



LEGAL POSITION PAPER

DIGITALIZATION OF COPYRIGHT AND NEIGHBORING RIGHTS ACT. NO 7 OF 1999 (CAP. 218 .R.E. 2002) IN TANZANIA

This paper discusses the essential aspects of copyright protection for internet-based artistic works that are not covered by the existing Act. by going deeper into the digitalization of the Act



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INTRODUCTION

Tanzania Artists Rights Organization (TARO) is a non-governmental organization that champions Artistic Freedom in Tanzania. We advocate for the rights and interests of artists and their works. TARO serves as both a human right and a cultural rights defender for artists. It engages to contribute to the development of the Tanzanian arts and cultural sector by focusing on enhancing **Artistic freedom** in the area of **promotion of artistic freedom of expression, artists' rights and interests, professionalism, and gender equality**. The organization achieves this through advocacy, awareness campaigns, research, monitoring, and reporting on artistic freedom in Tanzania. It was registered in 2021 under "Non-Governmental Organizations Act. No.24. of 2002"

In May 2023, TARO was invited to participate in the 9th World Summit on Arts and Culture which took place in Stockholm, Sweden. The aim of the summit was "**SAFEGUARDING ARTISTIC FREEDOM**". The summit was coordinated by **the Swedish Arts Council** and **the International Federation on Arts and Cultural Agencies (IFFCA)**. TARO was appointed as a delegate and expert to present on "**Building the Case from Action to Law**" from **Tanzania**. In February 2024, TARO presented on the status of Artistic Freedom in Tanzania, at the **Pan African Summit on Artistic Freedom** in Zanzibar, which was coordinated by **SELAM**. Therefore, TARO is among the dedicated organizations in Africa to champion Artistic Freedom.

The preparation and publication of this legal position paper is a part of SANAA RIGHTS PROGRAM.

SANAARIGHTS/ArtistsRights is a project that aims to enhance the policy and legislative landscape for the Tanzania arts scene. The initiative has invested its resources to develop innovative recommendations for improving the policy and legal framework that govern Tanzania's arts and cultural sector. It is a three-year program (2022-2025). **Tanzania Artists Rights Organization (TARO)** is a cooperating partner **of Culture and Development East Africa (CDEA)** to implement the legal component of the SANAARIGHTS project, which is funded by the **Norwegian Embassy in Tanzania**. Its implementation includes roundtable meetings with various strategic stakeholders in the arts and cultural sector, "**drafting legal position papers**", parliamentary advocacy on artists' human rights, public dialogues on the status of artists, media coverage, Meeting with the members of Tanganyika Law Society (Bar association of lawyers) and drafting of policy briefs

This publication is made possible with a sub-grant from Culture and Development East Africa (CDEA), with funding support from the Norwegian Embassy in Tanzania

DIGITALIZATION OF COPYRIGHT AND NEIGHBORING RIGHTS ACT.NO 7 OF 1999(CAP. 218 .R.E. 2002) IN TANZANIA

Copyright And Neighboring Rights Act No. 7 Of 1999(Cap. 218. R.E. 2002) is a product of Tanzania's compliance with international treaties to protect literal and artistic works. It has been proven to be very relevant to the existing business practices within the arts and cultural sector. However, It is recorded to be very rare for artists to enforce their artistic rights before the court in times of infringement as the protection is offered in the Act. Most disputes are resolved within the offices of the **Copyright Society of Tanzania (COSOTA)** currently known as the **Copyright Office Of Tanzania**.

Traditionally, COSOTA resolves smooth disputes, but when it comes to disputes that accommodate legal complexities that require delicate procedures **to identify proper parties, analyze the cause of action, highlight specific damages, and procure evidence**. It is when the burden of further engagement is left to complainants. COSOTA's best approaches to copyright protection of artistic works predominantly placed more efforts on mediation, public awareness of copyright laws, and registration of authors and their artistic works.

In most cases, complainants are laymen in the practices of the law. They understand generally that the use of their works without their consent amounts to copyright infringement. They know nothing about the legal processes accompanied by complaints for copyright infringement. They usually submit their complaints of infringement randomly to COSOTA, either orally or in writing.

