

Copyright Protection and Enforcement in the Digital Age under the Cameroonian Copyright Law

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Abstract

The protection and enforcement of copyright in Cameroon are not new concerns but they are given new impetus and importance when copyrighted works are infringed across borders notably on the Internet. The duty of safeguarding and upholding copyright in Cameroon is now carried out through a multitude of institutional and legal systems. It is frequently questioned how digital copyrighted works are protected in Cameroon given the existence of these laws and institutions. This is the main concern to which this essay seeks to provide an answer. To address this issue, more emphasis has been on the various methods of copyright infringement on the Internet and how it can be remedied while taking into considerations the difficulties involved. This article concludes on the strength that the protection and enforcement of Copyright on the Internet under the Cameroonian copyright law is not really effective due to the loopholes created by the Internet itself and copyright. We therefore suggest that, the Cameroonian law makers should clearly legislate on the liabilities of Internet service providers or intermediaries that facilitate infringing activities on the Internet.

Keywords: Protection, enforcement, copyright, law, digital age

INTRODUCTION

The protection and enforcement of copyrights in Cameroon are not new concerns but they are given new impetus and importance when copyrighted works are infringed across borders notably on the Internet. The Internet has developed quickly, first into an academic exchange network [1], then as a significant means of mass communication network available in principle anywhere and to anyone in possession of a personal computer and a telephone line [2]. The emergence of new technologies in information and communication has increasingly made it feasible to unlawfully duplicate digital copyrighted files free of cost and go scot free. This is one of the crafty and obscure activities operating within the cyberspace, which has created a new dilemma in the domain of electronic commerce and in the copyright regime and brings to mind the question of whether the present Copyright Law can adapt the cyberspace [3].

Technology remains one of the most praised human intellectual endeavors, yet it has created an anarchical environment for technologies of information and communication. Large quantities of copyrighted files such as websites, audio–visuals, audio and video music files are linked, framed, uploaded, downloaded and shared using peer-to-peer file sharing technology such as; Napster, Kazaa, Pirate Bay, and so on [4] to the point of competing with the original author on his creations.

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Nowadays, copyright like any other right, is not safe from infringement. The advent of new technologies, notably the Internet and other forms of high-speed data transmission as well as the concomitant evolution of global electronic commerce, has unleashed and exacerbated

copyright infringement in the sense that it is easier today to disseminate, transfer information, upload and download text books, videos, films and music per minutes, or seconds just with a mouse click or by simply pressing the buttons of sophisticated mobile machine like smart phones, iPhones x(s), ideal pad, and so on. With the Internet, it is more herculean to identify infringements and the infringer(s) since there is no territorial boundary on the Internet, coupled with the cloak of anonymity it affords its subscribers. The phenomenal growth of the Internet has escalated cross-border infringement of intellectual property rights, which is a hot-button issue in the field of intellectual property today, but has equally revolutionized the traditional understanding of jurisdiction in private international law [5] and remains a crucial challenge to the territoriality principle of intellectual property rights which has to be addressed with extreme caution [6].

The difficulties or challenges that beset the protection and enforcement of copyright on the cyberspace are generated by the Internet itself. Indeed, most Internet users are anonymous and often operate with pseudonyms. This situation exacerbates the problems of enforcement and protection of copyright.

THE MEANING OF COPYRIGHT

Creators of artistic, musical, theatrical, and literary works as well as those who make sound recordings and motion pictures are granted the legal right to copy their work. In actuality, it is a collection of rights that includes, among other things, the rights to the work's adaptation and translation as well as its right to reproduction and public communication. Depending on the work, there could be minor differences in the rights' structure. The economic rights in the work and the author's moral rights are the two separate halves of an author's rights.

The economic rights are a type of proprietary right that has a time restriction and may be transferred by the author to others in the same way that other types of property can [7]. They include the right to approve any kind of replication of the work and are meant to enable the creator or the person holding them to make money from their work [8]. Articles 6 to 8 of the WIPO Copyright Treaty provide creators of works authority over its rental and distribution, which they may not have under the Berne Convention alone [9].

