236] Moreno *supra* note 216 at 156

The European Copyright Society reveals that the implementation of this testing scheme involves all stakeholders, including the courts. In the society's analysis it is provided that according to Article 17(5), courts should take into account "the type, the audience and the size of the service, the type of works or other subject matter uploaded by the users of the service", as well as criteria, such as the degree of specialization of the OCSSP in types of content, the shared organization or disintegration of rights, among others.[237] Nonetheless, all required measures from OCSSPs and rightsholders must conform with the principle of proportionality so that if it does not resonate with that principle then it cannot be workable. It further adds that the value of the information delivered by the rightsholder will play an essential role.

1.4 A leeway for small OCSSPs to avoid direct liability

Article 17(6) gives some leeway for new and small service providers who may be inexperienced in the industry dynamics or may not have the capacity to handle the full demands of the Copyright Directive to operate without being held fully accountable. As Husovec and Quintais observe, Article 17(6) contains a limited exemption to this regime, to the advantage of OCSSPs that are "new to the provision of online services with minor turnover and audience. Although these new service providers remain covered by the regime in Article 17, they are subject to lessened obligations, as compared to their larger counterparts, in order to be beneficiaries of the liability exemption system in Article 17(4).[238] They are still subject to injunctions and other penalties if their services are utilised by a third-party users in an unauthorized manner. It important to note

[237] European Copyright Society *supra* note 196 at 120
[238] Husovec and Quintais *supra* note 197 at 330

that these small-scale OCSSPs must have the qualification of being in existence for less than 3 years with their turnover being under 10 million euros.[239]

Moreno notes that per the provisions of Article 17(6), if these small OCSSPs fail to reach an agreement with rightsholders, following a rightsholder notice, they must immediately remove or restrict access to the unauthorized content by implementing notice and takedown.[240] Nonetheless, if the audience exceeds 5 million visitors monthly in the future, upon getting a rightsholder notice, such small OCSSPs must also work to restrict future uploads by implementing notice-and-stay-down.[241]

1.5 Article 17 of EU Copyright Directive: Fulfilling a public interest Agenda through User Exceptions

According to Geiger and Jutte, Article 17(7) reflects the interests of users of services that come within the scope of Article 17. This is because this provision indicates that the collaboration between rightsholders and OCSSPs as defined in Article 17(4) "*shall not prevent the availability of lawful content uploaded by users*".[242] Senftleben also argues that Article 17(7) provides a public interest agenda of safeguarding the fundamental rights of internet users.[243] Article 17(7)[244] states:

"The cooperation between online content-sharing service providers and right holders shall not result in the prevention of the availability of works or other subject matter uploaded by users,

[239] EU Copyright Directive *supra* note 18
[240] Moreno *supra* note 216 at 156
[241] *Ibid*
[242] Geiger and Jütte, *supra* note 200 at 531
[243] Senftleben *supra* note 173 at 8
[244] EU Copyright Directive supra note 18

which do not infringe copyright and related rights, including where such works or other subject matter are covered by an exception or limitation."

"Member States shall ensure that users in each Member State are able to rely on any of the following existing exceptions or limitations when uploading and making available content generated by users on online content-sharing services: (a) quotation, criticism, review; (b) use for the purpose of caricature, parody or pastiche."

Essentially, this regulation requires Member States to see to it that, online users "are able to rely on" copyright restrictions for "quotation, criticism, review" and "caricature, parody or pastiche" purposes. As the European Copyright Society has confirmed, the wordings in the provision, such as "shall not result in the prevention" and "shall ensure that users [...] are able" provide copyright restrictions for "quotation, criticism, review" and "caricature, parody or pastiche" an elevated outlook. This is so in the sense that even in the case where state legislations do not make provisions for the exemption of "quotation, criticism, review" and "caricature, parody or pastiche", the use of "shall" in Article 17(7) inflicts a legal responsibility on Member States to enforce these user privileges.[245] There is however, some weakness in this position when Dusollier argues that indeed, under Article 17(7), those exemptions conferred a special position as members need to make them compulsory. However, the reality is that parody exception is not applied in some countries and so the contention then becomes whether the exception is automatically transformed into a mandatory exception. To this end, the author argues that the provision limits the sudden acknowledgement to the instance of uploading content on OCSSPs.[246]