The scenario turns out to be very complicated when digital space (internet space) is involved. The significant challenges in digital space are around the area of understanding **a cause of action, finding the identity of the infringer, the extent to which the infringer benefited from the artwork and the injuries suffered from infringement**. This paper discusses the essential aspects of copyright protection for internet-based artistic works that are not covered by the existing Act. Before going deeper into the digitalization of the Act. There are some key issues to be addressed as described below:

a. Submission of complaints at COSOTA

There are no formal procedures to submit complaints for copyright infringement at COSOTA. Complaints for copyright infringement are submitted either orally or in writing. There is no specific format required. Therefore, It is hard for a complainant to build a strong case on the facts procured at COSOTA. Despite this, the experience shows that many good facts are usually disclosed at COSOTA with alleged infringers. There would be an opportunity to build a strong case if the procedure of receiving complaints of copyright infringement, would be simplified systematically. In the submission of complaints, the law should provide that a complainant must include further details on his complaints such as

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the proper parties, the cause of action, specific damages, and available evidence.

b. Authority of COSOTA to determine Copyright infringement cases

It is a clear fact that the law gives COSOTA the authority to issue fines to copyright infringers if they accept the infringement amicably. If they dispute the allegations, then the copyright administrator shall report the matter to the office of the **Director of Public Prosecution (DPP)** for the institution of the criminal case. Refer to **section 16 of the Written Laws (Miscellaneous Amendments) Act. No.3 of 2019**, which introduced section **42A** in the **Copyright And Neighboring Rights Act No. 7 Of 1999(R.E. 2002)**. Read together with **The Copyright And Neighbouring Rights (Compounding Of Offences) Regulations, 2020**.

Even though the law provides for such authority, COSOTA argues that the application of that law is limited to the physical environment and it does not extend to internet space. Fore stance: When someone has been caught red-handed selling counterfeited CDs of music albums or movies. However, the wording of the law does not provide such a limitation. It appears that COSOTA has further reasons to be reluctant to apply the same laws in cases involving internet claims on copyright infringement.

c. Procedure to determine submitted Copyright infringement complaints at COSOTA

There are no procedures to submit complaints of copyright infringement at COSOTA. Therefore, the infringer may be summoned by COSOTA and refuse to appear in the mediation. No law gives COSOTA a mandate to summon anyone for mediation purposes. However, the **Compounding Regulations of 2020** have mandated COSOTA for compounding offenses. It is very difficult to predict the period of time that will be consumed when the dispute is submitted to COSOTA. Therefore to submit complaint at COSOTA may be time consuming. Justice delay is justice denial according to legal jurists. Therefore the law should provide at least simplified procedures to direct the above.

d. Conflict of interests

This is a most important matter to be addressed regarding COSOTA. It is a government institution that is required to establish good relationships with its stakeholders. But in doing so, it shall consider the conflict of interest with its clients. Example: COSOTA may engage in projects of individual artist and later the artist may enter into a conflict relating to copyright infringement with an artist who has no record to work with COSOTA. The other artist may feel the uncomfortable with COSOTA. Therefore, we recommend that, COSOTA should establish standard rules of engagement with stakeholders that if someone has a dispute of copyright infringement, must settle it before engaging with COSOTA.

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e. Copyright as a Human Right

The whole concept of copyright is not perceived as a human right by both the government and the public in general. It is taken as an individual financial aspect. Copyright is a human right protected as a cultural right under International Law. In 1976, Tanzania ratified the **International Covenant on Economic, Social and Cultural Rights (ICESC) of 1966**. Therefore **Article 15 (1)(C)** provides that "*The States Parties to the present Covenant recognize the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author*"

The government has made a very rare effort to create a conducive environment for copyright protection without putting a huge burden on individuals. It is very expensive for an individual to institute a copyright lawsuit before the court. It may take 3-7 years until resolved. One to succeed in a copyright lawsuit must hire a private lawyer (advocate). Most artists cannot afford to hire a private litigant. Therefore, there should be simplified procedures for individual artists to deal with copyright infringement cheaply and smoothly.

LOOPHOLES OF THE COPYRIGHT AND NEIGHBORING RIGHTS ACT.NO 7 OF 1999(CAP. 218 . R.E. 2002) ON THE PROTECTION OF COPYRIGHT IN THE DIGITAL (INTERNET) SPACE

A. Jurisdiction of the court

The law does not provide anything on the jurisdiction where a work is utilized online. Most digital services providers (DSPs) on the internet are physically stationed in **Europe, China, and the United States of America (USA)** but their services are available worldwide. Examples of DSPs are YOUTUBE, iTunes, Audio Mack, BOOMPLAY, DEEZER, Spotify, etc. In the case of internet space, It is not easy to ascertain the geographical area where infringement has taken place since the internet is everywhere. The geographical area is essential to determine the jurisdiction of the court for initiating a lawsuit. The law should be advanced to highlight all important factors that may be used to establish jurisdiction of our local courts on matters of online (internet) copyright infringements.

