



HAWASSA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
SCHOOL OF LAW AND GOVERNANCE

Analyzing the Legal and Institutional Functions of Copyright Collective Management Society in Ethiopia: A Comparative Analysis.

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Hawasa, Ethiopia

March, 2019

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A Thesis Submitted to the School of Law and Governance

In Partial Fulfillment of the Requirements for Master's Degree in Law (LLM)

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Declaration

I, Birhanu Mulugeta Shiferaw, declare that this thesis entitled “ Analyzing the legal and Institutional Function of Collective Copyright Management Society in Ethiopia: A comparative analysis” is my own work and has not been presented for degree in any other university and all reference materials used for this study have been duly cited and acknowledged.

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Examiner's Approval Sheet

We, the undersigned members of the board of examiners of the final open defense by Birhanu Mulugeta have read and evaluated his thesis entitled “Analyzing the legal and institutional function of Collective Copyright Management Society in Ethiopia; A Comparative Analysis” and examined the candidate.

This is, therefore, to certify that the thesis has been accepted in partial fulfillment of the requirements for the degree.

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Table of Content

Acknowledgment	vii
CHAPTER ONE	1
Introduction	1
1.1. Background of the Study	1
1.2. Statement of the Problem.....	5
1.3. Research Questions	8
1.4. Objectives of the Study	8
1.4.1. General objective	8
1.4.2. Specific objectives	8
1.5. Significance of the Study	9
1.6. Methods of the Study	9
1.7. Limitation of the Study	10
1.8. Scope of the Study	10
1.9. Organization of the Study	10
CHAPTER TWO	12
General Overview of Collective Copyright Management Society.....	12
2.1. Origins of Collective Copyright Management Society.....	12
2.2. Definition of Collective Copyright Management Society	13
2.3. Theoretical Frame Work of Copyright Collective Management Organization	15
2.3.1. Natural law Theory of Copyright	16
2.3.2. Utilitarian Theory of Copyright.....	16
2.4. The Legal Status and structure of Collective Management Organization	18
2.5. Models of Copyright Licensing or Management System	19
2.5.1. Individual and Collective Management.....	19

2.5.2. Extended Copyright Licensing Society	20
2.5.3. Compulsory Collective Management System	21
2.6. Advantages of Collective Copyright Management Organizations	21
2.7. Role of Collective Copyright Management Society	25
2.8. Members of Collective Management Organization	27
2.9. Rights Administered Under Collective Copyright Management Society	28
2.10. Intellectual Property and Digital Technology	29
2.11. Cooperation between Collective Management Societies	32
2.11.1. National Treatment or Reciprocity.....	32
2.11.2. Solidarity	33
CHAPTER THREE	34
International Instruments and Copyright Administration in different Countries	34
3.1. International Obligation of Collective Management Society	34
3.1.1. The International Confederation of Societies of Authors and Composers	35
3.1.2. The International Federation of Reproduction Rights Organizations (IFRRO)	36
3.1.3. Berne Convention for the Protection of Literary and Artistic Works.....	37
3.1.4. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).....	38
3.1.5. The World Intellectual Property Organizations Treaty	39
3.2. Copyright Administration in Different Countries.....	41
3.2.1. Legal Framework of Collective Management Society in Canada	41
3.2.2. Institutional Framework of Canadian Collective Management Society	44
3.2.2.1. Collective Management Societies in Canada.....	46
3.2.3. Legal Framework of Collective Management Society in Germany	48
3.2.4. Institutional Framework of Copyright Management Society	50
3.2.4.1. Collective Management Societies in German.....	50

3.2.4.2. German Patent and Trade Mark Office.....	55
3.2.5. Legal Framework of Copyright Administration in Nigeria	56
3.2.6. Institutional Framework of Collective Management Society in Nigeria	59
3.2.6.1. Copyright Collective Management Society of Nigeria.....	59
3.2.6.2. Supervision of Collective Management Societies in Nigeria	61
3.2.6.3. The Nigerian Copyright Commission (NCC).....	63
3.2.7. Legal Frame Work of Copyright Administration in India	66
3.2.8. Institutional Frame Work of CMO in India	69
3.2.8.1. Collective Management Societies in India	69
CHAPTER FOUR.....	73
4.1. The Copyright Administration in Ethiopian and its Challenges	73
4.1.1. Copyright Policy.....	73
4.1.2. Legal Framework of Copyrightin Ethiopia	74
4.2. Institutionsin Ethiopia on Copyright Industry	78
4.2.1. Professional Associations on Creative Industry in Ethiopia.....	78
4.2.2. Collective Management Society	80
4.2.3. Multiple Collective Management Societies	83
4.2.4. Powers and Duties of Collective Management Society	87
4.2.5. Collection and Distribution of Royalty.....	88
4.3. Powers of Ethiopian Intellectual Property Office	89
4.3.1. Supervision of Collective Management Society.....	90
4.4. International Copyright Treaties versus Ethiopian Copyright law	96
4.5. Digital Technology and Ethiopian Collective Management Society.....	97
4.6. Obstacles to Setup a Strong Collective Management Society in Ethiopia	98

CHAPTER FIVE	102
5.1. Conclusions and Recommendations	102
5.2. Recommendations.....	106

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Acronyms

CISAC	Confederation of International Society of Authors and Composers
CMS	Collective Management Society
CMOs	Collective Management Organizations
DRM	Digital Right Management
EIPO	Ethiopian Intellectual Property Office
ECNRCMS	Ethiopian Copyright and Neighboring Rights Collective Management Society
EFIMA	Ethiopian Film Makers Association
EIPO	Ethiopian Intellectual Property Office
IP	Intellectual Property
SOCAN	Society of Composers, Authors and Music Publishers of Canada
SODRAC	Society for Reproduction Rights of Authors, Publishers and Composers in Canada
NRCC	Neighboring Rights Coalition of Canada
CPCC	Canadian Private Copying Collective
COSON	Copyright Society of Nigeria
REPRONIG	Reproduction Right Society of Nigeria
NCC	Nigerian Copyright Commission
TRIPS	Trade Related Intellectual Property Rights Agreement
UNESCO	United Nations Education, Scientific and Cultural Organizations
WPPT	WIPO Performances and Phonogram Treaty
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization

Abstract

Copyright collective management society is very important for managing copyright since individual management is impossible for right holders to exercise their rights by dealing with all potential users. Accordingly, the objective of this thesis is to examine the adequacy of the legal and institutional function of collective management society in Ethiopia and go through the legal loopholes of the new amended copyright law and difficulties of Ethiopian collective management society. The research is predominantly doctrinal and qualitative data is used to test the validity of the research. Also, Comparative study was conducted with foreign laws of other countries namely Canada, Germany, India and Nigeria since these countries have a sound copyright policy, well developed collective management society, and comprehensive copyright law.

The researcher found that certain ambiguities on the legal provisions on the formation of collective management society are obstacles for the formation of collective management society. The provisions of Ethiopian collective management society are not compatible with digital technology. Also, the study found out in addition to the legal gaps, there are other challenges that affect the establishment of a strong and functional collective management society in Ethiopia; for instance, lack of trust of copyright owners on collective management society, lack of unity among the copyright owners and cooperation between the government agencies.

Therefore, it is concluded that collective management society has not been effectively functioning in Ethiopia due to loopholes of the provisions of copyright law and unable to keep the interest of copyright owners.

Accordingly, the researcher recommends amendments in the provisions of the copyright and neighboring right law to make it comprehensive law and to provide viable solutions for the legal gaps and problems that affect the formation of vibrant collective management society. Moreover, Ethiopia should adopt the experiences of the countries like German, Canada, India and Nigeria in managing copyright in protecting the rights of copyright owners and users and set up a well-developed collective management society.

Keywords: Collective management society, Collection of royalty, Internet Piracy

CHAPTER ONE

Introduction

1.1. Background of the Study

When the UN decided to adopt a solemn declaration enshrining the rights that were considered essential and fundamental to the human condition, authors' rights were included. The Universal Declaration of Human Rights December 10, 1948 provides in its Article 27(2) that everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author¹. Consequently, authors' rights have become fundamental rights which states throughout the world are required to grant and promote. This requirement of the legal protection of creators is an idea of modern times. Copyright originated in the 18th century. Before then artists were supposed to have no need for such protection².

Copyrights are rights granted to copyright right and neighboring rights holder to ensure that those who have created or invested in the creation of music or other content such as literature or films can determine how their creation can be used and receive remuneration for it³. Copyright include economic rights which enable right holders to control or license the use of their works and other protected material such as performances, records, audiovisual productions and broadcasts, and be remunerated for their use⁴. These rights normally take the form of exclusive rights and include the right to copy or otherwise reproduce any kind of work and other protected subject matter, the right to distribute copies to the public and the right to communicate to the public performances of such works and other protected subject matter⁵. Authors are also granted moral rights which may include the right to decide on when

¹Paula Schepens, *The Administration Society at the Service of Authors and Users*, UNESCO', (2000)

² *Ibid*

³ *Ibid*

⁴Firth, S. & Marshall, L. *Music and copyright. Edinburgh: Edinburgh University Press Ltd*, (2004),P(7)

⁵ Mitsindo Tom, 'Collective management of Copyright under Rwandan Law Kigali', (December 2015), P(2)

or whether to make the work public the right to claim authorship of the work and the right to object to any derogatory action in relation to the work⁶.

Copyright can be described as the exclusive right of the owner of copyright to control the exploitation of his work and to grant authorization to others in this regard, subject to certain limitations and exceptions. The administration of copyright is governed by international and national legal frameworks; International in the sense that several international instruments such as the Berne convention, Universal Copyright Convention⁷, Rome Convention, ⁸WIPO Copyright Treaty, WIPO Performance and Phonograms Treaty, Geneva Phonograms Convention and the Agreement on Trade Related Aspects of Intellectual Properties contain provisions relating to the international and national administration of copyright and related rights⁹. They do this by recognizing the sovereignty of each member nation and allowing the national legislation of these countries to determine issues that are considered domestic or peculiar to each nation and that may affect the nation's sovereignty.

Copyright and related rights can be exercised individually or, where it is impracticable to enter into individual arrangements can be managed by collecting societies also known as Collective Management Organizations (CMOs)¹⁰. The first known Collective Management Organization (CMOs) were established by the French in 1777 and 1852 followed by the British in 1914¹¹. To date, the system of collective administration remains an indispensable and effective means of bridging the gap between rights holders and users of copyright works. The freedom of owners of rights to choose between individual and collective mechanisms of their rights and among various possible forms of collective mechanisms seems to have grown¹². New methods of licensing and monitoring the use and collecting and distributing remuneration have been introduced.

⁶Petya Totcharovaa and Emil Gelel, *'The ABC of Copyright', Diversity of Cultural Section, UNESCO,(2010),P(30)*

⁷Jane C. Ginisburge, *'International Copyright Law: U.S. and E.U. Perspectives',(2015), P(347)*

⁸ *Ibid, P(383)*

⁹ *Ibid, P(317)*

¹⁰ D.J. Gervais *'Collective Management of Copyright and Neighboring Rights in Canada: An International Perspective',(2001),P(9)*

¹¹WIPO' *WIPO Guide on the Licensing of Copyright and Related Rights, World Intellectual Property Organization. '(2004),P(111)*

¹² *Supra Note(5),P(3)*

Collective management of author's right has been seen as indispensable method of exploiting creative works. The system has worked over a century and half in developed countries in the creative industry but a recent phenomenon in developing countries. The World Intellectual Property Organization and its developing partners such as United Nations Education, Scientific and Cultural Organization (UNESCO), the International Confederation of Societies of Authors, Composers (CISAC) and collective management societies in developed countries have given support and technical assistance to African countries to set up collective management societies for effective management of copyright and related rights¹³. In spite of the support and technical assistance to developing countries to collectively license, collect and distribute royalties on behalf of right owners, it has been relatively difficult task for countries in Sub-Saharan African countries to succeed¹⁴. Such societies are often accused of lack of efficiency, transparency and abuse of incumbency due to the de facto or de jure monopoly they enjoy¹⁵.

Collective administration of copyright effectively allows rights holders to grant exclusive mandates to a single entity namely the CMO, which acts on behalf of the rights holders to grant authorizations through licenses to users under certain conditions and on the basis of a tariff system; to collect the remuneration from the licenses; to distribute it among the rights holders; to monitor the uses of their works; to negotiate with prospective users; to prevent and detect infringement of rights; and to seek remedies for infringement.¹⁶ Therefore, there is a need to have effective and efficient legal and institutional framework for collective of copyright which strikes an appropriate balance between the interests of the rights holders and the users of copyright works¹⁷.

In Ethiopia, like in other countries, there is the possibility to manage intellectual property rights collectively or individually. Practically, few copyright or neighboring rights holders can personally manage their rights by negotiating directly the performance of a play, the publication of a book or the recording of a musical works. The majority of rights holders are

¹³M. Shushine and P.Khanh, 'Fair Use of Copyrighted Works in Digital Age', P(15)

¹⁴ *Ibid*, P(18)

¹⁵ *Ibid*, P(19)

¹⁶M. Fiscor, 'Collective Management of Copyright and Related Rights at A Triple Crossroads: Should It Remain Voluntary or May It Be "Extended" or Made Mandatory?(2003)

¹⁷ *Ibid*

incapable individually to control all their work and these need collective management society that can contact users, negotiate exploitation contracts, collect and distribute royalties. Collective copyright societies are also of benefit to users such as broadcasters which cannot within reasonable timescales obtain all of the required authorizations from thousands of rights holders¹⁸.

The FDRE Constitution recognizes the protection of intellectual property in general and under its cultural objectives provision states that the government shall have the duty to the extent its resources permit to support the development of the arts, science and technology¹⁹. Grounding this, the Ethiopian Intellectual Property Office (EIPO) was flourished as an independent institution in 2003. The EIPO also strives to maintain international cooperation for the protection of copyrights in collaboration with the World Intellectual Property Organization (WIPO), of which Ethiopia has been a member since 1998.

In Ethiopia, intellectual property in general and copyright in particular is a very recent development compared to other countries. In Ethiopia the introduction of legal and institutional framework with regard to intellectual property is a recent phenomenon but there is no clear policy on copyright and neighboring rights. The 1960 Civil Code came up with the first law that deals with copyright issues in Ethiopia²⁰. The Code discusses about protection of Literary and Artistic ownership. However, the law did not suffice to cover all issues relating to copyright and effectively to protect the right of authors and owners of copyrightable material. Ethiopian Criminal Code also protects infringement of rights relating to literary, artistic or creative works²¹.

Copyright and Neighboring Rights Protection Proclamation No.410/2004 was also enacted in 2004. This new Proclamation has introduced new concepts and rights, widened the scope of copyright and related rights, and provided a better mechanism of enforcement and protection of copyright. The Proclamation No.410/2004 does not say anything about collective copyright management society. Individuals are inefficient to protect and enforce all their

¹⁸*Supra Note (1)*

¹⁹*The Constitution of Federal Democratic Republic of Ethiopian, Proclamation No.1 /1995.Art,91(3)*

²⁰*The Ethiopia Civil Code Federal Negarit Gazeta, Proclamation No. 165/1960, Art (1647-1674)*

²¹*The Criminal Code the Federal Republic of Ethiopia, Proclamation No.414/2004Art(712)*

rights personally since it is difficult to deal with all potential copyright owners. And recently the Ethiopian government amended the former copyright and neighboring rights proclamation by introducing legal provisions on collective copyright and neighboring rights management society.

1.2. Statement of the Problem

A well functioning copyright management is supported by copyright legislation, collective management organization and enforcement. Without effective enforcement, right owners cannot enjoy the right conferred to them by law. It is impractical for copyright owners to deal or bargain with every potential copyright user. On the other hand, it is impractical for users to contact every copyright owner in order to seek permission for broadcasting. This scenario compels the need for collective management organizations whose role is to link between right owners and users.

Collective administration system copyright owners authorize collective management organizations to monitor the use of their works, negotiate with potential users, give their licenses against appropriate remunerations on the basis of a tariff system and, collect royalties and distribute it among the owners of rights²². The ground for the need of collective management organization arises from the impracticability of managing these activities individually specifically the inability of the individual right owner to personally monitor and enforce all of his rights in every situation where his works are used²³. The author may not be able to monitor all uses at all times and in an indefinite number of places around the world²⁴. On the other hand, users do not have the possibility to enter into worldwide negotiations with countless authors and other right owners on a one-by-one basis.

Though collecting society has got wide recognition worldwide including in developing countries as the best mechanism for efficient administration of copyright and related rights, they have been facing a number of challenges²⁵. Kasay Gebremedin identified in his thesis

²²*Supra Note(11)*

²³ *Supra Note(1)*

²⁴ *Ibid*

²⁵Kasay Gebremedhn, '*The Emerging Ethiopian Copyright and Related Right Collecting Society: Assessment of Challenges and Prospects*', LLM Thesis, unpublished, (2013)

the challenges associated with the existing Ethiopian copyright legal regime is absence of special legislation that regulates the establishment of collective management society and absence of functionality of the emerging Ethiopian copyright collecting society. Hence, no special legislation was enacted concerning the collective management society in Ethiopia while he was doing his thesis under the title of the Emerging Collective Management Society in Ethiopia: Assessment of challenges and prospects. After his research was done, the new Copyright and Neighboring Right Proclamation as (amended) came up with the provisions on collective management society. Hence, my thesis primarily focuses on this newly introduced provision of the copyright law which is different from Kasahy Gebremedin thesis which focused on the emerging collective management society.

He also raised and predicted on some of the challenges which may hinder the effective establishment and operation of the future emerging Ethiopian copyright collecting society. In his prediction he explained that absence of special institutional back up or government support, lack of awareness, existences of high level of copyright piracy in the nation, absence of competent staffs will be the other challenges for the emerging Ethiopian copyright collecting society²⁶. He pointed out some of the challenges for effective enforcement of the prospecting collective management society in Ethiopia. He didn't say anything about the new amended copyright and neighboring rights proclamation.

The appropriate administration of copy right is essential in creating the conditions for a viable copy right industry in developing countries. However, an effective copy regime is not by itself sufficient to guarantee a flourishing copyright industry and other strong institutional arrangements will be needed in countries looking to better exploit their rights. The Ethiopian collective copyright and neighboring rights society acquired legal personality recently to protect the interest of the copyright holders. However, still the Ethiopian artists suffered a lot and their rights are surrendered due to infringement of the copy right.

Despite the fact that the Ethiopian government enacted laws for the protection of Copyright and Neighboring Rights Proclamation to protect the right of copyright holders from the infringement, there are lots of bottlenecks to enforce these laws. Nowadays, administration of copyright could be a challenge without strong institutions which represents authors and right

²⁶*Ibid*

holders to provide adequate assistance with regard to the management of exclusive rights. Weakness of the copy right and neighboring rights management society is one of the most determinant factor for non enforcement of copy right and neighboring rights in developing countries like Ethiopia²⁷.

Globally, collective management organization is facing the challenges generated by technological development²⁸. Internet and mobile piracy continue to worsen the situation of copy right infringement in both developing and developed countries²⁹. Unauthorized transmission and down loading of music, films or e-books is particularly prevalent at internet cafe and transfer the data from peer to peer without the authorization of copyright owner. Management and enforcement is practically beyond the capacity of any individual right owners and they are individually incapable to negotiate with all potential users. Copyright owners need effective and efficient management of copyright and neighboring rights.

According to the International Confederation of Society of Authors and Composers (CISAC),there was 3 billion music works pirated in 1999, 36 billion in 2000, and the estimated loss of music in 2001 for music industry was 4.3 billion whereas150 billion music works are transmitted illegally on internet in 2003³⁰. This symbolizes that it is very difficult to manage copyright works in this digital era since the copyright infringement increases from time to time according to the CISA report unless a strong collective management society is set up. Hence, collective Management society is also facing the challenges of the digital age. Copy right does not work in the digital age are usually the result of the unwillingness of users to use protected materials lawfully³¹.

Ethiopia's collective copyright management system in the copyright regime has a very short history. The new amended copyright and neighboring rights proclamation introduced provisions on collective copyright and neighboring management society to protect the interest of the individuals either the copyright holders and users; nevertheless, still the

²⁷Abay FM radio 101.2, *Interview Made with Artists and Authors (Members of Ethiopian Collective Copyright and Neighboring Rights society)*, July 24/2017E.C.

²⁸*Supra Note (5)*

²⁹ *Ibid*

³⁰Philippe Gillerieron '*Performing Right Societies in the Digital Environment*', (2006), P(60)

³¹Wolters Kluwer, '*Collective Management of Copyright and Related Rights*' (3rd edition, edited by Daniel Geravais, Nov19, 2015),P(21)

copyright owners are not benefiting from their work. There might be gaps or loopholes on the recent provisions of collective management organization of copyright and neighboring regime to protect the interest of the copy right holders.

1.3. Research Questions

Grounding the problems stated above the researcher looks into the following questions:

1. What are the gaps or loopholes of the legal regime on Ethiopian Collective Copyright management society?
2. What are the other bottlenecks for the establishment of Collective Copyright Management Society in Ethiopia in addition to the legal loopholes?
3. Do you think that the recent amended copyright and neighboring right proclamation compatible with digital environment?
4. What lessons does Ethiopian learn from jurisdictions of other countries like Nigeria, Canada, German and India in creating a vibrant and well- developed collective management society?
5. What are the challenges from the government to enforce the law and strengthen the collective management society?