[245] European Copyright Society *supra* note 196 at 123
[246] Dusollier *supra* note 202 at 1019

According to Bernal, Article 17 does not include any robust incentive or stern obligation to stop over-blocking. For instance, Article 17(7) provides that "*Member States shall ensure that users are able to rely on copyright exceptions and limitations*"; however, the scope of this obligation and penalties of inadequate support remain unclear.[247] Riding on this argument, Senftleben adds that, the expression "are able to rely on" should not be comprehended in a sense of an obligation to remove filter structures that are unable to differentiate between an allowable parody and a violating copy.[248]

1.6 Complaint and Redress Mechanisms under Article 17

According to Geiger and Jutte, the requirement for OCSSPs that come under Article 17(4) and users' right as provided for under Article 17(7) form an internal conflict within the provision's systematic structure. The conflicts can result in the unjustified blocking of contents which ordinary should be seen as a being covered under Article 17(7) as exempted from liability.[249] To the authors, the resolve of practical conflicts between these two provisions is expected in Article 17(9) which ensures that member states require OCSSPs to put in place appropriate complaint and redress structures which users can tap into in the very occasion that access to contents uploaded by them is restricted or removed.[250] Senftleben provides that Article 17(9) presents an avenue for online users whose contents gets blocked to have an effective and expeditious complaint and redress mechanism.[251]

[247] Bernal *supra* note 221 at 32
[248] Senftleben *supra* note 173 at 8
[249] Geiger and Jutte *supra* note 200 at 531
[250] *Ibid*
[251] Senftleben *supra* note 173 at 9

Apart from the prompt complaint and redress mechanism, Moreno is able to further explain the intricacies of Article 17 (9) that the provision indicated that if rightsholders request for a content to be removed or restrict access, they must provide a strong justification. Additionally, user complaints must be addressed within an appropriate time period, and removal or disabling decisions should only be enforced after the circumstance has been subjected to human review. Furthermore, Article 17(9), mandates Member States to establish other dispute resolution or out-of-court settlement mechanisms, and this is to ensure that disputes are independently decided, without affecting the right of users to go to court and depend on copyright exceptions.[252]

Moreno argues that Article 17(10) is a carefully crafted measure in the CDSM Directive, which ultimately ensures that there is always fairness between all the essential rights at stake concerning rightsholders, OCSSPs, content uploaders, customers, and human rights organizations.[253] Article 17(10) essentially deals with stakeholder dialogues. It provides that as of June 2019, "*the European Commission, in cooperation with the Member States, shall organize stakeholder dialogues to discuss best practices for cooperation between OCSSPs and right-holders"*.[254] The provision further remarks that, The Commission shall, *"in consultation with OCSSPs, right-holders, users' organizations, and other relevant stakeholders, and taking into account the result of the stakeholder dialogues, issue guidance on the application of Article 17, in particular regarding Article 17(4)"*.[255] On this note, the European Copyright Society admonishes member states to urge OCSSPs and rightsholders to participate in the stakeholder discourses so as to develop appropriate

[252] Moreno *supra* note 216 at 157
[253] *Ibid* at 175
[254] EU Copyright Directive *supra* note 18
[255] *Ibid*

practice measures which may encompass framework agreements, including one between OCCSPs and CMOs.[256]

According to Bernal, organizing stakeholder dialogues to offer guidance on the application of Article 17 would be useful given the complexities associated with the directive. It will also help to ensure that member states apply Article 17 in a uniform manner.[257] For instance, member states, by virtue of Article 17(10) can come together to give meanings and finality to contentious standards and legal texts such as "best effort" requirements, among others. Bernal also admonishes stakeholders to take the opportunity Article 17(10) presents to find a useful solution to organize and enforce a licensing system that precludes OCSSPs from being responsible for user-generated content, else in order to avoid accountability, OCSSPs will resort to implementing stern filtering structures to take away any potentially infringing content, which may result in over-blocking.[258]

Assessment

The objective of this chapter has been to review a selected sample of the existing literature to give an indication of the current shape of arguments for and against the implementation of the EU Copyright Directive. The arguments in support of the directive are varied and have been provided in this chapter. We come to understand that the EU Copyright Directive is significant mainly for the fact that it introduces a new separate exclusive right to communicate to the public by telecommunication whenever works are made accessible through an online platform. Another argument as we have seen include the point that, it imposes liability on online platforms such that there is a requirement on them to attain permission from rights holders for works on their

[256] European Copyright Society *supra* note 196 at 120
[257] Bernal *supra* note 221 at 24
[258] *Ibid* at 29

platforms, lest they would be seen to have infringed on the exclusive right communication to the public. These approaches, as some scholars have asserted ensure that the value gap is bridged.

