

Copying for Private Use as a Safety Valve for Copyright Infringement under the Cameroon Copyright Law

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Abstract

That copyright infringement in Cameroon is alarming is and is not new. This article sets out to expose how copying for personal or private use as permitted under the copyright law of Cameroon constitutes a gateway for copyright infringement and its consequences. Apart from other factors that account for such infringement, the 2000 copyright law indirectly promotes copyright infringement. Specifically, the article assumes that the exception of personal use provides a gateway to copyright infringement which constitutes a serious problem for copyright holders and the society. One further finds that this short coming in the law has deprived authors of artistic, literary or musical work. The findings were arrived at by making an analysis of primary and secondary data on this topic. The article recommends the need for a reconsideration of the motives that underpin Section 29(1)(c) of the 2000 copyright law of Cameroon that operates to deprive copyright holders of their rights. A cursory look at the provision shows that it serves as a safety valve for copyright infringement in Cameroon.

Keywords: Analysis, Copyright, Expose, Infringement, Personal use or private use, Safety valve

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INTRODUCTION

Copyright is a legal concept, enacted by most governments, giving the creator of an original work exclusive right to it, usually for a limited time. Generally, it is “the right to copy”, but also gives the copyright holder the right to be credited for the work, to determine who may adapt the work to other forms, who may perform the work, who may financially benefit from it, and other related rights. It is a form of intellectual property (like the patent, the trademark, and the trade secret) applicable to any expressible form of an idea or information that is substantive and discrete [1].

Copyright initially was conceived as a way for government to restrict printing; the contemporary intent of copyright is to promote the creation of new works by giving authors control of and profit from them. Copyrights are said to be territorial, which means that they do not extend beyond the territory of a specific state to which protection is granted unless that state is a party to an international agreement. Today, however, this is less relevant since

most countries are parties to at least one such agreement. While many aspects of national copyright laws have been standardized through international copyright agreements, copyright laws of most countries have some unique features [2].

If copyright protection is applied rigidly, it can hamper progress of the society. However, copyright laws are enacted with necessary exceptions and limitations to ensure that a balance is maintained between the interests of the creators and of the community. To strike an appropriate balance between the rights of the copyright owners and the interests of the society, there are exceptions in the law. Many types of exploitation of work which are for social purposes such as education, home or personal use, and so on are exempted from the operation of the rights granted in the Cameroon copyright law. Permission for private copying is however subject to remuneration as provided for under sections 69 and 72 of the copyright laws and under sections 13 to 17 under chapter IV of Decree

No. 2001/956/PM of November 1, 2001 implementing Law No. 2000/11 of December 19, 2000 on copyright and Neighboring Rights [3]. The exception of personal or private use provides a gateway to copyright infringement which constitute a serious problem for copyright holders and the society as a whole [4]. This is especially so because such private copying is usually not noticeable, and therefore not remunerated [5]. Those who copy for private use do not always notify copyright holders. Hence, there is a need for a timely redressal of this problem.

A work means any of the following: a literary, dramatic, musical or artistic work, a cinematograph film, or a sound recording.

PREMISE

The exception of copying for personal use as provided for under the 2000 Copyright and Neighboring Rights Law of Cameroon, provides a gateway to copyright infringement which constitute a serious problem for authors of artistic, literary or musical work and the society.

BRIEF HISTORY OF COPYRIGHT

Copyright came about with the invention of the printing press and with wider public literacy [6]. As a legal concept, its origins in Britain were from a reaction to printers' monopolies at the beginning of the 18th century [7]. Charles II of England was concerned by the unregulated copying of books and passed the Licensing of the Press Act 1662 by an Act of the Parliament, which established a register of licensed books and required a copy to be deposited with the stationers' company, essentially continuing the licensing of material that had long been in effect [8].

Copyright has grown from a legal concept regulating copying rights in the publishing of books and maps to one with a significant effect on nearly every modern industry, covering such items as sound recordings, films, photographs, software, and architectural works [9].

Copyright laws are standardized through international conventions such as the Berne Convention and Universal Copyright

Convention. These multilateral treaties have been ratified by nearly all countries, and international organizations such as the European Union or World Trade Organization [10] require their member states to comply with them.

UNDERSTANDING THE MEANING OF COPYRIGHT

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work. Authors' rights have two distinct components: the economic rights in the work and the moral rights of the author.

