COPYRIGHT AND COLLECTIVE MANAGEMENT

UGANDA PERFORMING RIGHT SOCIETY

23.07.2021 Grace Nakabugo
Guiding questions

- What is copyright?
- What are the relevant laws in Uganda?
- What are the types of rights under copyright?
- What is the duration of the right?
- How can copyright be exploited and/or commercialized?
- What is collective management of copyright?
What is copyright?

- Original works reduced to material form in whatever method irrespective of quality or purpose of creation
  - Literary works
  - Artistic works
  - Scientific works

NB: the legal categories do not necessarily correspond to the objects protected by copyright
The types of rights under copyright?

- **Copyright right**
  - Right to subject matter
    - Lyricist, musical Composer
    - Sculptor
    - Book author

- **Neighbouring rights**
  - Rights related to copyright, attached to auxiliary role played by:
    - Performers
    - Producers of sound/audio-visual recording
    - Broadcasting companies

auxiliary role is dependent on the work of the author/owner - without which the role cannot begin.

- **Economic rights - Owner**
  - Commercial exploitation
    - Distribute, reproduce, perform
    - Rent, lend, adaptation
    - License, sell, authorize acts etc.

- **Moral rights - Author**
  - Paternity
    - Acknowledgement in use
    - Authorship claim
  - Integrity
    - Objection to distortion, dilution, mutilation, alteration etc.
Protection of copyright works

- Copyright “right” is inherent on creation of an eligible work
- Protection not subject to formality – registration is voluntary
- Ideas, concepts, procedures methods and the like are not protected by copyright
- Registration is voluntary for;
  - Keeping evidence of ownership
  - Identification of works and authors
  - Maintenance of record of rights
- Infringement
  - Occurs without valid transfer, license, authorization or contrary to permitted/fair use
  - Infringement is not actionable unless it involves the whole or substantial part of the work
  - Includes use prejudicial to honour or reputation of author

Source: Google photos
Duration of the rights

- **Moral rights** - *not assignable*
  - Exist in perpetuity - whether economic rights are still protected or not

- **Economic rights**
  - **Individual**: lifetime of the author and 50 years after death
  - **Legal entity**: 50 years from the date of first publication of the work
  - Computer program: 50 years from the date of making the program
  - Photographic works: 50 years from the date of making the work
  - **Audio visual, sound recording or broadcast**: 50 years from the date of making the work or when work is made available to the public
  - **Performers**: 50 years from the date of the performance
Copyright in a song

Musical work

- 1 song 3-4 copyrights
  - Composition
    - Lyrics
    - Melody / musical composition
  - Recording
    - Sound recording/Audio compilation
    - Visual compilation

A song may consist of literary and musical works (the lyrics being a literary work);

A CD might contain a sound recording, a musical work, and a literary work.
Rights in a song

A. Copyright

- Composition
  - Lyrics
  - Melody/musical composition

- Sound recording
  - Audio compilation

- Visual recording
  - Cinematograph film / video

B. Neighbouring rights

- Auxiliary role played by
  - performers, producers of sound recording and audio-visual and broadcasting companies

  through-
  - (a) the fulfilment of literary or artistic works;
  - (b) the provision of destiny and permanence in works; and
  - (c) the diminishing of distance in the publication of works;

respectively, which auxiliary role is dependent on the work of the author and without which the role cannot begin.
The two main types of music copyright:

**SOUND RECORDING**

Ownership of the track (a particular recording).

Usually owned by a label or artist.

**COMPOSITION**

Ownership of the song (the music & lyrics that exist separately from any particular recording of that song).

Usually owned by songwriters and/or publishers.
Assignment / transfer

An assignment is a transfer of ownership of the copyright. As a result of an assignment, assignees stand in the shoes of the assignor and are entitled to deal with the copyright as they please.

License

A permission to do an act that would otherwise be prohibited without the consent of the proprietor of the copyright. A license enables the licensee to use the work without infringing. So long as the use falls within the terms of the license.

