

Unveiling the Myth that Characterizes the Assignment Contract of Copyrights under the Cameroonian Law

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Abstract

This article deals with the assignment contract for copyright under the 2000 law on copyright and neighbouring rights under the Cameroonian law. The study reveals that the assignment agreement in its real sense is not effective. The real legal problem in this research work is that in an assignment contract, an assignor is not completely relieved of his obligations and liabilities after the assignment agreement has been signed. This means that the assignor, who is the original party to the contract, still has obligations in the case where the assignee fails to perform the contract, to fulfill the terms of the contract even though the assignee reaps the benefits. The main objective of this study is to explore the extent of the legal implications surrounding the rights and obligations of the parties under an assignment contract in a copyright work which is so rampant in today's modern contract with regards to the transfer of rights and obligations under Cameroonian law. In this study, the researcher has adopted an analytical and exploratory approach to data analysis. As a result, data obtained from personal observation and secondary sources was used to capture the objective of the study. Consequently, the paper concludes that the non-use of a proper term under the 2000 copyright law may have given rise to the myth that characterizes the assignment contract of copyright, therefore suggesting that the incorporation of the term assignment or grant will set forth broad guidelines in the resolution of the myth in the domain of the assignment contract of copyrights.

Keywords: Assignment, contract, copyright, myth, unveil

INTRODUCTION

In Cameroon, matters relating to intellectual property rights are handled by the African Intellectual Property Organization [1], which is a regional institution that handles everything from registration to the grant of titles, the various types of protected works, and the conditions for the assignment of copyrights in a work. The Bangui Agreement [2] and its applicable rules, together with other international treaties ratified by Cameroon, remain the legal instruments for applicants governing copyrights. That notwithstanding, the Cameroonian legislators have enacted their own national laws dealing with copyrights and neighbouring rights [3]. But where the rights in such works are subsisting

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in favour of any other person, on the date of public notice, such rights shall not be affected. Assignment is an inevitable necessity in this dynamic world. People cannot be self-sufficient in every respect. For the betterment of the art, the ownership rights of the creator need to change hands and bring out the full potential of original work by exploring various tiers of creativity. The feasibility of copyright assignment is highly questioned because of the rising counts of copyright infringement cases, because the sole objective of the assignment process is to provide both pecuniary and distribution benefits to the

original work of the creator. It cannot be used to deprive the original owner permanently of his creation. In Cameroon, intellectual property is provided under Article 17 of the Universal Declaration of Human Rights, which is part of the Cameroonian Constitution.

UNDERSTANDING THE LEGAL TERMINOLOGY OF ASSIGNMENT CONTRACT OF COPYRIGHT UNDER THE CAMEROONIAN LAW

The definition of an assignment is a task that has been given to someone. Homework is an illustration of a task given to a student. Under the 2000 law on copyrights and neighbouring rights in Cameroon, the Cameroonian legislators have preferred to use the term “license” instead of assignment. This law allows the license agreement to be exclusive or non-exclusive [4]. A license is the transfer of a less-than-full or different-than-full interest in a patent, as opposed to the whole interest in a patent, a split interest in a patent, or an exclusive sectorial interest in a patent [5]. Some additional rights and obligations that come with the assignment are determined by the legal structure of the assignment and the terms of the parties’ contract. The term “assignment” is typically only used to refer to the transfer of rights that are tangible, such as contractual rights and rights pertaining to property [6]. In the case of *Strasberg v. Brauvn Realty Serves* [7], the court determined that the assignee of a party to a subordination agreement is entitled to the benefits of the arrangement and is also liable to its obligations. Additionally, according to the court’s ruling in *Florida E.C.R Co. v. Eno* [8], the simple assignment of all sums payable in and of itself does not change or add to the owner’s duty to the assignee from that which existed from the owner to the assignor. In a copyright assignment, one can grant a transfer for a certain timeframe, territory, or medium, such as allowing web use but prohibiting film use. Only authors are permitted to reproduce, distribute, display, perform, and alter creative works thanks to copyright protection. Although copyright protects an original artistic, literary, dramatic or musical works, copyright law does not protect ideas.