The economic rights are a property right which is limited in time and which may be transferred by the author to other people in the same way as any other property [11]. They are intended to allow the author or their holder to profit financially from his or her creation and include the right to authorize the reproduction of the work in any form [12]. The WIPO Copyright Treaty provides authors of works with control over their rental and distribution in Articles 6 to 8 which they may not have under the Berne Convention alone [13].

The protection of the moral rights of an author is based on the view that a creative work is in some way an expression of the author's personality. The moral rights are therefore personal to the author and cannot be transferred to another person except by testament when the author dies. The moral rights regime differs greatly between countries, but typically includes the right to be identified as the author of the work and the right to object to any distortion or mutilation of the work which would be prejudicial to his or her honor or reputation [14]. In many countries, the moral rights of an author are perpetual [15].

Copyright also denotes exclusive rights. Several exclusive rights typically attach to the

holder of a copyright such as the right: to produce copies or reproductions of the work and to sell those copies; to import or export the work; to create derivative works (works that adapt the original work) to perform or display the work publicly; to sell or assign these rights to others; and to transmit or display by radio or video [16].

The phrase “exclusive right” means that only the copyright holder is free to exercise those rights, and others are prohibited from using the work without the holder’s permission. Copyright is sometimes called a “negative right”, as it serves to prohibit certain people (e.g., readers, viewers, or listeners, and primarily publishers) from doing something they would otherwise be able to do, rather than permitting people to do something they would otherwise be unable to do [17].

REASONS FOR THE PROTECTION OF COPYRIGHT

Copyright ensures certain minimum protection of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the centerpiece of development, no state can afford to ignore the basic requirement of encouraging it. In other words, economic and social development of a society is dependent on creativity. It will also ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts [18].

The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which encourages them to create more and motivates others to create.

HOW COPYING FOR PERSONAL USE MAY CONSTITUTE AN INFRINGEMENT

The copyright law permits the reproduction and transformation in one copy for strictly personal and private use of the person who makes them, excluding any collective use or any exploitation for profit [19]. In other words, an author may not forbid the reproduction and transformation in one copy for strictly

personal and private use of the person who makes them, excluding any collective use [20] or any exploitation for profit. This exception may be termed “fair use” right. Permission for private copying is however subject to remuneration as provided for under sections 69 and 72 of the copyright laws and under sections 13 to 17 under chapter IV of Decree No. 2001/956/PM of November 1, 2001 implementing Law No. 2000/11 of December 19, 2000 on Copyright and Neighboring Rights [21]. A question that crops up here is whether collective use as referred to above includes all the members of a family.

Fair use is a right granted to the public on all copyrighted work. It takes precedence over the author’s interest. The Copyright Law therefore establishes that it is legal in some circumstances to make copies of audio recordings for non-commercial personal use. Hence, if it is not fair use, it is copyright infringement. For example, lending can lose fair use status.

However, if a work is not copyrighted, fair use does not come into play, since public-domain works [22] can be used for any purpose without violating copyright law. Strict adherence to personal use as a form of fair use may however constitute an injustice [23]. This is especially so because such private copying is usually not noticeable, and therefore not remunerated [24].

Although the law recognizes copyright limitations, allowing “fair” exceptions to the creator’s exclusivity of copyright, and giving users certain rights, the development of digital media and computer network technologies have prompted reinterpretation of these exceptions, introduced new difficulties in enforcing copyright, and inspired additional challenges to copyright law’s philosophic basis. The scope of copyright limitations and exceptions became a subject of significant controversy within various nations in the late 1990s and early 2000s, largely due to the impact of digital technology [25]. Today, making photocopy of a book, even for personal use, may constitute an infringement and may be subject to a criminal charge [26] if such private users fail to notify and remunerate the author as provided for under sections 13 to

17 of Decree No. 2001/956/PM of November 1, 2001 implementing Law No. 2000/11 of December 19, 2000 on Copyright and Neighboring Rights of Cameroon.

THE SCOPE OF PROTECTION OF COPYRIGHT IN THE 2000 COPYRIGHT AND NEIGHBORING RIGHTS LAW

The 2000 Copyright and Neighboring Rights Law protect all literary or artistic works, irrespective of the mode [27], worth, genre or purpose of the expression. These works include: (a) literary works, including computer programs; (b) musical compositions with or without lyrics; (c) dramatic, dramatico-musical, choreographic works and pantomimes created for the stage; (d) audiovisual works; (e) drawings, paintings, lithographs, etchings or wood engravings and other works of the same genre; (f) all kinds of sculptures, bas-reliefs and mosaics; (g) architectural works, including the drawings, models and the construction itself; (h) tapestries and objects created by the arts and applied arts, including the sketches or patterns and the works themselves; (i) maps as well as graphic and plastic drawings and reproductions of a scientific or technical nature; (j) photographic works including works expressed by a process similar to photography from unauthorized uses [28].

