

UNIVERSITY OF RWANDA

THE PROTECTION OF PERFORMING ARTISTS THROUGH COLLECTIVE MANAGEMENT ORGANISATIONS IN RWANDA

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Under the Supervision of

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DECLARATION

I, Luc Martin Ngarambe, declare that this thesis entitled “**The Protection of Performing Artists through Collective Management Organisations in Rwanda**” is my original work. It has not been submitted by any person for a degree in any other university and that all the sources that I have been indicated and appreciated by means to comply references.

.....

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Date: **24/01/2019**

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ABSTRACT

Over time, Copyright and Related rights have been overset by technology innovations. The internet was the last step in this evolution. The scholars wrote abundantly to the meaningful problems raised by the internet and the executable enforcement of copyrights in the digital age, performing artists have remained absent to the discussions.

Law n°31/2009 of 26/10/2009 on the protection of intellectual property is an affluent collection of good practices from various legal materials that have been in position at the international and regional. But, some problems upset the fair protection for performing artist's rights in country of Rwanda.

The thesis analyses the articles of law linking for the legal status of Collective Management Organisations (CMOs) and its functioning in order to protect the performers for their works and applicable remedies and propose sustainable responses to the problems that are affecting the enforcement of performing artist's rights protections in Rwanda.

The general objective of the dissertation is to assess the legal state of collective management organisations landscape, to ascertain the protection and promotion of rights for performing artists. The research addresses Collective Management Organisations (CMO) reforms aimed at the realization of protecting and promoting of performing artists' rights in Rwanda in the current and prospective generation.

From this assessment, the study finds that there exist in Rwanda only one monopoly multipurpose CMO. This situation requires more input especially to fill the gaps created by the scattered current legislation.

Consequently, this dissertation will make an additional contribution on the existing literature(s) to the collective management organizations of copyrights. The study will enlighten government officials, and other agencies which advocates for performers artists copyrights promotion and protection, focus on the weakness of the available legal regime. The study will help law makers and implementers to come up with new strategies and laws to improve on the collective management organization for the performing artist in Rwanda.

ABBREVIATIONS AND ACRONYMS

ARIPO	: African Regional Intellectual Property Organization
Art.	: Article
ASCAP	: American Society of Composer, Authors and Publishers
BTAP	: Beijing Treaty on Audiovisual Performances
CD	: Compact Disc
CEO	: Chief Executive Officer
CMO	: Collective Management Organization
FRW	: Rwandan francs
GATT	: General Agreement on Tariffs and Trade
Ibid	: Same source (Ibidem)
IP	: Intellectual Property
IPL	: Intellectual Property Law
ISPs	: Internet service providers
LLM	: <i>Legum Magister</i> —Master of Laws
MINICOM	: Ministry in charge of Copyright and Cultural
MINISPOC	: Ministry of sports and culture
NCC	: Nigerian Copyright Commission
No	: Number
OG	: Official Gazette
P. /PP.	: Page / Page(s)
Para	: Paragraph
RAC	: Rwanda Arts Council
RDB	: Rwanda Development Board
RSAU	: Rwanda Society of Authors
S.R.D.A	: Service Rwandais Chargé de la Gestion du Droit d’Auteur
TRIPS	: Trade Related Aspects of Intellectual Property Rights
UNESCO	: United Nations Educational Scientific and Cultural
WIPO	: World Intellectual Property Organisation
WTO	: World Trade Organisation
WPPT	: WIPO Performances and Phonograms Treaty

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GENERAL INTRODUCTION

0.1. HISTORICAL BACKGROUND OF THE STUDY

Artists need most of the time the help of performing professionals to display their works publicly. A musician plays role in a play written by playwright; producers of phonograms or more commonly “the record industry” record and produce music composed by authors, played by musicians and sung by performers, organizations of broadcast works, phonograms and video on their stations.¹

Under foreign laws and domestic laws, the copyright legal instruments attempt to encourage artistic creation by rewarding performing artists with a set of exclusive rights, yet subject to a time limit. Rights of authors and rights of performers can be divided into two categories: economic right and moral right. For the economic right, performer can receive exclusive right and right to equitable incomes for certain uses of their performances and the right to object to distortion, mutilation or other modification.

Despite the fact that Rwanda has not yet ratified the international convention on the protection of performers, producers of phonograms and broadcasting organizations² like Rome convention. The minimum protection of performers is provided under Articles 253 and 254 under the current Rwandan domestic law governing Intellectual property³ in the form of “possibility of preventing” doing of any acts without the consent of the performer.

The performers, most of time, the same way with authors use their rights both through individual agreement and/or through a collective management Organisation (CMOs) exercised by Collective Management Organizations (CMOs). The word “management of rights” is referred for

¹WIPO, *Creative Expression: An Introduction to Copyright and Related Rights for Small and Medium-sized Enterprises*, WIPO, Publication year 2006, at. p. 3-4, available a <http://www.wipo.int>, accessed on 10/7/2018.

²Rome convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted in 1961, Article 7.

³Law n° 31/2009 of 26/10/2009, on the protection of intellectual property, *O.G* of 14 December 2009.

‘meaning by which copyright and related rights are managed, for example licenced, assigned, or remunerated for any type of use’ other side individual rights management is controlling rights by individual rights-holders⁴ collective management of rights defines a particular system whereby collective society administers rights together with rights-holders and “monitors, collects and distributes the payment of royalties” for their behalf⁵.

At the present times, when innovative work can easily cross not only through radio or television but also through internet, the author or the performer cannot manage their IP rights by themselves and receive remuneration from every subject that used or is using his creative. For example, regarding to WIPO, 60,000O of musical works are being played every year through television⁶. Therefore, taking into consideration of individual rights management, a television or a radio should have to negotiate every author for the authorization, doing management of the activities unworkable.

In this way collecting management come to assist, becoming mediator between authors or performer and make sure that all are being paid⁷. Also, work holder cannot contact every television station to permit or prevent the use of his creative as well as to discuss licenses and remuneration for the use his works⁸.

The unfeasibility of monitoring these activities individually, both for the performer and the user need a Collective Management Organisations (CMOs) the performing artist and for the user creates a need for Collective Management Organizations (CMOs) for performing artists.

These societies make sure that performing artists enjoy their economic and moral intellectual property rights and especially the right to acquire payment for the use of their creative.

⁴Wenqi Liu, *Models for collective management of copyright from an international perspective: Potential changes for enhancing performance*, Journal of Intellectual Property Rights, 2012. p.17.

⁵ Zivile Buinickaite, *Collecting Societies under European Competition Law Scope and the Contribution of the Commission and Court of Justice of the European Union in applying competition rules in Collective Rights Management*, 2011, p.3.

⁶ *Collective rights management of copyright and related rights*, WIPO, available at <http://www.will.int/about-ip/en/about collective mnngt.html>, visited on August 20, 2018.

⁷Ibid.

⁸WIPO, *Collective Management of Copyrights and Related Rights*, available at <http://www.wipo.int>., visited on 12/7/2018.

While the rise of collective management began in France with the French playwright Pierre-August Caron de Beaumarchais in the dark and dingy Parisian theatres in the 1700s⁹, international protection of performing artists is very recent and settle out to 1961 in the time Rome convention for the protection of performers, producers of phonograms and broadcasting organizations was discussed.¹⁰ By 1996, the WIPO Performances and Phonograms Treaty (WPPT) offer to the performing artist exclusive rights for the first time¹¹.

From Rome to Beijing, rights granted to the performers are protected for theirs works in the domain of music, audiovisual, dance or any other category of performing arts. Generally, those rights called “performers’ rights”.

In practice, performer’s rights are to a great extend shifted on the basis of agreements and/or legislation. Customarily, the performing artists entered into agreements protected working conditions, yield of rights and payments. The terms of these agreements can be discussed by unions representing performers, as an actor’s or Collective Management Organisations¹².

Many countries have encouraged the development of Collective Management Organisations through legislative in the belief that Collective Management Organisations offer a proper solution to the problem of individually licensing, collecting and enforcing copyright. CMOs facilitate the establishment for collecting and dispersing royalties and negotiate licensing arrangements for works¹³.

Rwandan IP law recognizes this scheme of collective management of copyright and related rights its article 253 states as follows:

The use and management of copyrights, rights of performing artists, of phonogram producers and of broadcasting organizations shall be entrusted to one or more private companies of collective management of copyrights and related rights.

One or more private of collective management of copyrights and related rights apply the law concerning the organization and the functioning companies in Rwanda.

⁹Daniel Gervais, Collective management of copyright and related rights (2006,p.4.

¹⁰Rome convention, available at www.wipo.int, accezsed on 8/8/2018 at 10.00

¹¹WIPO Performances and Phonograms Treaty 1996(adopted in Geneva on December 20, 1996), article 4

¹²Tarja Koskinen&Nicholas Lowe, *Management of Copyright and Related rights in the audiovisual field*,2012, at. p.26-30

¹³Daniel Gervais (ed.), *collective management of copyright and related rights*, at. p.171. © 2010 Kluwer Law International BV, the Netherlands

Activities of such companies shall include the management of authors' rights and related rights holders, the representation of authors and rights holders, as well as the administration and management of license granting scheme, collection, calculation and distribution of royalties and dividends arising from use of the rights granted, without however, not prohibit any author of work or his or her legal successors, or any related right owners for exercising directly their rights as granted by the law.

0.2. PROBLEM STATEMENT

While the Law n° 31/2009 of 26/10/2009 on the protection of intellectual property opens doors for multiple CMOs, however, only one CMO called the Rwanda Society of Authors (RSAU) has registered with Rwanda Development Board (RDB) for the license N° 1538/10/NYR on behalf of its 400 members respectively of the associations of musicians (Ingoma music Associations), Cinema Art (Iriza Card), the association of Writers (*La plume d'or*) and Isoko Art Rwanda. Rwanda Society of Authors (RSAU) is in charge of protecting and promoting the interest of its members.