1.4. Objectives of the Study

1.4.1. General objective

The general objective this thesis is to study and analyze the legal provisions and operation of the Ethiopian Collective Copyright and Neighboring Rights Society and identify the legal gaps, challenges of the emerged collective management society and pose possible recommendations that could be useful to have a very comprehensive copyright law.

1.4.2. Specific objectives

This research is specifically aims to:

- Investigate whether the copyright and neighboring right proclamation provisions of collective copyright management provision is adequate to protect the interest of both users and copyright holders.
- Examine whether the copyright and neighboring right proclamation is compatible with digital environment.

- Identify the difficulties that the Ethiopian copyright collective copyright and neighboring rights management society faces to protect the rights of copyright owners.
- Adopt the experiences of other countries as input for setting up of a strong collective management society in Ethiopia.
- Examine the bottle necks that affect the government to enforce law and strengthen institutional framework so as to make the collective management society effective and functional.

1.5. Significance of the Study

After completing this research paper, the researcher believes that the thesis will be used as an input or bench mark for further comprehensive study on the collective copyright administration and neighboring rights in Ethiopia. The paper also helps the reader to grasp knowledge on Collective Copyright management Society in Ethiopia and can be used as input for legislature and policy makers to enact and set up strong law and institutions for the enforcement of the law effectively to benefit the copyright holder and users. Also it sheds light on the Ethiopian Collective Copyright and Neighboring Rights Society by comparing with other experienced countries namely Nigeria, India, Canada, and Germany and recommends to fill the gaps or loopholes of the new amended copyright and neighboring right proclamation.

1.6. Methods of the Study

The thesis is predominately doctrinal research. It is doctrinal since the legal regime of the collective copy right management society is systematically analyzed. Moreover, doctrinal research is valuable because it helps to clarify ambiguities of rules. Qualitative approach is an essential tool for the study of this research to examine the legal and institutional function of the Ethiopian collective copyright management society. The researcher used both primary and secondary sources. Primary sources to be studied includes interview, the Copyright and Neighboring Rights Proclamation No.410/2004, and Copyright and Neighboring Rights (amendment) Proclamation No. 872/2014, other countries of Copyright Act, and some other relevant laws. Secondary sources include books, international journals, unpublished materials, media and internet sources. Interview was made with members of Ethiopian Collective Management society including the president and vice president and with the

Ethiopian Intellectual Property Office experts. Purposive sampling was used to select the interviewees from EIPO and from each field of board members of CMS (film, music and writer) including the attorney to collect concrete information. A comparative analysis was made with other experienced jurisdictions to recommend lessons that Ethiopia learn from them on strengthening the collective management of copyright and neighboring rights management society. For the comparative study countries like German, Nigeria, Canada, and India have been selected because their copyright protection administration systems are advanced and they have strong and sound copyright policy, strong institution, well developed collective management society and comprehensive law on copyright administration.

1.7. Limitation of the Study

There is no enough local literature on collective management society in Ethiopia. There are no published materials which take in to account the Ethiopian copyright collective management society situation. Therefore, reliance is made on foreign literatures which can be found mostly on internet. The regulation has not taken for the study since it has not been enacted and no case analysis also is taken for this study. It was difficult to make interview with board of directors of collective management society to collect data to be used as input to the study.

1.8. Scope of the Study

The study is limited to the examination of legal and institutional function of Collective Copyright and Neighboring Rights Management Society under the Ethiopia copyright and neighboring proclamations and a comparative analysis of copyright laws of Nigeria, India, German and Canada. The study is also limited in space to Addis Ababa City due to the fact that the interview should be conducted to the place where the offices of the Ethiopian Copyright Collective and Neighboring Rights Society and Ethiopian Intellectual Property Office are located.

1.9. Organization of the Study

In this study an attempt has been made to look in to and explain the legal and operational function of Collective copyright in Ethiopia in comparison with some foreign countries collective copyright laws and international conventions and agreements. Therefore, the paper

is organized in to five chapters: Chapter one symbolizes the proposal of the paper. It presents statement of the problems, research questions and objectives, significance of the study and methods of the study briefly. Chapter two explains with general overviews of collective copyright management society. Under this chapter, the historical development of collective management copyright, definition of collective management society and neighboring rights in general and the functions and advantages of collective copyright and neighboring rights and collective copyright society in digital technology. The third chapter deals with international instruments on administration of copyright, others countries jurisdictions of the collective copyright and neighboring rights society of, Canada, German, Nigeria, and India. Chapter four explains copyright administration in Ethiopia and its challenges and comparative analysis is made and also the data collected through interview should be analyzed. Chapter five provides conclusion and recommendations.

CHAPTER TWO

General Overview of Collective Copyright Management Society

2.1.Origins of Collective Copyright Management Society

Understanding collective management may be easier in historical context. The story of the rise of collective management has become a quaint and famous tale. It begins in France with the French playwright Pierre-August in Caron de Beaumarchais in the dark and dingy Parisian theatres in the 1700s³².Theatrical companies at the time were enthusiastic in their encouragement of promoting plays and artists, but were less generous when it came time to share in the revenues. The term ‘starving artist’ was more literal than figurative. Beaumarchais was the first to express the idea of collective management of copyright³³.The meeting, which was held on the 3rd of July 1777 could be regarded as the birth of the first collective management organization, Société des Auteurs et Compositeurs Dramatiques (SACD) a professional association for creative writers domiciled in France³⁴.

The late 1800s and early 1900s saw the formation of several collective management organizations particularly performing rights’ societies all around Europe and indeed other parts of the world³⁵.First debates about financial matters and collective protection of rights started to emerge. In 1868, Honoré de Balzac and Victor Hugo co-founded the society which collected the royalties from print publishers to French writer³⁶.More collecting societies were established in order to protect the rights of creators and strive for equal and lawful remuneration. Depending on a cultural background, collective rights management spread throughout the world³⁷. Trust was given away to collecting societies: they were the ones who could offer practical and efficient methods to maintain lawful circulation of intellectual property. Developments were not limited to the domestic scene, however. As CMOs

³²Daniel Gervais ,’ *Collective Management of Copyright and Related Rights*’, (2nd ed), P(7)

³³ *Ibid*, P(8)

³⁴*Ibid*,P(9)

³⁵ Ola,Olukunle,’ *Copyright Collective Administration in Nigeria, Lessons for Africa*’, P(15)

³⁶Zivile Buinickaite,’ *Collecting societies under European Competition Law scope and the contribution of the Commission and Court of Justice of the European Union in applying competition rules in collective rights management*’, P(6)

³⁷ *Ibid*, P(6)

flourished in their own national States, the need for cooperation and harmonization on the international level became apparent³⁸.

Around the same time, Firmin Ge´mier succeeded in creating the Universal Theatrical Society. Both of these initiatives led to the founding congress meeting in 1926 of the International Confederation of Societies of Authors (CISAC)³⁹. The founding members identified the need to establish both uniform principles and methods in each country for the collection of royalties and the protection of works and to ensure that literary and artistic property were recognized and protected throughout the world.

Today, CISAC has 225 member societies in 118 countries, a majority of which license either the public performance and communication of musical works or the reproduction of those works⁴⁰. Other CISAC members license reprography and reproduction of works of the fine arts and performance in theatres the so-called grand rights⁴¹. Many countries have fostered the growth of CMOs through legislative initiatives in the belief that CMOs offer a viable solution to the problem of individually licensing, collecting and enforcing copyright.

2.2. Definition of Collective Copyright Management Society

Collective management is the exercise of copyright and related rights by organizations and societies representing the interests of the owners of such rights⁴². Collective Management Organizations (CMOs) collecting societies are interesting economic institutions. They were set up by composers, songwriters and music publishers to exercise their musical rights and exploit them financially.

As collective administration is administration by a collective body of authors. The sums collected in this way cannot be diverted from their end recipients, namely individual authors. To each his due royalties must not be used for collective purposes and they are not a tax but

³⁸ *Ibid*, P(6)

³⁹ *Ibid*, P(7)

⁴⁰ *Supra Note(31)*, P(9)

⁴¹ *Ibid*, P(9)

⁴² Alhaji Tejan-Cole, '*Collective Management Of Copyright And Related Rights*', P (5)

the author's salary so collective licensing but individual distribution⁴³. Collective administration is the most effective means of facilitating the public dissemination of works when the user draws upon a multiplicity of works and it is the only means of ensuring the legitimate interests of the author are respected when the latter is dealing with a multiplicity of users⁴⁴. New challenges are coming with new technologies that affect the application of copyright law. Practically, it is impossible for a musician to contact every single radio or television station to negotiate licenses and remuneration for the use of his or her works. On the other hand, it would be equally impractical for an FM radio station to contact every musician in order to seek permission for the broadcasting of the musician's work.

The traditional and normal way of managing economic rights in the field of copyright and neighboring rights is through individual contracts. This is still the case in the publishing business and when it comes to public performance and broadcasting of choreographic works, theatre plays and other uses of the so-called grand rights⁴⁵. A dramatist might be able to keep track of the performances of his plays by professional actors, at a pinch. But he is totally incapable of monitoring performances by amateurs.

It is a longstanding and common practice that copyright holders commission other organizations to jointly administer some of their copyrights. This is referred to as collective administration of copyrights, or collective rights management⁴⁶. The organizations that conduct collective administration are known as collecting societies, copyright collectives, or copyright management organizations (CMO). EU legislation defines CMO as any organization which manages or administers copyright or rights related to copyright as its sole purpose or as one of its main purposes. Collective management comes in many shapes and sizes. There is, however, an interesting definition proposed by WIPO:

⁴³Paula Schepens, 'Guide To The Collective Administration Of Authors' Rights' (UNESCO 2000), P(15)

⁴⁴ Ibid

⁴⁵Henry Olsson, 'The Importance Of Collective Management Of Copyright And Related Rights: WIPO National Seminar On Copyright, Related Rights, And Collective Management' (January 2005, Sudan Khartoum), P (2)

⁴⁶ EU Satellite and Cable Directive Law Article (4)

*The term collective management only refers to those forms of joint exercise of rights where there are truly collectivized aspects such as tariffs, licensing conditions and distribution rules; where there is an organized community behind it; where the management is carried out on behalf of such a community; and where the organization serves collective objectives beyond merely carrying out the tasks of rights management. In contrast, rights clearance organizations are those which perform joint exercise of rights without any collectivized elements in the system; simply a single source is offered for users to obtain authorization and pay for it.*⁴⁷

Collective management is the exercise of copyright and related rights by organizations acting in the interest and on behalf of the owners of rights. The creator of a work or copyright owner has the exclusive right to permit or prohibit use of his/her work and to receive financial compensation for any permitted use. In spite of the fact that it may be difficult for the copyright owner to monitor each and every use of the work and for each and every user to directly contact the copyright owner to request permission to use the work. Collective Management Organizations (CMO) or collecting societies as they are also called, act on behalf of the copyright owners, to grant permission or a license to persons wishing to use the copyrighted works and to collect the fees or ‘royalties’ payable for this use.

2.3. Theoretical Frame Work of Copyright Collective Management Organization

The classical foundations of intellectual property law are twofold: the natural law approach and the utilitarian approach. The natural law approach embraces ethical and moral arguments: ⁴⁸author’s natural or human rights over the product of their labor. The utilitarian approach is an instrumental justification where the legal instrument of intellectual property induces or encourages desirable activities⁴⁹. Under the natural law approach protection is granted because it is right and proper to do so and because such productions emanate from the mind of an individual author. It is the expression of a particular author’s personality⁵⁰.

⁴⁷Daniel Gervais, ‘*Collective Management of Copyright: Solution or Sacrifice, Symposium on the Landscape of Collective Management Scheme*’, P(1)

⁴⁸Pete, Lanchidi, ‘*Collective Management of Music Rights and Competition Policy in the European Union*,’ P(9)

⁴⁹ *Ibid*, P(9)

⁵⁰ *Ibid*, P(9)

Copyright collectives are formed when groups of copyright holders join together into a single unit for the purposes of exploiting the economic rights in their different copyrights. Reduced to their most basic structures, copyright collectives carry out three main tasks on behalf of the members:⁵¹ they license to users access to the copyrights of their members and collect royalty payments from users, distribute the royalty income among the collective members, monitor the use of the copyrights of their members, enforce the legal copyright parameters and bring action against copyright infringements on behalf of their members

2.3.1. Natural law Theory of Copyright

The natural law theory sometime called fairness theory is deeply rooted on the works of Locke⁵². According to Locke, everyone has a property right in the labor of his own body and that the appropriation of vacant object arises out of the application of human labor to that object. But Locke believed that there must remain objects of similar quality in sufficient quantity to supply others and there must be no wastage of resources⁵³. The Lock theory fails to meet the public interest consideration if an author has absolute exclusive rights over the fruits of his labor while the main purpose of copyright protection is to stimulate the production of creative works to benefit the public at large⁵⁴. The heart of this theory is the principle that the creators of literary, artistic and other original works deserve either to control their creations or to be rewarded for their efforts. Put slightly differently, to deny legal protection to creators would be unfair⁵⁵.

2.3.2. Utilitarian Theory of Copyright

The central principle of ‘welfare theory or utilitarianism is that the law should be organized to maximize total human welfare or the law should be arranged in a manner that provides greatest satisfaction to the greatest number advocated by Jeremy Bentham and John Stewart

⁵¹Richard Watt, ‘*Collective Management as a Business Strategy for Creators: An Introduction to the Economics Of Collective Management Of Copyright And Related Rights*’, P(15)

⁵²William, Fisher, ‘*Theories of Intellectual Property*’ <<http://cyber.law.harvard.edu/people/ffisher/iptheory>> accessed on Nov /9/2017.

⁵³ *Ibid*

⁵⁴ *Ibid*

⁵⁵ *Ibid*

Mill⁵⁶. A widely accepted justification for IP protection comes from utilitarian theory also known as economic theory.

The utilitarian theory posits that maximum benefit of the maximum members of the society should be guaranteed by the law in force and in the regulation there-under. Bentham stated that utility is the greatest happiness to the greatest number therefore all laws had to be measured against this criterion of utility⁵⁷.

According to utilitarian theory, copyright law provides the incentive of exclusive rights for limited duration to authors to motivate them to create socially and culturally viable works, thereby maximizing social welfare.⁵⁸ Without this incentive, the theory states that authors might not invest the time, energy and resources need to create copyright works because these works might be used cheaply and easily by the public, eliminating authors' ability to profit from their works.

According to utilitarianism, the exclusive rights of authors and by extension CMOs restrict competition in protected works which allows the latter to charge a premium for commercial use of the works for a fixed period of time⁵⁹. Once the term of protection expires, the rights holders and CMOs can no longer license for the use of the protected works. As a result, the society benefits since subsequent creators are not prevented from building on previously protected creations to generate new works.

With regard to collective administration of copyright, utilitarianism demands that an optimal balance is struck between, on one hand, the power of exclusive rights to stimulate the creation of inventions and works of art and, on the other, the partially offsetting tendency of such rights to curtail widespread public enjoyment of those creations⁶⁰. It follows that utilitarian law-making in the area of collective administration should be aimed at the maximization of net social welfare. From a utilitarian perspective, laws on collective administration of copyright and related rights are necessary to bridge the gap between rights

⁵⁶Fikremarkos Merso, *The Ethiopian Intellectual Property Rights: Copyright, Trademarks, Patents, Utility models and Industrial Designs, A Textbook* (School of Law, Addis Ababa University) (2012), P(22)

⁵⁷ *Ibid*

⁵⁸ *Supra Note (42), P(8)*

⁵⁹ *Supra Note (42) P,(9)*

⁶⁰ *Ibid*

holders and users in order to achieve welfare maximization. Therefore, the adequacy of the legal framework for collective administration will be measured against the following utilitarian cost-benefit analysis: the benefit to society of rights holders crafting valuable works offsets the costs to society of the incentives the law offers to these rights holders. Hence, the Ethiopian collective management society is established to strike the balance between the copyright owners and users by satisfying the needs of both the consumer and the creators and should serve as a bridge for both. This utilitarian theory is the best approach for collective management society.

2.4. The Legal Status and structure of Collective Management Organization

The legal status of collective management bodies may vary widely from one country to the next. The way in which collective management bodies are organized may also vary substantially, depending on the category of rights the organization manages. The first collective management organizations were non-profit-making private entities established by authors and sometimes publishers⁶¹. In addition to their legal status, collective management bodies may differ also with regard to the form and extent of government supervision, the number of categories of rights they administer, or, ultimately, to the number of collective management organizations per category of rights⁶². Differences also exist in relation to the way in which collective bodies obtain the right to act on behalf of individual right owners⁶³. Authors and other right owners tend to become members of collective bodies by choice but some national laws provide a mandatory collective management for certain types of rights⁶⁴.

In 1983, WIPO published model statutes for organizations administering authors' right. Subsequently, both WIPO and UNESCO published studies on the establishment and operation of collective management organizations to serve as a basis for advice to government⁶⁵. Whatever the legal nature, in most cases, the organizational structure of a collective management organization would usually consist of an elected, non-executive board

⁶¹Petya Totcharova and Emile Glele, *The ABC of Copy Right: USESCO Cultural Center*, P(76)

⁶² *Ibid*, P(77)

⁶³ *Ibid*, P(77)

⁶⁴ *Ibid*, P (77)

⁶⁵Geravis,' Collective<http://aix1.uottawa.ca/~dgervais/publications/licence_etendue_questions>: assessed Nov 24,2017.

of directors setting the policy directions, and a team of employed professional managers carrying out the day-to-day administrative functions. The organizational structure may be divided as membership, licensing, documentation, distribution and other departments. The structural layout of Collective Management Organizations differs from one organization to another and across countries⁶⁶. These differences are usually influenced by the legislative framework under which each Collective Management Organization operates. These operating systems are numerous including the following: the legal basis on which the society operates,⁶⁷ the field of activity, Whether it is for-profit or not-for-profit, the ways rights are acquired, they are managed (type of governance, type(s) of membership organization, agency, they license, and distribute their funds (use of surveys, application of national treatment, use of funds for purposes other than distribution.

Collective management of copyright could be seen as a positive way to deal with copyright licensing⁶⁸. Under this regime, collective management organizations (CMOs) are societies to which authors of creative works authorize their copyrights. The process of copyright licensing can be described as followed: ⁶⁹firstly, potential users of copyrighted works negotiate with CMOs and make an agreement; secondly, users are granted a license and pay the agreed royalties whereas CMOs distribute them to their members after deducting administrative costs; finally, CMOs oversee the use of the works in their repertory and take legal actions where necessary.

2.5. Models of Copyright Licensing or Management System

2.5.1. Individual and Collective Management

The right owner may choose to exercise the rights he or she has under the law by individual or Collective management. The decision whether to exercise rights individual or collectively depends on the category of rights owner and the nature of the use. Some rights lend themselves to being exercised on an individual basis through agreement between the right

⁶⁶ *Ibid*

⁶⁷ *Ibid*

⁶⁸ Zijian Zhang, 'Rationale Of Collective Management Organizations: An Economic Perspective', P(3).

⁶⁹ *Ibid*

owner and the individual user of the work. There are, however, many rights which are difficult, if not impossible, to exercise individually. Such rights are typically entrusted to CMOs by right owners, to exercise on their behalf on a collective basis (i.e. together with similar rights of other rights owners).

Today, CMOs exercise an array of rights for a variety of right owners: the right of public performance, the broadcasting right, reproduction rights for certain uses, remuneration rights for Private copying, reprographic, reproduction of literary, and graphic works, making works available online, and the visual artist's resale right. Some rights by law may only be exercised collectively in the European Union: these include, for example, cable distribution, private copying and the visual artist's resale right.

2.5.2. Extended Copyright Licensing Society

The term extended collective licensing is often misunderstood. It does not make collective licensing compulsory by law; nor does it mean that collective licensing should extend to all types of use. The term extended simply means that the license granted by a collective rights management organization on behalf of its members is extended by law to cover also all nonmember rights holders of the same category⁷⁰. In short extended collective license refers to the situation where a license agreement freely negotiated between a collective management organization (CMO) and a user typically an institution by legal provision is extended onto the works of rights holders who are not members of the CMO.

Extended licensing system means copyright law presupposes one organization represents one group of right owners in a particular copyright field and is empowered to write and enforce contracts on their behalf⁷¹. The extended licensing system works in the following way. As soon as a considerable number of right holders of a particular type of copyrighted works agree to join a CMO, they sign a collective agreement with it and place their works into its repertoire. Then the agreement is extended to apply to both domestic and foreign right holders for the same category of works⁷². The extending effect of the collective agreement

⁷⁰Nicola Frank, 'Extended Collective Licensing a Valuable Catalyst for the Creative Content Economy in Europe', < <http://www.eurovision.com> > accessed on November 18th, 2017

⁷¹http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633708&download, accessed Nov 19, 2017

⁷²*Supra Note (5), P (72).*

allows users to exploit all works in the CMO's repertoire even though some right owners are not represented by the CMO.