Section 3(2) further provides that copyright shall relate to the expression through which ideas are described, explained and illustrated. It shall cover the distinctive features of works, such as the plan of a literary work insofar as it is materially linked to the expression. Sub section (3) provides that this law shall protect only expressions or original distinctive features resulting from a creation.

A work shall refer to a creation not only in its original form, but also in its derivative or composite forms. In addition to the works referred to in Section 3 above, the following shall be protected as composite works, without prejudice to the copyright in the already existing work: (a) translations, adaptations, arrangements or other alterations of literary or artistic works; (b) collections of works, including those which express folklore or simple facts or data, such as encyclopedias, anthologies, compiled data, which are

reproduced either on machine-readable mediums or on any other form which, by the choice or arrangement of their contents, constitute original works; (c) folklore-inspired works [29].

Unlike the case with patents, copyright protects expressions and not the ideas. There is no copyright in an idea [36]. It does not also protect laws, court judgments and other official instruments, as well as their official translations; coats of arms, decorations, currency marks and other official insignia [30].

Folklore shall belong originally to the national cultural heritage. The representation or direct or indirect fixation of folklore for private purposes shall be allowed. Its representation, direct or indirect fixation for profit-making purposes shall be subject to prior authorization from the service in charge of culture, in return for payment of royalty whose amount shall be fixed by statutory instrument following the conditions applicable in each of the categories of creation considered. The amount received shall be deposited in a cultural policy support fund [31].

The title of a work shall be protected as the work itself insofar as it has an original feature. Even when the work is no longer protected, no one may use its title for another work of the same genre when such use is likely to cause confusion in the mind of the public [32].

Furthermore, literary and artistic works, performances, phonograms, videograms and programs shall apply to works which are entitled to protection in accordance with an international treaty to which Cameroon is signatory [33]. This is provided for in Section 94 of the Cameroon copyright and Neighboring Rights Law [34].

It may apply to a wide range of creative, intellectual, or artistic forms, or “works” such as poems, theses, plays, other literary works, movies, musical compositions, audio recordings, software, radio and television broadcasts, and industrial designs [35]. It generally does not protect the underlying ideas, and it does not protect facts [36]. For example, copyright does not prevent you from

expressing in your own words ideas and facts found in a book or journal you read but you should always give appropriate credit to the sources in which you found them; it is common courtesy to do so, and not doing so could constitute a violation of the copyright law, unless you have obtained license or permission from the copyright holder to create the same. It may also constitute plagiarism [37].

OBTAINING OR CLAIMING COPYRIGHT

Typically, a work must meet minimal standards of originality [38] in order to qualify for copyright, and the copyright expires after a set period. Copyright law recognizes the right of an author based on whether the work actually an original creation is rather than based on whether it is unique; two authors may own copyright on two substantially identical works, if it is determined that the duplication was coincidental, and neither was copied from the other.

In all countries, where the Berne Convention standards apply, copyright is automatic, and need not be obtained through official registration with any government office. Once an idea has been reduced to tangible form, for example by securing it in a fixed medium (such as a drawing, sheet music, photograph, a videotape, or a computer file), the copyright holder is entitled to enforce his or her exclusive rights. However, while registration isn't needed to exercise copyright, in jurisdictions where the laws provide for registration, it serves as *prima facie* evidence of a valid copyright and enables the copyright holder to seek statutory damages and attorney's fees. Hence, acquisition of copyright is automatic, and it does not require any formality. However, certificate of registration of copyright and the entries made therein serve as *prima facie* evidence in a court of law with reference to dispute relating to ownership of copyright.

In some countries, the administration and enforcement of copyrights are the responsibility of the municipal authorities. In Cameroon, the principal law on copyright is Law 2000/011 Relating to Copyright and

Rights, which is mainly derivative of Annex VII of the Bangui Accord. This legislation accords to authors of literary, artistic and scientific works the exclusive right to their works and also covers traditional knowledge, which is fast becoming a focal area for the World Intellectual Property Organization. The registration of copyright used to be performed by a single body, but this has now been broken down into more specialized entities. Therefore, in Cameroon there are specialized entities for various areas, including the registration of literary and dramatic works, musical works and scientific works, and each body has developed its own registration procedures.