Copyright refers to the ownership of literary property that is recognised and protected by law, a privilege granted to the creator or author of certain literary or artistic works, whereby he is given the sole and exclusive right to reproduce the works in multiple copies, publish them, and sell them for a set amount of time [9]. The Bangui Agreement of 2nd March 1977, as revised on the 24th of February 1999, provides that copyright is the right that protects literary and artistic works such as writing, musical work, works of art such as painting and sculpture [10]. The Black’s Law Dictionary defines a work as expressing the human mind in language, images, sounds, signs, symbols, and media. According to the World Intellectual Property Organization, the literary and artistic creations of authors and artists are usually referred to as works [11] and lastly, the Berne Agreement of 1977 provides that this annex applies to literary and artistic works, hereinafter referred to as works which are original intellectual creations in the literary, artistic, and scientific fields [12]. Copyright also ensures certain minimum safeguards of the rights of the creators over their works thereby rewarding creativity. The protection provided by copyright to artists creates an atmosphere conducive to creativity that induces the artist to create more [13] as well as motivating other aspiring artist to join the industry and create more literary and artistic works. Books, music, paintings, sculptures, films, computer programmes, databases, advertisements, maps, and technical drawings are all examples of works protected by copyright. Every time you turn on the radio and hear music, you are hearing the product of multiple agreements involving copyrights.

TYPES OF RIGHTS UNDER THE 2000 COPYRIGHTS LAW IN CAMEROON

The instant a work is generated and fixed in a tangible form that makes it detectable either directly or with the help of a machine or device is the legal criterion for it to be copyrighted or under copyright protection. The owner of the copyright to a work produced by an employee while they are employed is the employer. Therefore, there are two different kinds of rights under copyright law: economic rights, which allow the owner to profit financially from the use of his work by others, and moral rights, which allow the author to take specific actions to safeguard the unique connection he or she has with their creation.

The Economic Rights Comprised in Copyright Work

Economic rights are referred to as patrimonial rights under Cameroon's 2000 copyright legislation [14], and these include the author's unrestricted right to use or provide permission for the use of his work in any format and to profit financially from such uses. These rights include the ability to reproduce. The tangible fixing of all or a portion of a literary or artistic work through any means that will enable indirect communication, including long-term or short-term electronic storage, is referred to as replication [15]. It may be done through photography, drawing, engraving, casting, audiovisual tapes, and mechanical recording. Reproducing an architectural work by following a blueprint or design repeatedly is referred to as reproduction. Following the debate here, it is possible to once more consider the act of creating copies of a protected work to be one carried out by the publisher who desires to provide copies of a text work to the general public, whether in the form of printed copies or digital media like CD-ROMs. The rights of a phonogram producer that creates and distributes compact discs (CDs) containing recordings of musical performances are also in part reliant on the composers' consent to have their compositions reproduced in the recording. Numerous methods of exploitation of protected works thus have as their legal foundation the right to control the act of reproduction. The right of distribution comes in second. According to the 2000 law [16], the right of distribution means the right to sale or lease, the sale, rentals or any other acts of marketing of the original copies of the literary or artistic work. However, the exercise of this right is subject to exhaustion upon the first sale or other transfer of ownership of a specific copy of a work. Technology advancements have made it simple to reproduce these kinds of works, so the right of rental is justified on that basis. This suggests that in order to preserve the principle of copyright territoriality, the owner of the copyright has the right to regulate importation. In other words, if the copyright holder was unable to exercise his right to reproduction and distribution on a territorial basis, his legitimate economic interest would be in jeopardy. The right to public performance, broadcasting, and communication comes in third [17]. According to the 2000 Copyright law, "representation shall mean the communication to the public of a literary or artistic work including its publication in a manner, that permits everyone to have access to it whenever and however he so desires [18]. In accordance with Section 40 of the 2000 Copyright law, such public performance must take the form of a contract, which under Section 41 must be signed for a specific amount of time and a specific number of communications to the public, unless an expressly stated explosive right is involved. The performance contract must ensure that the copyright holder's moral rights are upheld and must not grant the show organiser any exploitation monopolies. The organisation of concerts must be subject to the show organiser receiving authorization and paying a royalty, and he cannot transfer the benefits of his contract without the copyright holder's written consent. Lastly, there is the right to translation and adaptation. The extent of the right of adaptation has been a topic of discussion in recent years due to the increased ability of users to quickly and easily adapt and transform works that are embodied in digital format through the manipulation of text, sound, and images. On the other hand, adaptation refers to the alteration of one work to produce another. For instance, modifying a work to make it acceptable for varied exploitative circumstances by changing an industrial textbook that was initially created for students of higher education at a lesser level. Such authorization to reproduce the work is known as exploitation of a work [19]. Accordingly, for phonograms, videograms, and performances fixed thereon, the duration of the patrimonial rights is 50 years as of the end of the calendar year of fixation under Article 68 of the 2000 Copyright law [20]. Without a doubt, the end of the calendar year for performances is not fixed for phonograms and videograms as well as the calendar year for broadcasting film. No distinction is made between the duration for the protection of the broadcasting programmes and other related rights.