Based on the idea that a creative work is in some manner a manifestation of the author's personality, moral rights of authors are protected. As a result, the moral rights are the author's property and cannot be passed on to another individual other than through a will. Although the moral rights system varies significantly between nations, it often includes the right to be acknowledged as the author of the work and the right to object to any distortion or mutilation of the work that would be detrimental to the author's honor or reputation [10]. The moral rights of an author are everlasting in many nations [11].

Exclusive rights are a component of copyright. The holder of a copyright typically has access to a number of exclusive rights, including the ability to sell or otherwise transfer these rights to others, make copies or reproductions of the work and sell those copies, import or export the work, produce derivative works (works that alter the original work), perform the work publicly, and transmit it via radio or video [12].

The term "exclusive right" denotes that the work's use by others is banned without the holder's consent and that only the copyright holder is permitted to exercise those rights. Copyright is frequently referred to as a "negative right" since it helps restrict rather than allow some individuals (such as readers, viewers, listeners, and principally publishers) to engage in activities that they would otherwise be able to perform [13].

THE BACKGROUND AND NATURE OF THE INTERNET

It is now time for the Internet revolution. Since individuals all over the world utilize Internet services every day, what began as a small-scale endeavor has now expanded to encompass the whole planet [14]. The idea to connect computers within a network that enables users to exchange ideas and data came

into existence at the beginning of the 1960s when the American military researchers decided to enhance their ability to share academic research [15]. The Internet—as shorthand for internetworking, originated in the 1950s during the Cold War era following the launching of the first satellite, “Sputnik,” by the Soviet Union which spurred the United States Defense Department to create in the late 1960s the Advanced Research Project Agency Network (ARPANET)—the first and foremost functioning prototype of the Internet. This network was used by the United States Defense Department to enable computer networks to communicate or disseminate information to each other with the aid of the Transfer Control Protocol or the Internetwork Protocol (TCP/IP) in order to protect communication in the event of nuclear attack. It is worth noting here that the (ARPANET) (present day Internet) was controlled essentially by the United States Defense Department. Only the academic and research organizations, which had contact with the United States Defense Department were authorized to have accessed to the (ARPANET). The world-wide used of the Internet as it exists today exploded since the year 1990. That is, the period where its services became more diversified.

The Internet has introduced a new world order—the digital economy, which is considered as the touchstone of economic growth and development in various countries including Cameroon [16]. The Internet became a world-wide network of interconnected computers in 1989 as a result of the creation of the non-proprietary and free World Wide Web, which revolutionized access to information and interaction between people situated in different locations of the world [17]. As a result, any Internet user is able to converse with every other Internet user, gather information, and disseminate it globally all while speaking a single common language known as the Internet protocol language [18].

The Internet has affected every area of modern life, and we can no longer envision existence without it. According to Carl Sagan, “we live in a society exquisitely dependent on science and technology, in which hardly anyone knows anything about science and technology” [19]. In the same vein, the United States’ Supreme Court while deciding the case of *Renov v. ACLU* [20] described the Internet as “a unique medium-known to its users as “cyberspace”—located in no particular geographical location but available to anyone in the world” [21]. It means that the Internet is everywhere and cannot be reduced easily to a particular geographical location. Indeed, as of March 3rd 2020, the global network included four billion five hundreds and seventy-four million one hundred and fifty thousand one hundred and thirty-four (4, 574, 150, 134) Internet users [22]. It means that about 50% of the world population have an Internet connection [23]. This shows that the Internet—the virtual universe, is a moving stream and not a stagnant pond [24]. Based on the above statistics, we can therefore imagine the rate at which copyrighted works are infringed over the Internet. The ubiquitous nature of the Internet breeds more debates in answering the question of whether the Internet can ever be adequately regulated or not.

Having mentioned that the Internet is part and parcel of today’s industrial society, the question of what may happen to the world if the Internet collapses or is simply short down remains open. Probably, government, both private and public sectors will suffer dislocations because of interruption in key businesses. Banking services, military, fiscal, governmental and communication infrastructures would shut down [25]. The online exploration of music, films, e-books, and communication via WhatsApp, Facebook, and E-mail will be halted. Worst still, it would tear down the world economy and untold poverty will be its direct consequence. Despite the fact that the Internet is currently indispensable in our daily lives, it is indeed, a double-edged sword. One of the thorny issues posed by the Internet is the rate at which intellectual property rights notably copyright infringement is skyrocketing, which is our concern in this article.