DURATION OF COPYRIGHT

Copyright subsists for a variety of lengths in different jurisdictions. In most of the world, the default length of copyright is the life of the author plus either 50 or 70 years. Under most countries' laws (for example, the United States and the United Kingdom), copyrights expire at the end of the calendar year in question [39].

As far as the duration is concerned in Cameroon, Section 37 provides that:

- (1) The patrimonial rights of an author shall last for his lifetime. They shall subsist after his death throughout the current calendar year and for the next fifty years. They shall also subsist for all his successors or rightful claimants during the year of the death of the last surviving co-author plus fifty years for joint works.
- (2) The patrimonial rights of an author shall last for fifty years with effect from the calendar year during which the work was published with the consent of the author. If such publication did not take place within fifty years starting from the date of creation, the rights shall last for fifty years with effect from the end of the calendar year of creation. This shall apply to:
 - (a) audiovisual works;
 - (b) works of applied arts;
 - (c) collective works.
- (3) For anonymous or pseudonymous works, the rights shall last for fifty years starting from the end of the calendar year during which publication was authorized. The term of copyright shall be that provided for in subsection (1) where the pseudonym

does not leave room for any doubts as to the identity of the author, or where the latter reveals his identity before the deadline expires. If such publication does not take place within fifty years from the date of creation, the rights shall last for fifty years starting from the end of the calendar year of creation.

- (4) For posthumous works, the term of copyright protection shall be fifty years with effect from the end of the calendar year of authorized publication of the work. The patrimonial rights shall belong to the author's successors in title or rightful claimants where the work is published during the period provided for in subsection (1) above. Where publication took place after this period, the rights shall belong to the successor in title or rightful claimant who did the publication or caused it to be done.

Section 68 further provide that the duration of the patrimonial rights dealt with in this Part shall be fifty years with effect from: the end of the calendar year of fixation, for phonograms, videograms and the performances fixed thereon; the end of the calendar year of execution, for performances not fixed on phonogram or videogram; the end of the calendar year of broadcast, for the programs of audiovisual broadcasting firms.

The length and requirements for copyright duration are subject to change by legislation, and since the early 20th century there have been several adjustments made in various countries, which can make determining the duration of a given copyright somewhat difficult. For example, the United States used to require copyrights to be renewed after 28 years to stay in force, and formerly required a copyright notice upon first publication to gain coverage. In Italy and France, there were post-war-time extensions that could increase the term by approximately 6 years in Italy and up to about 14 in France. Many countries have extended the length of their copyright terms (sometimes retroactively) [40].

International treaties establish minimum terms for copyrights, but individual countries may enforce longer terms [41]. The Berne

Convention states that all works except photographic and cinematographic shall be copyrighted for at least 50 years after the author's death [42]. For photography, the Berne Convention sets a minimum term of 25 years from the year the photograph was created [43], and for cinematography the minimum is 50 years after first showing, or 50 years after creation if it hasn't been shown within 50 years after the creation [44]. Countries under the older revisions of the treaty may choose to provide their own protection terms [45].

In the case of anonymous or pseudonymous works, the term of protection granted by this Convention shall expire fifty years after the work has been lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). The countries of the Union shall not be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for fifty years [46].

Article IV of the Universal Copyright Convention 1952 is to the effect that the term of protection for works protected under this Convention shall not be less than the life of the author and twenty-five years after his death [47]. However, any Contracting State which, on the effective date of this Convention in that State, has limited this term for certain classes of works to a period computed from the first publication of the work, shall be entitled to maintain these exceptions and to extend them to other classes of works. For all these classes the term of protection shall not be less than twenty-five years from the date of first publication. Any Contracting State which, upon the effective date of this Convention in that State, does not compute the term of protection upon the basis of the life of the author, shall be entitled to compute the term of protection from the date of the first publication of the work or from its registration prior to

publication, as the case may be, provided the term of protection shall not be less than twenty-five years from the date of first publication or from its registration prior to publication, as the case may be. If the legislation of a Contracting State grants two or more successive terms of protection, the duration of the first shall not be less than one of the minimum periods specified above. The duration of protection of a work shall be governed, in accordance with the law of the Contracting State in which protection is claimed [48]. The provisions of paragraph 2 of this article shall not apply to photographic works or to works of applied art; provided, however, that the term of protection in those Contracting States which protect photographic works, or works of applied art in so far as they are protected as artistic works, shall not be less than ten years for each of said classes of works [49].