The arguments against the implementation of the EU Copyright Directive have also been provided to keep the conversation on what must be done to make it suitable to implement, going forward. Some of the arguments come down to the fact that, the filtering system the directive makes provision for can go against the copyright holder, possibly due to foreseeable discrepancies in the system. And also, to the point that the potential burden on online platform owners to secure authorization for works that are found on their platforms can be insurmountable and daunting. The insights that have been obtained under this chapter will provide an understanding and context to later discussions about a regulatory model for music copyright in Ghana. The next chapter will inform readers on the suitability on the applicability of a model like the EU Copyright Directive in Ghana.

CHAPTER FIVE

IMPLEMENTING A LIABILITY REGIME SIMILAR TO ARTICLE 17 OF EU'S COPYRIGHT DIRECTIVE IN GHANA: PROSPECTS AND POTENTIAL CHALLENGES

The preceding chapters of this thesis have provided insight on the Ghanaian online terrain, the nature of copyright protection and infringement on online platforms, as well as the components of Article 17 of the EU Copyright Directive. This chapter discusses the prospects and challenges of applying a legislative framework with similar provisions like Article 17 of the EU Copyright Directive in Ghana.

1.1 Prospects

The promulgation of the comprehensive provisions slated under Article 17 of the EU's Copyright Directive indicates the desire of the European territory to curtail online copyright infringement, thereby promoting and protecting the economic rights of right holders on internet platforms. Article 17, per subsections (1) and (2), clearly outlines information that mandates OCSSPs to seek authorization to make copyrighted contents publicly accessible on their platforms,[259] as well as their responsibility to peruse and take actions on infringement complaints 17(9).[260] In addition, it lays out possible sanctions for OCSSPs who violate the copyright regulation.

In contrast, it appears that the existing Copyright Law in Ghana is vague as far as online copyright protection is concerned. Although Ghana's copyright legislation acknowledges that unauthorized

[259] Hovec and Quintas *supra* note 197 at 325
[260] Moreno *supra* note 216 at 157

presence of copyrighted contents on other platforms may constitute an infringement, there seem not to be any specific provision of adequate contents and contexts in this legal framework that would regulate online music copyright issues. This instance could present some ambiguities and uncertainties in the interpretations of the law.

We are reminded of the case of *Copyright Society of Ghana v Afreh,*[261] to demonstrate the attitude of the Ghanaian courts when it is confronted with ambiguities or the absence of specific provisions that are to address a particular act in the copyright legislation. When this happens, the courts either tend to refrain from devising any interpretation that will give effect to something that is not already existent in the copyright laws, as was illustrated in the trial court. Thus, a decision which would have been made in favor of a right holder in a fair and equitable manner had there been definite provisions to address such scenarios would not be realized. Which is why even the courts appear to advocate for copyright law reforms so as to fill gaps that are identified. Indeed, the other approach the courts have in response to ambiguous and absent provisions in the copyright law, which is the most apparent, is where they develop an interpretative spin on the case, as they are rightly so to do within their duties, in order to give effect to the interest of the rights holder. The court of appeal in the *Afreh Case* was seen to have ruled in favor of the rights holder only by inferring from several provisions in the act to provide a combined effect on the issue at hand. Apart from the fact this could be a daunting and heinous task by the court, it is not guaranteed that the desired results would be achieved. Thus, a provision like Article 17 of the EU copyright directive, which is tailored to address a specific phenomenon – online copyright infringements – could

[261] Afreh *supra* note 188

possibly go a long way to eliminate ambiguities and uncertainties in the extant copyright law that does not make definite reference to copyright activities and infringements on the internet.