Collateral - mortgage / charge / securitization

Copyright can be given as security for a debt to access financing.
Assignment / transfer

Copyright Assignment

Transfer of ownership rights from the owner to another individual or company.

It can be either partly or wholly.

Payment: a royalty, fixed sum or both

Source: Google photos
EXCEPTIONS TO INFRINGEMENT

Licensing

When a copyright owner gives permission to a particular party to use the copyrighted work for a specific reason.

You can use my song called "Oo Oo Yeah Yeah"
## License – License or Usage Agreement / Terms

### Voluntary license

<table>
<thead>
<tr>
<th>Exclusive</th>
<th>Licensee only</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Equal to a lease</td>
</tr>
</tbody>
</table>

| Sole       | One licensee and owner |

| Ordinary   | Various licensees or uses of work |

### Compulsory license - by law

- Permitted use / exceptions
- Administrative procedures to obtain license
- Deny owner the right to bargain

Source: Google photos

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**royalties**
Assignment vs License

**Assignment**
- An assignment must be in writing.
- An assignment transfers ownership of your work to some other person or company.
- They can do whatever they want with your work after you assign your work to them.

**License**
- A license can be verbal or written.
- You can retain ownership of your work.
- A license can be limited or unlimited.
- A license can be exclusive or non-exclusive.
- A license can be limited to a specific period of time.
- A license can be limited to a specific project.

**Why It Matters**
- You don't want to inadvertently lose control of your work so you need to be very careful.
- You can license your work multiple times but you can assign it only once.
- If you want to maintain ownership and control over your work, you should never use the word "assign" or "transfer" in a contract.
- A license, if properly drafted, can allow someone the right to use your work for a limited time, for a limited scope, while you retain ownership of your work.
- Once you transfer ownership of your work via an assignment, you cannot use your own material any more, unless you get permission.


Source: Google photos
Collateral is often required when the lender wants some assurance that they won’t lose all of their money. If you pledge an asset as collateral, your lender has the right to take action.

**Types of Collateral**

- Automobiles
- Real estate (including equity in your home)
- Valuables and collectibles
- Machinery and equipment
- Investments
- Insurance policies
- Cash accounts

Source: Google photos
NB: under the Security Interest in Movable Property Act, movable property includes intangible assets which include intellectual property like works protected under the Copyright and Neighbouring Rights Act.
Mortgage

- Like other forms of property, copyrights may be mortgaged - that is, assigned as security for a debt.
  - This can be a useful technique that enables copyright owners to raise funds.
  - Particularly common where a work is extremely expensive to create, as in the film industry.

- A mortgage is achieved by way of an assignment of the copyright by the copyright owner to the mortgagee (lender).
  - Subject to a condition that the copyright will be reassigned to the mortgagor when the debt is repaid or on ‘redemption’.
  - It is important that the assignment reserves for the mortgagor a right to continue selling copies of the work (exclusive license).
Collateral - charge

Charge

- Copyright can be used as security by way of a charge.
  - While, in these circumstances, there is no assignment, the chargee does gain certain rights over the copyright as security – crystallization.

- In the case of security as mortgage or charge, the transaction should be in writing and signed by the parties in order to be valid.
  - It is assumed that a mortgagee has the powers of proprietor and is therefore able to sue infringers, even though, as a matter of practice, the borrower is in a better position to police infringements.
Collateral – securitization

Securitization

- ‘Securitization’ - a further way of raising money from copyright.

- Typically, securitization involves selling tranches of (that is, defined periods of entitlement over) the rights to royalties accruing from bundles of copyrights,

- The reasons for creating these financial arrangements stem from the desire to exchange future possible income for immediate capital, which will facilitate reinvestment of that capital in new projects.

Source: Google photos
Collective management of copyright

What is Collective Management?