B. Distinction of liability between DSP, Distributor, and uploader

When an artistic work is made available on the internet contrary to copyright laws, an author should be compensated for any injuries, damages, or

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inconvenience that may be caused to him due to that act. Before, setting our minds to compensation, we should ask ourselves that **if a musical work is made available in any DSP, who may be liable according to our local laws? DSP, Distributor, or uploader?**

DSP is a digital services provider where a song is kept available for listening in the internet space. Example: iTunes, Audio Mack, Spotify e.t.c. **The distributor** is the company that supplies music works to **DSP**. **Example**. Distro, TuneCore, Believe, etc. **An uploader** is a person (author) who uploads music online to a distributor so that they can supply the song to **DSP**. In some cases, Some **DSPs** are receiving music works directly from uploaders (authors) without **Distributors**. **Example**: BOOM PLAY, AUDIO MACK.

Some foreign **DSPs** have subsidiary companies operating in Tanzania. **Where a copyright infringement occurs then whom should be consulted? A foreign holding company, a subsidiary company or uploader ?**

The law is silent on the important aspects of copyright protection which justifies the phrase that "The law is outdated". It does not complement the development of science and technology, especially the use of the Internet. The law should be updated to accommodate the aforementioned practical challenges in the creative industry.

C. When to takedown a disputed content

In Tanzania, when a copyright dispute emerges on the internet space, the predicted act to follow is a disputed content to be taken down. The intent is to terminate the available evidence on the matter at hand. No law regulates when disputed content is to be taken down. When content is removed from the internet, normally it creates a difficult process to access information relating to that content. Example: Revenues, streams, etc. Therefore the law should cover the aspect.

D. Disclosure of Information relating to content subjected to complaints on internet copyright infringement

The law does not obligate any person who holds content online to disclose information relating to that content when the content is claimed to infringe copyright. Only the court of law may opt to order it. When the court is involved, it tends to be very expensive and time-consuming. In many cases, if the said information can be obtained before going to court may help to resolve copyright disputes amicably. In practice when the copyright dispute is submitted to COSOTA, complainants usually refuse to provide genuine information on the complained copyrighted work. Normally genuine information is found on the

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dashboard of the distributor or DSPs, contracts, agreements, etc. The law should be upgraded to consider the above-discussed practical facts. In case of online copyright infringement cases, a part complained should be obliged to submit all required information to COSOTA

E. Disclosure of financial information directly from the dashboard when artists need

The current business practices in music and film are covered by extreme fraudulent practices when it comes to the Internet business. There are very big music companies operating in Tanzania without being monitored by the law. They sign contracts with music artists and film producers to distribute their works on the internet. They collect internet revenues through various computer systems which offer a dashboard to show all important information about the revenues such as the kind of revenue collected, the geographical area the revenue collected, the total number of users of the work, the exact time the artwork was utilized, specific work which generated revenue e.t.c.

Traditionally, when artists ask for such information, companies tend to generate separate sheets of information in PDF or Word format and then supply them to artists. Usually, the information generated contains minimal and false details (fake information). They do not disclose the actual income generated from the work (music or film work). In other words, these companies take advantage of the silence of the law to steal part of the revenue of artists. They normally pay artists less and unfairly contrary to their contracts.

The matter does not affect artists only but also the government. When artists are not properly and fairly paid, the government cannot collect proper taxes for the economic development of the sector and the country in general.

The law should articulate clearly that the Artist (author) of any work protected under copyright law if his work generates income on the internet, shall have a right to access a genuine source of information that provides all important details relating to that work. Anyone who holds such a genuine source of information shall be obliged to disclose it. That artist should have a legal right to access the dashboard of internet computer systems that collect revenues on his work.

F. Collection and distribution of royalties on artistic works

The idea of collection and distribution of royalties on artistic work without digitalization is a myth. There is no way mechanical royalties can be collected and fairly distributed to artists without having the technology to do so. Even though the government put much effort into crafting the law that should direct

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who should contribute and what amount should be contributed as mechanical royalties, the efforts are very silent to ascertain fair and just distribution of such collected royalties to artists.

Ongoing collection and distribution of royalties relating to musical works is facing a serious challenge of identifying the amount of money collected in connection with a specific musical work and the extent that work was utilized. Despite of positive motive of the government to assist artists in generating revenue, we are undoubtedly convinced to conclude that the current initiative of collection of royalties coordinated by COSOTA accommodates challenges in distribution.