As part of their efforts to promote the rights of music copyright owners, some key music players, through their individual platforms and even at seminars, have emphasized that online platforms have no locus to share copyrighted works unless they receive permission from their owners.[262] Nonetheless, such public advocacy efforts may be insufficient if they are not adequately backed by the prevailing laws. Therefore, the existence of a comprehensive liability regime, such as Article 17 of the Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market (EU's Copyright Directive), could firmly ensure that OCSSPs seek permission from right holders before sharing their contents on their platforms, defaulters of this regulation are sanctioned, and ensure that copyright owners are properly remunerated.

The implementation of a liability regime that possess components similar to Article 17 of the EU copyright regulation in Ghana would ensure that online platforms who operate within this geographical territory are held accountable for the presence of unauthorized copyrighted contents on their platforms. As Moreno reports, sections of Article 17 indicate that authors of copyrighted content deserve to be consulted and consent to their contents getting uploaded on OCSSPs.[263] Consequently, having such a liability regime in Ghana would clearly spell out the mandates of OCSSPs in reaching agreements with right holders to have their contents uploaded on their platforms, how complaints from copyright owners to remove their music products from OCSSPs

[262] Stephen Nana Asare, "Copyright Law and Managing Audio Visual Rights – Diana Hopeson Successfully Holds Music Seminar" (19 January 2021) online: *Modern Ghana* https://www.modernghana.com/entertainment/65637/copyright-law-and-managing-audio-visual-rights.html

[263] Moreno *supra* note 216 at 155,

can be addressed, as well as propose punitive measures for OCSSPs who violate the rights of music authors. Inferring from the content of Article 17(9) of EU's copyright directive, the establishment of this proposed liability regime in Ghana could also offer OCSSPs, copyright owners, and copyright users multiple avenues (e.g., out-of court settlement, courts, etc.) through which redress for music copyright issues could be sought.[264]

Furthermore, the argument for the implementation of a legislation to regulate copyright issues on the Ghanaian internet space is in tandem with the social contract theory which emphasizes that the maintenance of peace and stability in the affairs of society is dependent on the existence of clear-cut rules to regulate it.[265] The theory becomes a vital indicator in our assessment of the "reward mechanisms" that have been set in place by the state through legislation to ensure that music owners recover payment for their work on the internet.

Copyright laws that safeguard the rights of creators on internet platforms are needed to reduce the unlicensed access to their contents. When such laws are not functional, for instance, because they are unclear or ineffective in tackling infringements, right holders become deprived of their economic rights. Thus, flowing from the theory, the absence of a comprehensive legal framework to regulate music copyright matters on the internet might increase the rate at which OCSSPs and their users illegally upload copyrighted contents on their platforms. When this continues, it may have adverse consequences on the right holder's economic interest.

Additionally, the prospect of safeguarding the rights of OCSSPs and the users of these platforms cannot be overlooked if a replica of Article 17 of EU's copyright directive is implemented to guide music operations on the internet in Ghana. It is enshrined in Article 17(7) that mandated institutions

[264] *Ibid* at 157
[265] Richard Flathman & David Johnson, eds, Leviathan (New York: W. W. Norton, 1997)

must enforce existing exceptions that would allow online users and service platforms to quote, review, and critique copyrighted contents. The directive also covers users who engage in works that are for the purposes of caricature, parody and pastiche.[266] It is interesting to note that Act 690 does not make any provision for the user exceptions of caricature, parody and pastiche, nor are there provisions that specifically address the user exceptions of criticisms and reviews. Unlike Ghana, Canada's Copyright Act provides for criticisms or reviews as well as parody and pastiche.[267] The Copyright, Designs and Patents Act of the UK makes specific reference to criticisms, reviews and quotations as well as caricature, parody and pastiche.[268]

In Ghana, there is, however, the permitted use of quotations that users may come under to dispel liability. And, in not so much of an exact context, users may come under the act of reporting events that involves the use of only short excerpts of a performance, broadcast or sound recording to avoid copyright infringements. Thus, in the absence of specific user exemptions like pastiche and parody, among others, those exemptions may be covered by such a provision. That notwithstanding, implementing a copyright regime as Article 17 of the EU copyright Directive without specific reference to these user exemptions may cause some challenges and lapses especially when it comes to the situation where internet platforms automatically filter presumed unauthorized use of copyrighted works. In a rather optimistic focus, adopting a regime likened to that of Article 17 of the EU Copyright Directive will persuade and encourage Ghanaian legislators to incorporate such user exemptions. Consequently, Ghanaian online platforms and their service users would be able to utilize copyrighted contents within an appreciable limit without facing untoward consequences.