2.5.3. Compulsory Collective Management System

One more is compulsory collective management system, that means management of the right of reproduction as an exclusive right is a voluntary act, but in cases of compulsory collective management rights cannot make claims on individual basis holders. As the mandatory collective administration prevents authors from individually exercising their rights, they are dependent on the possibility of having their rights represented by the collecting society. In this respect, the principle of national treatment as laid down in Art. 5 (1) Bern Convention as well as in Art(3) TRIPS Agreement and Art(3) WCT in connection with Art(5) (BC) requires equal treatment for foreign and domestic works. In other words, authors of foreign works must have the same possibilities of access to and influence on the decisions by the collecting society as those of domestic works. The mandatory collective administration does not require member ship of the collecting society due to the mandatory character of the collective administration its effects are extended to non members⁷³.

2.6. Advantages of Collective Copyright Management Organizations

From the beginning of its existence, the most important goal of collective rights management was to protect rights of creators and provide with corresponding remuneration for their work. Together with the development came certain membership agreements and conditions, variety in licensing arrangements, distribution agreements and general administration of fundamental right. One can say that the length of right is also an important factor when it comes to functioning of collecting societies management of right is relevant even after 50/70 years after the death of an author (entitlement of heirs) they can be writers, composers or publishers⁷⁴. Therefore, collecting societies follow the migration of the right and carry information for the present and provisional owners⁷⁵.CMOs facilitate the establishment of

⁷³Silke v. Lewinski, 'Mandatory Collective Administration of Exclusive Rights –A Case Study On Its Compatibility With International and EC Copyright Law' P(12)

⁷⁴Ernst-Joachim Mestmäcker, 'Collecting Societies' in Claus Dieter Ehlermann and Isabela Atanasiu (eds), *European Competition Law Annual 2005: The Interaction between Competition Law and Intellectual Property Law* (Hart Publishing, Oxford-Portland Oregon, 2007)

⁷⁵ *Ibid*

unified methods for collecting and dispersing royalties and negotiate licensing arrangements for works. Yet, licensing and royalty payment, while still important is not the only preoccupation of CMOs. Over time the role of CMOs has evolved to oversee copyright compliance, fight piracy and perform various social and cultural functions⁷⁶.

Collective management has also allowed authors to use the power of collective bargaining to obtain more for the use of their work and negotiate on a less unbalanced basis with large multinational user groups. That being said, most collective schemes value all works in their repertory on the same economic footing, which may be unfair to those who create works that may have a higher value in the eyes of users. In spite of the fact that CMOs were initially promoted as an efficient way to collect and disburse monies to compensate right holders for copyright works, increasingly the structure of CMOs on both a national and an international level has raised questions about their efficiency⁷⁷.

Collective management of rights has many advantages. CMOs act as important facilitators in the creative industries. They play a valuable role in administering the licensing of rights and lowering transaction costs for both their members and users. They are practically, economically and legally both viable and essential⁷⁸.

Economically, it is cheaper to share the financial expenses of negotiation, supervision and collection among the greatest possible number of right owners. Most economists see collective administration as a means to reduce the costs of trading Copyrights⁷⁹. In this perspective, the benefit of collective administration is to reduce the number of transactions and to develop standard arrangements for deals between rights holders and users of copyright works so that trading takes up fewer resources⁸⁰. Regarding the heterogeneity of rights holders, users, works and uses, such standards will rarely be perfectly efficient for any

⁷⁶M. Ficsor, *Collective Management of Copyright and Related Rights (World Intellectual Property Organization, 2002)*, P(99)

⁷⁷*Ibid*, P (101)

⁷⁸ *Supra Note (10)*

⁷⁹Christian Handke, *'The Economics of Collective Copyright Management, Senior Researcher at the Institute for Information Law at University of Amsterdam'*

⁸⁰*Ibid*

specific case. Another widely acknowledged function of copyright collectives is that they operate similarly to a trade union for rights holders⁸¹.

For the commercial user, there is a clear advantage in being able to obtain a license from a single source a national collecting society, which for a low transaction cost gives him the right to use virtually any work from its worldwide repertoire, given that national CMOs control the rights administered by their sister CMOs in other countries. Individual negotiations with individual right owners to obtain such repertoire would be impractical and prohibitively expensive so that the role of CMOs for such users has become essential⁸². The commercial user with a license from the national collecting society in his home country is generally safe from actions for infringement regardless of the source of the works use⁸³. The relationship between a collecting society its members and copyright users is expressed through three main functions: licensing, monitoring and distribution⁸⁴.

There is an additional advantage to individual right owners and users whose personal standing or size would put them in a weak bargaining position in negotiating licenses. Large entities such as broadcasting organizations and film companies would be able to negotiate successfully but individual right owners and small users would have difficulties⁸⁵. Collective licensing increases their marketing power, putting the individual and small user on the same footing as their more powerful and influential colleagues.

Large entities such as broadcasting organizations and film companies would be able to negotiate successfully but individual right owners and small users would have difficulties. Collective licensing increases their marketing power putting the individual and small user on the same footing as their more powerful and influential colleagues. In this way CMOs play a

⁸¹ *Ibid*

⁸² *International Confederation of Societies of Authors and Composers, 'The Importance of Collective Management' <<http://www.cisac.org>> ,Article, ,accessed, October 15,2017),P(3)*

⁸³ *Ibid, P(3)*

⁸⁴ *Caroline Morgan, 'Collective Management Of Copyright And Neighboring Rights: Corporate Services Division, Copyright Agency Limited, Australia'*

⁸⁵ *Ibid*

key cultural role in the protection and promotion of diversity of cultural expressions by enabling small, specialist and less popular repertoires to access the market⁸⁶.

Consumers also have an interest in effective collective rights management. Efficient licensing of copyright works is central to the economy and without it many such works would not be made available seen or heard by any significant number of consumers. By licensing large repertoires of creative works CMOs effectively facilitate the mass use of creative content for the benefit of consumers⁸⁷.

According to the World Intellectual Property Organization (2017) there are three main pillars that CMO operations are laid upon. These are:

The administration of rights: where the CMO collects and keeps track of personal and ownership information about their members and their musical works. This may require active communication with their own members and sister societies who, upon request, may either confirm or query, for example, the correct share split for writers affiliated with different societies and publishers⁸⁸.The CMOs also play an important role with regards to counterclaim issues. In certain situations they may enquire additional information from sister societies to find are solution. In that sense, they are the traditional gatekeepers of IP data because of their established international network of reciprocal agreements.

The licensing of rights: the CMO negotiates the terms of a licensing deal with users who need music. The CMO will discuss the terms of that deal and a fee for that license. Those who seek licenses vary, from digital service providers, websites, TV and Radio stations to public concerts, museums and cafeterias⁸⁹. The CMO must also be active with regards to the enforcement of rights, for example, to investigate and identify businesses (offline and online) that use music but do not have a license. Finally, the CMO must ensure that certain businesses must send usage reports, from which distribution is determined.

⁸⁶ *Ibid*

⁸⁷ *Ibid*

⁸⁸ *Andreas Kefalas, 'The Relevance of Traditional Collective Management Organizations in the Digital Age: Current Challenges And Future Possibilities, MA Thesis', P(14)*

⁸⁹ *Ibid*

The collection and distribution of revenue to rights holders: the CMO is responsible to collect the revenue from all their licensing agreements on behalf of local and foreign authors and distribute it accordingly⁹⁰. The basis for a fair distribution may be complicated to estimate, but societies use the logs of music played on TV/Radio stations, to split the revenue and send it out to the rights holders they represent. These operating functions serve as one bundled service for their members.

2.7. Role of Collective Copyright Management Society

Collective management of rights is an essential mechanism carried out by Collective Management Organizations (CMOs). It enables creators and rights owners to exercise their rights efficiently in their country and abroad, in their own interests and in those of commercial users, consumers and the general public. CMOs play a vital role in the national and international exercise and administration of authors' rights/copyright⁹¹.

CMOs were traditionally set up by right owners at national level to manage one or more of the rights of one or more categories of right owners and to grant licenses to commercial users on their behalf. Today, acting on behalf of their members,⁹² CMOs negotiate royalty rates and other license terms, and issue licenses to users authorizing the various uses of the works of their members. Once a license is issued, the CMOs have the task of enforcing the rights, monitoring uses, collecting the revenue due to their members and distributing it to them in accordance with agreed distribution schemes based on use of the works.

Traditionally, CMOs have been set up on a national basis and, in general, one CMO represents the rights of one particular category of right owners in a given territory. Foreign right owners are

represented by national CMOs by virtue of reciprocal representation agreements; thus, they are able to exercise the rights to which they are entitled by virtue of the national treatment rules of the international copyright and related rights conventions⁹³. Collective management has a role in many copyright industries. Some examples of situations that are appropriate for

⁹⁰ *Ibid*

⁹¹ *Supra Note(82), P(3)*

⁹² *Ibid, P(3)*

⁹³ *Ibid*

collective management are: photocopying in schools, the playing of music on the radio, and the downloading of ring tones⁹⁴.

The importance of collective management organizations is well demonstrated by WIPO by stating that; the experience of recent years has increasingly confirmed that the individual exercise of rights is impractical; there are cases in which users need rapid access to a vast mass of works. Collective management is an essential tool for the efficient exercise of rights; collective management societies therefore play an important and very useful role both for authors/creators and for users. This is definitely why they have experienced considerable development in parallel to the increased use of works made possible by new technology. The importance and usefulness of collective management is such that many national legislators have taken that aspect into account in the drafting of laws⁹⁵.

Though these societies were brought into being primarily for the benefit of right holders, there was another purpose for their existence, namely, to provide a one-stop-shop access to protected works for users⁹⁶. That is, these societies play the role of intermediaries between right holders and users. Both right holders and users are many, which makes it extremely difficult, if not downright impossible (both in practical and economical terms), to users to find the right holder to get a license, and to right holders to negotiate the terms of the license to monitor the uses of the works, and to collect royalties⁹⁷. This mechanism has proved to provide clear advantage for both sides in the off-line world.

Beyond these core activities, collecting societies take up other tasks. As it is summarized on the CISAC homepage⁹⁸, the activities of collective societies are quite broad, collecting of royalties and distributing it to authors, providing legal support, such as drawing up of model contracts, issuing licenses and authorizing uses, negotiating rates and terms of use with users, taking political action in favor of the effective protection of author's rights; such action can

⁹⁴ *Supra Note (10)*

⁹⁵ *WIPO, Promotion and Development of Collective Management of Copyright and Related Rights, Geneva(1999), P(1)*

⁹⁶ *Peter Lanchidi, 'Collective Management of Music Rights and Competition Policy In European Union, PhD Thesis'*

⁹⁷ *Ibid*

⁹⁸ *CisacPortal.<<http://www.cisac.org/CisacPortal/afficherArticles.do?numRubrique>>.accessed November,25,2017*

be undertaken before national or international bodies representing the author's right community, be it governmental or non-governmental; taking social and cultural actions, such as promoting author's interests and safeguarding their well being.

2.8. Members of Collective Management Organization

Right holder must be defined in broad enough terms so as to encompass all categories of members whose rights are managed by any type of CMO, including not only natural persons and legal entities holding a copyright or related right, but also publishers who by virtue of an agreement for the exploitation of rights or by law are entitled to a share of the revenue from the rights managed by CMOs and to collect such income from the CMO⁹⁹. User is defined as any natural person or legal entity who is carrying out acts subject to the authorization of right holders, the remuneration of right holders or the payment of compensation to right holders and who is not acting in the capacity of a consumer¹⁰⁰.

Membership of CMOs is open to all owners of copyright and related rights, whether authors, composers, publishers, writers, photographers, musicians, or performers. Broadcasting organizations are not included in the list, as they are considered users, even though they have certain rights in their broadcasts. Membership to a CMO by rights holders is what gives these organizations reason for existence. It is only when a CMO has members that it would have rights to license out to users.

Any owner of a copyright or a related right can become a member of a collective management organization. The general rule is that a person who creates an original work is the first owner of copyright in the work. This rule also applies to commissioned works- the creator of a commissioned work is also considered as the owner of copyright in the work, in the absence of any written agreement to the contrary¹⁰¹. As owners of copyright and related rights, authors, composers, publishers, writers, photographers, musicians, or performers qualify for membership of collective management organizations¹⁰². Broadcasters are not included in the list because of the fact that they are considered as users. Upon joining a

⁹⁹Alhaji ,Tejan-Cole, *'Collective Management of Copyright and Related Rights BELIPO, P(7)*

¹⁰⁰*Ibid*

¹⁰¹ *Ibid P(7)*

¹⁰² *Ibid*

collective management organization, copyright or related rights owners assign the rights in their work to the collective management organization.

The right owners are obliged to provide some personal particulars and declare their works.¹⁰³ This information is used by the collective management organization to create the documentation necessary to create a link between the use of works and payments for such use to the correct owner of the rights. The declared works form part of what is known as the local or national repertoire. Foreign works managed by a collective management organization under reciprocal agreements with other collective management organizations form part of what is known as the organization's international repertoire¹⁰⁴.

2.9. Rights Administered Under Collective Copyright Management Society

Collective management organizations administer several important rights on behalf their members. Firstly, collective management organizations administer performing rights for their members. The performing right has been defined as the right to perform works in public, to broadcast or communicate works to the public.¹⁰⁵ The International Confederation of Societies of Authors and Composers (CISAC) Model Contract of Reciprocal Representation between Public Performance Rights Societies defines public performances as including any sound and performance that is rendered audibly to the public in any place and by any means.¹⁰⁶

Secondly, collective management societies administer mechanical rights on behalf of their members. Mechanical rights refer to an author's right to authorize the reproduction of his work in the form of mechanically produced recordings such as phonograms and audiovisual fixations.¹⁰⁷ This is the reproduction of mostly musical works in CDs, tapes, vinyl records, cassettes, mini-discs, or other forms of recordings. Such musical works are usually used in feature films, television program, and television and radio commercials. According to WIPO, the most prevalent and economically important mechanical right is the right of composers of

¹⁰³ *Ibid*

¹⁰⁴ *Collective Management of Copyright Rights together with Stating the role of collective management organizations* <<http://www.belipo.bz/wp-content/uploads/2011/12/>> accessed December 10, 2017

¹⁰⁵ *Supra Note (84), P(7)*

¹⁰⁶ *Supra Note (84) P(8)*

¹⁰⁷ *Ibid, P(9)*

musical works-and the authors of accompanying words-to authorize the sound recording of such works.

Thirdly, collective management societies administer rights in dramatic works, which include scripts, screenplays, mime shows, ballets, theater plays, operas and musicals¹⁰⁸.These rights are usually administered using the agency type or partial collective management.

2.10. Intellectual Property and Digital Technology

Intellectual property law and its application to new digital technologies has rapidly become one of the most important areas of the law. The development of new technologies over the past few years, such as the Internet and the vast array of digital content which is now available, have created many difficult challenges for the law and the Courts¹⁰⁹.The Internet information industries became popular in the early 1990s, and gave rise to a variety of institutional problems in the mid 1990s.

The primary cry of the late twentieth century has been for a broader copyright regime due to the challenges posed by even newer technologies such as the reprographic, digital and compression technologies. The current problems did not arise from any single revolutionary invention but rather are due to the convergence of different technological developments: networked computers, digital file compression, increased computing power, the semiconductor chip leading to personal computing (not to mention affordable PCs), increased telephony coverage and, most importantly, higher communication speed. The advent of the Internet and other digital technologies has brought with it unique problems with regard to the licensing of copyright works and this, in fact, was one of the compelling reasons why the WIPO Internet treaties were enacted.

The Internet which is one of the most remarkable tools the world has ever known for sharing information and knowledge and for allowing us to make contact with other people and with what they are saying, writing and making.¹¹⁰ It is continually offering up new possibilities, new ideas, new friendships, new networks and new businesses. But it presents a challenge.

¹⁰⁸ *Ibid*

¹⁰⁹Brain Fitzgerald, '*Copyright Law, Digital Content and The Internet*', (Sydney University Press,2008)

¹¹⁰*Ibid*

The Internet is a massive copying machine. It works because it allows us to upload and download, copy and share, on a massive scale.

According to WIPO the new digital technology has a major effect on the collective management of copyright and related rights. WIPO submits further that the widespread application of digital technology, including the advent of multimedia productions and the use of digital networks like the Internet, the conditions, the exercise and the management of rights are facing new challenges.

The Ethiopian law has no provisions suiting the digital world in the copyright laws and other related instruments. There is also no general law covering information technology issues which would have to some extent cover copyright related issues. Other developed jurisdictions on copyright have extensively regulated the digital world in the copyright arena. However, countries like Germany and Canada are very strong in protecting their copyright since they are highly advanced in technology to regulate internet piracy and they are a member of WIPO Internet Treaty although Ethiopia is a member of it.

The development of technology has profoundly changed society. Ten years ago, people purchased physical albums to enjoy their favorite songs.¹¹¹ Today, a growing number of music fans resort to mobile phones, tablet computers, and live concerts for entertainment. Internet radio, stream portals, digital ringtones and other user-generated platforms have emerged and flourished in many nations¹¹². According to Professor Sean Pager, "just as mobile technologies have allowed developed countries to leapfrog wired infrastructure and develop innovative e-commerce models, so too, developing countries have an opportunity to bypass outdated legal standards and pioneer 21st century models¹¹³.

New challenges to copyright are now posed by the digitalization of information and the development of computer networks such as the internet. The ways they are resolved by copyright have important implications for the access to and the use of information worldwide. The technological developments result in improvements in data storage,

¹¹¹ Ye Jiang, 'Changing Tides of Collective Licensing in China: Michigan State International Law Review', Vol. (2),p(13)

¹¹² Ibid, P (13)

¹¹³ Ibid, P(13)

manipulation and transmission of data. Digitalization makes all kinds of data and copyrighted work to be recorded and compressed in the same format. This will allow the reproduction of copies without any problem and developments in software permits easy manipulation of data images and sounds¹¹⁴.

This digital technology has changed the way creators work and how authors and publishers deliver copyright works. These developments of new technologies have the capacity to create unauthorized, perfect free copies. In addition, the growth of internet makes any work to be distributed worldwide with insignificant cost¹¹⁵.

Online criminal copyright infringement is without a doubt a significant challenge when it comes to the enforcement of copyright laws. The history of free movement and access of copyright protected works and history of piracy are linked to each other. The history of piracy begins when the access to works started to be restricted¹¹⁶. Now days, the increasing availability of copyright protected material in digital online form creates a dilemma. One industry survey states that in 2014, 20 per cent of internet users worldwide regularly accessed services that offered copyright infringing music i.e. unauthorized services.¹¹⁷ While it is difficult to quantify with precision, online criminal copyright infringement is without a doubt a significant challenge when it comes to the enforcement of copyright laws.

CMOs are now facing one of the biggest challenges of their history: to cope with the contradictions between national orders of copyright law and global digital business expectations. Together with a few media companies that are granting licenses directly to individual consumers, CMOs have assumed the role of a major guarantor for a licit online market to build up in the sectors of audiovisual and multimedia. A consideration of the impact of new technologies on the protection of intellectual property rights resulted in the WIPO Copyright Treaty (WCT) and the WIPO Phonograms and Performances Treaty (WPPT).

¹¹⁴ Arthur R. Miller and Michael H. Davis, *Intellectual property: Patents, Trademarks and Copyright in Nutshell* (2000), P(295).

¹¹⁵ Peter, Schonning, 'Licensing Authors on the Internet, International Review of Intellectual Property and Completion Law' V(31), (2000), P(967)

¹¹⁶ Kim Talus, 'Geo-Blocking of Online Copyright Protected Content v Free Movement of Services within the European Union, MA Thesis'(2016), University of Eastern Finland.

¹¹⁷ *Ibid*

2.11. Cooperation between Collective Management Societies

Collecting societies typically hold a monopolistic position constrained by national borders. The cooperation regime between these national societies has been developed under many years and the present structure basically dominated the whole 20th century¹¹⁸. The two most important principles upon which this regime rests are the principles of reciprocity and solidarity¹¹⁹.

2.11.1. National Treatment or Reciprocity

Reciprocity or to put it in another way: national treatment is a core principle in international conventions. What the principle says is that all countries party to the given convention shall provide for foreign authors the same protection as is provided for the nationals of that particular country¹²⁰. International conventions and treaties employ this principle. The Berne Convention provides that authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention¹²¹.

The implementation of national treatment requires international cooperation. It cannot be done in other way but by the mutual application of the principle in the exercise of the rights¹²². Following the establishment of performing rights collecting societies in Europe, in 1926, CISAC, the international confederation of these societies was established. The cooperation among collecting societies takes the form of the so called reciprocal representation agreements applied on bilateral basis. To achieve the highest possible uniformity CISAC has developed the Model Contract of Reciprocal Representation between Public Performance Rights Societies.

Each of the contracting parties undertakes to enforce, within the territory in which it operates, the rights of the members of the other party in the same way and to the same extent as it does

¹¹⁸Péter Lánchidi, 'Collective Management of Music Rights and Competition Policy in the European Union, PhD Thesis', p(57)

¹¹⁹ *Ibid*, P(57)

¹²⁰ *Ibid*, p(57)

¹²¹ *Ibid*, P(57)

¹²² *Ibid*, P(58)

for its own members and to do this within the limits of the legal protection offered to a foreign work in the country ¹²³ where protection is claimed unless in virtue of the present contract such protection not being specifically provided in law, it is possible to ensure an equivalent protection.