RSAU has been claiming to stay the only company doing on behalf of copyright owner's in collecting and receiving remuneration money from users of copyright and related rights materials, (such as radio and television stations) and dispersing the money to the rights holders. The empowered authority "Rwanda Development Board" seems to adhere to the philosophy of this monopoly. Nevertheless, a number of voices among scholars have risen to question for such a monopoly¹⁴

¹⁴Handke, C & Towse, R, 2007, "*Economics of Copyright Collecting Societies*", International Review of Intellectual Property and Competition Law, vol. 38, no. 8, at. p. 938. And Sebastien Hauss, "*Conflict in the knowledge Society*" The contentious politics of intellectual property, Cambridge University, 2003, at. 56

In many cases, CMOs is realistically the only one available, so that it is a monopsonist to rights holders and monopolist to rights users. CMOs have thus been accused of abuse of power vis-à-vis both rights holders and users.¹⁵ By the aggregation of assigned rights, a CMOs may become a concentration that substantially lessens competition or is a monopoly.

In fact, the objective of Collective Management Organizations which are to license works, observe works, and to collect and disperse the royalties have been traditionally accepted most important to a natural national monopoly. Today, the digital exploitation of works such as music, drama and cinema may no longer support such a conclusion¹⁶.

Traditional arguments advantage of natural monopoly and economies plate in the analogue world are no longer compatible with the globalization phenomena and the digital environment. The rise of the internet and allied communication technologies has changed the rules of the game. With the rapid growth of the Internet and mobile telephone use and widespread of new information technologies, the market has literally exploded. A series of qualitative researches conducted in Western countries and Africa,¹⁷ recommend to open CMOs to competition, through a range of specialized CMOs by field of activity (music, drama, audio-visual,...) to manage positively their respective copyrights.¹⁸

The Rwanda IP law institutes the management of rights belonging to foreigners as follow:

The empowered authority ensures the follow-up of conventions which have been signed between foreign companies and independent companies of collective management of copyrights and related rights operating in the country.

However, provisions of paragraph one of this article shall not prohibit one or more independent companies of management of copyrights and related rights to sign conventions with other foreign companies of collective management.

However, one of great significance element of completely developed collective management system is to allow Collective Management Organisations (CMOs) permit blanket licenses to

¹⁵See, e.g., Commission Decision of 12, 2002, *Case C2/37.219*, *Banghalter & Honem Christo v.*

SACEM [Daft Punk] <http://ec.europa.eu/competition/antitrust/cases/decdocs/37219/37219pdf>.

¹⁶Morten Hviid, Simone Schroff and John Street, *Regulation CMOs by competition: an incomplete answer to the licensing problem?* pg.2, CREATE, 2015

¹⁷KeitsengNkahMonyatsi, *Survey on the Status of Collective Management Organisation in ARIPO Member States*, 2014, at. p.7.

¹⁸Daniel Gervais (2nded.), *Collective Management of Copyright and related Rights*, p. 135-167. © 2010 and Kluwer International Law BV, the Netherlands.

users the works of the entire world repertoire of works or other protected subject matter until the rights managed by them are concerned.

It is to be confirmed, however, that even the system of bilateral representation agreement is well developed for example in the case of performing artists, the repertoire of use in regards of which CMOs has been clearly given the capacity to monitor exclusive rights is, virtually, never the entire world repertoire ¹⁹.

For an effective legal protection of the rights of performing artists, it is important to establish the degree to which the legal instruments in place are helping and the degree to which practices are supportive .The above statement allows us to formulate research questions as below:

- To what extent, performing artists are protected through the CMOs under the Rwandan law?
- What is the legal status of CMOs and what is the legal framework of their functioning?
- Which challenges are faced by performing artists to enjoy their rights and what would be the right remedies?

0.3 OBJECTIVE OF STUDY

0.3.1 General objective

General objective of the study is to analyze the current legal state of Collective Management Organisations (CMOs) landscape, to ascertain the protection and promotion of rights for performing artists.

The research addresses Collective Management Organisations (CMO) reforms aimed at the realization of protection and promotion of performing artists' rights in Rwanda in the current and prospective generation.

¹⁹MihályFicsor, *Collective Management of Copyright and Related Rights at a Triple Crossroads: Should it remain voluntary or may it be "extended" or made mandatory?*, 2003, at. p.8

0.3.2. Specific objectives

- To assess on how Rwandan law guaranties, protection of Intellectual Property Rights (IPRs) of performing artists via an assessment for the legal framework;
- To identify challenging key issues and way forward to overcome the bottlenecks and gaps in the efforts of granting efficient, protection and promotion of intellectual property rights of performing artists

0.3. JUSTIFICATION AND SIGNIFICANCE OF THE STUDY

This study will make an additional contribution on the existing literature(s) on Collective Management Organizations (CMOs) of copyright and related rights. The study will enlighten government officials, and other agencies which advocates for performers artists copyrights promotion and protection, focus on the weakness of the available legal regime. The study will help law makers and implementers to come up with strategies and laws to improve on the collective management organization for the performing artist in Rwanda.

0.4. METHODOLOGY

The methodology used is qualitative , all data used were collected through analysing documents such as books, national legal instruments relating to the CMOs in protecting the performing artists rights, also examining the international and regional legal instruments; journals, newspapers articles, thesis and dissertations. The data collected includes published and unpublished and interviews were consulted in order to produce information relating particularly to the protection of performing Artist's rights through CMOs and applicable solutions to the performing artists in Rwanda.

0.5 SCOPE OF THE STUDY

This research focuses only on the protection of performing artists rights through the CMOs, in consideration of the applicability of the articles of the Rwandan Law on protection of intellectual property that relate to CMOs in Rwanda.

0.5. RESEARCH OUTLINE

The research is composed of an introduction and two chapters.

The first chapter presents the evolution of performing artist's protection and the genesis of CMOs;

The second chapter will discuss challenges of CMOs in the fields of performing artists and suggests remedies to identified challenges.

A General conclusion analyze the general observations; recommending to whatever issues found and putt conclusions as to the whole research work in relation to legislation of laws governing collective management for the performing artists in Rwanda.

CHAPTER ONE:EVOLUTION OF PERFORMING ARTIST’S PROTECTION AND COLLECTIVE MANGAMENTORGANISATIONS

The current chapter attempts to highlight the rights of performing artists over the time trough international conventions and treaties, and trace back the evolution and development of the idea of collective management in copyright background and added how it gained its practical significance in the administration and monitoring of intellectual property performing artist’s rights across the world and particularly in Rwanda. But on the onset and for a better understanding a conceptual framework of the topic is paramount.

I.1. Conceptual framework

I.1.1. Performing artists

Rome convention defines “performing artists” as actors, singers, musicians, dancers from the customary “high arts” the popular arts, including live performing artists in all places, and people who perform, sing, deliver, play in, or otherwise act literally or artiste creative” such all specialized forms of first class art in which the artists perform the creative live to the public audience, musical, spoken word....., .²⁰

Rwandan IP law defines “performing artists” as actors, singers, musicians, dancers and all other peoples who perform, sing, deliver, declaim play, or otherwise perform literary and artistic works including expressions of folklore.²¹

There is a difference in the definition of performing artist between the Rwandan IP law and the Rome convention, where by the Rwandan law added the persons who perform literally and artist works including expression folklore while Rome convention doesn’t provide.

²⁰Rome Convention, 1961, Article 3 and 26

²¹Law N° 31/2009, on the Protection of Intellectual Property *O.G.* of 14/12/2009, Article 6.

Specifically, rights of performers including a live performance of preceding artistic work like dramatic or musical work protected by copyright and the performance can be ameliorated one, either original or based precedent work.²²

I.2. Legal framework of the rights of performing artists

Domestic laws want to be positioned with commonly recognized by international and regional norms. According to copyright and related rights for appropriating this international system the new conventions are discussed:

- a) The Berne Convention for the protection of literary and artistic works;
- b) Rome Convention for the protection of performers, producers of phonograms and broadcasting organizations
- c) Agreement on Trade –Related Aspect of Intellectual Property
- d) The WIPO Performances and Phonograms Treaty
- e) Convention establishing the World Intellectual Property Organisation
- f) The Beijing Treaty on Audiovisual Performance

I.2.1. Berne convention for the Protection of Literary and Artistic Works

Berne convention is an international treaty which sets out to harmonise the way that copyright and related rights are regulated on the international level²³.

²²WIPO, *Poursuite des délits liés à la propriété intellectuelle*, Genève : WIPO, 2001, publication n° 943, at. p.32.

²³J.W. Chege, *Copyright Law and Publishing in Kenya*, Kenya Literature, (1978) p.98 and M. Wekesa & B. Sihanya (2009) , *Intellectual Property Rights in Kenya*, *op. cit.* at 4, 8, 76 and 152.

This convention is managed by World Intellectual Property (WIPO) and was adopted first in 1886 as an agreement to privilege the rights of all authors who are nationals of countries that are party to the Convention.²⁴

This convention preserve the right going to comprise the author's copyright called the right of public performance. This convention under its article 11(1) provides as follows:

(1) Author of dramatic, dramatic-musical works shall enjoy the exclusive right of authorizing:

- (i) The public performance of their works, including such public performance by any means or process;*
- (ii) Any communication to the public of the performance of their works.*

This Article protects only dramatic, dramatic-musical and musical works. The authors have the exclusive rights of to authorise public performance of the work. This protection, first and most prominent to the live performance given by actors and musician on the place. Confirm that only public performance is covered. Private performance calls for no permission.²⁵

The very convention under its article 11(2) states as follows:

(2) Author of dramatic or dramatic-musical works shall enjoy, during the full term of their rights in the original works. The same rights with respect to translations thereof.

This is reasoning effect of the right of translation. The authors have the rights of exclusive to permit of his work and also the public performance translation.

For example, the liberto of an Italian opera is translated into French: the Italian author exercise his right of translation; if the French version is later performed on Paris stage, the Italian may assert his right of public performance. The right lasts only as long as the right in the original. Once the letter is in public domain, the author's control over the public performance of the translation ceases.²⁶

²⁴The UK Copyright service, (2004) "International copyright law - The Berne Convention", Available at: http://www.Copyrightservice.co.uk/copyright/p08_berneconvention, accessed on 13/09/2018.