THE IMPACTS OF THE INTERNET IN THE COPYRIGHT FIELD

The euphoria which occurred during the heydays of the Internet, especially during the 1960s, has not faded in that the intellectual property rights communities are bewildered as they continue to benefit from Internet services to advertised and sell their intellectual products. Indeed, the Internet opens new market opportunities by allowing authors to distribute the results of their work freely to consumers and

reduces the time between creation and distribution. According to the International Federation of Phonographic Industry (IFPI's) Digital Music Reports 2008, the international record industry's group reported that "music sales via on-line and mobile channels have risen from zero to an estimated (US\$2.9billion) representing a roughly 40% increase as opposed to 50% of industry sales over the past 5 years, making music more digitally advanced than any entertainment sector except games.

The emergence of the Internet has resulted in an unprecedented growth in the number of issues concerning the protection of intellectual property rights on the Web [26]. However, in order to protect copyrighted works on the Internet it is necessary at first glance to appraise the impacts of the Internet on the copyright industry so as to provide a streamline legal assessment of jurisdictional issue in the case of copyright infringement on the Internet.

The Borderless Nature of the Internet/Extraterritoriality

The most obvious and talked-about feature of the Internet is that, it is borderless. In other words, the Internet is extraterritorial as its activities go beyond the boundaries of a state. Indubitably, the Internet is a means of communication which ignores boundaries or, perhaps more exactly, it operates by definition on a cross-border basis [27]. The borderless nature of the Internet is a challenge to copyright protection in that Copyright Law by nature is territorial and to enforce copyright on the Internet (a virtual universe) requires that its borders should be geographically end marked which cannot be achieved lightly on the Internet. Since the 1990s, international intellectual property law started to face new challenges: for instance, national boundaries have started losing their significance as a consequence of the emergence of new forms of technology [28]. As a result, in an Internet environment, some valuable intellectual property (IP) information such as; digital music, films, books, and software can be transferred in a short time on the Internet without physically crossing borders [29].

Indeed, the Internet is everywhere but it is difficult to delimit its borders. The borderless nature of the Internet brings up this question: Which state has sovereignty and complete jurisdiction over the activities taking place on the cyberspace?

The Scale of Copyright Infringement on the Internet

The wider the Internet borders, the wider the number of Internet users. As a result, the more extensive is the scale of copyrights infringement on the Internet. In other words, the scale of copyright infringement on the cyberspace is difficult to pin down or appraise with certainty. There is no doubt that significant amounts of piracy are occurring, but reliable data are surprisingly hard to come by due to online piracy, the scale of infringement is problematic, and sources and methodology for much research are not open to scrutiny, according to one writer in an independent review of intellectual property growth [30].” Indeed, the advent of fifth generation mobile phones has unleashed and eased the infringement of large quantities of copyrighted works in seconds by simply clicking the button of a computer or a mobile phone. The scale at which copyrights are infringed over the Internet breeds the problem of multiple proceedings as there are several infringers residing in different countries, which appears to be costly, less expeditious and requires knowledge of foreign copyright law.

The Difficulty in Detecting Infringement(s)

The preliminary step to enforce copyright piracy claims is to detect and locate with certainty the infringement(s) which is not easy in today's numerical environment. For example, a digital copyrighted work protected in Cameroon can be infringed by anyone on the Internet, and the copyright owner willing to enforce his right must at first sight detect the infringement(s) and the infringer(s) which requires heavy expenses, time and technical skills. According to some, digital system technologies greatly increase the potential for confusion, fraud, and intellectual property rights infringement by enabling users to duplicate, manipulate, and morph content perfectly, instantly, and infinitely in ways that may be largely undetectable [31].