[266] EU Copyright Directive *supra* note 18, article 17(7)
[267] Copyright Act of Canada, ss 29.
[268] Copyright, Designs and Patents Act of the UK, 1988, ss 30 and 30A

1.2 Challenges

While it is essential to acknowledge the usefulness of a liability regime similar to Article 17 of EU's copyright directive in addressing key legal gaps on music copyright on the internet in Ghana, it is also important to highlight some potential challenges that could arise.

The filtering system provided by the EU Copyright Directive is one that is likely to trump one of the fundamental rights of expressions. It is indicated in Ghana's supreme law (the 1992 constitution) that all the fundamental human rights that have been set out in the constitution shall be respected by every organ of the government and its agencies, including the legislative, executive, and judicial arm of the government.[269] The agencies of the government, for instance, would include state-mandated institutions that have been set-up to see to the administration of copyright activities in the country such as the GHAMRO and the Copyright Board of Ghana. Of the fundamental human rights that have been set out in the Constitution the one that would intersect with the enactment of a model like the Article 17 of the EU Copyright Directive will be the fundamental human rights of expression. The Constitution cloaks every person in the country with the right to freedom of speech and expression.[270]

Again, with Articles 17(2) and (4) indicated, service providers must use the best available methods in order to identify and eliminate unauthorized copyrighted works on their platforms, making them responsible for copyright infringement even for ones they have no notice yet or even the activities of copyright that have been sent to them through notice by the rights holders. This puts service

[269] Constitution of Ghana, 1992. Article 12(1).
[270] *Ibid*, Article 21(1)

providers in the circumstance where they are not only dealing with works that right holders have sanctioned but are also dealing with the situation where they are expected to make the general, and, possibly, loose assumption that all copyrighted materials that are uploaded on the internet can be identified by a certain required standard known as "best methods" and eliminated through same best methods standards.[271]

An online platform like YouTube is noted to have one of the best technologies for automatically identifying copyright infringement in music and videos posted on their platforms.[272] Indeed, available reports suggest that for the first part of 2021, only about 0.5% of all copyright claims on YouTube were disputed.[273] But it should be swiftly added that such reports and figures may not be an actual reflection of the reality since the data provided could also mean that for reasons such as the lack of knowledge on apparent issues users do not contest copyright claims. More significantly, however, there is the argument that algorithms generated to enforce the identification of copyrighted contents on this platform have the propensity to produce false results that will lead to the blocking of legally allowable musical contents that are associated with a referenced copyrighted content.[274]Thus, to the extent that right holders will have their works eliminated immediately and automatically even without full and special assessment of the work that is being uploaded for a possible mistaken belief of a copyright infringement, the freedom of expression of the creative artist would be breached.

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[271] Geiger and Jütte. *Supra* note 200 at 530
[272] Taylor B. Bartholomew, "The Death of Fair Use in Cyberspace: Youtube and the Problem with Content ID" (2014-2015) 13 Duke L & Tech Rev 66. At 70
[273] L. Ceci. "Number of copyright infringements claims submitted to YouTube via automatic detection 1st half 2021, by status." (16 December 2021) online: Statista https://www.statista.com/statistics/1281165/automatic-copyright-claims-youtube-by-status/#professional
[274] Toni Lester & Dessislava Pachamanova, "The Dilemma of False Positives: Making Content ID Algorithms More Conducive to Fostering Innovative Fair Use in Media Creation" (2017) 24:1 UCLA Ent L Rev 51. at 53

A developing state like Ghana that values fundamental human rights, and having set it out in their constitution, will most likely find the implementation of Article 17, especially the provision on filtering problematic, as is seen in other jurisdictions. In 2019 for instance, Poland petitioned the European Union's Court of Justice, citing that the Copyright Directive was inconsistent with the Union's Charter for Fundamental Rights, particularly with regards to freedom of speech and expression.[275]

The relevance of data or information keeping in contemporary Ghana, and in any other geographical territory cannot be overemphasized. This activity places an individual or an entity in a better position to analyze current trends, assess performances, make predictions, and engage in rich comparative analysis in the past, present and future events.[276] Keeping records of individuals and groups also facilitates the chances of tracing and communicating with them.[277]