²⁵ Claude Masouyé, Director of Copyright and Public Information Department of the International Bureau of WIPO *Guide to the Berne Convention for the Protection of Literary and Artistic Works* (Paris Act, 1971) Published by the world Intellectual Property Organisation, Geneva, March 1978, pp.64-65.

²⁶ Ibid.

In the Rwandan context, intellectual property law doesn't explain in detail how these provisions of Berne convention have given rise to a voluntary licensing system for collective management of copyright and related right through private companies called CMOs. The main gap to this convention was that, the performing artists were not taken into consideration, so that the national laws could not be lined with commonly accepted international norms.

I.2.2 Rome convention for the protection of performers, producers of phonograms and broadcasting organisation.

The Rome convention of 1961, is the first international treaty on the protection of performers, producers of phonograms and broadcasting organisations. This convention recognises the rights to oppose certain form of using which they have not previously authorized.²⁷

Although an encouraging start, it has to be observed that the Rome Convention offered only limited protection, especially since once the artists had permitted the audio-visual recording of his performance, he no longer enjoyed any right regarding its subsequent use²⁸. Moreover, Even this convention tries to highlight the right of performance there was a gap in the sense that no moral right were granted, nor was the exclusive right to authorize certain use of his performance. Another thirty years had to pass for protection specifically directed, at least a regard audio performance.

I.2.3 Agreement on Trade – Related Aspect of Intellectual Property

The Trade – Related Aspect of Intellectual Property (TRIP) is an international convention managed by the World Trade Organisation (WTO) It provides minimum measures for intellectual property norm as should executed by nationals of WTO Members²⁹. It was discussed at the end of the Uruguay Round of the GATT in 1994 and became into effect in

²⁷Mihaly Fiscor, *“The Law of Copyright and the Internet: the 1996 WIPO Treaties, their interpretation and implementation”*, Oxford University Press, 2000.

²⁸Ibid

²⁹WTO (2013) "Overview: the TRIPS Agreement" available at: <http://www.wto.org/English/traope/intel2e.htm>, visited on September 10, 2018.

January 1, 1995³⁰. So far, the contracting parties of TRIPs are 164, Rwanda accessed it on May 22, 1996.³¹

It is important to note that TRIPs includes nearly all the conditions of the Berne Convention as is contained in Articles 9 through 14 of TRIPs.³² Therefore, TRIPs effectively brought the laws of those WTO member states that had not signed the Berne Convention into harmony with the laws of those countries that are signatories to Berne.³³

This convention states that the performer has the capacity of stopping the following activities when committing without their permission: the fixation of the performance of their unfixed performance and the reproduction of such fixation. Performer also has the capacity of stopping this act as long as doing without permission: the broadcasting by wireless materials and the communication to the public of their live performance.³⁴

1.2.4 WIPO Performance and Phonograms Treaty

The very interesting characteristic of WIPO Performance and Phonograms Treaty is this, it constitutes the articles important for the applicability of international regulations on the

³⁰ Ibid

³¹The Republic of Rwanda later acceded to the Trade Related Aspects of Intellectual Property Rights on May 22, 1996. See WIPO Official Website on WIPO-Administered Treaties, Contracting Parties – TRIPs Agreement, available at <http://www.wipo.int/treaties/Show Results.jsp?Treaty id=15>, visited on September 12, 2018.

³²J. Watal, *Intellectual Property Rights in the WTO and Developing Countries*, Kluwer International Law, 2001, p.210.

³³M. N. Ouma, *Enforcement of Copyright in the Music Industry: A Critical Analysis of the Legal and Institutional Framework on Enforcement in Sub Saharan Africa*, Unpublished Phd Thesis, Queen Mary University of London, 2009, pp. 171-172.

³⁴ Trade Related Aspect of Intellectual Property Rights, Agreement, 1994.

prevention of creative, performers and phonograms to the circumstance bring into existence by the use of digital technology, especially of global digital networks like the internet.

The first objective of WIPO Performance and Phonograms Treaty is to top up the gaps created by the digital in the domain of copyright and related rights protection. Increasing the capacity of the internet and creative communication technology so that the creator receive the protection from copyright piracy³⁵

The definitions cover more or less the same terms as those which are defined in Article 3 of the Rome convention: “performers”, “phonogram”, “producers of phonograms” “publication”, “broadcasting”, more, in the sense that the WIPO Performances and Phonograms Treaty also defines “fixation” and “communication to the public”, and less, in the sense that it does not define “reproduction” and rebroadcasting”.³⁶

Article 4 of the treaty contains the principle of national treatment for authors. According to this principle, the treatment, it accords to its own nationals with regard to the exclusive rights specifically granted in this treaty, and to the right to equitable remuneration as provided in Article 15 of this treaty, provides the right to remuneration for broadcasting and communication to the public.

Article 15 states that:

(1) Performer and producer of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.

The countries ratified this treaty should set up in their domestic laws that the single equitable remuneration must be declared from the user by the performer or the producer of phonogram or

³⁵ HELMS, from the Committee on foreign Relations, submitted the following report: The Committee on Foreign Relations, to which was referred the World Intellectual Property Organisation Copyright Treaty and the World Intellectual Property Organisation Performances and Phonograms Treaty, done at Geneva on December 20, 1996, and signed by the United States on April 12, 1997, having considered the same, reports favorably thereon with one reservation, two declarations and three provisions, October 14, 1998, p.28.

³⁶ See the document prepared by the International Bureau of WIPO, The WIPO Copyright Treaty and The WIPO Performance and Phonograms Treaty, p.14.

both. And the member states can make national legislation that, in the absence of contract between the performer and producer of a phonogram provides the terms according to which performers and producers of phonograms must divide the single equitable remuneration.³⁷

Rwanda has not yet acceded to the WIPO Performances and Phonograms Treaty, but has already incorporated some relevant provisions on the protection of performing artist's and to the right of remuneration, like article 253 to 256 of Rwandan IP Law, they have approach to the articles 4 and 15 of WPPT.

I.2.5. The Beijing Treaty on Audiovisual Performance

This Treaty has been adopted in 2012 after the many negotiations started in 1996 and 2000. The main goal of this Treaty is to recognize the economic and moral rights of audiovisual performers, the BTAP comes very close to the WIPO Performance and Phonogram Treaty concerning to the rights it allows the performers.³⁸

Most of countries permit the performer's rights, both as effect of international convention to which they have become parties and on their own initiative. It should be remembered that international treaties set out minimum rights and that nationals can offer a broader protection. As I mentioned above, Rwanda has not yet signed the two last treaties and then those treaties provide extensively the protection of performing artists.

³⁷WIPO Performance and Phonograms Treaty, 1996, Article 15, (Adopted in Geneva on December 20, 1996).

³⁸Aaron X. Fellmeth, Professor of Law "Introductory Note to the Beijing Treaty on Audiovisual Performance, June 24, 2012, Volume 51, p. 13 Published on online 27 February 2017, available at <https://www.cambridge.org/core/journals/international-legal-materials/article/beijing-treaty-on-audiovisual-performances/2878185>, visited on 21/9/2018.

I.3. The historical development of the rights of performing artists and Collective Management Organizations in Rwanda

I.3.1. Rights of performing artists under the traditional customary law

Within the colonial period, Rwanda was successively under two different rules: the German rule and the Belgian rule.

From, July 1, 1890, Germany has hegemony over Rwanda and the neighbouring Burundi. “Germany didn’t initially interfere with the existing domestic institutions and customary law rules governing the new territory of Ruanda-Urundi under what was essentially military command until 1906, when civilian rule was introduced. This policy of go ahead without changes in political and cultural administration is best known as “indirect rule”.³⁹

The relative short period of German colonial rule do not amount any significant legal legacy to Rwanda. Germans enacted a limited number of written laws, especially rules related to tax and public order. Under the German rule, Rwanda remained about exclusively regulated by its customary law and generally continued to venerate its intangible cultural heritage.⁴⁰

Belgium invaded Rwanda in May, 1916. The Versailles Treaty, adopted at the Paris Peace Conference in 1919, assigned Ruanda-Urundi to Belgian rule on August 31, 1923, Belgium was entrusted with a League of Nations mandate over the territory. In 1925, an organic law adopted by the Belgium Parliament combined the administration of Rwanda and Burundi with that of the Belgian Congo with a Governor-General (Gouverneur-general) headquartered in Leopoldville (now Kinshasa, DRC), and a Deputy Governor-General (Vice-gouverneur general) for Ruanda-Urundi, who was based in Bujumbura, Burundi.⁴¹

³⁹Robert Aitken, How did the British imperial practice of indirect rule inform both the occupation police in the British zone of Germany, and the future of Germany in 1945-1949”,2017, p.4.

⁴⁰William A. Schabas and Martin Imbleau, Introduction to Rwandan law, Editions Yvon Blais, Cowansville (Quebec),1997, at. p. 6-7.

⁴¹Jean Rumaya, Le Rwanda sous le mandat Belge : 1916-1931, L’Harmattan, Paris, 1992, Paris, pp.103-119.

The Berne Convention not only impacted on the laws of these colonial powers, but also became applicable in the colonies by virtue of these declarations.

After a great number of African countries declared independence in the 1960s, two options were available for these former colonies: either (1) denounce the Berne Convention that had been applicable in their territories since the colonial period; or (2) make an open declaration of its continued application. An additional challenge was to decide whether to continue to enforce copyright laws inherited from the former colonial powers or to break from the colonial system by adopting new laws that adapted to their needs and priorities.

I.3.2. Rights of performing artists after the independence of Rwanda

Many countries of Africa ratified the Berne Convention in the 1960s or made declaration of the treaty have persisted application. Rwanda accessed it on May 21, 1983 and entered into force on March, 1984.⁴² It is understandable that many countries of Africa legislated their first copyright laws between 1961 and 1986. Most of these national laws had influence of the Berne Convention and were also influenced by the Tunis Model Law on copyrights for developing Countries of 1976.⁴³

Following a period of social and political turmoil in the 1950s, Rwanda established its first autonomous government, on October 26, 1960 and recovers its independence on July1, 1962. By virtue, this independence of the country was presumed to allow more people cultural expression and more intellectual rights preservation, unlike during the colonial era when many forms of indigenous cultural expression were discouraged and in to some extent denounced as evil. The question is of how the Rwandan law perceives such an expression during this period.