REMUNERATION FOR PRIVATE COPYING OF COMMERCIAL WORKS

The authors and performers of works and recordings fixed on phonograms or videograms as well as producers of these phonograms or videograms are entitled to remuneration in respect of reproductions for strictly personal and private use [50]. Remuneration for private copying of phonograms and videograms shall be determined by an order of the Minister of Culture [51].

The remuneration provided for in Section 69 is paid by the manufacturer or importer of recording media employed for the reproduction for private use of works or recordings fixed on phonograms or videograms upon the circulation of such recording in Cameroon. The amount of the remuneration shall be fixed according to the type of medium and the length of recording possible [52]. The length of a recording, in the absence of proof to the contrary, shall be that declared by the manufacturer or importer [53]. Remuneration shall apply to the blank recording media referred to in Article 70 of the aforementioned Law [54].

The types of mediums as well as the amount of

the remuneration and the conditions of payment shall be determined by regulation. The remuneration provided for in this chapter shall be collected on behalf of the legal representatives by the competent collective management body. Remuneration for private copying of phonograms or videograms shall be shared equally by the authors, the performers, the producers and the cultural policy support fund [55] provided for in Section 5(4) of the copyright law [56].

With respect to the remuneration for private copying of printed works, the authors and publishers of printed works shall be entitled to remuneration in respect of the reproduction for strictly personal and private use [57]. The remuneration provided for in this chapter shall be paid by the manufacturer or the importer of machines and used for the reproduction for private use of a printed work, when such machines are put in circulation in Cameroon [58]. Remuneration for private copying of printed works shall be 5% of the sale price of the reproduction equipment [59]. The types of machines subject to a fee and the amount of such fee, as well as the conditions of payment shall be determined by regulation. The fee provided for in this chapter shall be collected on behalf of the legal representatives by the competent collective management body [60]. Proceeds from private copying of printed works shall be shared equally among the authors, the publishers and the cultural policy support fund [61] provided for in Section 5(4) of the copyright law [62]. Any equipment for the reproduction of printed works shall be subject to the remuneration referred to in Article 16 of the Decree above [63].

RIGHTS OF OWNERS OVER INFRINGED COPIES AND EQUIPMENT USED FOR MAKING INFRINGED COPIES (FIRST-SALE DOCTRINE AND EXHAUSTION OF RIGHTS)

All infringed copies of any work in which copyright subsists and all equipments used or intended to be used to produce such infringed copies are deemed to be the property of the owner of the copyright. Copyright law does not restrict the owner of a copy from reselling legitimately obtained copies of copyrighted

works. It is therefore legal, for example, to resell a copyrighted book or CD. In the United States this is known as the first-sale doctrine and was established by the courts to clarify the legality of reselling books in second-hand bookstores [64]. Some countries may have parallel importation restrictions that allow the copyright holder to control the after-market. This may mean for example that a copy of a book that does not infringe copyright in the country where it was printed does infringe copyright in a country into which it is imported for retailing. The first-sale doctrine is known as exhaustion of rights in other countries.

In addition, copyright, in most cases, does not prohibit one from acts such as modifying or destroying his or her own legitimately obtained copy of a copyrighted work.

SANCTIONS OF COPYRIGHT INFRINGEMENTS

An artistic, literary or musical work is the brainchild of the author, the fruit of his labor and so, considered to be his property so highly is it prized by national and international conventions. This assertion sums up the underlying idea behind copyright protection, which is to award fruits of labor to only that person who has worked hard and produced the work with the addition of modern-day emphasis on originality and to prevent economic exploitation of the work of a creator by third parties. In keeping with this objective, the 2000 Copyright and Neighboring Rights law of Cameroon provides for penal sanction for the offence of infringement of copyright. Copyrights are generally enforced by the holder in a civil law court, but there are also criminal infringement statutes in some jurisdictions. Criminal sanctions are generally aimed at deterring serious infringement activity.

CIVIL REMEDIES FOR COPYRIGHT INFRINGEMENT

A copyright owner can take civil action against any person who infringes the copyright in the work. The copyright owner is entitled to remedies by way of injunctions, damages and accounts.