Nonetheless, it appears that there is a low data or records storage in Ghana. Gatune et al report that while comprehensive systems for gathering data within the government of Ghana exists, issues such as low staff capacity, poor coordination among units, and limited funding hinder the evidence or information generation process.[278] The authors further add that there seems to be a general mistrust for available data generated in the country, and this is even coupled with the challenges associated with accessing data in the right layout.[279] Moreover, anecdotal evidence suggests that

[275] Michaela Cloutier, "Poland's Challenge to EU Directive 2019/790: Standing up to the Destruction of European Freedom of Expression" (2020) 125:1 Dickinson L Rev 161. at 162
[276] Chun Wei Choo, "The Knowing Organization: How Organizations Use Information to Construct Meaning, Create Knowledge and Make Decisions." (1996) 16:5 Int J Inf Manage 329 at 330.
[277] *Ibid*
[278] Gatune, J., Commodore, R., Osei, R., Atengble, K., Harris, D., Oteng-Abayie, E., Shah, N., Bainson, K., Fenny, A., Osei, C. and Rosengren, A., 2021. The role of evidence in policymaking in Ghana: A political economy analysis. [online] Sedi Oxford. at 3 Available at: https://www.opml.co.uk/files/Publications/a2722-strengthening-use-evidence-development-impact-sedi/pea-ghana-final.pdf?noredirect=1 [Accessed 5 May 2022].
[279] *Ibid* at 3

some Ghanaians abhor the exercise or activities that seek to gather information from them, and this adds to the impediments encountered in the smooth generation of data in the country.[280]

This reveals a crucial point in respect of the implementation of a copyright regime where internet platforms are expected to seek authorization from rights holders immediately when they identify copyrighted contents on their platforms. It imposes on the internet platforms an almost impossible burden of tracing rights holders whose information cannot be found, as a result of deficiencies in information storage or record management, so as to make the identification possible. The situation in Ghana upon the implementation of a similar copyright regime like Article 17 of the EU Copyright Directive will confirm Senftleben's argument that while the licensing obligation placed on the online content platform may be useful it creates a rights clearance assignment which online service providers may be unable to complete.[281]

Apart from the noticeable streaming platforms (e.g., apple music, Spotify, YouTube, etc.), there seem to be no clarity as to as to how a liability regime similar to Article 17 of EU's copyright directive can address copyright infringement on online platforms, such as websites in Ghana, particularly for the fact that the owners of such platforms cannot be traced. Assertions from GHAMRO officials who were engaged in a study on royalty collection affirms this statement as they indicated that the unauthorized uploads and downloads of music on online platforms (websites) other than established streaming platforms has made the fight against music piracy

[280] See, Franklin Ansong Siame, "Most people are not willing to travel to the district offices to claim Ghana Cards' – NIA", *Joy Online* (21 February 2022), online: <https://www.myjoyonline.com/most-people-are-not-willing-to-travel-to-the-district-offices-to-claim-ghana-cards-nia/>; See also, Jaysim Hanspal, "Ghana: Card registration problems persist as citizens fear lack of access to services", The *Africa Report* (11 February 2022), online: < https://www.theafricareport.com/173142/ghana-card-registration-problems-persist-as-citizens-fear-lack-of-access-to-services/>

[281] Senftleben *supra* note 173 at 3

difficult.[282] Even in the event of a successful identification of owners of websites who, together with their users, illegally upload copyrighted contents, GHAMRO may not be in a better position to seek remunerations for right holders as many Ghanaian musicians do not register with this collection society.[283] The provision of Article 17 also appears to place enormous responsibility on OCSSPs for the presence of unauthorized contents on their platforms[284] without providing any punitive measure to deter or sanction individual service users who without giving prior notice, illegally upload copyrighted music on internet platforms. Making available copyrighted music on internet platforms without permission from the respective right holders is illegal hence, it may be ideal for consequences of such actions should be suffered not only by OCSSPs, but also service users who upload these contents on internet platforms.