The Difficulty in Locating and Identifying the Infringer(s)

After detecting the infringement(s), the next step is to detect and locate the infringer with the aid of connecting factors such as: the defendant's domicile, residence and nationality in order to institute legal proceedings against him or her. However, to locate on-line infringer(s) is not easy as compared with the location of off-line infringer(s) since the latter can be identified with ease in a geographical location. The difficulty in identifying and locating on-line infringer(s) dwells on two major factors: the cloak of anonymity which the Internet provides its users on the one hand, and the fact that, Internet users operate with pseudonyms on the other hand. At the same time, many companies that provide posting and distributing services on the Internet such as domain name registrars, bulletin board operators and commercial Web page host, require identification and contact details of their customers, but these requests are often ignored since no sanctions are enforced if unreliable contact details are detected. Indeed, the difficulty to locate and identify the infringer is a stumbling block in exercising jurisdiction *in personam*, which requires that the defendant should, in principle, be physically present within the court's jurisdiction since his or her identity plays an important role in the determination of the appropriate jurisdiction.

Therefore, it appears daunting and dismaying to trace the whereabouts of on-line infringer(s) with the view to imposing sanctions. As a result, the question of whether copyright can ever be enforced on the Internet remains open. Despite the fact that, the Internet makes it difficult to track on-line infringers, it does not make it a rule that tracking infringers is impossible. But much money and technology as well as both physical and mental efforts have to be expended to achieve this aim.

The enforcement and protection of copyrights on the Internet in Cameroon is unappealing and more difficult due to the borderless nature of the Internet and other factors like the difficulty in identifying the infringer, to detect the infringement, and the scale of infringement. As a result, copyright owners often pray the courts to issue an injunction against third parties (the Internet service providers) and files sharing industries that aid or facilitate infringement. Massive infringement of copyrighted files is due to Internet infringing technologies situated on the web.

THE METHODS OF COPYRIGHT INFRINGEMENT ON THE INTERNET

In recent years, several networking technologies have been created, which are accountable for copyright infringement on the Internet. The peer-to-peer (P2P) file sharing technology is the most pioneering, and virulent technology used to violate copyrights. Due to these technologies, Internet pirates adopt illegal techniques to reproduce copyrighted digital files in many copies, which are quite enough to impair and distort the investment of the copyright owner. Online copyright infringing activities are enhanced by;

The Peer-to-Peer Files Sharing Technology

The P2P technologies (such as Napster, Pirate Bay) make the sharing of copyright file easier on the Internet. They were initially created as a means to avoid bottlenecks that occur when Internet users access a server at the same time but today, they are rich facilitators of copyright infringement. P2P technology is defined as two or more computers connected by software, which enables the connected computers to transmit data to other connected computers [32]. It helps link different personal computers and enables the transfer of files from one personal computer to another cost free. Indeed, the computers are linked across a network and act as equal peer nodes, allowing them to share information with each other directly; thus, the computers in the network can act as both server and client [33]. The P2P file sharing has had a profound effect on the copyright industries in recent years, especially the music industry, creating legal questions surrounding liability for illegal distribution of copyright material online [34]. The hopes and fears of these P2P networks were described by Alexander Peukert in the following words:

"Peer-to-peer networks provide architecture for stable, cheap and global sharing of any digitalized information, be it music, movies, software, writings or other data. The

end-to-end or peer-to-peer architecture makes it possible for thousands of terabytes to rush through (P2P) networks every month without anybody having to invest in and provide for a centralized server. The technology features characterized that prompt great hopes for the advent of the global knowledge community. However, it also terrifies copyright owners to definitely lose control over their works, which for the user of these networks actually seem to be free as the air to common use” [35].

TYPES OF COPYRIGHT INFRINGEMENT

The unauthorized copying of copyrighted works for commercial purposes (*Note: If you used the word “unauthorized” at the beginning the deleted clause is a repetition. So, use either “unauthorized” or the deleted clause but not both*) is copyright infringement, irrespective of whether the infringer acted intentionally or not. In other words, innocent infringement is no defense. In addition, infringement can be subconscious [36]. Copyright Laws recognize two types of infringement: direct/primary infringement, and indirect/secondary infringement.

Direct/Primary Infringement

Direct infringement is concerned with persons who directly reproduce, distribute, broadcast, or ensure the public performance of copyrighted works without the author’s consent. For example, any person who unlawfully downloads and shares copyright files is a direct infringer, and his or her acts constitute primary infringement. In an action for primary infringement, Section 16(3) of the Copyrights, Designs and Patents Act 1988, states that, the onus falls upon the claimant to show on the balance of probabilities that; (a) the defendant carried out one of the activities that falls within the copyright owner’s control, (b) the defendant’s work was derived from the copyright work (a causal connection), and (c) the restricted act was carried out in relation to the work or a substantial part thereof.