The Moral Rights Comprised in Copyright Work

The 2000 Copyright Law has given recognition to these rights in the following words: Firstly, the title of a work shall be protected as the work itself in so far as it has an original feature; and if using its title for another work of the same genre is likely to lead to confusion in the public's mind, even after the work is no longer protected, it is prohibited [21]. It further stipulates that moral rights grant the author the right, independent of his patrimonial rights, and even following the transfer of such

rights, to take decisions relating to the process and condition of disclosure, to request that his name be mentioned on the work each time it is made available to the public [22]. Even if someone else owns economic rights to the work, Section 14(4) of the same statute stipulates that only human writers are granted moral rights to their creations. For instance, in the case of a film, only the individual who works has a moral interest at stake. The moral rights of the author which are distinguished from his economic rights, consist of the right to claim authorship of the work, or right of paternity, and the right to object to any distortions, mutilations, or other modifications of, or other derogatory actions in relation to work which would be prejudicial to the author's honour or reputation, sometimes called the right of integrity [23]. These rights, which are generally known as moral rights of the authors, are required to be independent of the economic rights and remain with the author even after he has transferred his economic rights.

LEGAL GROUNDS FOR AN ASSIGNMENT TO BE EFFECTIVE

The assignment must take place right now, not in the future, in order to be effective [24]. A transfer of full rights, title, and interests in something conveys all the assignor's interests therein, placing the assignee in the assignor's place [25]. The court in this situation is of the view that for an assignment to pass with regards to the rights and interests of the parties under an assignment agreement, the intentions of the parties are paramount [26]. After consideration has been paid, the assignor will keep his or her promises regarding the works being sold and will not object to the assignee's usage of those works. According to this clause, the assignor will no longer be able to utilise such items for any purpose following the sale. For the assignment to be effective, the assignor must disclose his intention to cede the rights to a third party.