CRIMINAL PUNISHMENT OF COPYRIGHT IN CAMEROON

Copyright infringement in Cameroon is punished with imprisonment of from 5 (five) to 10 (ten) years or a fine of from 500,000 to 10,000,000 CFA francs or both such imprisonment and fine. The penalties provided for in this section shall be doubled where the offender is a partner of the owner of the infringed right.

CONCLUSION AND RECOMMENDATIONS

The Copyright law of Cameroon agrees that copyright includes a free zone in which individuals may make personal use of copyrighted works without legal liability subject to remuneration. Individuals' claims to make personal copies and pass them on to friends and family seem more questionable when those copies are digital. Also, private copying is not usually remunerated. Today, personal uses can be characterized as "unlawful" in the following circumstances: trading music with your friends is called "piracy" and collecting photocopied articles relevant to your job is stealing. It is also unlawful for million MP3 Players, MP4 players, iPod and phone owners to use them to listen to music they've copied from recordings they have purchased whether legally or illegally.

An artistic, literary or musical work is the brainchild of the author, the fruit of his labor and so, considered to be his property, so highly is it prized by national and international conventions. This assertion sums up the underlying idea behind copyright protection, which is to award fruits of labor to only that person who has worked hard and produced the work with the addition of modern-day emphasis on originality and to prevent economic exploitation of the work of a creator by third parties.

In keeping with this objective, the 2000 Copyright and Neighboring Rights law of Cameroon provides for criminal sanction for the offence of infringement of copyright. Furthermore, in the context of the rampant rise in the crime of piracy there is an urgent need to effectively arm the police to tackle menace

of copyright piracy so that protection given under copyright is preserved and this can be done by interpreting sections of the law in such a manner which is conducive to curbing of the said crime.

It is often lamented that there is a difference between enacting a law and ensuring that it is properly enforced, and the copyright law of Cameroon offer a very good illustration of this enigma. Despite the protection provided by the 2000 Copyright and Neighboring Rights law of Cameroon, the country is notoriously known for the rapid increase in copyright violation year after year mainly because of a short coming under section 29(1)(c) of the above law and due to poor implementation and enforcement mechanisms.

In such a dismal situation, it is logical that wider powers must be given to the police to conduct *suo moto* raids to curb piracy. In other words, powers to conduct *suo moto* raids must be given to the police as part of creation of deterrence needed to drive piracy rates down. Even though the police can act on their own to seize pirated product under the copyright laws, and in fact, are obliged to do so under the Criminal Procedure Code [65], the police in many cities simply refuse to act ex-officio and invariably require a complaint from the right holder.

Raiding alone will not provide the level of deterrence needed to drive down piracy rates significantly; criminal cases with deterrent sentences imposed will be the true arbiter of whether these raids have had their ultimate desired effect. Therefore, there is an urgent need to effectively implement the copyright law and use the wide powers given under it to the police to combat the menace of copyright piracy.

It is also crucial that the interpretation of the provisions of the copyright law be made in a manner that no ambiguity has the effect of obfuscating the purpose of the law.

Furthermore, given this threat resulting from personal use, it is recommended that digital devices should be equipped with copy-prevention technology before being made

available to consumers. Whether the shrinking of lawful personal use should disturb us depends on whether personal use has intrinsic value. If personal use was once lawful solely because of social equality, we could address those fears directly by legislating new privacy rights or encouraging the adoption of innovative pricing models.

The government should institute private copying levy. A private copying levy is a government-mandated scheme in which a special tax or levy (additional to any general sales tax) is charged on purchases of recordable media. Income from such levies should be allocated to the authors. A distinction is made between “tax” and “levy” based on the recipient of the accumulated funds; taxes are received by a government, while levies are received by a private body, such as a copyright collective.

Such levies were first introduced in the USA in response to lobbying from the recording industry. With the advent of the audio cassette, legislators were persuaded that cassette recorders would decimate sales of records as friend after friend would then make copies of only one purchased album.

Levies are only intended to compensate for copies in the private sphere that are legally allowed.

A difficulty that immediately arises is the practical impossibility of devising a mechanism for distributing the proceeds to copyright holders that is considered “fair” by all copyright holders and consumers. Implementation may be restricted to music and may distribute the proceeds proportionally to a measurement of sales of CDs in music shops or amount of air-play on radio or the like. This ignores other distribution channels such as the Internet, and it may disproportionately benefit popular artists and publishers of the related products. Fairer methods would arguably involve extensive sampling of purchasers to determine actual recording behavior, or alternatively paying all musicians at a simple flat-rate.