Indeed, the requirement of causal connection is paramount in any infringement case. In order to establish direct copyright infringement, the copyright owner must prove that the alleged infringing piece of work is derived from or linked to his/her work. Failing to do so, the claim would not ground a legal action for copyright infringement as was the case in *Autospin (oil seals) v. Beehive Spinning* [37] where it was held that failure to show a causal chain between the original work and the alleged infringed work does not amount to infringement. In fact, the rationale here is that, it is possible for different persons to produce similar work through independent efforts and each of them will be entitled to copyright in their respective works. It is necessary to note that, the whole work need not be copied in order to amount to copyright infringement. Even a substantial copying of original work will ground a civil or criminal action.

Indirect/Secondary Infringement

In an effort to lessen the harm that illegal activities cause to copyright owners, copyright law acknowledges that it is not sufficient to only impose penalties on those who perform or copy the copyright work, and that owners also need to be protected from those who assist and abet the primary infringer [38]. Secondary infringement is concerned with persons who aid and abet the primary infringement. In other words, it deals with the third parties; especially Internet service providers and operators of P2P file sharing technologies that facilitate the infringement of copyright works. The P2P file sharing technologies have shaped and developed the law on secondary copyright infringement.

In order to establish secondary infringement, the claimant must proof; (a) a primary infringement, (b) that the infringer should have known that he or she was dealing with a product of infringement, and (c) that the secondary infringer sold, distributed, allowed or exposed for sale the infringing goods [39]. Secondary infringement is essentially threefold: contributory, vicarious, and induced infringement.

Contributory Infringement

This type of secondary copyright infringement concerns persons (natural and corporate entities) who allow or distribute infringing copies on the one hand and those who facilitate copying by providing the

means or equipment that permit piracy to take place on the other hand. Liability for contributory infringement occurs when one has knowledge that the interference with copyright in question constitutes infringement, but still goes further to cause another to infringe. An action for contributory infringement will prevail if the claimant successfully proves; direct copyright infringement, the defendant's knowledge (actual or constructive) and finally, how the defendant materially contributed to the infringement. Operators of P2P file sharing networks such as, Napster, Grokster, Kazaa, pirate bay, Bittorrent Protocol, and so on, are often charged for contributory secondary copyright infringement since Internet users illegally duplicate copyright files through these file sharing systems. Liability for contributory copyright infringement was adumbrated in the landmark case of, *A & M Recording v. Napster* [40].

In this case, the plaintiffs (A&M Records, Inc.) filed copyright infringement lawsuit against Napster (defendant), claiming that the latter facilitated the illegal distribution of their music files through P2P file sharing. In fact, Napster file-sharing software allowed users to: (a) make MP3 music files stored on individual computer hard drives available for copying by other Napster users, (b) search for MP3 music files stored on other users' computers, and (c) transfer exact copies of the contents of other users' MP3 files from one computer to another via the Internet. Napster raised the defense of fair use. The Ninth Circuit found that Napster had diminished the copyright owners' commercial sales because users were downloading content without paying royalties or fees. The court rejected Napster's fair use argument, finding that commercial use of the copyright material occurred because Napster's user repeatedly downloaded and retained unauthorized copies of copyrighted works. The court determined that Napster is responsible for both contributory and vicarious copyright infringement since it not only knew about the illegal behavior but also actively participated in it [41].

Vicarious Infringement

Vicarious liability was developed out of the tort law doctrine of "respondent superior" [42]. Vicarious infringement typically occurs when one party is responsible for infringement conducted by another when the two parties share a special relationship such as the employer-employee relationship. A defendant is liable for vicarious infringement if he profits from direct infringement while declining to exercise a right to stop or limit it. This was the situation in the case of *Metro-Goldwyn Mayer Studios v. Grokster* [43]. Indeed, it was held in the case of *Fonovisa Inc. v. Cherry Auction, Inc.* [44] that, the operator of a swap meet is vicariously liable for the sale of counterfeit recordings by a vendor who rented space from the operator on the basis that the operator had the right and ability to supervise the direct infringer and derived a financial benefit from the infringer's activities [45].