2.11.2. Solidarity

Solidarity is to be understood in two ways. Solidarity exists between collecting societies and between copyright holders¹²⁴. The solidarity between societies is well reflected in the CISAC Modal Contract says that the contracting parties undertake to uphold to the greatest possible extent by way of appropriate measures and rules applied in the field of royalty distribution, the principle of solidarity as between the members of both Societies, even when by the effect of local law foreign works are subject to discrimination¹²⁵. In particular, each society shall apply to works in the repertoire of the other society the same tariffs, methods and means of collection and distribution of royalties as those which it applies to works in its own repertoire. Solidarity is closely related to and builds upon the national treatment.

¹²³ *Ibid*, P(59)

¹²⁴ *Ibid*

¹²⁵ *Ibid*

CHAPTER THREE

International Instruments and Copyright Administration in different Countries

3.1. International Obligation of Collective Management Society

The establishment of the World Trade Organization (WTO) with the consequent adoption of the TRIPS agreement has in effect meant the establishment of a global standardized IP regime as far as it laid down minimum standards to be met by each WTO member-country¹²⁶. However, before the introduction of TRIPS there were other international agreements and arrangements that provided frameworks for the regulation of IP.

The international agreements that have come into existence since the 19th century provide a certain degree of harmonization of protection in all signatory countries. The most important conventions are: the Berne Convention for the Protection of Literary and Artistic Works of 1886, the Universal Copyright Convention of 1952, the International Convention for the Protection of Performers, producers of Phonograms, and Broadcasting Organizations of 1961, the Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994, the WIPO Copyright Treaty of 1996, the WIPO Performances and Phonograms Treaty of 1996.

Currently, there exists a well-established global network of collective management organizations, and they are strongly represented by non-governmental organizations such as the International Confederation of Societies of Authors and Composers (CISAC),¹²⁷ the International Federation of Reprographic Reproduction Organizations (IFRRO), among others. Ethiopia is not a member of CISA which its headquarter is Paris, France and also not a member of IFRRO which its headquarter is in Brussels, Belgium and didn't join international CMO community¹²⁸.

IFRROs mandate is to facilitate, on an international basis, the collective management of reproduction and other rights relevant to copyrighted works through the co-operation of national Reproduction Rights Organizations (RROs). Unlike CISAC, IFRRO's Code of

¹²⁶ *Infra Note (138)*

¹²⁷ M. Fiscor *Collective Management of Copyright and Neighboring Rights at A Triple Crossroad (2003)*, P(8)

¹²⁸ Greenfield K. Chilongo, 'IFRRO African Development Committee' (Zimbabwe. from the Harare-based national RRO <<http://www.ifrro.org/node>> accessed, December 25, 2017

Conduct is voluntary in nature and it embodies the principles and values which IFRRO believes all RROs should achieve and uphold¹²⁹.

3.1.1. The International Confederation of Societies of Authors and Composers

Collective Management Organizations usually belong to one of the two main families of Collective Management Organizations, namely the International Confederation of Societies of Authors and Composers (CISAC) the largest and oldest association of CMOs, or to the International Federation of Reproduction Rights Organizations (IFRRO)¹³⁰. Collective or centralized management is preferable where the individual exercise of rights is impracticable¹³¹. This is the essence of collective management: make copyright work when individual exercise would be impracticable for rights holders, users, or both, usually due to the sheer number of rights holders, users and/or uses.

In order to launch the harmonization process of national provisions concerning collective rights management, the meeting on International Confederation of Societies of Authors (CISAC) took part in 1926¹³². The goal of the meeting was to start the formation of unified collective rights management principles and methods in every country.¹³³ Nowadays, CISAC aims to guard the development of international network of copyright societies, protects creators and their collecting societies and is seeking to reach the efficient interoperability of the societies.

Internationally, the history of the legal regime of collective administration of rights dates back to Article 12 of the International Convention for the Protection of Performers', Producers of Phonograms and Broadcasting Organizations otherwise known as Rome Convention of 25th October, 1961, which lays the ground internationally for national systems of collective administration¹³⁴. It provides that one single amount shall be paid to the

¹²⁹ *Ibid*

¹³⁰ Daniel J. Gervais, 'Collective management of copyright and neighbouring rights in Canada: an International Perspective', (August, 2001), P(9)

¹³¹ International Federation of Reproduction Rights Organizations Art(1)

¹³² Daniel Gervais, 'Collective management of copyright and related rights: Kluwer Law International' (2006), P(10)

¹³³ *Ibid*, P(11)

¹³⁴ *Ibid*

performing artists or to the phonogram producer or to both¹³⁵. The conditions for dividing up the sum are ultimately to be¹³⁶decided by national legislation. However, the effectiveness of collective administration differ from one country to the other subject to the availability of industrial and business infrastructure that allow for orderly collection of fees and legislation in¹³⁷line with international standards as well as the existence of an efficient enforcement systems for these rights.

3.1.2. The International Federation of Reproduction Rights Organizations (IFRRO)

The International Federation of Reproduction Rights Organizations (IFRRO) began in 1980 as a working group of international scientific, technical and medical publishers. It now has 48 full RRO members and 61 Associate Members. These members are from Africa, the Americas, Asia, Europe and Oceania.¹³⁸ IFRRO has three primary purposes: to foster the creation of RROs worldwide, to facilitate formal and informal agreements and relationships between and on behalf of its members, and to increase public and institutional awareness of copyright and the role of RROs in conveying rights and royalties between copyright owners and users.¹³⁹ IFRRO has also established a development fund to assist in the formation of new national collecting Societies. It provides funds for emerging collecting societies in the form of project loans or activity grants.

Reproduction Rights Organizations (RROs) license the reproduction of material protected by copyright whenever it is impracticable or impossible for rights holders to act individually. The explosive development of RROs worldwide during the 1980s and thereafter is an example of successful collective action in response to the challenges of technology. The expansion of RROs is one of the most important developments for authors and publishers in recent decades.¹⁴⁰WIPO and IFRRO shall cooperate as appropriate in developing and strengthening the necessary infrastructure for collective management organizations as well as

¹³⁵Dorcas A. Odunaiké, *'Comparative Analysis Of Collective Administration Of Performance in Australia And Nigeria'* (2017), P(4)

¹³⁶*Ibid* ,P(4)

¹³⁷ *Ibid*, P(4)

¹³⁸ Caroline Morgan, *'Collective Management Of Copyright And Neighboring Rights, Copyright Agency, Australia'*, P (3)

¹³⁹ *Ibid*, P(3)

¹⁴⁰ *Ibid*

in increasing awareness of reprographic reproduction rights and their benefits to the owners of copyright, users and the society at large¹⁴¹.

The International Federation of Reproduction Rights Organizations (IFRRO) links all RROs, as well as national and international associations of rights holders.¹⁴² National Reproduction Rights Organizations are Members of IFRRO. Such RROs exist today in almost 50 countries, and the number is increasing year by year. Rapid development in many countries is due to the efforts of local authors and publishers supported by IFRRO and its Members¹⁴³. Longstanding development cooperation has borne fruit on all continents, to the benefit of authors and publishers and the international community. IFRRO works in cooperation with the World Intellectual Property Organization (WIPO). Both organizations promote the protection of intellectual property rights throughout the world¹⁴⁴.

3.1.3. Berne Convention for the Protection of Literary and Artistic Works

The Berne Convention is not only the oldest international copyright instrument, but even now, the most fundamental element of the complex structure of conventions and other treaties in the field of copyright and related rights¹⁴⁵. The Berne Convention is an international agreement which sets out to harmonize the way that Copyright and related rights are regulated at an international level. The Convention is administered by the World Intellectual Property Organization (WIPO) and was first adopted in 1886 as an agreement to honor the rights of all authors who are nationals of countries that are party to the Convention. Article 5 of the Convention contains the principle of national treatment for authors. According to the national treatment principle, works originating in a contracting state are protected in every other contracting state in the same manner as these states protect works originating in their own territory¹⁴⁶. Accordingly, foreign rights holders ought to receive the same treatment as national rights holders. In the context of licensing and supervision of

¹⁴¹ *Supra Note(118), P(54)*

¹⁴² Peter Shepherd, 'President of IFRRO, Collective Management in Reprography', P (54).

¹⁴³ *Ibid*

¹⁴⁴ *Ibid*

¹⁴⁵ Mihály Ficsor, 'Guide to the Copyright and Related Rights Treaties Administered by WIPO and Glossary of Copyright and Related Rights Term, Geneva' (2003), P(5).

¹⁴⁶ *Bern Convention Art(5)*

Collective Management Organizations, the relevant legal framework must ensure that Collective Management Organizations collect and distribute all royalties equally on behalf of both their members and their foreign affiliates.

3.1.4. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) was signed in Marrakech. The TRIPs Agreement thus links intellectual property protection to trade issues in particular by making available the WTO's dispute settlement process which can impose trade sanctions on members violating the agreement Morocco, on 15 April 1994.

The TRIPs Agreement is an international agreement administered by the World Trade Organization (WTO). It sets out minimum standards for intellectual property regulation as may be applied by nationals of WTO Members¹⁴⁷. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994 and came into effect on January 1, 1995¹⁴⁸. It is important to note that TRIPS includes nearly all the conditions of the Berne Convention as is contained in Articles 9 through 14 of TRIPS. Therefore, TRIPS effectively brought the laws of those WTO member states that had not signed the Berne Convention into harmony with the laws of those countries that are signatories to Berne. It is important to note that TRIPS includes nearly all the conditions of the Berne Convention as it is contained in Articles 9 through 14 of TRIPS.¹⁴⁹ Therefore, TRIPS effectively brought the laws of those WTO member states that had not signed the Berne Convention into harmony with the laws of those countries that are signatories to Berne.¹⁵⁰

By the time the TRIPS Agreement was signed, the international copyright community faced a new challenge. Between the de facto finalization of the TRIPS Agreement, which took place

¹⁴⁷WTO, the TRIPS Agreement < http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm>, assessed, November 24, 2017

¹⁴⁸ *Ibid*

¹⁴⁹J. Watal, *Intellectual Property Rights in the WTO and Developing Countries; Kluwer Law International* (2001), P (210).

¹⁵⁰M. N. Ouma, "Enforcement of Copyright in the Music Industry: A Critical Analysis of the Legal and Institutional Framework on Enforcement in Sub Saharan Africa", Unpublished PhD Thesis, Queen Mary University of London, (2009), P(171)

at the end of 1992, and its signing in 1994, the Internet began a truly spectacular development. The international copyright community was unable to celebrate the TRIPS Agreement and sit idle for a long period of time. The phenomena of digital technology and the Internet raised important new questions that required urgent responses.

3.1.5. The World Intellectual Property Organizations Treaty

On 20 December 1996, representatives of approximately 120 countries adopted the WIPO Copyright Treaty together with the WIPO Performances and Phonograms Treaty at a Diplomatic Conference on Certain Copyright and Neighboring Rights. The treaties were designed to address questions related to the impact of new digital technologies on copyright and related rights.¹⁵¹ The WCT obliges the contracting states to comply with the substantial provisions of the Paris Act of the Berne Convention. Like the TRIPs Agreement protection is extended to computer programs and databases. Along with a qualified commercial rental right, the WCT introduces a new ‘right of making available to the public which encompasses interactive transmission of works on demand, for instance via the Internet¹⁵².

The WCT provides that ‘contracting parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of the rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law¹⁵³.

Likewise the WPPT also introduces the term of ‘effective technological measures’ and states that contracting parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law¹⁵⁴.

¹⁵¹ *Ibid*, P (172)

¹⁵² *Ibid*, P(172)

¹⁵³ *WIPO Copyright Treaty (WCT)Art(11)*

¹⁵⁴ *WIPO Performances and Phonograms Treaty(WPPT) Art(18)*

In order to respond to rampant copyright infringement, TPMs have been recognized by the WCT, the WPPT and national copyright systems. Both the WCT and the WPPT require all the member countries to prohibit the circumvention of effective TPMs in order to use the protected content, unless such circumvention is authorized by right holders or allowed by law¹⁵⁵.

Ethiopia's Copyright Law does not give any mention of 'effective technological measures while technical measures' as the effective technologies, devices or components used to prevent or limit others from browsing or enjoying works, performances, phonograms or audio-visual recordings without permission from the owner, or from providing the works, performances, phonograms or audio-visual recordings to the public through the network without the owner's permission.

The two treaties that offered responses to the new challenges baptized as the Internet treaties by the international press were the WIPO Copyright Treaty (WCT)¹⁵⁶ and the WIPO Performances and Phonograms Treaty (WPPT)¹⁵⁷. It appeared that these two Internet treaties were prepared in a record time because only twenty months lapsed from the signing of the TRIPS Agreement in April 1994 and the signing of these two treaties in December 1996¹⁵⁸. Due to the perceived problems, in the last two decades of the twentieth century, the copyright law has been extended to cover computer programs¹⁵⁹ electronic databases, uploading and downloading of copyright works over the internet and the distribution of works over the internet. The WIPO Copyright Treaty extended copyright law in a more perverse way by allowing copyright owners to place technological measures on CDs and online works which not only prevent the reproduction and dissemination of the copied work (the traditional prohibition under copyright law), but now also allow owners to prevent access to works¹⁶⁰.

¹⁵⁵WCT, Art (11) and WPPT, Art,(18)

¹⁵⁶Mihaly Ficsor, 'The WIPO 'Internet Treaties: The John Marshall Review Of Intellectual Property LawUSA'(2006), P(6)

¹⁵⁷ Ibid

¹⁵⁸ Ibid

¹⁵⁹ Grham Dutfield, 'Global Intellectual Property Law'(Edward Elgar Publishing, Jan1,2008)', P(73)

¹⁶⁰ Ibid

The adequate protection and enforcement of intellectual property treaties and laws including treaties and laws on copyright and related rights, is an indispensable condition of economic, social and cultural development and well-being. The WIPO Internet Treaties serve this purpose. Their appropriate implementation and application is an indispensable condition for copyright to fulfill the fundamental public interest of granting incentives for the creation and production of works and objects of related rights necessary for global development¹⁶¹. The adequate protection of technological measures against unauthorized circumvention is a basic element of this contention. Such protection can only be adequate if it also extends to protection against the importation, manufacture, and distribution of illegal circumvention devices and services¹⁶².

Due to all these facts countries like Canada, Germany, India and Nigeria became a member of these international conventions and ratified these conventions to protect the interest of their copyright holders by adopting these treaties into their national legislation.

3.2. Copyright Administration in Different Countries

3.2.1. Legal Framework of Collective Management Society in Canada

The first Copyright Act in Canada was enacted in 1921. Today, Canada has caught up and counts no less than thirty eight CMOs. Canada's talent exceeds its vast borders. Indeed, the flurries of Internet activity brought about by Drake and Justin Bieber are perhaps the most recent testimony to the magnitude of the role played by Canadian artists on the world scene¹⁶³. To protect this talent and yet encourage its dissemination, Canadian policy makers must take a close look at the laws and regulations that preserve artists' ability to be remunerated for their work and users' capacity to engage with their art¹⁶⁴.

In 1989, a new act created the Copyright Board as we currently know it, and broadened its jurisdiction to encompass all areas of collective administration of copyright. Further amendments continued to expand the Board's areas of competence¹⁶⁵. In 1997, when the

¹⁶¹ *Supra Note(132), P(24)*

¹⁶² *Ibid*

¹⁶³ *Pierre, Emmanuel Moyses, ' Copyright Licensing and Collective Management Policy Proposal (December 7, 2015', P(9)*

¹⁶⁴ *Ibid*

¹⁶⁵ *Canada Copyright Act 1989 C-42*

system of collective management was further entrenched in Canadian copyright law as the tool of choice in dealing with a number of areas where access had to be guaranteed in exchange for a form of compensation it was expected that the Board would oversee this tool's handiwork

The current Canadian system does not impose a particular legal form for the collective management of copyright and neighboring rights. A number of models are in existence. Some CMOs are for-profit corporations, but often controlled by a not-for-profit foundation while several others are themselves not-for-profit entities¹⁶⁶. In foreign countries, the situation is similar. Collective management organizations spread to Canada who came as a later player in the copyright game.

The Copyright Act, most recently amended in 2012, embodies the bargain between creators and users, and has done so since 1921. It is also the founding statute of the Copyright Board of Canada which oversees the copyright tariff-setting process. The copyright market represents around \$45 billion in revenue and is rapidly changing¹⁶⁷.

The current Copyright Act, which will be revised in 2017 sets out the copyright licensing and collective rights administration regime in Canada. It is important to note that it is a public framework which regulates the relationship between private entities: CMOs and users¹⁶⁸. However, as the recent Google Book Settlement file has shown, the magnitude of the rights represented by some of these entities be users or rights holders raises public concerns even amidst private actors¹⁶⁹.

A collective society means a society, association or corporation that carries on the business of collective administration of copyright or of the remuneration right conferred by for the benefit of those who, by assignment, grant of license, appointment of it as their agent or otherwise, authorize it to act on their behalf in relation to that collective administration, and operates a licensing scheme, applicable in relation to a repertoire of works, ¹⁷⁰performer's performances, sound recordings or communication signals of more than one author, performer, sound recording maker or broadcaster, pursuant to which the society, association

¹⁶⁶ *Supra Note(163)*

¹⁶⁷ *Supra Note (145)*

¹⁶⁸ *Ibid*

¹⁶⁹ *Ibid*

¹⁷⁰ *Canadian Copyright Bill C-32, S(19)(a)*

or corporation sets out classes of uses that it agrees to authorize under this Act, and the royalties and terms and conditions on which it agrees to authorize those classes of uses, or carries on the business of collecting and distributing royalties or levies payable pursuant to this Act¹⁷¹.

In spite of this unified definition the Act contains various and the amendments introduced new legal regimes concerning the collective administration of copyright and neighboring rights. This amended act provides that collective management of rights in Canada is governed in four different ways, according to the right(s) involved. These legal regimes are as follows: music performing rights and certain neighboring rights¹⁷², general regime retransmissions and certain uses by educational institutions¹⁷³, the particular case regime¹⁷⁴ and private copying¹⁷⁵. These are known as either mandatory or optional regimes, referring to the requirement or not of filing a tariff with the Board. In theory, to obtain a license for one of these uses, users must go through the system of collective management

The current system of collective management of copyright and related rights in Canada is by and large a voluntary system. Authors and holders of neighboring rights can choose to participate in a collective scheme or to form a collective of their own. In the current legal environment, Canadian rights holders may create a new Collective Management Organization if they are dissatisfied with an existing one. In fact, users themselves could do the same, as was suggested by a well-known author in the area of reprography¹⁷⁶. In Canada CMOs are therefore organized around the rights they seek to protect which causes that an artist may be represented by more than one CMO if he or she is the holder of more than one type of copyright.

¹⁷¹ *Ibid*, S(19)(b)

¹⁷² *Canadian Copyright Act, 2017*, S(67)

¹⁷³ *Ibid*, S(70)(1)

¹⁷⁴ *Ibid*, S(71)

¹⁷⁵ *Ibid*, S(79)

¹⁷⁶ Daniel .J. Geravis, ' *Collective Management of Copyright and Neighboring Rights In Canada: An International Perspective*'(2001), P(26)

3.2.2. Institutional Framework of Canadian Collective Management Society

Canada has a unique approach amongst developed countries to collectives and to the oversight of collective by a specialized tribunal and, in turn, by the Courts¹⁷⁷. While Canada provides very strong copyright protection in the form of mostly exclusive rights, it recognizes these rights can most effectively and efficiently be enforced by collectives in many cases¹⁷⁸.

Canada has more copyright collectives than any other major developed country. However, Canada has approximately three dozen active collectives, many of which have received substantial direct or indirect government subsidies¹⁷⁹. The Copyright Board of Canada's predecessor, the Copyright Appeal Board, came to life in 1936, following some controversies surrounding CMOs. It was proposed that a tribunal that would determine disputes arising out of performance and approve the tariffs before they became effective be established¹⁸⁰. This was achieved in 1936 and the Copyright Appeal Board, the current Board's predecessor became operational certifying its first tariff in 1937.

The Board plays a key role in fixing rates and royalties to be paid to creators, most of them represented by collective management organizations hereafter CMO or collective. The licensing process can take various forms, such as that of a tariff or an agreement between a user and a collective. Many concerns have been voiced in frustration with this process, and the Board has taken the initiative to study these concerns¹⁸¹.

Copyright, in being a matter of federal competency and is regulated federally and so the Board's jurisdiction extends across Canada¹⁸². Whereas the Copyright Appeal Board's jurisdiction was limited to performing rights societies, the current Copyright Board's regulatory powers extend far beyond performing rights and its decisions have touched upon

¹⁷⁷Howard P. Knopf, *'Canadian Copyright Collectives and the Copyright Board: A Snap Shot in'*(2008),P(3)

¹⁷⁸*Ibid*, P(3)

¹⁷⁹ *Ibid*, P(6)

¹⁸⁰ Emmanuel Moyses, *'Copyright Licensing and Collective Management: Policy Proposal, ,Ottawa, Seminar on Intellectual Property Policy'*(December7,2015), P(17)

¹⁸¹*Ibid*

¹⁸² *Canada Constitution Act Art(36)*

anything from peer-to-peer file sharing, telecommunications network neutrality and other areas of contention¹⁸³.