- Collective Management
  -Creators/Right owners
  -pool rights
  -$ royalties
  -Collective Management Organization (CMO)
  -license
  -Several right users

- CMO is Not-For-Profit organization:
  - administering the owners’ rights & monitoring use of works,
  - negotiating and licensing appropriate fees and conditions,
  - distribute royalties among the owner of rights,
  - taking legal action against infringers

Source: Google photos
## Collective management of copyright

<table>
<thead>
<tr>
<th>CMO</th>
<th>Uganda Performing Right Society (UPRS)</th>
<th>Uganda Federation of Movie Industry (UFMI)</th>
<th>Uganda Reproduction Rights Organization (URRO)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bundle or category of rights</td>
<td>Musical works - Music</td>
<td>Audio-visual works - Film</td>
<td>Literary works - Books</td>
</tr>
<tr>
<td>Regulator</td>
<td>Uganda Registration Services Bureau (URSB)</td>
<td></td>
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</tbody>
</table>

**NB:** Voluntary membership BUT One CMO per bundle or category of rights
UPRS was formed in 1985 by musical authors.

Today UPRS;
- Is registered as a Company Limited by Guarantee having no share Capital.
- Is a CMO and has license from URSB to operate as a collecting society under the Copyright and Neighbouring Rights Act.
- Is a Member of the Confederation of International Societies of Authors and Composers (CISAC).
- Has entered into Reciprocal Agreements with other CMOs worldwide.
- Has mandate over local and foreign works within its repertoire in Uganda.
- Represents the rights of over 4,000 members in Uganda.
- Issues licenses to play, perform or make available copyright music on behalf of our members and those of overseas societies.
- Distributes royalties to its members and societies with reciprocal arrangements.
History until 2019

PRE – INDEPENDENCE (PRS)

TURBULENT 1970’S

UPRS FORMATION - 1985

THE COPYRIGHTS AND NEIGHBOURING RIGHTS ACT - 2006

Source: Google photos
July 2019 to date

- Inquiry and Caretaker Admin Starts
- Inquiry and stakeholder meetings
- Commencement of restructure
- Special AGM
- Board inauguration
- Modernisation
- Implementation of caretaker’s recommendations

- July ‘19
- July to Nov ‘19
- Mar ‘20
- Oct ‘20
- Nov ‘20
- On going

Covid19 Covid19 Covid19 Covid19
Key Functions

- **License**: License commercial users of members’ musical works
- **Monitor**: Monitor usage of members’ musical works and enforce rights
- **Collect**: Collect Royalties from commercial uses of members’ musical works
- **Distribute**: Distribute Royalties to members
Member Segments

42 Publishers

3,500 performers

600 Composers/Authors

Source: Google photos
<table>
<thead>
<tr>
<th>Tariff categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aircraft</td>
</tr>
<tr>
<td>Shops, Stores, Showrooms, Offices</td>
</tr>
<tr>
<td>Bars, Gardens, Pubs</td>
</tr>
<tr>
<td>Beaches and similar Open air premises</td>
</tr>
<tr>
<td>Clubs</td>
</tr>
<tr>
<td>Discotheques and Dance Halls</td>
</tr>
<tr>
<td>Hair Dressing Salons and Bathers Shops</td>
</tr>
<tr>
<td>Hotels, Restaurants</td>
</tr>
<tr>
<td>Juke Boxes</td>
</tr>
<tr>
<td>Light Music Concerts</td>
</tr>
<tr>
<td>Live Music Performances</td>
</tr>
<tr>
<td>Memory Cards and Memory Sticks</td>
</tr>
<tr>
<td>Mobile Disco</td>
</tr>
<tr>
<td>Jockeys</td>
</tr>
<tr>
<td>Musical Shows in Halls, Theatres and Auditoriums</td>
</tr>
<tr>
<td>Paid up Live Music Performances</td>
</tr>
<tr>
<td>Radios and Televisions</td>
</tr>
<tr>
<td>Sports Betting and similar premises</td>
</tr>
<tr>
<td>Buses, Motor Coaches, Taxis and Mini Buses</td>
</tr>
<tr>
<td>Guest Houses/Gyms</td>
</tr>
<tr>
<td>Banks</td>
</tr>
</tbody>
</table>