Nonetheless, there was starting with the independence, a perceptible will of the country to be in line with internationally recognized human rights standards. The fundamental pending question however, is to find out how Rwandan legal framework have complied with the relevant human rights standards and for instance, to what extent the central- and local-level governmental

⁴²*Supra* note 31.

⁴³Tschimanga Kongolo, *Historical Evolution of Copyright Legislation in Africa*, WIPO Journal, 5(2), 2014, p.164

institutions have applied, respect and protect these standards when fulfilling everyone's cultural rights, especially the participation access and enjoyment of cultural and artistic life.

On the field, the prior prevalent colonial ideology aimed to protect literary and artistic works only in connection with significance for western arts was still dominate until the end of the first two decades of independence.

It is only in 1983 that Rwanda enacted its copyright law, this law defined the performance as a public performance or delivery of work by any means whatsoever, it wasn't be specified to the performing artists (Law no 27/1983 of 15 November 1983 governing copyright). This law based on the Tunis Model Law on Copyright for Developing Countries was repealed by the Law No 31/2009 of 26/10/2009 on the protection of intellectual property gathering together Copyright and Industrial property.

At the time when the international copyright and related right system was being established the individual right system was being established of certain rights, first of all the right of performing artist's seemed difficult. Later, with the ever evolving the technologies, the number areas in which individual exercise of right was becoming difficult and same cases even impossible, started to grow, the establishment Collective management organization (CMO) was a logical solution for the right owners.

CMOs have grown in importance globally in their work of collectively administering the mandates from the right holders by negotiating royalties, collecting royalties from users and distributing the royalties to the right holders. In other jurisdictions, though a number of CMOs have been operational, there is little information available on their operations and understanding the impact of their work⁴⁴. It was within this context that this section shall have an understanding of what is happening at grass roots level in so far as the administration of CMOs is concerned and to gather information on the relevance of CMOs in promoting and protecting the works of right holders.

⁴⁴Survey on the status of Collective Management Organisations in ARIPO Member States, Reports by

KeitsengNkahMonyatsi - 2014

I.3.3. Historical development of Collective Management Organisations (CMOs) in Rwanda

“Traditional” CMOs, working and represent their members, discuss rate and conditions of use with users, deliver license authorizing works, collect and dispersing the remuneration. The individual holder owner of rights cannot directly engage in any of these steps.⁴⁵

the course of time, CMO’s were developed and established in many other countries in order to meet the needs of rights owners in respect of particular forms of use of their works and collect from the right users the fees due for such use and then distributing them: i.e. the GEMA or the German CMO managing performance rights in musical works founded in 1903 and the United Kingdom Performing Rights Society (PRS) established in 1914.⁴⁶

Rwanda enacted its copyright law n° 27/1983 of November 1983 governing copyright after a congress of actors in the creative industries “Premier Congrès National des Auteurs, Editeurs et Compositeurs Rwandais” held in May 1979. This law based on the Tunis Model Law on copyright for Developing Countries was repealed by the Law n° 31/2009 of 26/10/2009 on the protection of intellectual property gathering together Copyright and Industrial property. Art.75 of the 1983 copyright law, instituted the first CMO in Rwanda “ *Service Rwandais Chargé de la Gestion du Droit d’Auteur (S.R.D.A)*” and a Commission for the collect and the distribution of royalties”

Furthermore, the Presidential decree n° 277/14 of 6/5/1985 instituted the Commission for the collect and distribution of royalties” as a public entity under the tutelage and guidance of the then Ministry in charge of Copyright (*Ministre de l’Enseignement Supérieur et de la Recherche Scientifique*), while the Presidential decree n° 275/14 of 6//5/1985 ,instituted the tariffs for a use of a work of cultural expression and the Presidential decree n° 277/14 of 6//5/1985 , the damages for an illicit use of work under copyright . In the same period, a model of contract for the broadcasting of works managed by the S.R.D.A”is drafted .

⁴⁵Kalinda, F. X., *Intellectual Property Law Module*, course notes, UR, Master’s program, 2016-2018, at p. 48 unpublished.

⁴⁶Philippe Gillieron, *Performing Right Societies in the Digital Environment* , Thesis submitted to the Stanford program in International Legal Studies at the Stanford Law University, publication in May 2006, p.5.

The enactment of the Law No 31/2009 of 26/10/2009 on the protection of intellectual property transformed profoundly the Rwanda's CMO's landscape in its article 253 which states that:

*The use and management of copyrights, rights of performers, of phonogram producers and of broadcasting organisations shall be entrusted to one or many private companies of collective management of copyrights and related rights.
One or more independent companies of collective management of authors' rights and related rights apply the Law concerning the organisation and the functioning of commercial companies in Rwanda.*

This provision doesn't prevent any creator of work or his or her cujus, or any related right owners for practicing directly their rights as granted by this Law⁴⁷.

Beside this historical background, the desk review of the available literature on the management of copyright and related rights reveals that considerations and believes of authors and scholars have mainly fallen into a threefold approach: management of intellectual property rights under the oral traditional customary law, management of intellectual property right under the written legal instruments enacted by the rulers of the colonial and post colonial epoch and finally the management of needs and expectations of intellectual property rights holders in the ongoing virtual digital world. Whatever the country in the world, literature has accumulated over the years. However, a few have had concern with the Rwandan intellectual property landscape and particularly Rwandan performing artists.

Which concern to non-compliance CMOs, in Rwandan legal status there is no course of statutory course of action. However, in other African jurisdictions like South Africa and Nigeria under review, the law specifies drastic to measures and actions to deal with non-compliance CMOs.

In Nigerian Copyright Commission (NCC), established under section 34 of the Nigerian Act, is the statutory organ responsible for all matters affecting copyright in Nigeria as provided for in

⁴⁷Supra note 21.

the Copyright Act. Under section 39(2) of the Nigerian Act, the NCC has the powers to give approval for any entity seeking to operate as a CMO for the purposes of the Act.⁴⁸

Like the Kenyan Act, the Nigerian Act criminalizes the act of performing the duties of a CMO without the approval of the NCC but it goes a step further to impose a graduated scale of fines and an imprisonment term.⁴⁹

The primary source of law for licensing and supervision of CMOs is the Copyright Act Cap C28, Laws of the Federation of Nigeria 2004 and the Copyright (Collective Management Organisations) Regulations 2007.⁵⁰ Section 39(8) of the Nigerian Act aptly defines a CMO as “an association of copyright owners which has as its principal objectives the negotiating and granting of license, collecting and distributing of royalties in respect of copyright works.”

While it appears that Nigeria’s legal provisions for regulation of CMOs are more stringent than those in South Africa, one must bear in mind that the Nigerian provisions have been the subject of many litigation battles pitting CMOs against both users and the regulator, NCC. For instance, several cases arose from the requirement under Nigerian Copyright Act that prohibited a CMO from instituting actions for infringement of copyright unless such CMO had been approved by the NCC.

From all these considerations, we should conclude that the applicability of traditional CMOs has occurred to question in the digital age. Until the beginning of the internet the Collective Management Organisation have positioned an extensive change in their exercising and put them in the spotlight, for being unable to provide efficient services for their members. There is many places that Collective Management Organisations need to ameliorate should they want to remain on the high of their game, to the benefit of the average creator. The next chapter outline the main problem they are challenging as well as the applicability to stay high in a dynamic and competitive industry of performing artists to appropriate solution.

⁴⁸In this connection, see the case of musical Copyright Society Nigeria Ltd v. Details Nigeria Limited discussed by O. O. Rotimi (2012), p. 60.

⁴⁹S. 39(5) of the Nigerian Act.

⁵⁰The NCC has discretionary powers under section 39(7) to make regulations which would specify certain conditions required for effective collective administration of rights in Nigeria. Pursuant to these powers, the NCC issued the copyright Regulations 2007.

CHAPTER II: EFFICIENCY AND EFFECTIVENESS OF COLLECTIVE MANAGEMENT ORGANISATIONS UNDER RWANDAN PERSPECTIVE

The previous chapter has explored the state of CMOs in a general context and assesses the status of performing artists in Rwanda. The present chapter analyses and interprets horizontal issues that constitute a serious threat to the protection of performing artist's rights by the way of their Collective Management Organizations (CMOs).

The efficiency and the effectiveness of a CMO can be evaluated under four broad themes namely, policy and strategies in relation with CMOs, legal status of the CMO, acquisition of rights, dispute settlement and controlling anti-competitive activities in any jurisdiction⁵¹. Although CMOs in Rwanda have constitutional grounds and constitute a niche for the socio-economic and cultural development there subsist bottlenecks in the policy formulation, gaps in the legal environment and legal status of the existing CMO, challenges in the institutional framework, incoherencies in the institutional relationship arrangements, capacity gaps, assignment and licensing loopholes, shortness in the enforcement, struggles of the connected world and dispute resolutions. This chapter attempts to assess the efficiency and the effectiveness of a CMO in the light of the four themes mentioned above.

II.1. Policy formulation

The current Intellectual Property Policy of 2009 as modified recently in the first quarter of the year 2018, commit itself at providing guidance and a road map to ensure that the intellectual property laws, practices and strategies support and facilitate the achievement of the country's high-level vision and targets⁵².

⁵¹Liu, W, *Model for Collective Management of Copyrights from an International Perspective: Potential Changes for Enhancing Protection*, Journal of Intellectual Property Rights, 2012, p.46.

⁵²Ministry of Trade and Industry, Draft Rwanda Intellectual Property Policy, June 2018, p.5.

To do this would require a conducive environment, especially putting in place a strong legal and institutional framework that adequately protects performing artists rights in Rwanda and increasing technical literacy and skills that in turn would increase creativity and capacity of performing artists and in return of their related CMOs.