A statement of claim for vicarious copyright infringement can succeed only if the plaintiff proves the following: (a) direct infringement, (b) that the defendant with knowledge has financial interest in the infringement, and (c) that the defendant has the right and capacity to debar the infringing activity.

From the foregoing, it is necessary to draw a line between direct and indirect infringement. First, direct infringement deals with persons who duplicate or copy copyright files, while secondary infringement by contrast, deals with persons who abet or facilitate the copying of protected files, or who distribute or export the infringing products. Second, the defendant's knowledge is not required to establish liability as far as direct infringement is concerned, whereas with secondary infringement, the requirement of knowledge is paramount to establishing whether the defendant is liable or not.

Induced Infringement

Inducement was recognized as a separate secondary infringement in the U.S Supreme Court decision in the case of *Metro-Mayer Studios Inc. v Grokster Ltd* [46]. The Supreme Court enunciated an inducement rule from patent law providing that "one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties." Liability for

inducement of copyright infringement has four elements: (1) the distribution of a device or products, (2) acts of infringement, (3) an object of promoting its use to infringe copyright, and (4) causation [47].

COPYRIGHT INFRINGEMENT UNDER THE CAMEROONIAN COPYRIGHT LAW

The Cameroon Copyright Laws have not lost sight on acts that may be qualified as copyright infringement. What constitutes copyright infringement is contained in the 2000 Copyright Law and the new penal code. For example, section 80 of the 2000 Copyright Law. The section states that the following shall constitute forgery:

- a. Any exploitation of a literary or artistic work done in violation of this law, through performances, reproduction, transformation or distribution by any means whatever,
- b. Any reproduction, communication or supply to the public through sale, exchange, rental of a recording, a phonogram, videogram, undertaken without the authorization of the performer, phonogram or videogram producer, or the audio-visual communication film, where such authorization is required;
- c. Any infringement of moral rights through violation of the right of disclosure, the right of authorship or the right to respect of a literary or artistic work;
- d. Any infringement of the right of authorization and the right of integrity of a performance.

Section 81 states that the following shall also be considered forgery [48]:

- a. The importation, exportation, sale or putting up for sale of forged objects;
- b. The importation or exportation of phonograms or videograms produced without the authorization of their performer or producer, where such authorization is required;
- c. Manufacturing or importing, with the intention of selling or renting or setting up equipment, material, device or instrument entirely or partially designed to fraudulently record programs broadcast where such programs are reserved for a specific public that receives them in return for a fee paid to their operator or his legal representatives;
- d. The fraudulent neutralization of effective technical measures used by owners of copyrights or neighboring rights to protect their works against unauthorized acts;
- e. Allowing the irregular reproduction or performance in one's establishment of works protected by this law;
- f. Failure to pay or unjustified late payment of fees as provided for by this law;
- g. Carrying out the following acts, knowingly or, for civil sanctions, having good reasons to believe that this act will lead to, enable, facilitate or conceal infringement of a right provided for in this law:
 - unauthorized removal or alteration of any electronic information relating to the copyright regime [49].
 - the distribution, importation, for distribution, unauthorized communication of originals or copies of works, performances, videograms, phonograms, programs, while knowing that the electronic information relating to the copyright regime has been removed or altered without authorization."

Under the new Penal Code, acts of infringement are enumerated in section 327, similar to those purported under the 2000 Copyright Law as mentioned above [50]. It follows from the above that, any infringing activity which occurs on the Internet without the right holder's consent, constitutes *prima facie* infringement. Indeed, authorization is a *sine qua non* to use any copyright work protected in Cameroon. As a result, section 22(1) of the 2000 Copyright Law states that;

"Exploitation of a work by a person other than the author may not be allowed without the latter's written authorization or that of his rightful claimant in writing including any electronic devices."

The authorization must be written under pain of nullity and it must determine the mode, duration and place of exploitation. Despite the fact that the Cameroonian law maker has provided much literature on

copyright infringement, it has not defined infringement, and has not clearly severed primary and secondary infringement which is very essential when faced with on-line piracy. In contrast, the Copyrights, Designs and Patents Act 1988 (CDPA) regulating copyright in England in its part one (chapter two), clearly distinguishes secondary infringement of copyright from other acts restricted by copyright, which turns out to facilitate the determination of the type of infringement involved in the case pending trial.