WHAT AMOUNT TO VALID CONSIDERATION IN THE CONTRACT OF ASSIGNMENT

Most copyright legislation stipulates that the owner of the rights has the economic right to approve or forbid specific uses in relation to a work, or in some circumstances, to be compensated for the use of their creation, such as through collective management. This old trite concept was recently tested by Memorylink Corporation (Memorylink) in *Memorylink Corp. v. Motorola Solutions Inc* [27]. In this case, Memorylink and Motorola Solutions Inc. had jointly invented a handheld camera recording technology and later entered into an agreement assigning all their rights in the camera recording technology to Memorylink and Motorola. Thus, Memorylink and Motorola became joint owners. Later, Memorylink claimed that the technology's patent assignment to Motorola was invalid for lack of consideration and filed a lawsuit against it for infringement. The district court in this instance determined that the assignment clearly specified that one dollar, along with other good and useful consideration, was received as consideration [28]. The court dismissed the claims regarding the inadequateness of the consideration since Memorylink refused to rely on parol evidence, according to the court [29]. Additionally, the court determined that the transfer of Schulz and Wyckoff's patent ownership interests, which Memorylink claimed was the intended consideration—took place [30]. The court added that even after taking into account the parol evidence, it determined that Memorylink intended for representation in patent prosecution, which was unquestionably promised as a condition of the agreement [31]. As a result, the court determined that there was no genuine issue of material fact and granted summary judgement in favour of Motorola on the contract claim because the assignment was valid and Motorola was a joint owner of the 352 patent, so it was not possible for Motorola to be held responsible for infringement [32]. Therefore, consideration is a fundamental requirement of a contract in law [33], yet minimal regard is sufficient to uphold a contract [34]. Therefore, the court is not interested in examining the adequacy of consideration to support a contract unless the amount of the consideration is so grossly inadequate as to shock the conscience of the court.

CONDITION FOR THE VALIDITY OF COPYRIGHT ASSIGNMENT CONTRACTS

Any assignment or exclusive license of a copyright must be made in writing and signed by the person granting the rights, as required by the Copyright Act of 1976 [35]. The only requisite of

assignment is that it must be in writing and signed by the assignor or his duly authorized agent. In the case of *Deshmukh & Co. (publishers) Pvt. Ltd v. Avinash Vishnu Khandekar & Others*; the Bombay High Court observed that an assignment of copyright is valid only if it is in writing and assigned by the assignor or his duly authorized agent. The court with jurisdiction over the matter may restrain the assignment to the person to whom certain rights have been transferred by the assignor.

METHOD OF ASSIGNMENT OF COPYRIGHT IN A WORK

It is possible for the owner of a copyright to assign part or all of the monopoly rights to a third party in writing, with the owner's signature serving as proof of the assignment. In the United States, for instance, the assignment of copyrights is done via contracts without necessarily using forms. By registering the transfers with the copyright office, this is accomplished. Copyright assignments made orally are not valid or authorized. Basically, there are two methods by which a person can determine or identify whether a copyright has been assigned by the assignor to the assignee. One way is through the issue of a copyright registration certificate obtained from the copyright office. This can be verified by checking the copyright registration certificate delivered by the registering copyright office record and secondly, by way of transfer or through an assignment agreement, or by asking for the transfer or assignment contract signed by both parties.

IS ASSIGNMENT A CHANGE OF CONTROL?

The general rule is that a change in a corporate entity's control does not, by operation of law, constitute an assignment and, as a result, does not infringe on a fundamental anti-assignment clause. A copyright assignment is the transfer of an owner's ownership rights in a specific creative work or works, and it may take place separately or as part of the sale or purchase of larger assets. Therefore, the terms for the validity of the assignment of copyrights in a work are contained in what is known as an assignment clause. When and whether a party may assign the contract to another party are governed by an assignment clause. It addresses what transpires in a change of control, including whether a party can assign the contract to its buyer if it merges with another business or is entirely acquired. In this situation that does not amount to a change of control clause, it is important to note that a change of control term does not affect assignment but simply states whether a party can terminate if the other party goes through a merger or other change of control. No party may, in accordance with the provision governing assignments, assign this agreement or any of its rights or obligations without the other's express written consent. With the exception that any party may assign this agreement to the party that survives a merger with another organisation or the acquisition of all or nearly all of a party's assets. On the other hand, a change of control means a transaction or series of transactions by which more than 50% of the outstanding shares of the target company or beneficial ownership thereof are acquired within a one-year period, other than by a person or entity that owned or had beneficial ownership of more than 50% of such outstanding shares before the close of such transactions. With regards to the control clause, if a party undergoes a change of control, the other party may terminate this agreement with 30 days' notice.