1.3 Recommendations

A critical factor that can determine the success of a new legislation includes the ability of policymakers to secure the buy-in of all stakeholders. As explained by proponents of the social contract theory, people must gain a clear understanding of why a legislation is being implemented and why it is important to abide by them. Therefore, any attempt by the state and its mandated institutions to formulate and implement legislation to regulate music copyright issues on the internet should involve all stakeholders, including musicians, OCCPs, the general public, and other key music industry players. Their involvement should begin from the conceptualization, through to formulation, and then to the implementation stage. This would enable all parties to gain in-depth understanding of the content of the legislation.

[282] Acquah and Acquah-Nunoo *supra* note 45 at 70
[283] *Ibid* at 71
[284] Majumdar *supra* note 195 at 12

To ensure that Ghana's copyright regime is strengthened in a way that the interests of copyright owners are taken care of when their works are identified and used on the internet, everyone has a role to play.

Ghanaian Legislature – After over a decade of legislative inactivity with regards to making any amendment to Ghana's copyright Act, the most obvious recommendation to the organ of state that is responsible for passing laws and policies – the parliament of Ghana – is that, it is time for the laws to be amended or updated. The law makers must amend the copyright Act and make new laws with the very understanding that the current copyright regime has lost touch with reality. It is important that the legislature adopts a similar copyright regime while streamlining it in meaningful ways that fits the country's peculiarities.

On how to reconcile the constitutionally-entrenched principles of freedom of expression and that of the implementation of a new online liability framework, similar to the EU Copyright directive, it is important for legislators to take cognizance of the very fact that such a new legal framework would need to be interpreted within the confines of freedom of expression. Doing so will go at length to ensure that the freedom of expression of individuals is respected while advancing a formidable copyright law regime. In any case, Ghana's constitution is also emphatic on the very provision that whereas fundamental human rights are upheld in the highest regard, a person's fundamental human rights are nonetheless subject to the respect for the rights and freedoms of others and for public interest.[285] It thus important for law makers, in implementing a copyright regime similar to that of the EU's Copyright Directive, to bear in mind the human rights issues of

[285] Constitution of the Republic of Ghana, 1992, Article 12(2).

expressions that come to play not only with regards to the right holder but also the user of the work.

Courts – It will be improper to rush and pin, at first instance, any law-making responsibility on the courts since their main responsibility is to implement and enforce laws that have already been enacted and promulgated. That said, it has already been pointed out in this study that the role of the courts must not be underestimated in that search for an effective legal regime especially because of the fact that through their interpretation and judicial opinions, the copyright regime can be strengthened. However, with the dearth of copyright law cases in the system, especially with regards to those that have to do with the protection of copyrighted works on the internet, it becomes almost impossible to extract any judicial pronouncement on the matter. Nonetheless, in the absence of laws that protect musical works on the internet, it is recommended that courts are able to continue and intensify their advocacy for the enactment of such laws with the least opportunity they get, whether through the few and similar cases they encounter or through public advocacy in the journals of law reports.

To also increase the number of copyright law cases that are reported, while also making the point to bring up competent judges who are well-specialized in which can eventually galvanize judicial opinions and advocacy, Kerry's reference[286] remains relevant for a country like Ghana. The author recommends for the creation of intellectual property courts which will create qualified personnel in the judiciary and will significantly increase the number of appeals to the courts in connection with copyright infringement on the internet.[287]

[286] Kimberly Kerry, "Music on the Internet: Is Technology Moving Faster Than Copyright Law" (2002) 42:3 Santa Clara L Rev 967
[287] *Ibid*

GHAMRO – The position of the Ghana Music Rights Organization as, currently, the only collecting society that is responsible for the collection of royalties on musical works must have a full in-house makeover whereby, first and foremost, proper accounts and records are taken of members who decide to register their works with them. Such information of members must also be updated at periodic intervals to reflect the current state and information of members. This helps GHAMRO to easily connect with members when identify their works on platforms they have policed.

It is expected that in a digital environment, the most suitable tools of enforcement are those that are commensurate with digital technology. It is thus, important that GHAMRO is adequately equipped with adequate resources to properly function. There is also the need for GHAMRO to have more collaborations with international collecting management societies so that broader scopes are reached.