The Board's specific responsibilities under the Act are to: certify tariffs for the public performance or the communication to the public by telecommunication of musical works and sound recordings¹⁸⁴, set royalties payable by a user to a collective society, when there is disagreement on the royalties or on the related terms and conditions¹⁸⁵ certify tariffs for the retransmission of distant television and radio signals¹⁸⁶ or the reproduction and public performance by educational institutions, of radio or television news or news commentary programs and all other programs, for educational or training purposes¹⁸⁷, set levies for the private copying of recorded musical works¹⁸⁸, rule on applications for non-exclusive licenses to use published works, fixed performances, published sound recordings and fixed communication signals, when the copyright owner cannot be located¹⁸⁹, examine, at the request of the Commissioner of Competition appointed under the Competition Act, agreements made between a collective society and a user which have been filed with the Board, where the Commissioner considers that the agreement is contrary to the public interest¹⁹⁰, set compensation under certain circumstances, for formerly unprotected acts in countries that later join the Berne Convention, the Universal Convention or the Agreement establishing the World Trade Organization. Hence, the Canadian Copyright Board is granted a wider power and duties for effective enforcement of the right of copyright holders.

Moreover, the Copyright Act contains a number of provisions dealing with collective management, these usually only empower the Copyright Board to remedy failures in negotiations among interested parties or otherwise set appropriate tariffs, or ensure transparency.

¹⁸³ *Supra Note (149)*

¹⁸⁴ *Canada Copyright Act ;S(67-69)*

¹⁸⁵ *Ibid, S(70)(2)*

¹⁸⁶ *Ibid, S(70)(4)*

¹⁸⁷ *Ibid ,S(71-76)*

¹⁸⁸ *Ibid, S (79-88)*

¹⁸⁹ *Ibid, S(77)*

¹⁹⁰ *Ibid, S(70)(5-6)*

An owner of copyright who does not authorize a Collective Management Organization to collect royalties for that person's benefit is only entitled to be paid those royalties by the collective designated by the Board subject to the same conditions as those to which a person who has so authorized that collective is subject¹⁹¹. Therefore, Canada's Copyright Board plays a greater role in the collective administration of copyright than comparable tribunals in other common law countries and probably all other major developed countries.¹⁹²

One can understand from the above is that the Canadian government is highly committed and devoted in establishing a comprehensive law, strong and well developed collective management society. This is a symbol for all developed and developing countries to have such modern law and institution.

3.2.2.1. Collective Management Societies in Canada

Most Canadian societies are non-profit and therefore do not make money on the administration of copyrights. However, they do collect membership fees and retain a percentage of royalties to cover their administration costs. The following are some of the better known collectives that most practitioners are most likely to have occasion to deal with¹⁹³. Copyright collectives usually represent copyright owners of a specific medium (such as music, visual arts or film) and administer specific rights pertaining to it¹⁹⁴. Here are some examples: SOCAN (Society of Composers, Authors and Music Publishers of Canada) administers performing rights for musical works SODRAC (Society for Reproduction Rights of Authors, Publishers and Composers in Canada) administers exhibition and reproduction rights for visual art, COPIBEC administers the right to copy literary works¹⁹⁵. The largest and oldest collective is SOCAN which traces its roots in Canada back to 1925 and collects over \$200 million annually. This symbolizes that the creative industries in Canada add great economy to the national GDP of Canada¹⁹⁶.

¹⁹¹ *Ibid*, S (76)

¹⁹² *Supra Note* (177)

¹⁹³ *Major Copyright Collectives in Canada* <<http://www.cb-cda.gc.ca/societies-societes/index-e.html>> accessed November 21, 2017

¹⁹⁴ *Ibid*

¹⁹⁵ *Ibid*

¹⁹⁶ *Ibid*

Neighboring Rights Coalition of Canada (NRCC) is a collective of other collectives and collects revenues for certain activity involving sound recordings, and performers' performances. The rights involved are known as neighboring rights, because they historically were not recognized as being part of the mainstream of authors' rights¹⁹⁷.

Canadian Private Copying Collective (CPCC) is also a collective of collectives that collects approximately \$40 million a year from levies on blank audio recording media almost all of which currently derives from sales of blank CDs¹⁹⁸. It has been very active in litigation against alleged levy evaders with a number of reported decisions in the Federal Court and the Federal Court of Appeal in recent years.

Canadian Musical Reproduction Rights Agency is a collective of music publishers. It grants licenses on an agency basis for cover versions of musical compositions and other common activities. There are many other collectives though they are generally less visible than those mentioned above; for instance collectives for the licensing of motion pictures for classroom use and a number of collectives involved in the very lucrative retransmission tariff. Therefore, there are a number of collective management societies in Canada. Today, Canada has more than 38 CMOs and this is the most in the world

International Legislations have been central to the development of copyright in Canada. The copyright of Canada is not enforceable outside Canada's borders. However, international conventions and treaties expand the rights of Canadian creators to the territories of other member countries and include enforceable penalties for copyright infringements¹⁹⁹. Canada has ratified a number of international agreements that impose obligations especially in terms of reciprocity between member countries. Canada is a signatory to the Berne Convention for the Protection of Literary and Artistic Works, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)²⁰⁰. So, Canadian copyright collectives operate nationwide, but some have agreements with associations in other

¹⁹⁷ *Supra Note(163)*

¹⁹⁸ *Ibid*

¹⁹⁹ Dara Lithwick, ' *Legislative Summary Bill C-11: An act to Amend the Copyright Act, P(4)*

²⁰⁰ *Ibid*

countries. This allows members of the Canadian society to collect royalties from the use of their work abroad.

A sound and strong system has been established in Canada which consists of a specialized authority for the supervision of all dealings between collecting societies, users and of a well-resourced Copyright Tribunal. According to the General Counsel for the Copyright Board for Canada this approach has facilitated the expansion of collective rights management in Canada and helped it gain legitimacy²⁰¹.

3.2.3. Legal Framework of Collective Management Society in Germany

The rights of authors and holders of related rights are protected under Article 14 of the Basic Law, the constitution of the Federal Republic of Germany. The German Copyright Act reflects the protection granted by the German constitution. According to Article 11 of the German Copyright Act the author is protected in his intellectual and personal relationships to the work and in respect of the use of the work. Copyright shall also serve to ensure equitable remuneration for the exploitation of the work.

The German Copyright Administration Law 1995 has five sections. The first section states the authorization to conduct business. Section two explains the rights and duties of collective management societies. The following are the rights and duties of collective management societies in German: obligation to administer, distribution of revenue, welfare and assistance scheme, rendering of account and auditing, obligation to furnish information, obligation to contract and tariff. Section three of the copyright act vividly shows the supervision of collective society.

According to Germany Collecting society Act Collecting society means an organization which is authorized by law or contractual arrangement to manage, as its sole or main purpose, copyright or rights related to copyright on behalf of more than one right holder, for the collective benefit of those right holders, irrespective of whether it is acting in its own name or on behalf of another²⁰². In order to be a collecting society, the organization must,

²⁰¹Kostas Rossoglou, *The European Consumer Organization, Collective management of Copyright and Related Rights and Multi territorial Licensing of Rights in Musical Works for Online*, P(14)

²⁰²German Collecting Societies Act of 24 May 2016 Federal Law Gazette I p. 1190,section(1)(2)

further, fulfill at least one of the following conditions: its shares are held by its members or it is controlled by its members, it is organized on a not-for-profit basis²⁰³.

In Germany, Collective Management Organizations are governed by the Administration of Copyright and Neighboring Rights Act perhaps the most extensive model of sector-specific State control of the operations of Collective Management Organizations anywhere in the world. The German Patent Office must approve the formation of Collective Management Organizations and can revoke said authorization at any time²⁰⁴. Under this Act, the Patent Office may appoint board members of any CMO and revoke any person entitled by law or the statutes to represent a collecting society who does not possess the trustworthiness needed for the exercise of his activity; the supervisory authority shall set a date for him to be relieved from his post to avoid revocation of authorization under Article 4(1). The supervisory authority may forbid him to exercise his activity further pending expiry of the time limit where necessary to prevent serious detriment.

By law, each Collective Management Organization must also set up welfare and assistance schemes for the holders of the rights and claims that they administer²⁰⁵. While the Act does not prevent the formation of more than one society in a given field, at present there is only one Collective Management Organizations in each field. Each German Collective Management Organizations is therefore in a de facto monopoly situation²⁰⁶. Collecting Societies Act of 24 May 2016 of German serves to implement Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

²⁰³ *Ibid*, S(2(2))

²⁰⁴ *German Copyright Administration Act*, S(2-4)

²⁰⁵ Daniel J. Gervais, 'Collective Management of Copyright and Neighboring Rights in Canada: An International Perspective' (August (2001), P(54)

²⁰⁶ *Ibid*

3.2.4. Institutional Framework of Copyright Management Society

3.2.4.1. Collective Management Societies in German

Collecting societies are an essential part of the German copyright system. The German Copyright Act actually stipulates that specific rights can only be exercised by collecting societies²⁰⁷. The transfer of rights to collecting societies for management in some cases even by means of depriving the creators of their right to legal action is a precise legal policy choice. The legislator aims to assist right holders incomprehensively and effectively exploiting their rights through resort to a central collecting body. This stems from the recognition of their weak economic position in relation to the users of their work, with increasingly easy means to copy and distribute protected works²⁰⁸.

Mandatory collective administration has been introduced in German national laws in respect of statutory remuneration of rights especially in respect of public performance and satellite broadcasting that constitutes mass uses of a large number of works that are impossible to exercise individually²⁰⁹. Where the author has granted the right of cable retransmission to a broadcasting organization or to the producer of an audio recording or film, the cable operator shall nevertheless pay the author an equitable remuneration for the cable retransmission²¹⁰

The collecting society shall take measures to ensure that those persons who by law or under the statute are authorized to represent the collecting society do so in a sound, prudent and appropriate manner²¹¹. In order to be able to identify and avoid conflicts of interest of persons who, by law or under the statute, are authorized to represent the collecting society the collecting society shall put in place and apply procedures to prevent adverse effects for members and entitled persons²¹². The collecting society shall thereby also stipulate that unavoidable conflicts of interest must be disclosed, monitored and ended at the earliest opportunity. Those persons who by law or under the statute are authorized to represent the

²⁰⁷M. Gonçalo Macedo, 'Hellenic Foundation For European And Foreign Policy: European Parliament: Collecting Societies And Cultural Diversity In Music Sector', P(57)

²⁰⁸ *Ibid*

²⁰⁹ *Ibid*

²¹⁰ German Copyright Act, S(20)(b)(2)

²¹¹ Germany Act on Management of Copyright and Neighboring Rights By Collective Societies (2016)S(21)(1)

²¹² *Ibid*, S(21)(2)

collecting society shall make an individual statement to the general assembly of members at least once a year which shall contain the following information²¹³.

The collecting society shall, even if it is not operated in the legal form of a corporation, draw up, have audited and disclose financial statements comprising a balance sheet, profit and loss account, cash-flow statement and an annex, and a management report under the provisions applicable to large corporations set out in the Commercial Code²¹⁴. The audit of the financial statements shall include an examination of whether the obligations have been fulfilled and whether the valuations and attribution to accounts have been done correctly and comprehensibly, taking account of the principle of consistency, as well as an examination of whether the investment guidelines were complied with when the rights revenue was invested²¹⁵.

The collective society has to disclose the necessary information to the public. The collecting society shall publish at least the following information on its website²¹⁶: its statute,²¹⁷ the conditions of management, including the conditions for the termination of the management relationship and the withdrawal of rights, the standard license agreements, the tariffs and standard rates of remuneration²¹⁸, in each case including discounts, the inclusive agreements it has concluded, a list of those persons who by law or under the statute are authorized to represent the collecting society, the distribution plan, the general policy on deductions made from the rights revenue in respect of management fees, the general policy on deductions made from the rights revenue for purposes other than in respect of management fees, including where applicable, deductions made to promote culturally important works and contributions and for the establishment and operation of welfare and assistance schemes²¹⁹, and the general policy on the use of non-distributable rights revenue.

²¹³ *Ibid*, S(21)(3)

²¹⁴ *Collective Society Act 2016*, S(57)(1)

²¹⁵ *Ibid*, S(57)(2)

²¹⁶ *Ibid*, S(56)

²¹⁷ *Ibid*, S(56)(1)

²¹⁸ *Ibid*, S(56)(4)

²¹⁹ *Ibid*, S(56)(9)

The collecting society shall have a body which is entrusted with continuously monitoring those persons who by law or under the statute are authorized to represent the collecting society²²⁰. There shall be fair and balanced representation of the different categories of members in the supervisory body. The supervisory body shall have at least the following powers and tasks: The supervisory body shall have at least the following powers and tasks: the powers delegated to it by the general assembly of members, the monitoring of the activities of and performance of tasks by those persons who, by law or under the statute, are authorized to represent the collecting society, the monitoring of the activities of and performance of tasks by those persons who, by law or under the statute, are authorized to represent a management entity which is dependent on the collecting society²²¹ in so far as the dependent management entity carries out the activities of a collecting society. The supervisory body shall meet regularly and shall report on its activities to the general assembly of members at least once a year. Germany designed system of prior authorization and permanent supervision of collecting societies according to which anybody wishing to undertake collective rights management must seek prior permission.

In Germany there are thirteen Collective Management Societies which are large in number in comparison with other EU States next to France. Among these collective societies GEMA is the most famous collective societies in Europe. One of the largest collecting societies in terms of revenues, for instance, is GEMA in Germany which collected over 860 million Euros in 2010 (GEMA 2011)²²². This collecting society is concerned with the administration of copyrights held by composers, lyricists and publishers of musical works in Germany²²³. It does not deal with copyright related or neighboring rights of performing artists such as singers or instrumentalists and record companies for which there is another collecting society.

GEMA offers licenses to use copyright works and collects royalties on behalf of its members. For example, record companies pay a flat fee per copy for the right to reproduce musical

²²⁰ *Ibid*, S(22)(1)

²²¹ *Ibid*, S(22)(3)(1-5)

²²² Christian Handke, ' the Economics of Collective Copyright Management, Assistant Professor in Cultural Economics at Erasmus University Rotter damand Senior Researcher at the Institute for Information Law at University of Amsterdam ' P(3)

²²³ *Ibid*

recordings. Broadcasting stations pay for the right to make recordings available to their customers. GEMA also offers licenses to producers of movies and ads, restaurants or even nursing homes, and it collects and distributes copying levies from suppliers of copying technology. And also, it distributes the revenues from licensing among its members according to estimates of the use of specific works and after subtracting an administration fee to finance the operations of the collective. Some types of works are treated favorably, most importantly some types of 'serious' music. It participates in reciprocal agreements with collecting societies who operate in other territories.²²⁴ Through this arrangement, GEMA administers the rights of over two million foreign rights holders within Germany.²²⁵ In a similar manner as with the domestic repertoire of its members GEMA collects royalty payments for international repertoire used in Germany and forwards receipts to the relevant collecting societies abroad after deducting an administration fee.

GEMA also monitors the use and users of copyright works²²⁶. This information is utilized to set adequate prices and to enforce copyrights where deemed necessary. Finally, GEMA bargains with users over royalties. At the time of writing, for example, there is a notorious conflict between GEMA and Google about licenses for music made available via the Google subsidiary YouTube.

The legal status and structure of collecting societies greatly vary from one country to another. Beyond the legal framework, traditions count a lot²²⁷. In certain countries performing rights and mechanical rights are administered by one and the same society as GEMA in Germany while in other countries these rights are administered by two separate societies as in France, where SACEM administers performing rights and SDRM mechanical rights²²⁸. GEMA also exercises the rights of authors in the online sector. GEMA licenses responsible content providers, such as Music load, Apple's iTunes Store, Spotify, Napster, and others.

As a result, the General Principles Enshrined in the Germany Law on collective Rights Management were put in place to provide a comprehensive legal framework for collective

²²⁴ *Ibid*

²²⁵ *Ibid*

²²⁶ *Ibid*

²²⁷ Péter Lánchidi, 'Collective Management of Music Rights and Competition Policy in the European Union' P(56)

²²⁸ *Ibid*

rights management and the activities of CMOs in Germany. The law was based on several fundamental principles. It is driven by and based on:²²⁹ protecting and fostering creativity is an important function of copyright, collective rights management is particularly required for protecting the creativity and defending the rights of natural persons notably of authors and performers via CMOs as their trustees, Collective rights management by CMOs is useful and beneficial for all parties notably right holders and users as well as for culture and society at large in many sectors of copyright and neighboring rights²³⁰. Collective management is therefore an indispensable part of the German copyright system and collective rights management can function well only on the basis of a reasonable balance of all interests and rights.

In addition, the German Copyright Act reflects the requirements of international copyright law treaties such as inter alia the Revised Berne Convention, the Rome Convention, WIPO Copyright Treaty and the WIPO Performances and Phonogram Treaty known as the Internet Treaties, which aim at preventing unauthorized access to and use of creative works on the Internet or other digital networks²³¹. The same principles apply mutatis mutandis to the protection of intellectual property in other fields such as the protection of industrial property. However, the German legal system does not only protect the interests and rights of rights holders²³². The German Copyright German collecting societies have joined together internationally into umbrella groups such as the (CISAC) using this organization as a lobby group to influence governments, international organizations and the European Community.

The famous Germany collective management society GEMA has entered into reciprocal agreements over performing and broadcasting rights with seventy three of its foreign sister companies. For mechanical reproduction rights, GEMA entered into reciprocal agreements

²²⁹*The Annual Reports Of The German Patent And Trade Mark Office Contain Informative Figures And Statistics Relating To IP Applications In Germany And On All Other Activities Of The DPMA* <https://www.Dpma.De/English/Our_Office/Publications/Annual_Reports/Index.Html>, accessed December 12, 2017.

²³⁰ *Ibid*

²³¹*DerStand Der Deutschsprachigen Dokumentation Kann Aktueller Sein. Vergleichen Sie Dazu* [<\(Bitte Http://Www.Gesetze-Im-Internet.De/Urhg/BJNR012730965.Html\)>](https://www.Gesetze-Im-Internet.De/Englisch_Urhg/) accessed On December 20, 2017

²³² *Ibid*

with fifty different collecting societies. A reciprocal agreement facilitates the mutual granting of rights; foreign collecting societies transfer to GEMA the exercise of performance, broadcast, and reproduction rights of their entire inventory within Germany, along with the collection of corresponding usage fees, and in return GEMA grants the same rights and duties to foreign counterparts holding corresponding legal positions in their own territories. This symbolizes that Germany collective society is strong enough to protect the interest of the copyright holders abroad.

3.2.4.2. German Patent and Trade Mark Office

The German Patent and Trademark is one of the leading national institutions for the protection of intellectual property at world level²³³. In Germany, collective management organizations are governed by the administration of copyright and neighboring right Act and perhaps the most extensive model of sector specific state control of the operation of a collective copyright management anywhere in the world. According to the Copyright Administration Act the German Patent Office must approve the formation of collective management organization and can revoke authorization any time²³⁴. The supervisory authority shall be the Patent Office²³⁵. Any supervision of collecting societies under other statutory provisions shall be exercised in conjunction with the Patent Office²³⁶.

The supervisory authority shall ensure that collecting societies faithfully discharge their obligations under this Law. The supervisory authority may at all time demand from collecting societies information on any matters concerning their conduct of business and require to see their books or other business papers²³⁷.The supervisory authority shall be entitled to be represented at the meetings of members and also at any meetings of the supervisory board or advisory board where such exist²³⁸.

The German Patent Office has responsibility for overseeing the operations of collective management organizations. It also provides an Arbitration Board in cases of disagreement

²³³ *German Patent and Trademark Office, Annual Report 2008:P(4)*

²³⁴ *German Copyright Administration Act 1995, S(4)*

²³⁵ *Ibid, S(18)(1)*

²³⁶ *Ibid, S(18)(2)*

²³⁷ *Ibid, S(19)(2)*

²³⁸ *Ibid, S(19)(3)*

concerning tariffs. The decisions of this Arbitration Board may, however, be appealed in normal courts of law if the parties are not satisfied with the decision.

Grounding collective society Act, the Patent Office may appoint board members of any collective management organization and revoke any person entitled by the law or the statutes to represent a collective society who does not possess the trustworthiness needed for the exercise of his activity. The supervisory authority shall set a date for him to be relieved from his post to avoid revocation of authorization under Art 4(1).The supervisory authority may forbid him to exercise his activity further pending expiry of the time limit where necessary to prevent serious detriment²³⁹.

In Germany, the establishment of a Collective Copyright Society requires to be jointly authorized by the German Patent office and the Kartellamt. Their activities are also under the control of these institutions. Not only the Patent Office can demand any information and attend the meetings of their boards, but also they can require the Collective Copyright Society to replace their manager or even forbid them to carry out their activity.²⁴⁰ Furthermore, a Collective Copyright Society can be legally bound to enter into contract with any user and to conclude blanket contracts with representative association of commercial users on their request. Finally, the Patent Office plays a role of arbitrator when CCS and users are in conflict. Only in case of failure, the dispute takes the form of a trial²⁴¹.