**NB:**
- UPRS sets the tariffs and categories
- Currently 37 tariffs, e.g.
## Statistics

<table>
<thead>
<tr>
<th>PARTICULARS</th>
<th>CURRENT STATE 2021</th>
<th>REALISABLE POTENTIAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members</td>
<td>3,994</td>
<td>25,000</td>
</tr>
<tr>
<td>Works</td>
<td>16,200</td>
<td>126,200</td>
</tr>
<tr>
<td>Reciprocal Agreements</td>
<td>35</td>
<td>Potentially 80 CMO’s</td>
</tr>
<tr>
<td>Assessed Users</td>
<td>2,550</td>
<td>253,000</td>
</tr>
</tbody>
</table>
Music revenue – 2 main copyrights

Who gets paid?

**Song**

**Composition** (melody & lyrics)
- Songwriter
- Composer
- Publisher

**Recording** (Sound / video)
- Rights owner (usually record label)
- Performer

**Original Song**

**Composition (Publishing)**
- Performance Royalties
- Mechanical Royalties

**Master (Recording)**
- Digital Performance Royalties
- Master Recording Revenues

Source: Google photos
WIPO Guide Revenue split model

Collection vs Distribution

100% GROSS

70% MEMBERS

30% CMO OPERATION

Source: Google photos
WIPO Guide Revenue split model

**Members’ 70%**

### REVENUE SPLIT MODEL

- **Composer**: 25%
- **Author**: 25%
- **Publisher**: 50%
- **Performer**: 50%
- **Producer**: 50%

### CASE STUDY $1,000

- **Musical work**: $600
- **Sound recording**: $400

**SONG**

100% (70% of collection)
State of affairs – Music Industry

Creative

• Vibrant society shaped by the large youth demographic
  • Youngest population in the world, high rates of unemployment spurring entrepreneurship

Massive Growth

• Ugandan Music permeates our ethnic diversity and western tastes
  • Local music has locked out foreign works which enjoyed premium market space in the past.

Enhanced sector regulation

• URSB revived regulation of CMOs, UPRS restructure – URSB IP Enforcement (Police) Unit.
• UCC Broadcasting Policy - 70% Local content requirement – includes music, drama etc
  • Enhance social & night life, Liberalised media industry with 500 operating media houses and several other online broadcasters serving Ugandans in the diaspora

Low earnings

• Fame without fair “value” revenue
• Existing 37 tariffs can be reviewed – CMO is responsible for the tariff
• Unexploited potential - revenue leakages, enforcement leakages
New Board of Directors (2020-2023)

MEMBER ELECTED

- Justin Basiima - Producers
- James Serumaga - Publishers
- Juliet Ssesanga - Performers
- Wisdom Kaye - Performers
- Dr. Peter Ntege - Composers

REGULATOR APPOINTEES

- Kabiito Karamagi
- Prof. Patrick Mangeni
- Robert Ssemakula
- Sam Okello Kelo
- James Abola
- Grace Nakabugo

Justin Basiima - Producers
James Serumaga - Publishers
Juliet Ssesanga - Performers
Wisdom Kaye - Performers
Dr. Peter Ntege - Composers
Kabiito Karamagi
Prof. Patrick Mangeni
Robert Ssemakula
Sam Okello Kelo
James Abola
Grace Nakabugo
Board of Directors (2020-2023)

Julie Ssesanga
Dr. Peter Ntege Nawe
Kabiito Karamagi
Robert Ssemakula
Prof Patrick Mangeni
James Sserumaga
Wisdom Kaye
Justin Basiima
James Abola
Sam Okello Kelo
Grace Nakabugo
Revenue potential & leakages