A further problem is to find a proper tariff base for levies. The legislators as the

representatives of the people could however decide this on their behalf.

An implementation question that arises is whether the levy applies to any type of copyrighted work or is restricted to a limited field such as music and on all media devices. The options include: Collecting the levy on all copyrighted work and on all media, regardless of the end use, and ignoring the injustice to purchasers with non-covered uses.

The extension of the competence of the forces of law and order to impound infringed copies and equipments used for making infringing copies.

The distributors of technology that makes infringement easier should be liable for their customers' infringing use and the distributors of like technology.

Authors should seek to join collective administration of copyright bodies in Cameroon. Collective administration of copyright is a concept where management and protection of copyright in works are undertaken by a society of owners of such works. Obviously, no owner of copyright in any work can keep track of all the uses others make of his work. When he becomes a member of a national copyright society, that society, because of its organizational facilities and strength, is able to keep a better vigil over the uses made of that work throughout the country and collect due royalties from the users of those works.

Because of the country's membership in international conventions, the copyright societies would be able to have reciprocal agreements with similar societies in other countries for collecting royalties for the uses of Cameroonian works in those countries. From this it can automatically be inferred that it will be in the interests of copyright owners to join a collective administration organization to ensure better protection to the copyright in their works and for reaping optimum economic benefits from their creations.

In the face of growing concerns expressed by the creators of work regarding ineffective

protection given to copyright, it is high time that the position with respect to the implementation and enforcement of the law on copyright infringement be given a attention that it deserves.

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16. Kaushik G. Access to Knowledge in Africa: How to free a continent from the shackles of copyright, LLM Thesis, University of Kent, September 2006, P. 22,
17. Section 3(1) of the 2000 Copyrights and Neighbouring rights law of Cameroon.
18. Article 2 of the Berne Convention for the Protection of Literary and Artistic Works on September 21, 1964. See also article 1

- of the Universal Copyright Convention, with Appendix Declaration relating to Articles XVII and Resolution concerning Article XI 1952.
19. Section 4 of the 2000 Copyright and Neighboring Rights Law.
 20. Ibid., Section 3(4)(a).
 21. Ibid., Section 3(4)(b) and (c).
 22. Ibid., Section 5.
 23. Ibid., Section 6.
 24. Section 94 of the Cameroon Copyright and Neighboring Rights Law.
 25. Peter K. Yu, op. cit., P. 346.
 26. Simon, Stokes, *Art and copyright*, Hart Publishing, ISBN 978-1-84113-225-9, 2001, pp. 48–49.
 27. Under section 2(1) of the Copyright and Neighboring Rights Law, “original work” mean one which, by virtue of its characteristics or expression, can be differentiated from previous works.
 28. Ibid.
 29. Article 7 (6) of the Berne Convention for the Protection of Literary and Artistic Works.
 30. Ibid., Article 7 (1) which is to the effect that the term of protection granted by this Convention shall be the life of the author and fifty years after his death.
 31. Ibid., Article 7 (4).
 32. Ibid., Article 7 (2).
 33. Article 7 (3) of the Berne Convention.
 34. Article IV (2) of the Universal Copyright Convention 1952.
 35. Ibid., Article IV (1).
 36. Ibid., Article IV (3).
 37. Section 69 of the Copyright and Neighboring Rights Law of Cameroon.
 38. Article 13 of Decree N°. 2001/956/PM of November 1, 2001 implementing Law N°. 2000/11 of December 19,
 39. 2000 on Copyright and Neighboring Rights.
 40. Section 70 of the Copyright and Neighboring Rights Law.
 41. Article 14 of Decree N°. 2001/956/PM of November 1, 2001 implementing Law N°. 2000/11 of December 19, 2000 on Copyright and Neighboring Rights.
 42. Ibid., Article 15.
 43. Section 71 of the Copyright and Neighboring Rights Law.
 44. Section 5(4) provides that the amount received shall be deposited in a cultural policy support fund.
 45. Section 72 of the Copyright and Neighboring Rights Law.
 46. Ibid., Section 73.
 47. Article 16 of Decree No. 2001/956/PM of November 1, 2001 implementing Law No. 2000/11 of December 19, 2000 on Copyright and Neighboring Rights.
 48. Collective management is the exercise of copyright and related rights by organizations and societies representing the interests of the owners of such rights. By serving as effective links between right owners and users, collective management organizations help in ensuring that right owners receive payment for the use of their works. This payment serves as an incentive for composers, writers, musicians, singers and performers, who are among society’s most valuable assets. In Cameroon, all the authorized bodies have adopted the form of a non-commercial association: SOCILADRA (Société civile des droits de la littérature et des arts dramatiques (Civil Society for Literary and Dramatic Art)); SOCIDRAP (Société civile des droits audiovisuels et photographiques (Civil Society for audiovisual and photographic art)); SOCADAP (Société civile de droit d’auteur et droits voisins des arts plastiques et graphiques (Collective management organizations of copyright)); CMC (Cameroon Music Corporation).
 49. Section 74 of the Copyright and Neighboring Rights Law.
 50. Section 5(4) provides that the amount received shall be deposited in a cultural policy support fund.
 51. Article 17 of Decree N°. 2001/956/PM of November 1, 2001 implementing Law N°. 2000/11 of December 19, 2000 on Copyright and Neighboring Rights.
 52. Ibid.
 53. Gramophone Company v Birender Bahadur Pandey, AIR 1984 SC 667 at 676, cited by Shivendra Singh and Aprajita, Insight into the Nature of Offence of Copyright Infringement, Journal of Intellectual Property Rights, Vol 13, November 2008, p 583, at