3.2.5. Legal Framework of Copyright Administration in Nigeria

Since independence in 1960, Nigeria has had two indigenous copyright legislations: The Copyright Decree of 1970 and the Copyright Decree 47 of 1988 later codified as Copyright Act, Chapter C28, Laws of the Federation of Nigeria, 2004 following amendments in 1992 and 1999.

The first indigenous Copyright Act in 1970 contained very little information on collective administration. However, the little information it contained forms the bedrock of Nigeria's legal framework for collective administration. Section 13 of the 1970 Copyright Act had five

²³⁹ *Ibid*, S(4)(1)

²⁴⁰ Fabrice Rochelandet, 'An Evaluation Of Collective Administration Of Copyright In Europe'(Inaugural Annual Congress 2002), P(5)

²⁴¹ *Ibid*

sub sections and was designated by short title as the section on appointment and powers of competent authority. These sub-sections provided the following important information: appointment of three persons by the Commissioner to constitute the competent authority²⁴², checks and balances on a licensing body's powers to grant licenses²⁴³, integrity, fairness and transparency of members of the competent authority²⁴⁴, provisions for appeal to the Commissioner by any aggrieved persons and powers to make regulation in respect of the competent authority.

Despite the fact that the Copyright Act 1970 was very old, it addressed some provisions on collective management society and this paved the way for the first time for further enactment of copyright law and establishment of collective management organizations. International treaties have impacted Nigerian intellectual property law²⁴⁵. The Nigerian copyright act has subsequently been amended in 1992 and 1999 and now incorporated as Copyright Act CAP C28 Laws of the Federation of Nigeria 2004 to cope with increasing national and international responsibilities within copyright system. Recently, the commission is the Federal Government of Nigeria Agency in the Federal Ministry of Justice responsible for all copyright matters with an expanded mandate for the administration of copyright, enforcement of copyright, regulation of copyright based industries and promotion of copyright in Nigeria.

The Nigerian Copyright Bill 2015 Draft has 88 sections divided into eleven parts. Part ten of the Draft Bill provides the copyright administration in Nigeria and Collective management of copyright is stated under this part. The Nigerian Draft Copyright Bill 2015 part six provides for anti-piracy measures. In particular, provision is made for prohibition of circumvention of technological protection measures adopted by owners of copyright and falsification, alteration or removal of electronic rights management information²⁴⁶. Rights management information means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work,

²⁴² *Copyright Act 1970, S(13)*

²⁴³ *Ibid, S(13)(1)*

²⁴⁴ *Ibid, (13)(2)*

²⁴⁵ *Sopefolu O. Adegoke, 'Intellectual Property Rights In Sub-Saharan Africa, Senior Thesis' P(24)*

²⁴⁶ *Nigerian Copyright Bill 2015 ,Art(45)*

and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public²⁴⁷.

The Nigerian copyright act provides provisions on how to control on line service or network service. Service provider means a provider of online services or network access, or the operator of facilities therefore and includes an entity offering the transmission routing or providing of connections for digital online communications between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received²⁴⁸. Notwithstanding the provisions of any other law, the Commission may directly or with the assistance of any other person block or disable access to any content or link hosted on a system or network which it reasonably believes to infringe copyright under this Act²⁴⁹.

The owner of copyright may issue notice of such infringement to the relevant service provider requesting the service provider to take down or disable access to any infringing content or link to such content, hosted on its systems or networks²⁵⁰.

In addition to enacting and amending its national copyright law, Nigeria is a signatory to several international treaties for the protection of copyright and related rights of which content had been incorporated to in to local legislation. The copyright related conventions to which Nigeria is signatory include: Universal Copyright Convention (UCC), International Convention for the Protection of Performers, Producers of phonograms and Broadcasting Organizations, The Universal Declaration of human rights (Article 27), which includes, the right to benefit from the protection of authorship of any scientific, literary, or artistic production, the Berne Convention of 1886 covers literary and artistic works. Nigeria became a member of the Berne Union in 1993, WIPO Convention), Agreement on Trade Related Aspect of Intellectual Property Rights (TRIPS) with in framework of GATT, WIPO performances and Phonograms Treaty and WIPO Copyright Treaty. The last two treatises are

²⁴⁷ *Ibid*, Art(45)(3)

²⁴⁸ *Ibid*

²⁴⁹ *Ibid* Art(54)

²⁵⁰ *Ibid* Art47(1)

called internet treaties as it empowers the country to protect the works on the internet and to use right management system for works.

3.2.6. Institutional Framework of Collective Management Society in Nigeria

3.2.6.1. Copyright Collective Management Society of Nigeria

A collective management organization referred to as a CMO may be formed in respect of any one or more rights of copyright owners for the benefit of such owners, and the CMO may apply to the Commission for approval to operate as a collective management organization for the purpose of this Act.²⁵¹ Collective management organization means an association of copyright owners which has as its principal objectives the negotiating and granting of licenses, collecting and distributing of royalties in respect of copyright works, group of persons includes a body corporate.²⁵²

The Commission may approve a CMO if it is satisfied that it is incorporated as a company limited by guarantee, its objects are to carry out the general duty of negotiating and granting copyright licenses and collecting royalties on behalf of copyright owners and distributing same to them, it represents a substantial number of owners of copyright in any category of works protected by this Act and it complies with the terms and conditions prescribed by regulations made by the Commission under this section²⁵³. The Commission shall not approve another CMO in respect of any class of copyright owners if it is satisfied that an existing approved CMO adequately protects the interests of that class of copyright owners²⁵⁴. It shall be unlawful for any group of persons, howsoever described, to purport to perform the duties of a CMO without the approval of the Commission as required under this section.²⁵⁵

There are criteria to grant license for Collective management society in Nigeria Subject to the conditions specified under Section 39 of the Act, a company may apply to the Commission in the prescribed form and upon payment of the prescribed fees, for grant of license to operate as a Collective Management Organization. Every Company applying for license to operate as a Collective Management Organization shall furnish the Commission with the following

²⁵¹ *Nigerian Copyright Commission Draft Copyright Bill 2015, Art74(1)*

²⁵² *Ibid, Art 74(8)*

²⁵³ *Ibid, Art 74(2)(a-d)*

²⁵⁴ *Ibid, Art74(3)*

²⁵⁵ *Ibid, Art 74(4)*

documents:²⁵⁶ a Certificate of registration in respect of the company issued under the companies and allied matters act, the Memorandum of Association of the Company²⁵⁷, the Articles of Association of the Company²⁵⁸, Statement indicating the class of right or category of right owners in which the society owns rights, or intends to represent or act for, membership list of not less than 100 right owners representing the class of right to which the company is seeking a license to operate as a Collective Management Organization, which list shall indicate the signed consent of such persons to belong to the Organization, or where the Organization has been in existence, that they are members of the society, undertakings by at least five directors including the Chairman of the Company that the Company shall comply with provisions of the Copyright Act and these Regulations in respect of the operations of the Organization²⁵⁹, membership agreement used by the organization²⁶⁰.

The Nigerian Copyright Act allows multiple of collective management societies. The best known of collective management societies in Nigeria are COSON, MCSN, REPRONIG and AVRS. Copyright Society of Nigeria (COSON) is the sole body licensed for collective administration of

rights in musical and sound recordings in Nigeria. Its activities cover authors, composers, performers, publishers of musical works and sound recordings, public performance of musical work and records inclusive. Its objectives are to promote and protect the copyright of practitioners in the Nigerian music industry. Membership of COSON is open to all owners of copyright or neighboring rights in musical works or sound recordings²⁶¹.

The reformation initiative for collective administration of copyright in Nigeria which commenced about the end of 2006 culminated in the issuance of a new regulation for collective management organizations in Nigeria²⁶². The reform not only brought about the issuance of the regulation but by virtue of the regulation and an application process that

²⁵⁶ *Copyright(Collective Management Organizations) Regulations2007,Art2(1)*

²⁵⁷ *Ibid, Art2(2)(ii)*

²⁵⁸ *Ibid, Art2(2)(iii)*

²⁵⁹ *Ibid, Art2(2)(vi)*

²⁶⁰ *Ibid, Art2(2)(vii)*

²⁶¹ *Ibid*

²⁶² OlaOlukunle, 'CopyrightCollectiveAdministrationinNigeria' <<http://www.bookdepository.com/Copyright-Collective-Administration-Nigeria>> accessed 23th December2017

issued the Copyright Society of Nigeria (COSON) obtained approval from the Nigerian Copyright Commission and emerged as the sole collective management organization for musical works and sound recordings in Nigeria²⁶³. COSON and MCSN are charged with the responsibility of negotiating licensing arrangements with users on favorable terms as well as the collection and distribution of royalties on behalf of members. Other collective licensing bodies are the Audio Visual Rights Society of Nigeria (AVRS) for audio-visual works and the Reproduction Rights Society of Nigeria (REPRONIG) for cinematographic work.

The reach of collective administration in Nigeria spreads beyond just the music industry, covering also the literary sector²⁶⁴. In this sector, right owners are represented by the Reproduction Right Society of Nigeria (REPRONIG). REPRONIG is a company limited by guarantee with its main object as negotiating and granting of licenses, as well as collecting, and distribution of royalties to right owners. It represents copyright owners in the literary sector and seeks to ensure that the reprographic rights of its members are protected and that members are adequately remunerated for the use of their works. The organization was approved by the Nigerian Copyright Commission in 2001 and commenced operations on the 3rd of November 2003. Its approval has been renewed twice, first in 2004 and subsequently in 2007²⁶⁵.

3.2.6.2. Supervision of Collective Management Societies in Nigeria

The primary source of law for supervision of CMOs is the Copyright Act Cap C28, Laws of the Federation of Nigeria 2004 and the Copyright Collective Management Organizations Regulations 2007. Within the context of supervision of the activities of CMOs, section 2(3)(vi) of the Nigerian CMO Regulations states that the Articles of Association of the CMO must make provision for the attendance of a representative of NCC as an observer at the Governing Board and General Meetings of the CMO. The Regulations provides that NCC may require any new applicant to advertise, at its own cost, its application for grant of license to operate as a CMO in designated national newspapers²⁶⁶. Finally, the Regulation provides

²⁶³ *Ibid*

²⁶⁴ *Ibid*

²⁶⁵ *Ibid*

²⁶⁶ *Supra Note (241), S(2(4))*

that the license granted by NCC is valid for three years and may be renewed every two years for a successive two year period²⁶⁷.

The Nigerian Regulations also provide for the appointment of an auditor at any time to audit the accounts of a CMO and the cost of such auditing shall be borne by the CMO. However, the Nigerian Regulations empower NCC to initiate criminal proceedings against the CMO where an offence has been committed by the CMO or by any of its officers.

During the registration of collective management organization, the regulations impose certain positive obligations on CMO to furnish certain information both to the Nigerian Copyright Commission as well as the general public. The regulation provides that Nigerian Copyright Commission must be notified by the CMO on the following issues: any alterations to its memorandum or articles of association or any internal rules, any adoption of tariffs and alteration thereof, any reciprocal representation agreements entered into with foreign collecting societies, any alteration to the standard membership agreement and any decisions in judicial or official proceedings to which the CMO is a party where the Commission so requires²⁶⁸.

The regulatory and operational framework for collective administration in Nigeria is as provided for under the Nigerian Copyright Act²⁶⁹ and the Copyright Collective Management Organization Regulation. The Copyright Act of Nigeria has been amended twice. The first amendment of the Act, done in 1992, amongst other things introduced regulatory provisions on collective administration²⁷⁰ and a further amendment was done in 1999 empowering the Commission to carry out enforcement activities²⁷¹.

A collecting management organization as a society may be formed in respect of anyone or more rights of copyrights owners for the benefit of such owners, and the society may apply to the commission for approval to operate as a collecting society for the purpose of this Act²⁷². It shall be unlawful for any group of persons to purport to perform the duties of a society

²⁶⁷ *Supra Note(254), S(2)(9)*

²⁶⁸ *Nigerian Copyright Regulation, S(8)(1)*

²⁶⁹ *Nigerian Copyright Act, S(39)*

²⁷⁰ *Ibid, S(17)(39)*

²⁷¹ *Ibid, S(37)*

²⁷² *Ibid, Sub S(1)*

without the approval of the Commission as required under this section of this Act²⁷³. The combined effect of these provisions is that the approval by the Nigerian Copyright Commission is a prerequisite to the operation of any society performing or desirous of performing the functions of a collecting society. Any person who contravenes the provision of the subsection (4) is guilty of an offence and liable on conviction of fine or/and imprisonment.

Beginning 2002, Nigeria has made attempts to address revise the IPR related laws, ostensibly because of external pressures as well as the obligations hanging over the country as result of the provisions of the TRIPS Agreement²⁷⁴.

3.2.6.3. The Nigerian Copyright Commission (NCC)

The Federal Military Government in 1988 promulgated the copyright Decree No. 47 of 1988. This Decree was re-designated the Copyright Act in 1990. This Act not only created favorable conditions for actualization of author's potentials through protection of creative work but also incorporated on establishment for the first time machinery for the administration of copyright in Nigeria called the Nigerian Copyright Council²⁷⁵. The Nigerian Copyright Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name²⁷⁶. The commission shall be responsible for all matters affecting copyright in Nigeria as provided in the copyright Act,²⁷⁷ monitor and supervise Nigerian position in relation to international conventions and advise government, and regulate conditions for the conclusion of bilateral and multilateral agreement between Nigeria and any other countries.

The Nigerian Copyright Commission, established under section 34 of the Nigerian Act, is the statutory organ responsible for all matters affecting copyright in Nigeria as provided for in the Copyright Act. Under section 39(2) of the Nigerian Act, the NCC has the powers to give approval for any entity seeking to operate as a CMO for the purposes of the Act. The

²⁷³ *Ibid*, S(34)(4)

²⁷⁴ George M. Sikoyo, ' Intellectual Property Protection In Africa ', P(26)

²⁷⁵ *Historical Background of NCC* <<http://www.copyright.gov.ng/historicalbackground>> accessed on December 25, 2017.

²⁷⁶ *Nigerian Copyright Act 2004*, S(34(1)

²⁷⁷ *Ibid*, S(34(2)

Nigerian Act criminalizes the act of performing the duties of a CMO without the approval of the NCC but it goes a step further to impose a graduated scale of fines and an imprisonment term²⁷⁸.

The Commission has zonal offices in some states of the Federation for the purposes of decentralized administration of copyright matters²⁷⁹. It is headed by a Director-General who is responsible for the day to day administration of NCC²⁸⁰. The Director General shall be the Chief Executive and appointed by the President on the recommendation of the Minister and responsible on day to day administration of the commission²⁸¹.

The commission shall have a governing board which shall consist of the following: a chair man to be a person knowledgeable in copyright matters to be appointed by the president on the recommendation of the Minister, the Director General of the commission, one representative of the Federal Ministry of Justice and Ministry of Education, a representative of Nigerian Police force not below the rank of a commissioner of police, one representative of Nigerian Customs service not below the rank of a comptroller customs²⁸² and six other persons who shall represent as far as possible the authors in the literary work, artistic work, music work, cinematograph films, sound recordings, and broad casts²⁸³. Here, the board has the power to adopt rules governing its procedure and methods of operations of collective societies.

For effective and efficient administration of copyright, enforcement of copyright laws and fight against infringement, the Nigerian Copyright Commission has been divided into various departments, headed by duly appointed officers²⁸⁴. Such departments include regulatory department, enforcement department, public affairs department, administrative department, legal unit, governing board, prosecution department and internal audit unit. These

²⁷⁸ *Nigerian Copyright Act, S(39)(5)*

²⁷⁹ Mary Imelda Obianuju Now, 'The Challenges of the Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy In Nigeria: Global Journal of Politics and Law Research' Vol.(2), P(23)

²⁸⁰ *Ibid*

²⁸¹ *Ibid*

²⁸² *Nigerian Copyright Act 2004, S(35)(1)(a-f)*

²⁸³ *Nigeria Copyright Act 2004, S (35)(1)(g)*

²⁸⁴ *Supra Note(279)*

departments are saddled with varying functions, including fight against copyright piracy. Piracy as a global cankerworm affects both developed and developing countries of the world. It remains a challenge to law enforcement agencies and the society at large. In Nigeria today, piracy hits all sectors of copyright industry, but the worst hit is the entertainment industry, hence one of the greatest challenges facing the Nigerian entertainment industry is piracy which has robbed the industry of billions of Naira²⁸⁵. The Nigerian Copyright Commission established under the Act is the only government agency responsible for copyright administration in Nigeria.

Since the establishment of the NCC in 1989, it has worked through its enforcement unit tirelessly to clamp down on piracy and reduce it to the barest minimum. Various initiatives were made to fight against piracy. The aims of the initiative are to combat all forms of piracy of music, film, software, books and all other protected works, create conducive environment for copyright protection for all categories of work, empower local industries, create opportunities for legitimate distribution of protected works and attract foreign investment and through a sustained campaign to restore the image of Nigeria as a country that upholds the ideals of creativity. The Nigerian Copyright Commission designed the national anti piracy campaign for effective protection against piracy and all forms of intellectual property theft in 2005. The Nigerian government has adopted a zero tolerance for acts of piracy. In line with the zero tolerance for piracy the copyright Act in its wisdom provides for antipiracy measures to assist the commission effectively and efficiently carry out its functions²⁸⁶.

Hence, through the national policy, Nigeria has managed not only to raise public awareness about the copyright law and its importance to all the stakeholders and public in general but also well to promote indigenous artists. She has successfully changed national attitudes in favor of the local talents and this has consequently witnessed a boom in indigenous music industries from the late 1970s²⁸⁷.

²⁸⁵ *Ibid*, P(3)

²⁸⁶ *Ibid*

²⁸⁷ *Ibid*

3.2.7. Legal Frame Work of Copyright Administration in India

In India, copyright law is governed by the Copyright Act, 1957. It provides protection to the rights of creators of different types of work like literary works, dramatic works, graphical works, musical works and artistic works²⁸⁸. The copyright Act 1957 as amended in 1999 governs the copyright law in India. It has established a copyright office under the immediate control of the Registrar of Copyright, to facilitate registration of copyright²⁸⁹. It has also established a copyright Board with Registrar of Copyright as its Secretary. The Copyright Board is meant to hear and settle certain kinds of disputes arising under the act²⁹⁰. The Copyright Act, 1957 governs the laws and applicable rules related to the subject of copyright in India. The Act was valid from January 21, 1958 and created copyright office and copyright board and also introduced civil and criminal remedies against infringement.

The Indian copyright law is in conformity with the provisions of the TRIPS Agreement of the WTO. It is also in line with the provisions of the Berne Convention for the Protection of literary and Artistic Works and the Universal Copyright Convention 1952. India is a member of both conventions²⁹¹.

There was no provision in the Copyright Act referred as the Act for the collective administration of copyright by copyright societies before 1994²⁹². Recognizing the importance of collective management of copyright, the Indian parliament incorporated the provision of copyright societies under chapter seven of the Act by the amendment of 1994. After this amendment, performing rights societies were replaced by the copyright societies.

The working of performing rights societies was limited to granting of the performance rights whereas copyright societies extends license for all classes of work. Copyright society has been defined under the Act as a society registered under sub section (3) of section 33 of the Act. The Act provides that after the Amendment Act of 1994, the business of issuing or

²⁸⁸*The Copyright Act, 1957, S(13)*

²⁸⁹Ranbir Singh, '*Transforming Dimension of Intellectual Property Right Challenges for New Age Libraries:Published by National Law University*', P(40)

²⁹⁰ *Ibid*

²⁹¹ *Ibid*

²⁹² *Ibid*

granting license in respect of all the works in which copyright subsists shall be carried out only by a Society registered under the Act²⁹³.

The present Copyright Act has been amended several times; most recently it was amended in 2012. Copyright societies in India have been accorded a monopoly status by the Indian copyright Act. Copyright Societies are important institutions that bridge the gap between the copyright holders and users of the works protected by copyright. Initially copyright societies came into ²⁹⁴existence as not-for-profit organizations but with the growth of business, they took shape of big business house that are interested only in profit-making and not copyright management.

Moreover, the Copyright Amendment Act of 2012 Amendment made significant changes in the working of copyright societies. Before the 2012 Amendment, copyright owners were allowed to grant license in respect of their work individually in respect of all categories of work²⁹⁵. But the 2012 Amendment provides that copyright societies shall have the exclusive right to carry out the business of issuing or granting license in respect of literary, dramatic musical and artistic work incorporated in a cinematographic film²⁹⁶.

The 2012 Amendment also provided that all the copyright societies already existing in India before the Amendment shall get themselves re-registered within a period of one year from the date of Amendment²⁹⁷. Another important amendment in this area was the insertion of Section 33(A). This section imposes a mandate on every copyright society to publish its tariff scheme. It also provides for an appeal to the Copyright Board by a person who is aggrieved by such tariff scheme. According to the 2012 Amendment, Copyright Board will have the power to remove any unreasonable inconsistency. Copyright Board may fix an interim tariff to be paid by the parties after hearing both the parties²⁹⁸.