- Commercial Public Transport
  - 35,000 Units
  - Ugx 14 Bn
- Shops, Stores, Showrooms, Offices, Banks, Gym And Similar Premises
  - 5,000 Units
  - Ugx 1.4 Bn
- Radio and Television Diffusion Services
  - 500 Stations
  - Ugx 14 Bn
- Hotels, Restaurants And Similar Premises
  - 800 Units
  - 420 Mn
- Mobile Disc Jockeys
  - 536 DJ’s
  - 356 Mn
- Blank Tape Levy
  - 150 levies
  - Ugx 255 Mn
- Blank Tape Levy
  - 150 Units
  - 300 Mn
- Sports Betting And Similar Premises
  - 1,000 Units
  - 900 Mn
- Memory Cards & Memory Sticks
  - 1 Mn sticks
  - Ugx 141 Mn
- Memory Cards & Memory Sticks
  - 5,000 Units
  - Ugx 1.34 Bn
- Juke Boxes
  - 100 Units
  - Ugx 56 Mn
- Mobile Disc Jockeys
  - 4 units
  - 283 Mn
- Ringtone Service Providers
  - 500 coffee shops
  - 138 Mn
- Restaurants, Cafes, Coffee Shops etc
  - 500 Stations
  - Ugx 14 Bn
- Shops, Stores, Showrooms, Offices, Banks, Gym etc
  - 5,000 Units
  - Ugx 1.34 Bn
- Race Tracks, Sports Stadia Open Air Premises etc
  - 1,000 Units
  - Ugx 190 Mn
- Light Music Concerts
  - 1,500 concerts
  - Ugx 260 Mn
- Race Tracks, Sports Stadia Open Air Premises etc
  - 300 events
  - Ugx 300 Mn
- Live Music Performances
  - 200 Live shows
  - Ugx 114 Mn
- Blank Tape Levy
  - Blank Tape Levy
  - Discotheques & Dance Halls
  - 150 levies
  - Ugx 255 Mn
- Light Music Concerts
  - Amusement Arcades, Parks & Fairgrounds
  - 4 Units
  - Ugx 240 Mn
- Light Music Concerts
  - Race Tracks, Sports Stadia Open Air Premises etc
  - 1,500 concerts
  - Ugx 260 Mn
- Race Tracks, Sports Stadia Open Air Premises etc
  - 300 events
  - Ugx 300 Mn
- Hotels, Guest Houses etc
  - 1,000 Units
  - Ugx 190 Mn
- Race Tracks, Sports Stadia Open Air Premises etc
  - 300 events
  - Ugx 300 Mn
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  - Ugx 260 Mn
- Race Tracks, Sports Stadia Open Air Premises etc
  - 300 events
  - Ugx 300 Mn
Board priorities

Enhanced accountability and value addition to the Members

- Regular payments of value Royalties
  - through the implementation of Business Process re-engineering

- Working with Govt agencies to build sustainable partnerships to protect & commercialize members works
  - URSB, URA, NITA, UCC, LGs, UPF, DPP, UNCC, NCF

- Seek partnerships to provide value addition to the members to
  - enhance their revenues, brands to attract societal respectability
  - Provide social protection (healthcare education etc)

Capacity building & Professionalisation of the CMO

- Recruiting and maintaining a professional staff
- Training in copyright for staff and members
- Building institutional capacity through Business Process re-engineering leveraging on ICT
- Creating a firm regional footprint around the country to promote stakeholder engagements

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Take away

**Collective management**
- Voluntary but necessary
- Enforcement & strength in numbers
- Growth curve for the long game

**Bookkeeping**
- Creation in puts
- Marketing in puts
- Trends – demand & supply
- Copyright registration

**Valuation**
- Value of the work
- Commercialization

**Revenue strategy**
- Royalties or one-off payment
- License vs assignment
- Collateral over work or royalties

Source: Pixabay
THE END
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