The desk review reveals that the Intellectual Property Policy in force is more explicit on industrial property and less sensitive on copyright and related rights. It is practically silent on collective management of rights, which is an important aspect in ensuring legal use of protected works for the economic benefit to rights holders. As a result, many stakeholders⁵³ especially the creators of intellectual property rights are not aware of the potential contribution of CMOs on the protection and promotion of their intellectual property rights and on the development of the country. The lack of such awareness leads to the negative attitudes towards the protection of the copyright and related rights works in Rwanda and consequently the copyright and related rights protected works are exploited unfairly through a rampant piracy at the expense of the right owners to the benefit of the users.

II.2. Legal environmental gaps

While intellectual property rights remain territorial, the nature of the rights and the requirements for enforcement are today largely determined by the requirements of multilateral treaties and decisions in international organizations. At the international level, a number of international treaties shaping intellectual property rules and adapting them to the ever changing world to which Rwanda is party apply to the country.

The Convention establishing the World Intellectual Property Organization (WIPO) was signed at Stockholm, Sweden, on 14 July 1967 and as amended on September 28, 1979,⁵⁴ The Republic of Rwanda later acceded to the WIPO on November 3, 1983, entered into force on February 3,

⁵³Stakeholders include users, consumers, rights holders and CMOs, and financial stakeholders.

⁵⁴WIPO Database of Intellectual Property WIPO Legislative Texts, available at <http://www.kipo.go.kr/upload/en/download/03.pdf>, visited on September 1, 2018.

1984,⁵⁵ and the Berne Convention for the Protection of Literary and Artistic Works, Rwanda ratified in March 1984,⁵⁶ which provides for protection of creative works for a minimum period of fifty (50) years and creates principles for the protection of original created works, the Agreement establishing in 1996 the World Trade Organization (WTO) and Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement) introduced to narrow the gaps in the way IPRs are protected around the world, and bring under common international rules the minimum levels of protection that member states are required to grant under their national intellectual property systems.

In 2011, Rwanda joined also, the Lusaka Agreement establishing the African Regional Intellectual Property Organization (ARIPO) which aims to coordinate and harmonize the administration of intellectual property rights by its member countries. On April 21, 2013, was ratified the Convention for the safeguarding of the protection of the Intangible Cultural heritage aimed at safeguarding the knowledge, use, representation and expression of the national cultural heritage such as oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices concerning nature and the universe.

There is still a gap in legal environment because all legal instruments stated above that Rwanda is party, don't dedicate to performing artists protection like others legal instruments that Rwanda so far not ratify.

II.3. Legal status of Collective Management Organisations

The legal nature of Collective Management Organisation is established by the legal norms of the State where it exercise. Collective Management Organisations have many various legal rules according to the legislation of the concerned country. Some countries manipulate a particular legal form for Collective Management Organisations, while others do not. The CMO should be

⁵⁵See WIPO Official Website on WIPO-Administered Treaties, Contracting Parties – Available at http://www.wipo.int/treaties/en/ShowResult.jsp?treaty_id=15, visted on September 12, 2018.

⁵⁶See WIPO Official Website on WIPO-Administered Treaties, Contracting Parties – BerneConvention. Available http://www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=15, visted on September 12, 2018.

formed, inter alia, as: society; a limited liability company, a foundation or a partnership. Nowadays, the majority of CMOs are incorporated as private, not-for-profit organizations.

Whatever the form adopted (pure public, mi-public or private), the basic *modus operandi* of CMOs is fairly linear. Once established and accredited by an authorization of a governmental authority to operate, CMOs most of which are private entities, must obtain from a group of right holders (e.g., music composers, music publishers, music and drama performers, actors) the authority to license, create repertoires of works, performances or recordings on behalf of those rights holders. “Such ability to license may be granted by law or by contracts with right holders or other.

This can be done by a full transfer of copyright (assignment) or by an agency agreement (license) allowing the CMO to represent the right holder, whether on an exclusive or non-exclusive basis”⁵⁷

In Rwanda the Intellectual Property Law states that “rights of performing artists, of phonogram producers and of broadcasting organizations shall be entrusted to one or more private companies of collective management of copyrights and related rights. One or more private companies of collective management of copy rights and related rights apply the Law concerning the organization and the functioning of commercial companies in Rwanda”⁵⁸.

The law governing companies recognizes private companies and public companies either as limited companies by shares, guarantees or both, either as unlimited companies beyond 100 shareholders. However, a company limited by guarantee or an unlimited company cannot be a public company and any private company with more than 100 shareholders is prohibited any invitation to the public to subscribe for any shares or debentures of the company⁵⁹.

According to the management of the Rwanda Society of Authors (RSAU), RSAU is a CMO licensed as a Limited company by guarantees as Nadine Bwiza CEO of RSAU told me on 01st October through the interview made at its office and added that RSAU has 582 members (authors and performers) until now.

⁵⁷Daniel Gervais, *Collective Management of Copyright and Related Rights*, 2nd ed., 2010, p.6-7.

⁵⁸ Article 253 Law on IP Protection *Supra* note 21.

⁵⁹See art.4,6, and 8, of the Law n° 17/2018 of 13/04/2018 Governing Companies, *O.G* n° Special of 18/04/2018 .

RSAU is member of CISAC with more than 400 authors and performers shareholders grouped in 4 associations :Association of Musicians (Ingoma Music Association), the Association of Cinema Artists (IrizaCard), the Association of Writers (La Plume d'or) and Isoko Arts Rwanda⁶⁰.

As far as the legal doctrine agree that copyright as a whole is basically an inalienable individual right, this poses a risk of organizations cropping up and operating as CMOs with a license apparently conflicting with the law as stated above.

This may in the long run confuse users; breed fertile ground for an ungovernable institution, and by the way, rendering collective management ineffective in Rwanda. As a result the role of guidance undertaken by the competent authority underlined by the law bear the risk of being compromised. Experience from other countries shows that CMOs can be heavy laden by lack of transparency, accountability and good governance.

⁶⁰ RSAU , available at <http://www.cisac.org> accessed on 1/8/2018 at 2.00 am.

It is surprising to note that none of the staff members of RSAU (including the Chief Executive Officer) knew whether RSAU was licensed by the competent authority to operate as a collective management organization, neither if the competent authority have a guideline of rules and regulations on which is normally based any accreditation of a Collective management Organizations to act as such (requirements , procedures, effects, of accreditation, duties of an accredited CMO, renewal of accreditation,...).

II.3.1. Legislation

Good CMOs regulation is a necessary prerequisite to create an environment where it is attractive to create and invest. It is of paramount importance that national laws provide a solid and unambiguous foundation, with clear rights and exceptions or limitations.

A well-functioning system of copyright and related rights is first of all based on the country's copyright law which needs to be in harmony with commonly accepted international norms. For example, countries under the TRIPs Agreement, are not only obliged to provide minimum standards of protection, but must also ensure their effective enforcement. Rwanda is party to TRIPS however as already mentioned.

There are very important tailored international legal instruments dedicated to performing artists to which Rwanda is not party. These are Convention for the protection of performer, producers of phonograms, and broadcasting organizations adopted, the WIPO Copyright Treaty adopted in 1996 and the WIPO Performance and Phonograms Treaty adopted in 1996. It is highly recommendable to Rwanda to ratify the above international legal instruments

Additionally, the Intellectual Property Office has to institute an online repository system that will ensure that registered copyright works are easily searchable, copyright owners more easily identified and enabled to enforce their rights in an environment where digital creations can be recast into different formats. Collective management organizations would be encouraged to use WIPO software systems such as WIPOCCOS developed and managed to assist CMOs in an efficient, reliable and timely collection of royalties on behalf of their members⁶¹.

⁶¹WIPO, WIPOCCOS: Software for Collective Management, available at <http://www.wipo.int>, accessed on 12/9/2018 at 13.00 am.

Moreover, there is a need for the current law on intellectual property to be reviewed, for example to clarify the responsibilities of organs in charge of copyright and related rights and domestic legal instruments include also various implementing ministerial orders: The Ministerial Order N°07/10/MINICOM of 25/08/2010 determining the structure and functioning of the Council of Appeal in charge of settling disputes related to IP in force from 2010; the Ministerial Order N°25/2016 of 17/03/2016 determining the timeframes for granting a compulsory license and opposition to registration of IP in force from 2016.

The Ministerial Order N°24/2016 of 17/03/2016 determining fees payable for registration services of IP in force from 2016 and the Ministerial Order fixing the form and content of the power of attorney in Intellectual Property matters in force from 2016.

The desk review yet, found the Law N° 31/2009 of 26/10/2009 on the protection of intellectual property as modified to date, to be compliant with basic principles of the Berne Convention and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), however, there subsist inadequacies to be addressed to. Key challenges range from the fact that the law does not adequately address the protection of copyright and related rights to its internally inconsistent in the use of terminology related to intellectual property protection. Moreover, there are other laws in place which create overlapping duties and responsibilities for different organs and government agencies.

Nevertheless, in order to ensure that all aspects of the intellectual property rights of various artists are protected within a well-functioning system, especially those of the most important segment constituted by performing artists, the revised law would seek to usher in the promulgation of a more comprehensive intellectual property law “which domesticates the provisions of the most relevant international treaties related to harmonizing the protection of intellectual property related rights, both regionally and internationally; establishes penalties which act as a deterrent against the commission of offences related to copyrights, takes advantage and due account of WTO TRIPS and clarifies institutional responsibilities as regards policy-making, administration and enforcement of intellectual property in Rwanda”⁶².

⁶²Ministry of Trade and Industry, op. cit., p.3.

Moreover, As stressed in the new Rwanda National IP Strategy validated January 2018, “ it is necessary to design and implement target oriented intellectual property awareness and outreach opportunities and programs reflecting the needs of different groups such as intellectual property right holders them serves , researchers, politicians and other relevant government officials, enforcement officers, potential investors and users of the intellectual property system, small and medium enterprises and the general public”⁶³. Basically, they should be sensitized or formally trained on intellectual property rights and their importance as a strategic tool for any country’s development

Legislation is also the concern of the legal status of the actual CMO in Rwanda “RSAU”. To comply with the law, RSAU has either to renounce to its actual status or to be declared an exception to the company law and then commissioned as a new field of public utilities under RURA regulations.