²⁹³ *Copyright Act 1994, S(33)(1)*

²⁹⁴ Sunaina Mishra & Deepankar Mishra, 'Legal Framework Of Copyright Societies And Competition Law In India: Indian Competition Law Review', V(II)

²⁹⁵ *The Copyright Act, 1957, S(33)(1)*.

²⁹⁶ *The Copyright Act 2012, S(33)(3(A))*

²⁹⁷ *Ibid*

²⁹⁸ *Ibid*

The Copyright Amendment Act, 2012 has been enacted by the Government of India bringing changes to the Copyright Act, 1957. The amendments make Indian copyright law compliant with the Internet Treaties, WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT)²⁹⁹. The amendments grant performers' rights to performers. While introducing technological protection measures, the law ensures that fair use survives in the digital era by providing special fair use provisions. The amendments have gone beyond the limited mandate of WCT and WPPT and made many author friendly amendments to streamline business practices, special provisions for disabled, amendments facilitating access to works and other amendments to streamline copyright administration³⁰⁰.

The 2012 Amendment also helped in removing the ambiguities created by the judgment. The amended law also makes it compulsory for radio and broadcasters to pay royalties every time they air a recording. The biggest impact of these changes will be on India's film industry, especially on the lyricists and composers of Bollywood music who have long lobbied for rights over their work.

No doubt that after 2012 amendments artists in film industry gets some strong protection and especially economic rights over their work. Before the 2012 amendment those who have the money were more powerful than those who make the arts. The amendment act recognizes this and it addresses a power balance but this alone is not enough.

One of the high points of 2012 amendments was to ensure that users of copyrighted materials have affirmative access to protected materials and their fair use rights are duly protected and enforced. Amendment Act not only broadened the scope of statutory and compulsory licensing provisions provided in the earlier Act but also empowered broadcasting organizations to broadcast any prior published literary, musical work and sound recording by just giving a prior notice to the copyright owner and paying royalty at the rates prescribed by the Copyright Board.³⁰¹ Neither any positive confirmation from the copyright owner is required nor do they have any say in determining royalty rates making it almost an

²⁹⁹Thomas, Zakir, 'Overview of Changes to the Indian Copyright Law: WCT; WPPT; Performers' right; Technological protection measure; Copyright society' <<http://nopr.niscair.res.in/handle/Publisher:NISCAIR-CSIR,India>> accessed November 23, 2017

³⁰⁰ *Ibid*

³⁰¹ *Copyright (Amendment), S(31)(D)*

unqualified right for the broadcasters. The Amendment Act has tried to bring the Indian Copyright regime in harmony with technological advances and concomitant international developments. And accordingly, the ambit of reproduction right has been widened to include storing of the work in any medium by electronic means. Section 65(A) and 65(B) are inserted so as promote to digital rights management. Both these provisions are aimed at protecting the rights of the copyright owners in the digital domain and there were concerns that may impinge on the fair use rights of the copyrights users as seen in case of the United States Digital Millennium Copyright Act (DMCA)³⁰².To curb piracy, the Amendment has introduced the following provisions, which are applicable in relation to copyright, performer's rights and broadcaster's right granted under the Copyright Act. For example, provision against circumvention of technology says any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by the Copyright Act with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine³⁰³. However, there are exceptions to the circumvention of technology. These are: conducting any lawful investigation, doing anything necessary for the purpose of testing the security of a computer system or a computer network with the authorization of its owner or operator, doing anything necessary to circumvent technological measures for identification or surveillance of a user and taking measures necessary in the interest of national security.

3.2.8. Institutional Frame Work of CMO in India

3.2.8.1. Collective Management Societies in India

Collective management organizations (CMOs) act on behalf of their members to negotiate rates and terms of use, issue licenses, collect and distribute royalties. CMOs are becoming more relevant as copyrighted works are increasingly delivered in digital form. CMOs generally result in a monopoly of both rights owners and users. Unrestricted monopoly is prone to abuse³⁰⁴. Therefore, to ensure the proper operation of CMOs, the government should

³⁰² *Ibid*, S(65(A)(B)

³⁰³ *Ibid*, S(65(A)

³⁰⁴ *Collective management organizations (CMOs) act on behalf of their members to negotiate rates and terms of use, issue licenses, collect and distribute royalties.*

maintain a position of cooperation or be justified in introducing legal provisions resulting in greater supervision and control over CMOs. Power corrupts, and absolute power corrupts absolutely. This maxim has no less application to the Collective Management organizations (CMOs) or the Copyright Societies as they are popularly known in India³⁰⁵.

Accordingly, a few CMO's such as the Indian Performing Rights Society (IPRS) for musical works, Phonographic Performance Limited (PPL) for sound recording, the Indian Reprographic Rights Organization (IPRO) for reprographic works and the India Singers Rights Association (ISRA) for performers (singers) rights came into existence³⁰⁶. However, the Copyright Act was amended in the year 2012 by the Copyright Amendment Act. The Amendment Act provided that every copyright society already registered before the Copyright Amendment Act, 2012 came into existence shall get itself registered within a period of one year from the date of commencement of the Amendment Act³⁰⁷.

The Amendment Act also brought about a number of changes to Indian copyright law such as allowing the authors of a work in cinematograph films to claim an equal share of the royalties earned by producers through utilization and exploitation of their creative product. This was contrary to the industry practice till then which involved authors of songs assigning away their copyrights to the producers for a one-time lump sum payment.

Every copyright society shall have a governing body with such number of persons elected from among the members of the society consisting of equal number of authors and owners of work for the purpose of the administration of the society as may be specified³⁰⁸. All members of copyrights society shall enjoy equal membership rights and there shall be no discrimination between authors and owners of rights in the distribution of royalties³⁰⁹.

The registration granted to a copyright society shall be for a period of five years and may be renewed from time to time before the end of every five years on a request in the prescribed

<http://www.apaaonline.org/pdf/APAA_63rd_council_meeting/CopyrightCommitteeReports2014/India%20Copyright%20Committee%20Special%20Topic%202014>, accessed December 12, 2017.

³⁰⁵ *Ibid*

³⁰⁶ *Supra Note (163)*

³⁰⁷ *Copyright (Amendment) Act, 2012 Subsection (1)(3A)*

³⁰⁸ *Ibid*, S(35(3))

³⁰⁹ *Ibid* S(35(4))

form and the Central Government may renew the registration. The renewal of the registration of a copyright society shall be subject to the continued collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty³¹⁰.

The power of copyright societies relating to the administration of the rights of owners has been provided under section 34 of the Act. Subject to certain conditions a copyright society may accept from the owners and authors an exclusive authority to administer any right by way of issuing license and collection of fee.³¹¹ This section also empowers the copyright societies, the authority to enter into reciprocal agreements with the collecting societies working overseas³¹². For the purpose of carrying out the administration of copyright, a copyright society is allowed to perform following functions: issuing of license, collection of fee in consideration of such license, distribution of royalties collected in the form of license fee to the owner and author of copyright, and any other function in line with other provisions³¹³.

In the Indian market, for collective administration of copyright in musical works, there are three players IPRS, PPL and ISRA. The Indian Performing Rights Society collects royalties on behalf of the composers and lyricists. Whenever there is a live performance of the work of its members, IPRS has right to claim royalty. Another society is Phonographic Performance Limited which collects royalties for sound recording. Third and the most recently established society is the Indian Singers Right Association collects royalties on behalf of singers and it the only society which is registered under the Act.

In India, the Copyright Act itself provides for a number of checks and balances such as collective control of the author and the owners of rights over Copyright Societies and such Societies must obtain approval of right owners for its procedures of collection and distribution of fees; utilization of amounts collected; provide them full and detailed information concerning all activities in relation to administration of their rights³¹⁴. The

³¹⁰ *Copyright (Amendment) Act, 2012, S(33), Subsection(1)(3A)*

³¹¹ *The Copyright Act, 1957, S(34(1)(a))*

³¹² *Ibid, S(34(2))*

³¹³ *Ibid, S(34(3))*

³¹⁴ *Indian Copyright Act 2012, S (35)*

Copyright Act provides for a formal governmental control whereby the Central Government if satisfied that the Copyright Society is detrimental to the interest of the owners of the rights concerned then it may cancel registration of such Society after conducting an inquiry³¹⁵.

As per the provisions of Section 19A of the Act, the parties to assignment of copyright may approach the Copyright Board for revocation of the assignment when assignee fails to make sufficient exercise of the rights assigned to him and such failure is not attributable to any act or omission of the assignor and any dispute with respect to assignment of copyright.³¹⁶The Copyright Board has the power to revoke and also has been authorized to resolve dispute. Disputes in relation to copyright license agreement can be adjudicated by the Copyright Board. But the Copyright Board had no power in dispute resolution post copyright amendment.

Grounding the amended copyright act, every copyright society shall publish its Tariff Scheme³¹⁷. Any person who is aggrieved by the tariff scheme may appeal to the Copyright Board and the board may if satisfied after holding such inquiry as it may consider necessary, make such orders as may be required to remove any unreasonable element, anomaly or inconsistency therein³¹⁸. The Board may after hearing the parties fix an interim tariff and direct the aggrieved parties to make the payment accordingly pending disposal of the appeal³¹⁹.

³¹⁵ *Ibid*, S(33)

³¹⁶ *Indian Copyright Amendment Act, 2012*

³¹⁷ *Ibid*, S(33)(A)(1)

³¹⁸ *Ibid*, S(33)(A)(2)

³¹⁹ *Ibid*

CHAPTER FOUR

4.1. The Copyright Administration in Ethiopia and its Challenges

4.1.1. Copyright Policy

It is unquestionable that designing copyright industry is highly important for Ethiopia because it has an economic distribution to the national GDP. Putting the right policy measures is necessary for the realization of the potential of these industries for wealth creation, promotion of culture and employment generation. Formulating a sound copyright policy is the most invaluable to protect the interest of the copyright owners and consumers or users to establish a strong and developed collective management society and this entails for effective enforcement of copyright law. The contributions of the creative industry particularly in copyright issues have been due to efficient management system.

The law grants power the EIPO to study, analyze, and recommend policies and legislation on intellectual property to the government. One of the interviewees responded that the IP policy in Ethiopia is underway which is sponsored by WIPO but still there is no IP policy in Ethiopia³²⁰. The policy must be supported by strong legal regime and the law should be supported by strong institution³²¹. Policy, law and institution go hand in hand and these three key elements complement each other for the success and effective and efficient enforcement of the rights of copyright owners.

Grounding chapter three of the thesis countries namely German, Canada, India and Nigeria designed a sound copyright policy on creative industries and supported by strategies and amended their copyright act many times to implement the policy and established different institutions of CMOs to enforce the copyright act to protect the interest of copyright holders.

³²⁰ Interview Made with Mr. Yared Alemayew, Copyright and Community Knowledge Law Enforcement Expert and ELA Member, Date April 23/4/2018

³²¹ *Ibid*

4.1.2. Legal Framework of Copyright in Ethiopia

The origins of copyright protection in Ethiopia date back to the enactment of a codified penal law and civil law in 1957 and 1960 respectively. The civil Code grants exclusive rights to authors to use their works and include certain copyright exceptions and limitations even though the code was not comprehensive. Even though the 1957 penal code was made to impose imprisonment or fine on a person committing copyright infringement, these laws were not adequate to address issues of modern copyright protection and also the 2004 new Criminal Code also address the penalties for copyright infringement.

In addition, Intellectual property rights are enshrined in the 1994 Constitution of the Federal Democratic Republic of Ethiopia. The Constitution empowers the House of Peoples' Representatives to enact laws on patents and copyrights³²². The FDRE Constitution provides for the protection of copyright and the government has also enacted copyright and related rights law.

The parliament enacted the Copyright and Neighboring Rights Protection Proclamation No. 410/2004 in 2004 as the country's first comprehensive legal framework. The enactment of this law has seen as a new chapter for the emergence of the copyright industry in Ethiopia but it doesn't say anything how copyright is administered³²³. The government of Ethiopia proclaims new law to regulate Copyright and Neighboring rights called Copyright and Neighboring Rights Protection Proclamation, Proclamation No. 410/2004, herein after called the proclamation or the Ethiopian copyright law. The preamble of the proclamation states that artistic, literary and other related works should be protected taking in to consideration the economic, cultural, social and technological advancement significance of such works.

³²² *Supra Note(19), Art(55)(9)*

³²³ Kalsay Gebremedhn, 'The Emerging Ethiopian Copyright and Related Rights Collecting Management Society :Assessment Of Challenges And Prospects', (2013) Thesis, Addis Ababa University

The period before 2004 was predominantly characterized as time dark for copyright industry and the copyright industry was beyond the reach of the Code and law enforcement bodies³²⁴. As a result, infringement of copyright was so widespread that rights holders had to resort to public appeals through demonstrations and other activities³²⁵. But this does not mean that artistic and literary works were not regulated because the Civil Code of Ethiopia of 1960 devotes provisions for artistic and literary works under articles 1647-1674 and articles 2672-2697 of the Code³²⁶. However, the Code is not comprehensive to regulate every activity of right holders and users.

Although the Ethiopian civil code, the FDRE constitution and the criminal law have some provisions on the protection of an artistic works, the first modern copyright and neighboring rights proclamation No.410/2004 was enacted to protect the interest of the copyright owners. However, this copyright and neighboring rights proclamation is not enough to protect the interest of the copyright owners since there are some gaps on the provision of the copyright regime and does not address collective copyright administration and collective management society.

The Copyright and Neighboring Rights Proclamation gives protection to subject matters literary, artistic, and other creative works, and recognizes rights on works in the following areas:³²⁷ Books, booklets, articles in reviews and newspapers, and computer programs, speeches, lectures, addresses, sermons, and other oral works dramatic arts, dramatic musical works, pantomimes, choreographic works, and other works created for stage production musical compositions³²⁸ audiovisual works, works of architecture³²⁹, works of drawing, painting, sculpture, engraving, lithography, tapestry, and other works of fine art,

³²⁴Taame Berihu, 'Exceptions and Limitations under Ethiopian Copyright Law: A Comparative Analysis, Addis Ababa University, LLM Thesis'(2013), P(58)

³²⁵ *Ibid*

³²⁶ *Ibid*

³²⁷ Copyright and Neighboring Right Proclamation No.410/2004, Art(2)(30)

³²⁸ *Ibid, Sub Art(30)(a-d)*

³²⁹ *Ibid, Sub Art(30)(f)*

Photographic works, Illustrations, maps, plans, sketches, and three-dimensional works related to geography, topography, architecture, or science³³⁰ and applied art³³¹.

Though Ethiopia has enacted new and relatively comprehensive copyright proclamation in 2004, the level of copyright violation has been rampant and as a result copyright holders couldn't get appropriate economic reward out of their creative works³³². To minimizing the level of copyright violation and realize their economic benefit, copyright holders and their professional associations have established a collective administration mechanism known by the name Ethiopian Copyright and Neighboring Rights Collective Management Society in November 2009³³³. Though the establishment of ECNRCME dates back to 2009, it only exists in name. It has done, one can say, nothing to collect and distribute royalties among its members since its establishment³³⁴. It has not been involved in collection and distribution of royalties and other activities that contribute to combat the prevalent copyright violation³³⁵.

Since the copyright and neighboring right proclamation No. 410/2004 does not address collective management society, the new amended Copyright and Neighboring Right Proclamation No.872/2014 was enacted which provides collective administration of copyright through collective management society because the protection of copyright would be impractical individually. So, establishing the collective copyright management society for Ethiopia is very important to protect the balanced rights of the copyright owners and users. As a result of the amended Copyright and Neighboring Rights Proclamation No 872/2014, any professional association or institution can be a member of collective management society.

The copyright and neighboring rights proclamation No.872/2014 has come up with a glimmer of hope for copyright industry in Ethiopia by introducing the new provisions about collective management society. The new amended Ethiopian copyright and neighboring

³³⁰ *Ibid, Sub Art(30)(i)*

³³² Kahsay Gebremedhn, 'The Emerging Ethiopian Copyright And Related Rights Collecting Management Society :Assessment Of Challenges And Prospects', Thesis, Addis Ababa University unpublished, (2013)

³³³ *Ibid*

³³⁴ *Ibid*

³³⁵ *Ibid*

rights proclamation define Collective management society as a society formed by the owners of copyright and neighboring rights to jointly administer their rights³³⁶. According to this definition copyright holders come together form an organization to exercise their right effectively which can be impossible to exercise individually. Right holders of works protected under the Ethiopian Copyright and Neighboring Right proclamation may form collective management society to jointly administer their rights³³⁷. This collective management society has a pivotal role for the users by creating one stop shop to access local and worldwide repertoire, avoids multiplication of negotiations with right holders and lowering transaction costs for users. For right holders collective management society enable the right holders to administer their right in an organized and enhanced manner. From the above definition to be a member of copyright collective management organization, it is the consent of copyright owners to join collective management society of Ethiopia. The provision does not provide mandatory collective management society for copyright owners whereas the law provide voluntary collective management system.

In all countries, collecting societies are subject to competition law provisions with regard to abuses of dominant position - users may file a complaint to the relevant supervisory authority, competition authority or to court if they believe competition rules are being violated, for example, if they feel they are being denied access to repertoire without good reasons, or in case they are victim of unjustified discrimination. As indicated in chapter three in Canada and Germany the case of abuse of dominance shall be governed by competition or cartel law. The Indian Copyright Act has also incorporated some provisions for the prevention of abuse of dominant position by copyright societies. This is to strictly regulate the activities of these collective societies and made reforms to tackle abuse of dominance to copyright owners. The copyright law should have connection with competition and consumer protection law to protect the interest of consumer³³⁸. Competition law and intellectual property rights policies are bound together by the economics of innovation and creativity and an intricate web of legal rules that seek to balance the scope and effect of each policy³³⁹.

³³⁶ *Copyright and Neighboring Rights Proclamation(amended) No.872/2014,Art2(32)*

³³⁷ *Ibid, Art32(1)*

³³⁸ *Supra note(325)*

³³⁹ *Ibid*

4.2. Institutions in Ethiopia on Copyright Industry

4.2.1. Professional Associations on Creative Industry in Ethiopia

Ethiopia is home of more than eighty ethnic groups, each with its own language, culture, customs, traditions, and lifestyles. There are rich traditions of art, music, dance, literature, and other forms of creativity. Thus, the country has great potential to diversify its economy through the use of its cultural heritage and pool of creative talent as a feasible development tool. Using creativity as a strategic asset for economic development in Ethiopia calls for defining effective intervention strategies which in turn require understanding and responding to the factors shaping the development of the creative industries.

In Ethiopia, there are professional associations set up for the protection of copyright holders despite the fact that they are not competent enough to protect the rights of creators³⁴⁰. Professional associations like the Ethiopian Film association, the Ethiopian Music association, the Ethiopian writers association and others are established with the intention of safeguarding the economic and moral interest of the copyright and neighboring rights to the owners³⁴¹.

Regardless of the fact that these professional associations are established, they are not as strong as its expectations. Copyright holders are suffering from infringement despite the existence the professional associations. The members of the professional associations withdrew from time to time and this makes them weak in establishing strong institution. Professional associations should be organized and be free to work without any political, social and economic influences, so that they can serve to create favorable conditions for to be rightful beneficiaries of their creative works.

The Ethiopian Filmmakers Association is a professional association of filmmakers with the prime objective of developing and expanding the film art and industry in Ethiopia. At the time of its establishment in April 1, 1993 at the Ambassador Theater, Ethiopian Film Makers Association had twenty seven founding members who were employees of the Ethiopian Film

³⁴⁰*Interview Made With Artist, Attorney Tewodros Mosissa, Vice President of Collective Management Society, Date April,24/4/2018*

³⁴¹ *Ibid*

Corporation the only public enterprise of the nascent cinema industry at the time³⁴². The intention of establishing the professional association is not to perform the activities which are performed by the collective management societies.

As an association Ethiopian Film Makers Association has been undertaking various activities in collaboration with local and foreign organizations and partners in order to realize its goals. Such collaborations among others have enabled them to facilitate various trainings and opportunities for its members at different occasions³⁴³. Ethiopian Film Makers Association is an independent legal entity registered by Agency for Charitable and Societies of the Federal Democratic Republic of Ethiopia³⁴⁴. Having one hundred fifty members that represent over five regions in the country, Ethiopian Film Makers Association remains to be a pioneer association with a wider reach of filmmakers in Ethiopia.

The Ethiopian Music Association was established back in 1965. It is among the oldest professional organizations in the country³⁴⁵. Its primary objective is representing the interests of its members who can take the form of advising them towards clinching fair agreements for their records actively looking for ways in which its members get the best out of their efforts and constantly lobbying for the best legal framework which protects the ownership of recordings and copyright³⁴⁶. Ethiopian music association also is used by its now 720 members as an important platform to exert a collective effort towards securing improved protections. It is also hosting the annual Ethiopian musical awards in various categories.³⁴⁷

The Ethiopian Music Association is also another professional organization which was founded to protect the interest of musicians to protect from unfair use of the copyright by the

³⁴² *The Ethiopian Filmmakers Association (EFIMA) is a professional association of filmmakers with the prime objective of developing and expanding the film art and industry in Ethiopia* <<http://www.coloursofthenile.net/about/organisers/the-ethiopian-filmmakers-associationEFIMA>> , assessed December 17, 2017

³⁴³ *Ibid*

³⁴⁴ *Ibid*

³⁴⁵ Ethiopian-Musicians-Association-
Em<<https://www.musicinafrica.net/Directory/>> accessed December 17, 2017

³⁴⁶ *Ibid*

³⁴⁷ *Ibid*

consumer and to encourage and facilitate the music industry in Ethiopia. However, the Ethiopian artists are suffering a lot due to copyright infringement.