It is an open fact that the collection and distribution of royalties requires the application of advanced technology to clarify important information about where the royalties are collected, and the specific amount collected in connection with the specific use of a music work. To encounter the ongoing perception of misuse of public funds collected as royalties, the law should break the silence and provide that the collection and distribution of royalties shall be done with the application of advanced and honest technology which ensures just and fair collection and distribution of royalties.

The public has no confidence in the ongoing process of distribution of royalties to artists since the mechanism of collection and distribution is unknown. Example: Funds are collected in hotels as royalties' contribution for musical works but no mechanism to collect details on specific musical work connected to the funds.

G. Non Fungible tokens (NFTs)

Non-fungible means something unique that cannot be replaced. NFT technology is ideal for preserving scarcity and establishing ownership of digital and tangible assets. It offers digital creators solid options for monetizing their work and a level of flexibility that is often lacking in traditional creative industry models. Fortunately, the process of creating an NFT is neither costly, complex nor technical. It is called MINTING.

In simple words, NFT in art involves the conversion of artistic and literal works like music, books, images, paintings, or video into a relevant required digital format such as GIF, PNG, PDF, MP3, or MP4. Then it turns that digital item into an asset on the blockchain. **BLOCKCHAIN** is an advanced database mechanism that allows transparent information sharing within a business network. Blockchain is found within specific websites (internet space).

To turn the digital item into an asset one must access a **specific website** for that purpose. The information that makes up an asset is known as **metadata**.

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Metadata allows users to buy or sell objects based on their metadata rather than the entire object.

One must Register and log in to the website, then secure a crypto wallet (Wallet which keeps cryptocurrency). To have a wallet a user of the website must pay some fees (gas fee). The purpose of a crypto wallet is to convert a specific amount of normal money from a bank account to cryptocurrency and store it in the crypto wallet for accessing NFTs marketplaces. To access NFTs marketplaces is not free and the marketplace does not accept normal currency. It is when a creator of NFTs needs a cryptocurrency.

Then upload a digital item, name the title of the item, and finally create an NFT for that specific digital item. When NFT is created for a digital item (artwork), it means the unique metadata identity of the item is created to distinguish that digital item from any other item on the internet and to disclose the ownership. No person can create an NFT or temper ownership of that item.

The final stage is to access the NFTs Marketplace, promote the NFT created, and sell it. Usually, a crypto wallet helps the creator of NFT to pay the fee for accessing the NFTs Marketplace and promote their NFTs in the market for selling.

Each NFT is unique and limited in quantity and not interchangeable, it can function as a proof of authenticity and ownership of artwork attached to it. Attaching digital content to blockchain as non-fungible tokens is a safe and verifiable way to sell it online.

Anyone interested in selling and sharing their digital creations can create NFTs. When minting a token, creators can program a royalty clause so that subsequent sales of their digital items generate passive income for them. If their works get popular and their value increases, they can get monetary benefits out of them.

The law is completely ignorant on issues of NFTs in Art. In general Tanzania law does not recognize cryptocurrency. In 2019 the Bank of Tanzania (BoT) issued a public caution on the use of virtual currency (cryptocurrency). They declared expressly that cryptocurrency is not legally authorized in Tanzania.

H. Artificial Intelligence (AI) Arts

These are computer systems designed to generate artwork depending on the description of the user. The systems can generate videos, music works, images, literary works, etc. The work is completely done by automation of the computer. The essence of copyright protection is to protect creativity derived from human

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intelligence(mind). The law is silent when artwork is generated from AI, either the user of AI is eligible to be granted copyright on the generated artwork. This is still a worldwide debated issue.

AI art refers to art generated with the assistance of artificial intelligence. AI is a field of computer science that focuses on building machines that mimic human intelligence or even simulate the human brain through a set of algorithms.

CONCLUSION

Improving copyright protection of artistic works in Tanzania is not solely the responsibility of the government or civil society organizations. Both parties should collaborate to analyze laws, compare with practical aspects, and develop ways to improve them. Poor copyright protection undermines both the cultural rights and economic prosperity of artists. Copyright protection is a crucial element for safeguarding the cultural rights and economic prosperity of artists. No economic freedom for artists, no Artistic freedom. We hope the above articulations and recommendations will be taken into consideration positively to stimulate further intellectual engagement. There is a need for more comprehensive steps to engineer and implement advocacy on the changes of laws in the arts and cultural sector.

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