II.4. Institutional challenges and incoherencies in relationship arrangements

An institutional framework requires a set of institutions that act in a coordinated and mutually reinforcing manner. The majority of the stakeholders contacted expressed frustration over the fragmentation of intellectual property responsibilities under three government bodies RDB , MINISPOC and MINICOM that are responsible for handling different aspects of intellectual property but felt prevented the delivery of quality intellectual property services. They observed that none of the three entities had neither the resources nor the capacity for the effective implementation and follow up of the intellectual property policy and law.⁶⁴

In addition, the process of enacting laws and approving legislative proposals is time consuming, sometimes taking a year or more from submission of a proposal to being taken up by the Ministry for consideration.

⁶³B. NYASSE and K.N. MONYATSI, promotion of intellectual property Rwanda national strategy; report II, 2018.

⁶⁴Getachew Mengistie , Integrating intellectual property into innovation policy formulation in Rwanda,2014,p.24.

Expert scholars felt that there was an urgent need for clear streamlining of intellectual property responsibilities of MINICOM, MINISPOC and RDB in charge of copyright and related rights, the role of the copyright office at RDB over the CMOs and enforcement agencies. As a consequence, they finally recommend an appropriate new standalone office responsible for all intellectual property matters as CEO of RSAU declared in the interview, she told me that, the RDB (Division Director of IP) who gives to RSAU the tariff basing on collecting the remuneration from users of works.

The standalone office that would meaningfully deal with copyright matters and issues related to the general supervision, good management and administration of CMOs, the collection and distribution of royalties which fall under the duties of collective management societies excluded⁶⁵.

The intellectual property regime is rather broad and includes not only a comprehensive set of institutions but also the multiplicity of institutional arrangements that shapes the governance of intellectual property resources included the private social relationships and arrangements that contribute to defining the global use of intellectual property rights as intangible resources.⁶⁶

While in practice substantial attention has been paid in establishing the above mentioned institutions involved in intellectual property, scant attention has been devoted to exploring in a unified framework the range of institutional relationships and arrangements that contribute to the governance of intellectual property resources so as at public institutional framework, the literature review reveals that the current level of institutional capacity in Rwanda for addressing challenges in a coordinated manner between Government institutions is low. The government has an important role to play in this regard.

To comply with its international obligations, the country needs once again a clear demarcation of mandates between Government Ministries (MINISPOC, MINICOM) responsible for copyright and Agencies (i.e. RDB), as well as a sound organization structure of the existing CMOs and the Rwanda Arts Council (RAC).

⁶⁵Ibidem, p. 30.

⁶⁶Ministry of Trade and Industry, *Supra* note 5, p26

It appears in particular that there is duplication of efforts between the mandate of MINISPOC and MINICOM. In our discussions laid out with RSAU and thereafter conformed by B. NYASSE and K.N. MONYATSI, in their report II on the Rwanda national strategy mentioned above⁶⁷, the role of RAC was not clearly defined. It appeared during discussion that RAC also licenses users of works and possibly collects fees for that purpose. There is need for clarity; otherwise users will find an escape for non-payment of royalties.

To streamline performing artists rights administration at national regional and international stand and fulfill the mandates on, administering and ensuring adequate enforcement of these rights, experts scholars recommend also to put in place a special legislation on collective management specifically dedicated to performing artists.

II.5. Capacity building in the administrative and financial management

CMOs are naturally subject to the legal requirements of their company law. Such legislation also governs the way rights holders can exercise control over their CMOs. Rights holders have normally the highest decision-making power in a CMO. Through participation and the right to vote in a General Meeting, rights holders make strategic decisions concerning the organization. They elect the Executive Organ and, in many cases, the Chair of the CMO. The recruitment of the Chief Executive Officer is an important step which affects the day-to-day business and the CMO's success. The collective management of artist's intellectual property rights is a profession that demands an understanding of and experience in legal and economic affairs and an interest in creative work and/or cultural industries.

Skills in documentation and scan of factors affecting the CMO; databases management; knowledge of the value chain in intellectual property rights creation⁶⁸ and a well-founded knowledge of the basic principles governing the licensing practices, tariffs development and collection of royalties (or remuneration for use of works) are valuable assets. Good political contacts and/or experience in lobbying are additional assets⁶⁹.

⁶⁷B. NYASSE and K.N. MONYATSI, *op.cit*, p.30.

⁶⁸Unless the context clearly indicates otherwise, the expression "works" includes protected performances and sounds recordings.

⁶⁹Robert Hooijer and J. Joel Baloyi, *Organizations tool kit: Neighboring Rights*, 2016, p.39.

In its actual state, RSAU is far to meet these minima requirements. It has currently only three employees without a substantial formal training on Intellectual Property.

Even though the Norwegian Copyright Development Association has commissioned an experienced CMO official from Botswana to support the CMO, RSAU staff has never been exposed to how a CMO is administrated in practice⁷⁰. In addition, RSAU has not enough funds to run a CMO and then cannot recruit additional needed staff. This is inadequate for a CMO that needs to engage extensively to educate rights holders about their rights and invite them to join the organization, and engage users of works to license them. The especially on-the-job training human resource development will be key to the success of the current RSAU, the facto in monopolistic position benefit.

II.6. Assignment and licensing of performer's rights through Collective Management Organisations arrangements

The entire functioning of a CMO is heavily dependent on the acquisition of the rights from the rights owners because the task of CMOs begins with the acquisition of the rights from the right holders under different contractual arrangements such as compulsory licenses and voluntary licenses⁷¹. Under performance by a collecting society may mean lost licensing opportunities and less creative content being made available to consumers. Thus, by joining a CMO, the copyright owners can assign CMOs to exercise their rights on their behalf. Often, the users and the CMO will disagree on the terms of the license.

Upon the authorization of the rights owners, the CMO can exercise their power “to monitor the use of their works, to negotiate with prospective users, to grant licenses to the prospective users under certain conditions, to collect remunerations and distribute it among the owners of rights”⁷². Once done the CMO then turns to users. Each jurisdiction basically decides which type of state intervention is warranted in that context. To take just a few examples, in the United States, a federal judge is empowered (for music performing rights organizations the American Society of

⁷⁰B. and K.N. MONYATSI, op.cit, p.30, op.cit 29

⁷¹W.A. Sanath S. Wijesinghe, Comparative analysis of Collective Management Oragination of Copyright and Related Rights with special reference to Sri Lanka t ,*Proceeding of the 15th Open University of Sri Lanka Research Sessions*,2017, p.318.

⁷²Ficsor, M. (2003) Collective Management of the copyrights and Relate Rights at triple crossed: should it remain voluntary or may it be extended or may it be mandatory. *Copyrights Bulletin*.,2003, p.8.

Composer, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) by the agreement entered into between those CMOs and the Department of Justice to decide the appropriate rate for the licenses. In Australia, Canada and the United Kingdom, a specialized copyright tribunal or board was established for that purpose⁷³. Once a license has been signed by a user, the CMO will receive payments from that user and thereafter the CMO distribute these royalties the rights owners.

Under article 253 of the Rwandan law governing copyright⁷⁴, activities of a CMO include management of copyrights and related rights, representation and management of license granting scheme, collection, calculation and distribution of remuneration arising from the use of the rights as provided for by the intellectual property law .

Despite the fact that paragraph 2 of article 253 do not prohibit any copyright owner or any related right owner or his/her legal successors for exercising directly their rights as granted by this law, the following paragraph 3 put a remarkable functional barrier on rights owners to alienate their rights to a third party by entering into a contract. The paragraph states that:

For the activities concerning grant of license and collection of remunerations pertaining to public performance and communication to the public by broadcasting, by cable or throughout other means of musical or dramatic-musical works, their use and benefit extracted from it, the fixation of sounds of those works and their use and benefits extracted from it, one or more private companies of collective management of copyrights and related rights shall have to promptly respond to public for any demand of reasonable information about any documents and registers of such works and benefits extracted from their use, or of such current performances fixations, according to the normal procedure.

However, intellectual property rights can only be managed collectively if they are properly guaranteed by law. For instance, there is not much point in setting about managing broadcasting rights if there is no certainty that the radio and television stations are indeed obliged to pay royalties to the right holders of the works which they broadcast. Furthermore, collective management of copyright will only be successful if national and foreign works are protected in the same manner, that is to say, if the country undertakes to treat works by national authors and works by foreign authors on an equal footing by acceding to the international conventions.⁷⁵

⁷³Daniel Gervais (2010), op.cit. p7-8.

⁷⁴ Article 253 Law on IP protection, *Supra* note 21.

⁷⁵Ulrich Uchtenhagen, The sitting-up of new copyright societies: some experiences and reflexions, , 2005, p.4.

Once a CMO has acquired the right to license on behalf of a plurality of right holders, it can enter into ‘reciprocal representation agreements’ with similar CMOs in other territories.

Those agreements allow the parties to license each other’s pool of rights, known as their repertoire (sometimes called repertory) in the other party’s territory. For example, GEMA (the German music CMO) has such an agreement with the Society of Composers, Authors and Music Publishers of Canada (SOCAN), its counterpart in Canada.

As a result, SOCAN can license GEMA’s repertoire in Canada and GEMA can license SOCAN’s repertoire in Germany. The rationale behind is the fact that where foreign works remain without protection, the users will refuse the obligation to pay royalties for national works. And if the protection of national works is lacking, a copyright society will degenerate into the representative of foreign interests and will never achieve full recognition in the country in which it operates⁷⁶.

Article 254 open up an avenue for cross-border transactions of domestic works as it indicates that one or more private companies of collective management of copyrights and related rights can enter into what are known as a reciprocal representation agreement with foreign societies or organizations which administer copyrights and related rights, for a mutual collaboration in licensing works of their respective members⁷⁷. The empowered authority ensures however the follow-up of such conventions signed between foreign companies and private companies of collective management of copyrights and related rights operating in the country⁷⁸. Thus, although the two provisions (253 and 254) are not very details they provide considerable recognition to CMOs. A possible question may arise on the adequacy of such non-descriptive provisions in an era where the history of man is written in the electronic medium!