- <http://nopr.niscair.res.in/bitstream/123456789/2433/1/JIPR%2013%286%29%20583-589.pdf>, (25 May 2018).
54. Section 82 of the 2000 Copyright and Neighboring Rights Law which provide that (1) the offences referred to in Sections 80 and 81 [shall] be punishable by imprisonment of from 5 (five) to 10 (ten) years or a fine of from 500,000 to 10,000,000 CFA francs or both such imprisonment and fine. (2) The penalties provided for in this section shall be doubled where the offender is a partner of the owner of the infringed right. For an understanding of what constitute copyright infringement, see the following articles of the 2000 Copyright Law of Cameroon:
 55. The following shall constitute forgery:
 56. any exploitation of a literary or artistic work done in violation of this law, through performance, reproduction, transformation or distribution by any means whatsoever;
 57. 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 audiovisual communication firm, where such authorization is required;
 58. 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;
 59. any infringement of the right of authorship and the right of integrity of a performance.
 60. 81(1) The following shall also be considered forgery:
 61. the importation, exportation, sale or putting up for sale of forged objects; the importation or exportation of phonograms or videograms produced without the authorization of their performer or producer, where such authorization is required; 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; the fraudulent neutralization of effective technical measures used by owners of copyrights or neighboring rights to protect their works against unauthorized acts; allowing the irregular reproduction or performance in one's establishment of works protected by this law; failure to pay or unjustified late payment of a fee as provided for by this law; carrying out the following acts, knowingly or, for civil sanctions, having good reason to believe that this Act will lead to, enable, facilitate or conceal infringement of a right provided for in this law:
 62. unauthorized removal or alteration of any electronic information relating to the copyright regime;
 63. 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.
 64. (2) "Information on copyright regime" shall mean information that helps to identify the work, performance, videogram, phonogram or program, or information on the conditions of use of such productions and any number or code representing such information where one of these elements of information is attached to a copy of a production or is linked to the communication of a production to the public. Gramophone Company, *op. cit.* Section 85 (1) of the 2000 Copyright and Neighbouring Rights law of Cameroon provides that in case of violation of or threat to violate the rights provided in this law, the natural persons or corporate bodies or their legal representatives who own such rights, may request a judicial police officer or a bailiff to establish the said infringements and, if need be, seize, on the authorization of the State Counsel or competent judge, the forged copies, the illegally imported copies and objects and the equipment used or to be used for performance or reproduction, and set up to commit such forbidden acts.

65. Section 93 (1) of Law No. 2005 of 27 July 2005 on the Cameroon Criminal Procedure Code is to the effect that the judicial police officers who possess search warrants shall carry out searches and seizures. The proviso to the sub section further provides that the judicial police officer may act without a search warrant in cases of a felony or a misdemeanor committed *flagrante delicto*.
http://en.wikipedia.org/wiki/Private_copying_levy, (11 May 2018).

66. Ibid.

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