DEFENCES TO COPYRIGHT INFRINGEMENT

Several defenses are available to defendants charged with copyright infringement. These defenses include *inter alia*; fair use, obscene works, public domain works, non-material work, equitable estoppel, and so forth.

Fair Use/Dealings

Fair use is the most widely pleaded defense in copyright infringement cases. It is provided in copyright law to strike a balance between the owner's right and public interest. To ensure that fair use does not erode a person's copyright, a minimum standard of regulation is observed. Under the category of fair use, we have; copying for private use subject to compensation, copying for academic use, copying for academic criticisms (parody), private dealing within family circles (provided that it does not give rise to any proceed), braille reproduction for the blind, reproduction to serve as evidence in administrative or legal proceedings, and so forth, what amounts to fair use are stated in Section 29 of the 2000 Copyright Law. As far as parody is concerned, it can only benefit the gist of fair dealings if it targets or comments the original material. This was mentioned in the case of *Campbell v. Acuff –Rose music Inc* [51].

Thus, any person charged for infringing copyright protected in Cameroon and whose activity is permitted under section 29 above, he or she can raise the defense of fair use.

Public Domain Work(s)

When the term of protection of a work has lapsed, the work is said to have entered the public domain and anybody can copy without authorization or compensation provided that the author is accredited at moment the work is used or copied. In other words, the author's integrity and paternity remains attached to the work sine die. In Cameroon patrimonial right subsist in a work throughout the author's lifetime, and extends to fifty years after his or her death (*post-motemauctoris*).

Equitable Estoppel

This doctrine was developed in law of Equity to estoppel right holders who submit their rights. In other words, any person who waves his right of action by inducing another to rely on the waiver will be estopped if he or she later on attempt to vindicate such right. In fact, a copyright right holder who has knowledge of infringing activities and acquiesces in it will be precluded for claiming damages for such infringement.

The Criteria for the Enforcement of Copyright

To enforce copyright, three elements must be established by the copyright owner(s) to the satisfaction of the court: (1) ownership/authorship, (2) subsistence, and (3) proof of infringement. To establish these elements successfully, the right holder must, as mentioned earlier, identify the infringement and the infringer.

Proof of Ownership/Authorship

Under the Cameroonian Copyright Law, the right to file lawsuits for copyright infringement is essentially ascribed to the owner or author of the infringed piece of work. The owner of a literary, artistic or scientific work is the person who created the work. See section 7 of the 2000 Copyright Law. The section states;

1. "The author shall be the individual who created a literary or artistic work. The author shall equally be the individual who designed the work and initiated its realization by an automatic process.

2. The author of a work protected by virtue of this law shall be the holder of the copyright in the said work.”

Thus, any person filing a lawsuit to enforce copyright, must either be the owner or author of the work. Yet, it is important to mention that the Cameroonian Copyright Law recognizes the transfer of copyright either by licensing, sale, assignment or by way of inheritance (operation of law). As a result, the licensee, buyer and assignee of a copyrighted work, owns the copyright subsisting in the work as the real owner and consequently, can file law suits for copyright infringement.

Proof of Subsistence [52]

After proving ownership, the claimant will have to prove that copyright subsists in the allegedly infringed work. Under the Cameroonian Copyright Law, subsistence of copyright does not depend on formalities. The law obeys the principle of automatic protection established under by the Berne Convention (BC) which stipulates that the subsistence of copyright is independent of written formalities such as registration. The absence of registration makes it difficult to ascertain copyright and any person who wishes to assert copyright is required to prove subsistence by all means, which is onerous in connection with works such as; computer programs, cinematographic works, databases, and so forth.

Proof of Copyright Infringement on the Internet

It is common knowledge in law that he who alleges must prove [53]. In this context, the burden of proof for copyright infringement is on the copyright holder who has to prove beyond reasonable doubt or on the balance of probabilities depending on the type of action pending trial before the law court. Under this element, three other hurdles must be crossed:

The Work Must be Placed on the Internet

A claimant can file a lawsuit for online piracy only if, the work was placed on the Internet in digital form and infringed. Otherwise, it will not constitute online copyright piracy. To claim damages for online piracy, it is a *sine qua non* to establish that the work is placed on the Internet. Browsing a copyrighted work on the Internet does not *ipso facto* constitute infringement.