When it comes to the administration of the music industry, it becomes a matter of great importance to diversify the music industry in ways that the idea of legal monopoly to just one entity is immediately eradicated. It also becomes important to stress on the point that individuals, groups and entities that are directly affected by the activities or operations of copyright, such as GHAMRO, the musicians' union, as well as individuals and groups, as related, must be at the forefront of recommending legislative solutions for themselves and inherent to their needs. This becomes possible as they are better placed to know what they actually encounter. As Qi has observed, the American legislative model in which the music industry spearheads the legislation of copyright protection of musical works, should be preferred over the model of other jurisdictions'

whereby their governments are practically, directly and solely in charge of the promotion of related systems.[288]

Assessment

This chapter has provided some insight on the feasibility of implementing a liability regime similar to article 17 of EU's copyright directive in Ghana. The discussion revealed that while the adoption of such a legal framework could put Ghana in a better position to address pertinent music copyright issues on the internet, certain concerns, such as the likely deprivation of the freedom of expression, among others could render the framework inefficient. Some recommendations have also been suggested as to how the identified legal loopholes can be curtailed to make the legal directive more prudent in the Ghanaian territory.

[288] Qi, *supra* note 41, at 219

CHAPTER SIX

CONCLUSION

Ghana's copyright regime is bereft of specific provisions in its Copyright Legislation, Act 690, that head-on address the protection and enforcement of online copyrighted contents, for that matter musical works. The definition of communication to the public under Act 690 does not anticipate digital transmissions which are predominant in the digitized era we find ourselves.

This tends to create dormancy and ambiguities when it comes to their enforcements by the judiciary and mandated state institutions like the collective management societies. The Copyright Regime of the EU as opposed to Ghana's specifically addresses copyright activities and infringements on the internet and although it is saddled with peculiar challenges, it is generally agreed by scholars whose works have been analyzed in this study that it eventually inures to the interest and advantage of the copyright holder. One of such advantages is seen in how makes the effort to bridge the value gap.

To put things into perspective, a copyright regime that has been tailored to suit a union of several individual states, like the EU, will be hard to be referenced and strictly adopted by a single nation like Ghana. This is informed by differences in respect of population, technological advancements, among other inherent element as a pertained to developed system versus a developing system. That said; however, Ghana can develop a copyright regime as Article 17 of the EU copyright Directive while making the conscious effort of bearing in mind its peculiar circumstances, qualities, demands and aspirations. This can be done by monitoring the implementing the desired regime in their related jurisdictions. Ghana can take a lesson from Canada where for instance, its statutory review committee through a report in 2019 recommends to its government to monitor collective licensing online in other jurisdictions.

1.1 Summary

Chapter one provided a background to this thesis. It provided preliminary information that served as a road map to facilitate the understanding of the research. The chapter explained the problem at hand, the main in of the study, the research questions and the significance of the study.

Chapter two reviewed relevant academic literature necessary to provide a general assessment on the business landscape of music in Ghana within the context of internet operations.

Chapter three provided an insight into the legal landscape of protection of musical works in Ghana as through statutes, the judiciary as well as the operations of Ghana's collective management society for musical works, GHAMRO.

Chapter four provided a comprehensive review on Article 17 of the EU Copyright Directive. In the review some arguments for and against the implementation of the EU Copyright Directive were discussed which was necessary in order to open up arguments on how efficient (or otherwise) the regulatory model, if referenced in Ghana's copyright regime, will be.

Chapter five presented a discussion on the prospects and challenges of applying a legislative framework with similar provisions like Article 17 of the EU Copyright Directive in Ghana.

1.2 Areas for Further Research

Research into the ideal copyright regime that will best meet the demands of contemporary, dynamic times is an insatiable expedition. This is mainly owed to the fact that day-in-day-out, new ways of doing things emerge and they tend to circumvent the course of policies and systems that have been set to address an identified challenge. For this reason, there will always be the need for researchers to engage this area so as to not fall behind or lose sight of rising trends. Given the

peculiarity that comes this research, in light of the juxtaposition that is made between Ghana's copyright law regime and that of the EU's, this research recognizes some prospective research directions which are addressed in the preceding section. Future works could specifically delve into the dynamics in the allocations of royalties as well as the operations of a collective society within an online-centered copyright regime like that of EUs with the aim of showing its viability. Furthermore, future studies could employ either qualitative or quantitative methods to solicit in-depth information on how music copyright protection can be intensified in Ghana. Findings of such studies could increase the depth of knowledge in this research area.

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