UNVEILING OF THE MYTH THAT CHARACTERIZED ASSIGNMENT OF COPYRIGHT CONTRACT UNDER THE 2000 LAW ON COPYRIGHT

The following legal implications are worthy of note with regards to the assignment of copyright agreements. Assignment contracts do not generally require the authorization of all the parties to the agreement. The copyright shall not be transferable upon the death of the owner [36]. From the reading and understanding of the given legal implications surrounding the assignment contract of copyright under the 2000 law, piercing or unveiling the myth that characterizes copyright in a work can be analyzed in the following manners. This implies that a party who was the original contract's assignor retains the contract's final rights during the assignation period. Once the original contract has come to an end, a new one is formed between the incoming party and the remaining party to the original contract. Secondly, in an assignment contract of copyright, once it has been signed, the assignee's right to payment is not greater than the right possessed by the assignor. If the assignor is in breach of

the contract, and therefore, entitled to less than the full contract price, the assignee is likewise entitled to less. Thirdly, even if someone else has the economic right to the work, the 2000 copyright legislation only grants moral rights to human writers. This means that only the individual, who created the work has a moral interest at stake. The law requires that these rights, known as the moral rights of the author, be distinct from economic rights and continue to belong to the author even after he has sold his economic right. In this case, the author is granted his moral rights attached to the work, which include the right to determine the method and conditions of disclosure, the right to claim ownership and have his name mentioned whenever the work is made available to the public, the right to object to the mutilation of the work, and the power to halt any changes to or dissemination of his work. These rights are imprescriptibly, perpetually, and inalienably yours.

CAN AN ASSIGNEE SUE THE ASSIGNOR AFTER THE CONTRACT HAS BEEN SIGNED?

The question as to whether an assignee can sue the assignor, who is the original owner of the copyright in a work, has been addressed in the case of *Novex Communication Pvt. Ltd v Lemon Tree Hotels Ltd & Anor* [37]. The Delhi High Court ruled in this case involving copyright in sound recording that an individual owner might continue to provide licenses with regard to copyright works he owned while still suing the offender [38]. In these circumstances, the trial court partially disallowed the appellant/right plaintiffs to file a lawsuit for copyright infringement by citing Section 33 of the Copyright Act, 1957 [39], but the trial court permitted the appellant/plaintiff to file a lawsuit for copyright infringement on behalf of only one party, namely defendant number two in the lawsuit, Yash Raj Films Private Ltd [40]. So, the trial court was of the opinion that the plaintiffs cannot bring a claim for copyright infringement, Eros International Media Ltd [41] and Shemaroo+ Entertainment Ltd [42] because, in accordance with Section 33(1) of the Act, a copyright society is required to obtain a legal license for copyright works of sound recording. According to the complaint, the appellant/plaintiff asserts ownership of the copyright work in the sound recordings as a result of assignment deeds that Zee, Eros, and Shemaroo all performed in his or her favour on November 8, 2015, September 1, 2017, and September 3, 2017, respectively. In this case, the court went on to note the distinction between a musical composition and a sound recording, concluding that when the second proviso to Section 33(1) refers to issuing or granting a license with respect to a musical composition in a sound recording, it only refers to the musical composition in the sound recording and not the sound recording itself. Judging from the facts of the case and the issue which is argued before this court, and was also argued before the trial court, it was decreed that if the defendant wants to play any songs or music that is not covered under the license in their hotel, they have to necessarily get permission from the plaintiff [43].

CONCLUSION

The feasibility of copyright assignment is highly questioned because of the rising number of copyright infringement cases. Assignment is an inevitable necessity in a world that is dynamic. People cannot be self-sufficient in every respect. For the betterment of the art, the ownership rights to the creation need to change hands, bringing out the full potential of the original work by exploring various tiers of creativity. The sole objective of the assignment process is to provide both pecuniary and distribution benefits to the original work of the creator. It cannot be used to deprive the original owner permanently of his creation. As such, any person who is interested in copyright transfer must make sure that it is a valid legal transfer made via contracts. This is done through the copyright office, which is the competent body in charge of recording the transfers of copyright. This may offer some legal benefits and may also be necessary to substantiate a transfer in the eyes of a third party. It is also important to note that donatives assignments are revocable.

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