The Work Must Satisfy the Requirement of Protection

As mentioned earlier, a work is copyrighted if it benefits from copyright protection. To benefit from copyright protection in Cameroon, the work must satisfy the eligibility test: creativity, originality and fixation (tangibility). It is provided in section 3 of the 2000 Copyright Law. As a result, the work alleged of having been infringed, should be that which satisfies the above eligibility test in the absence of which, the lawsuit will not be actionable.

The Work Must have been Copied

After proving that the digital work is copyrighted, it is incumbent on the claimant to prove that the work has actually been copied without his/her implied or express authorization. In other words, the claimant must establish that there exist probative similarities or a causal connection between his or her work and the defendant's work [54]. The rationale here is that, copyright law confers exclusive rights on the right holder(s), not monopolistic right. It implies that, it is possible for different individuals to create similar works with independent effort and each of them is entitled to copyright in their respective works.

CONCLUSION AND RECOMMENDATIONS

From the foregoing, we can sum up by concluding that the Internet is an endemic problem to the copyright industries, as its impacts do not only exacerbate infringement, but also render onerous the protection and enforcement of copyright. The P2P file sharing technologies sheltered on the Internet are the root causes and medium of copyright infringement. Though the copyright industries praised the birth of the new technology, its wounds remain unhealed till date, given that online copyright piracy is

still alarming. The difficulties that beset the regulation of copyright on the Internet, is the Internet itself. The Internet is a safe harbor for peer-to-peer file sharing technologies. The impacts of the Internet in the copyright field are the thorny issues regarding the enforcement and protection of copyrights as they render copyright enforcement on the Internet daunting, dismaying, and highly challenging in most countries including Cameroon.

Bearing in mind that the Internet is borderless and affords infringers a cloak of anonymity, which represents a serious challenge to the effective protection and enforcement of rights under the Cameroonian Copyright Law, the Internet domain should be regulated. In fact, protecting or enforcing copyright on the Internet era should not be a pipe dream. In our opinion, to resolve the challenges discussed in this paper, national, regional, and international solutions are indispensable.

At the national level, we humbly recommend that: If a *sui generis* private international law rule is included under the 2000 Copyright Law to take into consideration the issues of competent jurisdiction and the law applicable to cross-border piracy of copyrighted works via the Internet, it will help solve the current problems that beset the protection and enforcement of copyright in this Internet era. In addition, this rule should be enacted in a clear and simple language for better understanding.

The provisions relating to infringement, penalties and procedure for copyright enforcement contained in (part VI) of the 2000 Copyright Law, should be reformed to include provisions that clearly separate primary and secondary copyright infringements. This will contribute in establishing with ease, the primary and secondary liabilities in cases of infringement, as it obtains under (Part I, chapter two) of the English Copyright, Designs, Patents Acts (1988).

The Cameroonian law maker should clearly legislate on the liabilities of Internet Service Providers (intermediaries that facilitate infringing activities on the Internet) as far as directly or indirectly liable for copyright infringement in concerned as it is the case under the United States Internet Copyright Infringement Liability Act (1998). This will be of great help those right holders who prefer to sue Internet intermediaries when the identification or location of primary infringers proves unsuccessful.

The reasons that underpin section 29(1)(c) of the 2000 Copyright Law on copying for private use should be reviewed because in today's digital age, many are those who incessantly copy, download and distribute copyrighted files with the aid of the Internet technology, and do not remunerate the right holders as provided by law.

We kindly recommend at the regional level that within the World Intellectual Property Organization, for example, Article 14(2) of the 1996 World Intellectual Property Copyright Treaty (WCT), which covers provisions on enforcement of copyright should be reformed to include provisions on jurisdiction and the applicable law because cross-border piracy of copyrighted works via the Internet is transnational and can, to a greater extent, be annihilated by transnational efforts. The ISP (Internet Service Providers) should be involved in the fight against online piracy because they control the network and are well placed to solve the problem of anonymity.

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