II.6.1 Management

Collective management organizations need to be run effectively in a professional manner, fulfilling the requirements of good governance, both in leadership and management and applying

⁷⁶Daniel Gervais (2010), op.cit. p.8.

⁷⁷Ibidem, p.8..

⁷⁸ Art. 254 Law on IP Protection Supra note 21.

highest standards of due diligence, transparency and accountability. There are not only standards that deal with transparency, accountability and governance issues but it is important for the country to bring the current intellectual property legislation up to date with the digital environment.

Success stories are to be found in increasing political will to manage intellectual property rights which is materialized in the country's vision, intellectual property policy and a strategic plan translating the policy into enforceable means.

The Rwanda's national vision 2020, consider intellectual property rights as one of the keys drivers of the country's sustainable development and democratic values. The existence of this vision is a positive meaning leading to a bright future for the intellectual property rights environment.

Rwanda has now a new policy, perceived as "tool to encourage technology transfer, with a particular emphasis on knowledge creation, knowledge acquisition and knowledge transfer"⁷⁹. It is aimed at providing guidance and a road map to ensure that the IP laws, practices and strategies in Rwanda support and facilitate the achievement of the country's high-level vision and targets. It is articulated on six interrelated objectives. These are to:

1. putting in place a strong legal and institutional framework that adequately protects intellectual property rights in Rwanda
2. increasing technological literacy and advanced scientific and technological skills that in turn would increase the innovation capacity
3. promoting innovation and creativity
4. facilitating access to financing the development and application of innovative and creative projects and ideas implemented by national creators, inventors, innovators, and small businesses, youth in particular
5. Enhancing the protection of geographical indications, traditional knowledge and cultural expressions and facilitate equitable access to genetic resources and benefit sharing

⁷⁹Ministry of Trade and Industry, op. cit., p.40

II.7. Management of performer's rights in the internet environment

A well-functioning IP system with an adequate and reliable enforcement mechanism is key to knowledge-based economy as Rwanda seeks to become.

While so many factors have been adduced for piracy in Rwanda, the inadequacy and sometimes lack of effective copyright enforcement laws is of significance. Therefore, it is important to build an intellectual property rights enforcement regime with efficient measures, adequate infrastructure and technical know-how discouraging piracy and counterfeiting of copyrighted goods⁸⁰.

Nevertheless, stakeholders contacted on the field report a high level of piracy by a number of people who present themselves as promoters of artists while in actual fact their trade is based on violating copyright. Moreover, stakeholders considered IP capacity building in enforcement agencies (Police, Customs, the Judiciary and Law firms/practitioners engaged in handling IP matters) as a prerequisite for IP law enforcement and IP protection.

For a more improvement, this lack of training of enforcement agencies should be coupled with the lack of coordination and strategic engagement between players in the fight against IP violation and adverse effects of the already mentioned lack of awareness on the effects and impact of IP violation.

As intellectual Property has an international character, there is a need in this perspective to make IP court decisions available to the IP community as a whole. In this respect, Court decisions should be compiled and published in both English and French, and they should also be regularly updated to add selected of new cases.

⁸⁰Ministry of Trade and Industry , op. cit., p.32.

The rapid diffusion of digital technologies since the 1970s poses particular challenge to the copyright law. Thanks to internet consumers have suddenly the power to view performances of copyrighted works on demand in the privacy of their homes; since these performances can happen at any time and place chosen by them⁸¹.

The international copyright regime, based on the private ownership of intellectual property, is being conflicting with the collaborative and sharing dimensions of a networked digital culture⁸². Services of CMOs need to find the right way in this labyrinth of new media landscape where copyright-protected material is wider than ever before and, without effective management of rights, the very foundation of creativity and cultural industries is in danger⁸³.

Peer-to-peer sharing of works has been declared an infringement of copyright in many countries as it makes available protected works without authorization from copyright owners.

The legal status of the mere downloading of works from P2P networks is less clear. Mere downloading is certainly an act of reproduction unauthorized by the authors or neighboring rights holders.

Yet, its permissibility as a fair use or private copy has been challenged in some countries. Downloading also raises the question whether permissibility of a private copy should depend on whether it was made from a legal source.

If the permissibility of a private copy turns on whether it was made from a legal source, then a copyrighted work downloaded from a P2P networks would no longer have private copy status because its source was unauthorized by the copyright owner. There is no longer any doubt that uploading works on P2P networks is against copyright principles⁸⁴

⁸¹ Gilliéron Philippe, *Performing rights societies in the digital environment*, , 2006, p.6.

⁸²Lynne Spender, *Digital Culture, Copyright maximalism, and the Challenge to Copyright Law*, 2009, p.5.

⁸⁴Séverine Dusollier and Caroline Colin, Symposium: *Collective Management of Copyright: Solution or Sacrifice?* Peer to peer File sharing and Copyright.: What could be the role of Collective Management? *Columbia Journal of Law & the Arts*, vol.34:4, p.811.

As digital technology, and especially the internet, rose in importance, a new breed of services came to the fore, most notably, the streaming platforms (Spotify, Deezer, Amazon Music, etc.) changing dramatically the needs of users. They differ from analogue users in the kind of licenses they require. Analogue users only require territorial licenses; their services do not cross national borders and therefore they do not require licenses that extend further. However, the internet (and digitalisation) creates the possibility of easy access to the works of performing artists among others irrespective of tariff barriers or broadcasting regulations. Any legal service seeking to exploit these possibilities requires multi-territorial licenses⁸⁵.

The statement above shows clearly that new media landscape, both online and mobile, offers both opportunities and challenges. Unauthorized modes of exploitation can, for instance, include transmission of a show online, taken from a live performance without any permission and then distributed widely on a social media website. Randomly checking the internet, rights holders have found a number of cases where their works have been recorded without their knowledge and widely shared thereafter⁸⁶.

II.8. Dispute settlement paradigm

Disputes may arise caused either by the conflict between the CMO and users especially dispute over tariffs and licensing conditions or between the CMO and the right holders. Based on different forms of supervision, under specific legislation, countries have explored several settlement mechanisms for resolving such disputes. Many governments have determined mechanisms whereby tariffs are set or approved by a competent authority. Mediation or arbitration procedures are among the tasks of some copyright offices. In many Common Law countries, copyright tribunals decide tariffs and licensing conditions in case of disagreement.

⁸⁵Hviid, M., Schroff, S., & Street, J.(2016). *Regulating Collective Management by Competition: An complete answer to the licensing problem?* *Journal of Intellectual Property, Information Technology and Electronic Commerce Law*, 7(3), p.256.

⁸⁶Tarja Koskinen-Olsson and Nicholas Lowe, *Management of rights in dramatic works*, 2012, p.30.

The Kenya Copyright Board (KECOBO)⁸⁷ is actively engaged in all aspect of copyright and related rights: legislation and enforcement of rights as well as awareness and education. It approves and supervises the activities of Kenyan CMOs.

II.9. Enforcement of performing artist’s rights

The TRIPS Agreement requires that fair and equitable uncomplicated costless and time saving enforcement procedures should be made available to permit effective action against any act of infringement of intellectual property rights, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. The procedures must be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse⁸⁸.

Nevertheless, legislation alone is not enough, as rights need to be managed and enforced if for example, there are pirated products on the market. Therefore, the Role of competent organs in the enforcement of IPRs is needed.

II.9.1.The roles and responsibilities of the competent institutions in the Enforcement of IPRs in Rwanda

It is an obligation set under the TRIPS Agreement that all member States have to implement comprehensive mechanisms that facilitate the fight against activities of IPRs infringement. It requires fast and effective remedies to combat infringement of IPRs and requires imposing penalties that play role of deterrence from future infringements.⁸⁹

The Rwandan law on IP protection gives right to infringed IPRs owner to take actions against any person who infringes their rights seeking for legally provided remedies.

However, there would be no point having legal texts that provide for the protection of IPRs in

Absence of ability by IPRs holders to enforce IPRs through accessible, adequate and sufficient

⁸⁷Kenya Copyright (KECOBO), www.copyright.go.ke Visited on 13/01/2019.

⁸⁸See Art.41, 45-48,61 of op cit. TRIPS.

⁸⁹WTO, *Annex IC: Agreement on Trade –Related Aspect of Intellectual Property Rights*, Art.41. <http://www.wto.org/english/docs/legal/27> trips Visited on 14th January, 2019

Procedures brought before institutions that are able to efficiently and fairly deal with IPRs infringement.

The following key agencies and offices are charged with the responsibility of enforcing IPR in Rwanda:

II.9.1.1 Rwanda development Board

From 1963 to 2008, the Ministry of Commerce was the institution responsible for all industrial property police and legislative work as well as its administration but after the creation of the Rwanda Development Board, the latter took over the administration of Intellectual Property.⁹⁰

In Rwanda Development Board we find the office of Registrar General there division in charge of management of intellectual property.⁹¹ Its responsibility we will also find them in the law on protection of intellectual property.

II.9.1.2 The Ministry of Trade and Industry

According to the Rwandan Law on protection of intellectual property assigns the Ministry of Trade and Industry with responsibilities of implementation of policies that protecting and promoting intellectual property in Rwanda, to implement the legislative texts that make easy with the enforcement of the law on the intellectual property and to verify the organ in the charge of intellectual property.⁹²

Ministry of Trade and Industry does with Rwanda Development Board precisely in the office of Registrar General to put forward the programs that promote intellectual property protection in Rwanda via a lot of studies or training that protect the exercising of the Law on intellectual

⁹⁰ Organic Law n° 53/2008 of 2/9/2008 establishing Rwanda Development Board and Determining its Responsibilities, Organisation and Functioning, *O.G* n° special of 5/9/2008.

⁹¹Office of the Registrar General , 2018, online: Rwanda Development Board <http://www.org.rdb.rw>, visited on 14/01/2019

⁹² Article 11, Law on IP Protection *Supra* note 21.

property protection and via continuity publication of interesting texts that to facilitate and the procedure of attaching services given to intellectual property rights.

II.9.1.3 The Ministry of Sport and Culture

This ministry is charged of copyright and related right and culture matters, it has also has the obligation protect moral of author and owner of copyright and related right, it provides Lot of service to performers and artists.⁹³

It implements the ministerial order number 01/01/MINISPOC which expressed the conditions to practice for termination of confirmation in circulation of doubt pirate products by the clients. This responsibility is provided in the law on the protection of IP under article 2.

Ministry of Sport and Culture works with other institution concerning organs like Ministry of Trade and Industry and the Office of Registrar General for promoting rights of performing artists via some training on the exercising of the law on Intellectual property protection and facilitate to get response to general issues regards by the artists.

II.9.1.4. The Rwanda Investigation Bureau

Working on various technology development by the facility of internet that help to find sustainable solutions to our daily issues like cutting production expenses to the most minimum possible.

The RIB exercises an interesting role for enforcing intellectual property rights via criminal actions. The mission of fighting against criminal activities by carrying out professional investigation of web-attacks.⁹⁴

⁹³Background, online: Ministry of Sport and Culture <http://www.minispoc.gov.rw>, visited on 14/01/2019.

⁹⁴ Law n° 12/2017 of 07/04/2017 establishing the Rwanda Investigation Bureau and Determining its Mission, powers, Organizations, and Functioning, (*O.G* n° 20/04/2017) art.5.

II.9.1.5. The National Public Prosecution Authority

The NPPA has a lot to do with IPRs enforcement under Rwanda law because of its power to file Before competent courts criminal actions against persons accused of criminal acts involving infringement of IPRs.

II.9.1.7. The Rwanda Standards Board

The role of this institution is to enforce the Intellectual Property Rights direves from its duty to issues a product certification.

The letter is certification following the examination that; features, quality, or status of products according with determine standard. It covers foods and beverage, construction material, ect.....⁹⁵

II.9.1.8. Collective Management Organizations

Copyright and related rights are bundles of different rights which can be exercised individually or, where it is impracticable to enter into individual arrangements can be managed by collecting societies also known as CMOs.⁹⁶

The Rwandan IP Law was put in place and it recognizes this scheme of collective management of copyrights and related rights. The use and management of copyrights, rights of performing artists, of phonogram producers and of broadcasting organizations shall be entrusted to one or more private companies of collective management of copyrights and related rights.⁹⁷

⁹⁵Law n° 50/2013 of 28/06/2013 establishing Rwanda Standard Board and determining its mission, organization and functioning, O.G n° 30 of 29/07/2013.

⁹⁶ See M. Fiscor, *Collective Management of Copyright and Related Rights*, World Intellectual Property Organisation, Geneva, (2002), p.6.

⁹⁷Article 253, Law on IP Protection, *Supra* note 21.

There exist in Rwanda only one monopoly multipurpose CMO. This situation requires more input especially to fill the gaps created by the scattered current legislation. This situation requires more input especially to fill the gaps created by the scattered current legislation.

As portrayed in the IP strategy⁹⁸.The detailed investigation and analysis of existing laws and the situations they have created have shown that actual legislation do not reflect the reality of the situation current in Rwanda . There continue to be shortcomings in the coherent development, implementation and enforcement of the few provisions of the legal frameworks actually in use.

II.9.2. Institutional framework weakness

As earlier noted, RDB has a section in charge of the management of intellectual property. This is a positive step made by the country but which is not enough. This institution lacks intellectual property rights experts such as specialized examiner and controller. However, in most of countries, it is provided an independent office, a commission or institution having in its attributions only the protection of intellectual property within the country. Such independent institution could be benefit for the efficiency management of intellectual property.

To empower these institutions for proper protection of IPRs in general, it is a single reminder that the increasing need to harmonize IP legislation in East African Community aimed to comply with the motto of the Community “one people, one destiny”, as well as SADC and COMESA should serve as a baseline or a source of inspiration.

Considering the cross-sectoral nature of intellectual property, proper intellectual property coordination requires a multi-stakeholder platform. In this context, it is proposed to establish a National Steering Committee on intellectual property with clear Terms of reference.

⁹⁸Ministry of Trade and Industry, op. cit p.42

The Steering Committee shall be co-chaired by MINICOM and the intellectual property Office and shall have members from all relevant Ministries, enforcement agencies (National Police, customs agency, prosecutor, courts and standards board), private sectors and civil societies included. Its main mandate would be the coordination of this intellectual property policy implementation, monitoring and evaluation.

Enforcement and management of rights are all needed to secure a healthy market for the creative sector. Once again, legislation is the basic condition without which rights can neither be enforced nor licensed. But two other pillars are needed: rapid and effective enforcement measures and licensing activities which complement each other, as they strive for the same goal through different means.

With the 2018 Rwanda National IP strategy, it is suggested to foster an IP culture of respect for knowledge, integrity and legal observance; to empower national courts to issue injunctions aimed at prohibiting the continuation of infringement and ensure that non-compliance be subject to recurring fines, to empower enforcement authorities to seize suspected infringing, along with any related materials used in the commission of the alleged infringement, documentary evidence, and any assets derived from or obtained directly or indirectly through the infringing activity; Empower law enforcement authorities to initiate investigation or legal action of criminal IP offences without the need for a complaint and to promote more effective prevention measures by encouraging the development and adoption of standards including those for the appropriate use of advanced technologies, such as automated tools for rapid notice and takedown, filtering and redress and the use of risk scoring services⁹⁹

Protection of copyrights and related rights in particular, the protection of creative works of performing artists are one of the daunting tasks not only in Rwanda but in the whole Africa. The adoption of an intellectual property policy with various strategies and program is yet a good thing but not an end in itself. The intellectual property policy interventions cannot be achieved if essential inputs enabling to fight against global threats that may affect creative works are not on agenda. There is a need for a better translation of the political will into tangible facts on the field.

⁹⁹B. Nyasse and K.N. Monyatsi, op. cit., p.12

There is need to strengthen the legal framework so as to ensure that the interests of rights holders and users of copyright and related rights works are maximized through CMOs. That is one of the reasons why Rwanda, although it has enacted law for IP protection, which include enforcement provisions, Rwanda is still facing many critical problems which hamper the promotion and protection of intellectual property rights such as enforcement of the law.

Rwandan government should meet the requirements of administrative costs of the CMO until it maintains strong position to manage itself. CMO must create an effective rights management system with a reliable mechanism for monitoring actual use of works, collection and distribution of royalties. It also need, as well, to establish dispute resolution mechanism, which will reduce the cost of dispute settlement for the rights owners and bridge the gap between the users and the right holders.

CMO must create an effective rights management system with a reliable mechanism for monitoring actual use of works, collection and distribution of royalties. It also need, as well, to establish dispute resolution mechanism, which will reduce the cost of dispute settlement for the rights owners and bridge the gap between the users and the right holders.

Law enforcement agents need to be well trained so as to acquire skills for effective administration in copyright related cases as their objectives can only be achieved in an environment where copyright law is respected and where it can be effectively enforced if not complied with since effective mechanisms for enforcement are required under international treaty obligations.

As advancement in digital technology has also created new opportunities for infringement of copyright, it is of fundamental importance that copyright owners are able to effectively trade in and enforce their rights in the new digital era. This can only be achieved if there is also a strong cooperation between rights holders, the police forces and different enforcement agents. In our view, it is in best interest of authors and other creators of artistic works to foster a culture which respects copyright and to make concerted efforts to reduce copyright infringement and commercial piracy. Therefore greater co-operation between Government, law enforcement agencies, right holders and users is vital in achieving this.

GENERAL CONCLUSION

We have briefly drawn some of practicable remedies, especially to enact a new more comprehensive intellectual property law with consistent deterrent provisions. This legislation should address divers ways of promoting and protecting intellectual property rights of performers.

This study aimed to assess the current legal state of the Collective Management Organizations (CMOs), and what is the legal framework of their functioning, to ascertain the protection and promotion of rights for performing artists, what are challenges faced by performing artists to enjoys their rights and what would be rights remedies.

The research finds that many challenges are barrier to the protection of rights of performing artists through the CMOs.

First, the research finds that the legal state of CMOs and its legal framework of their functioning, the IP law provides that CMOs should be one or more private company, but practically it works in the way of monopoly which creates the barrier to the people to access the CMOs.

Second, the research finds that many performing artists don't have full information about CMOs, how they can protect their rights through it.

Lastly, the study found that there is lack of continuing activities for awareness of intellectual property rights enforcement and that the degree of coordination between public and private institutions for protecting and promoting intellectual property protection in Rwanda is still now.

RSAU claimed to stay the only company acting on behalf of copyrights and related rights owners' in collecting and receiving royalty fees from users of copyright and related rights materials, (such as radio and television stations) and distributing the money to the rights owners . The empowered authority "Rwanda Development Board" seems to adhere to the philosophy of this monopoly.

From the above finding, the study proposes the following appropriate response to these problems

It is recommended to assess the current legal status of Collective Management Organisations (CMOs) landscape, to ascertain the protection and promotion of rights for performing artists.The

research addresses Collective Management Organisations reforms aimed at the realization of protection and promotion of performing artists' rights in Rwanda in the current and prospective generation.

Nevertheless, legislation alone is not enough, as rights need to be managed and enforced if for example, there are pirated products on the market. There is a need to review it to provide more clarity, introduce new provisions and also address other emerging issues such as protection of copyright works in the digital environment

Collective management organizations need to be run effectively in a professional manner, fulfilling the requirements of good governance, both in leadership and management and applying highest standards of due diligence, transparency and accountability. There are not only standards that deal with transparency, accountability and governance issues but it is important for the country to bring the current intellectual property legislation up to date with the digital environment.

Success stories are to be found in increasing political will to manage intellectual property rights which is materialized in the country's vision, intellectual property policy and a strategic plan translating the policy into enforceable means.

Rwandan legislators should reconsider their motivation follows them to get out all laws in one legal text. Dividing the law on intellectual property protection in the various laws, for example one protecting industrial and protecting copyrights , it is better if there is a law specific on determining the structure and functioning of CMOs, would be a good solution to facilitating access and application of the provisions contained within the current law on IP protection in Rwanda.

Lastly, it encourages the government of Rwanda to invest in infrastructures for CMOs and to put emphasis on multilateral legal engagements that are able to protect the rights of performing artists on the internet.

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