4.2.2. Collective Management Society

In Ethiopia there was no collective management administration of copyright in any field before 2014 but recently the collective management society has been established though there are difficulties and resistance from the copyright owners to join the collective administration due to lack of awareness on the economic contribution of collective management society to the copyright owners and no encouragement and support from the government³⁴⁸.

As it has been stated in chapter two of this paper, individual management of rights is virtually impracticable with regard to certain types of use for practical reasons. An artist is not materially or physically capable of monitoring all uses of his works; authors cannot; for instance, contact every potential user like bars, restaurants, and hotels in Addis Ababa and regional cities, impossible to bargain many radios and television stations to negotiate licenses and remuneration for the use of his works³⁴⁹. Similarly, it is not possible for potential users to seek specific permission from every copyright owner for the use of every copyrighted work³⁵⁰. For example, thousands of musical works are broadcast on television every year so thousands of owners of rights lost royalties for their work. The researcher believes that it is very crucial to establish a very strong vibrant and functional collective management society. In similar manner, the very impracticability of managing these activities individually both for the owners of rights and for the users creates a need for collective management organizations whose role is to bridge the gap between the user and copyright owners. This is the reason why the Ethiopian government and other stake holders are forced in proposing to establish collective management society. The Ethiopian artists are individually incapable to manage their works and exercise their rights.

The Ethiopian Copyright Collective Management Society was established with the objectives of administering the rights of its members, enhancing their benefits, and promoting the works

³⁴⁸ *Supra Note(341)*

³⁴⁹ *Ibid*

³⁵⁰ *Ibid*

of its members inside and outside Ethiopia. It serves as an umbrella association for copyright holder associations which have their own representations within the society. However, the Society has not yet started actively discharging its duties to their fullest extent and no royalties have been collected so far.

Collective management society is a recent in Ethiopia. There are mandatory preconditions for the formation of collective management society to acquire legal personality³⁵¹. An application for the recognition of for formation of collective management society shall be submitted to the office in written form accompanied by the following documents: description of types of members' creative works, internal rules of regulation, memorandum of association and list of sector associations established and their respective individual members³⁵².

A legal and institutional framework for collective administration of copyright is necessitated by the fact that CMOs occupy a monopoly position in relation to both rights holders and users³⁵³. Such a position is, in practical terms, a necessary condition for the appropriate operation of collective management of copyright. Therefore, without appropriate guarantees such a monopoly position might be abused by CMOs. These safeguards are needed both in the CMOs relationship with rights holders as well as in its relationship with users³⁵⁴. As a result, the external or internal supervision is needed to regulate the collective management societies to avoid the natural monopoly and the abuse of the CMOs.

Therefore, Fiscor and others have argued that competent public authorities should regularly supervise certain key elements of the collective management system, such as whether the actual activities correspond to the approved statutes whether the rules of collecting and distributing fees are correct; whether the costs of management administration are reasonable and whether the distribution and transfer of remuneration in fact take place as prescribed.

³⁵¹ *Supra Note(337), Art(33)*

³⁵² *Ibid, Art33(1)(a-d)*

³⁵³ Fiscor, M. (2003) *Collective Management of Copyright and Related Rights at A Triple Crossroads: Should It Remain Voluntary or May It Be "Extended" or Made Mandatory p(1)*

³⁵⁴ *Ibid*

Due to colonization Nigeria and India's collective management society is modern, well structured, well developed, and well funded and their copyright law is comprehensive and inclusive and the copyright owners are benefiting from their work due to the fact that their CMOs are very strong and equipped with advanced technology.

For instance, the Copyright Commission of Nigeria and the Copyright Board of India are strong enough to tackle the corruption, non transparency and lack of good governance in their collective management societies by regular supervision where as Ethiopia recently set up a collective management society and no evidence to raise all about the issue of corruption, transparency and good governance of the Ethiopian Copyright and Neighboring Rights Collective Management Society since it does not start operating collection of royalties.

Even if the copyright law and other institutions like Ethiopian Music, Film and Writers Associations exist, the Ethiopian artists are not benefiting from their work and are not collecting their fruits and are suffering a lot due to infringement³⁵⁵. A respondent from members of the Ethiopian Collective Copyright and Neighboring Rights Society said that the Ethiopian artists are starving due to the infringement of their work by illegal users where as the copyright infringers are vomiting by using illegal creative works³⁵⁶. The interviewee also responds that artists are incapable to manage their work individually and this is why after a long struggle, the Ethiopian Copyright and Neighboring Right Collective Management Society has been set up to enforce the right of the creators and the new amended copyright and neighboring right proclamation is enacted³⁵⁷.

Relatively, the Ethiopian government has been working in strengthening the institution though it is very slowly³⁵⁸. The Ethiopian collective management society is not effective and the regulation has been drafted but has not yet completed since this interview was conducted. It is very difficult to enforce the copyright law without the regulation.

One of the interviewees from the EIPO said that it is better to have one CMO rather than having many CMOs because it is very simple to license, easy to organize and to minimize

³⁵⁵ *Supra Note (341)*

³⁵⁶ *Ibid*

³⁵⁷ *Ibid*

³⁵⁸ *Ibid*

cost and very easy to make reciprocal agreement with other countries³⁵⁹. However, this view is rejected by another interviewee from members of collective management society by saying it is not fair to merge different interest groups together³⁶⁰. The very difficult task is how to reconcile these two extreme views since the law lacks clarity on how to establish collective management society and this creates disagreements among the recent established CMS and the Ethiopian Music Association on the establishment of CMS in Ethiopia. The researcher proposes at least to have one CMO for each sector though the law may not allow it.

4.2.3. Multiple Collective Management Societies

The formation of collective management society is similar to the formation of companies in commercial code since the requirements for the set up of companies are the preparation of memorandum of association and article of association. Board of directors and external auditors are also exists in collective management society and companies. Although the criteria required for the establishment of company and collective management society are almost similar, their purpose is different. Collective management society shall be established for nonprofit where as companies are business organizations formed for profit. Pursuant to the amended copyright and neighboring right the number of sector associations established under a collective society may not be less than three sectors³⁶¹.

The other gaps of the new amended copyright and neighboring right proclamation No.872/2014 cannot allow the single sector or two sectors to establish its or their own collective copyright management society. The law clearly states that in order to set up the collective copyright management society there at least three different sectors. This means that the law does not recognize as collective management society if a single or two sector/s want/s to establish the management society.

A single collective society to administer all categories of works causes to great setbacks to the substantive and administration of copyright. The interests of literary authors are entirely

³⁵⁹ *Interview made with Yasin Omer, Copyright and Community Knowledge Study, Registration and Information Team Leader , Date April 24/4/2018*

³⁶⁰ *Interview Made With Artist Deslaegn Hailu Members of Board of Directors of Collective Management Society, Date April 27/4/2018*

³⁶¹ *Supra Note(337) ,Art33(2)*

different from the interest of musical artistic authors and the interest of film maker is different from the interest of the comedians since they are from different professions³⁶². Therefore, such unrelated interests have been put together to be administered by a single society can be detrimental result for creators. This can be an obstacle to the development of the collective management society. This is one of the big issues of some artists that why the Ethiopian copyright and neighboring right law forbids setting up CMOs for each sector. The Ethiopian Music Association members claimed to establish Ethiopian Music Copyright Management Society but the law does not allow a single sector establish CMO. However, Nigerian copyright act allows under section 39 for the formation of collective management society by one or more rights of copyright owners while the Ethiopian law does not allow for one work to form it. For the same work multiple of collective management society is not allowed if the Nigerian copyright copy right commission believes that the existing collective management is adequate so to protect the interest of copyright owners.

Despite the fact that the Nigerian copyright act is a pro-single collective management for the same work, the Nigerian NCC has the power to approve the second collective management society for the same work in case the Nigerian copyright commission is dissatisfied with the existing CMO. The Ethiopian copyright and neighboring right proclamation as (amended) does not allow for the EIPO to approve another CMS if it is not happy with the existing one for the same sector or work.

In the new amended copyright and neighboring rights proclamation the term “sector” is not defined and this creates ambiguity in forming a strong collective management society in Ethiopia. There are different sectors in film and music. For example, there are sectors like performer, singer, audio recorder and authors and if someone interprets the sector in the proclamation refers to these, the music alone can establish Collective management society but if the legal term sector in the proclamation collectively refers to film, music, arts and others, they cannot setup collective management society and they shall be come together to flourish the collective management society³⁶³. This creates conflict between the musicians and other creators during the establishment of the collective management society and the

³⁶² *Supra Note (360)*

³⁶³ *Ibid*

musicians complain that we can establish our CMS since there are at least three sectors in music.

Moreover, countries like Canada, German, and India their copyright provisions allow the formation of multiple collective management societies and create a window of opportunity for the establishment of many CMOs. This is the reason why there are several collective management organizations in Canada and German. For example, there are dozens of collective management society in Canada including an umbrella CMO and the other CMOs are under the supervision of this umbrella CMO. The amended the Indian Copyright Act 2012 allows establishing one copyright society in respect of one class of work where as Ethiopian copyright regime does not allow one class of work or sector to set up CMOs. This hinders the establishment of multiple collective copyright management societies in Ethiopia.

The amended copyright and neighboring right proclamation No.872/2014 does not address the minimum number of members for establishing the collective management society whereas the Copyright Acts of Nigeria, India, Germany, and Canada fix the minimum numbers of collective management organization. The amendment to the Nigerian copyright act 1999 specified fifty as the minimum number of persons a collective society is expected but later the numbers rise. Grounding the Nigerian copyright act one of the requirements of for the formation of collective management society is the number of its members. Accordingly, in Nigeria there at least 100 members in the article of association have been listed to establish the collective management society.

Countries like Germany, Nigeria, Canada and India amended their copyright act many times so as to make it compatible with digital technology and international conventions. For instance, India amended five times to meet with the national and international requirements. The 2012 amendment which is very modern makes Indian Copyright Law compliant with the Internet Treaties like the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. Also, while introducing technological protection measures, the amended law ensures that fair use survives in the digital era by providing special fair use provisions. The provisions of collective management society of the countries like Germany, Canada, and India provides the protection of technological and right management system to help the film, music and publishing industry in fighting piracy and compatible with the conventions WCT

and WPPT where as the Ethiopian copyright law does not address how to manage copyright in digital technology.

As sourced in chapter three, Canada's system of collective administration of copyright is very strong. Canada's Copyright Board plays a greater role in the collective administration of copyright than any other common law countries like Australia, the USA, UK, and probably all other major developed countries³⁶⁴. Hence, the Canadian Collective Management Society is by far the best of all other Collective management Society in the world³⁶⁵. Canada appears to have more full time members and staff than in any comparable country. It has a long and rich history of which it can mostly be very proud. Canada Collected royalties reached 500 million Canada dollar a year which is the highest in the world³⁶⁶.

There are many collective management societies in Canada which is at least three dozen active collectives which have received substantial direct or indirect government subsidies. This is clearly symbolizes that the Canadian government is devoted and committed in establishing a strong and well developed collective management society in different sectors. However, the recent Ethiopian licensed Collective management society is the most infant and the least developed in terms of infrastructure. Therefore, Ethiopian can adopt the experience that the Canadian government passed through in building a fruitful strong collective management organization. Besides the provisions included in the copyright law, Germany has additional provisions on collective management laid down in laws and decrees specifically covering collective management of rights.

In Germany including reproduction, distribution and making available of works for disabled people³⁶⁷ and for educational and research uses³⁶⁸ and reproduction and distribution of broadcast commentaries and individual articles from newspapers³⁶⁹ and these all rights are managed by mandatory collective management society. German copyright act provides for mandatory collective management of the collection and redistribution of the fair

³⁶⁴ *Supra Note (176)*

³⁶⁵ *Ibid*

³⁶⁶ *Ibid*

³⁶⁷ *Germany copyright Act, S(45(a)(2)*

³⁶⁸ *Ibid, S(52(a)(4)*

³⁶⁹ *Ibid, S(49(1)*

compensation due to authors and related rights holders for private copying and reprography³⁷⁰ and remuneration for cable retransmission³⁷¹.

However, the Ethiopian new amended does not address mandatory collective management society and as it is interpreted from the definition of collective management society it address voluntary collective management society.

4.2.4. Powers and Duties of Collective Management Society

The principal function of collecting societies is to license and collect revenues from the exploitation of the copyright of their members. This symbolizes that collective management societies perform the following activities: identify potential users, negotiate a license with the users, collect the license fee from the users, monitor the usage (to prevent abuse and illegal activities), distribute fees collected to the individual right holders. The powers of collective management society are almost similar even though there are variations in scope. In the same way in Ethiopia grounding the amended proclamation collective management society has the following powers and duties: The Collective Management Society is responsible to the Ethiopian Intellectual Property Office and the office is granted power by the law to supervise the overall activities of the collective management society.

According to the amended copyright and neighboring rights proclamation No.872/2014, collective management society is granted powers and duties for the effective enforcement of the benefits of the copyright holders and users³⁷². The collective management society has the following powers and duties: collect royalties from users of work protected under the proclamation as well as works protected abroad³⁷³ and distribute same to the right holders, prepare and submit to the office royalty scheme,³⁷⁴ working manual for collection and distribution of royalty and implement same up on approval³⁷⁵ and grant permit up on payment of reasonable fee, to foreign musical bands. The law grants wide power to the EIPO for the approval of the activities performed by the collective management society and it has

³⁷⁰ *Ibid*, S(54)

³⁷¹ *Ibid*, S(20)(b)

³⁷² *Supra Note* (337) ,Art(34)

³⁷³ *Ibid*, Art34(1)

³⁷⁴ *Ibid*,Art34(2)

³⁷⁵ *Ibid*,Art34(3)

the power to approve or reject and there is a monopoly of power by the EIPO. The other duties of the collective management society is withholding income tax in accordance with the law from royalties distributed to members and pay same to the appropriate revenue collecting body³⁷⁶. Hence, the law forces the CMS to collect tax from the distributed royalties of members and hand over to the tax authorities. The amendment empowers a collective management society to collect royalties from users of protected works and administer rights related to foreign protected works on the basis of reciprocal agreements entered into with similar societies³⁷⁷. The principle of reciprocity between the Ethiopian collective management and the foreign collective management society is addressed.

The other duties of the collective management society are duty to keep book of account³⁷⁸. A collective management society shall keep complete and accurate books of accounts. The books of account and financial documents of collective management society shall be audited annually by external auditors.³⁷⁹ Auditing the documents is very important to supervise the collective management society and this makes the institution transparent for the copyright owners and the uses and also motivates to bring good governance and fight corruption and increases trust among the stake holders.

4.2.5. Collection and Distribution of Royalty

According to the new Amended Copyright and Neighboring Right Proclamation No. 872/2014 royalty means fees payable to the owner of the work protected under this proclamation by the user of such work for commercial purpose³⁸⁰. This definition symbolizes that only those users who use for commercial purpose can pay the royalty for the owners. Individuals who use for personal use cannot pay royalty grounding the provision. The royalty scheme should be prepared by the Collective Management Society and submit it to the EIPO and then approved by the office. Royalty scheme is a method employed to calculate the

³⁷⁶ *Ibid, Art34(4)*

³⁷⁷ *Ibid, Art2(35)*

³⁷⁸ *Ibid, Art36(1)*

³⁷⁹ *Ibid, Art36(2)*

³⁸⁰ *Ibid, Art2(31)*

amount of royalty collected from the users of work based on the type of work and the category of users³⁸¹.

Tariffs to be collected by collective management organizations and rules for the distribution of amounts to the right-holders are not yet identified. Although a royalty scheme is addressed in the Ethiopian copyright and neighboring right (amended) proclamation, the royalty scheme has not developed yet and no rules enacted how to collect and distribute royalty for the right holders at the time this thesis has been done. This shows that the collective management society unable to discharge the duty granted to it by the law and due to lack of trained man power, lack of infrastructure and financial constraint³⁸².

Collection and distribution of royalties is one of the major duties of Collective copyright management society. Royalties are a relatively recent phenomenon in Ethiopia's music and copyright industries. Until late 2014, there was no legal and institutional framework for the collection and distribution of royalties in Ethiopia. This was due to the absence of any legal provisions for a royalty system or the establishment of a collective management society empowered by the state to collect and distribute royalties under the 2004 copyright law. This causes both the right holders and the EIPO to work on an amendment of the 2004 copyright law in order to establish a royalty collection system. This amendment was ratified by Ethiopia' parliament in 2014, resulting in the enactment of the Copyright and Neighboring Rights Protection (Amendment) Proclamation No. 872/2014. This newly enacted law has finally introduced a royalty system that makes provision for the establishment of the first functional collective management society in the country though the royalty scheme has not yet made.

4.3. Powers of Ethiopian Intellectual Property Office

In Ethiopia the new amended copyright and neighboring right granted power for the supervision of collective management society for its effectiveness. The new copyright law addresses the obligations and duties of the Ethiopian Intellectual Office. In collaboration with board of directors of the collective management society which selected from different

³⁸¹ *Ibid,Art2(33)*

³⁸² *Interview Made With Tewedaje Kifle, CEO director of Ethiopian Copyright and Neighboring Rights Collective Management Society, Date April 24/4/2018*

sectors, the Ethiopian Intellectual Office is responsible for the success of the establishment of strong collective management organization.

An amendment to the Copyright Law of Ethiopia recently approved by Parliament provides that a collective management society be formed based on the recognition granted by the Ethiopian Intellectual Property Office. In addition to these, the Ethiopian Intellectual Property Office has the power to revoke the recognition granted to any collective management society: when it carries out acts contrary to its powers and duties,³⁸³ when members decide by majority vote to dissolve the collective management society³⁸⁴, or when the court of law having jurisdiction orders the revocation of the collective management society.³⁸⁵ Also, the office has authority to request a collective management society to submit a financial report and inspect its books of accounts

4.3.1. Supervision of Collective Management Society

In all countries collective management society is established for non -profit purpose. Similarly in Ethiopia the collective management society is formed as a non profitable legal entity and must be registered and recognized by Ethiopian Intellectual Property Office (EIPO). Currently, there is only one legally licensed collective management society in Ethiopia. Despite its establishment, this single collective management society has not yet started functioning in identifying potential users, collecting and distributing royalties for the copyright holders due to lack of commitment from both copyright owners, users and EIPO³⁸⁶.

In other words the legal status of collective management bodies may vary widely from one country to other country. The way in which collective management bodies are organized may also vary substantially depending on the category of rights the organization manages. In addition to their legal status, collective management bodies may differ also with regard to the form and extent of government supervision, the number of categories of rights they administer, or, ultimately, to the number of collective management organizations per category of rights. Differences also exist in relation to the way in which collective bodies

³⁸³ *Supra Note (337), Art37(1)*

³⁸⁴ *Ibid, Art37(2)*

³⁸⁵ *Ibid, Art37(3)*

³⁸⁶ *Supra Note(383)*

obtain the right to act on behalf of individual right owners. Authors and other right owners tend to become members of collective bodies by choice but some national laws provide a mandatory collective management for certain types of rights.

The supervision of collective management society is governed by government. German collective management supervision is carried out by the German Patent and Trade Mark Office in collaboration with the Federal Cartel Office in relation to the grant or revocation of the authorization to operate as a collecting society³⁸⁷. The supervision consists in controlling that the collecting societies comply with their legal obligation. In cases of mismanagement, the office can issue warnings or revoke the authorization to operate as a collecting society. The supervision of collective management society in Germany is strict in protecting the rights of copyright owners and oversee the interest of consumers.

Whereas in Ethiopia collective copyright management society is regulated and supervised by the Ethiopia Intellectual Property Office which is very lax in encouraging in the formation of the CMO and also there are board members of the Ethiopian collective management society which are elected from each sectors³⁸⁸. For instance, the Ethiopian Intellectual Property Office is unable to arbitrate the conflict between the Ethiopian Music Association and the Copyright and Neighboring Right Collective Management Society³⁸⁹.

In Nigeria the collective management society is regulated by the Nigerian Copyright Commission (NCC) and there is a copyright board established from different government organs which is by far well organized and well structured. As stated in chapter three in Nigeria the board of directors consist of the following: a chair man to be a person knowledgeable in copyright matters to be appointed by the president on the recommendation of the Minister, the Director General of the commission, one representative of the Federal Ministry of Justice and Ministry of Education, a representative of Nigerian Police force not below the rank of a commissioner of police, one representative of Nigerian Customs service not below the rank of customs and six other persons who shall represent as far as possible the authors in the literary work, artistic work, music work, cinematograph films, sound

³⁸⁷ *Ibid*

³⁸⁸ Interview with Dr. Muse Yakob President of Ethiopian Copyright and Neighboring Rights Collective Management Society, Date April 26,2018

³⁸⁹ *Ibid*

recordings, and broad casts³⁹⁰. Here, the board has the power to adopt rules governing its procedure and methods of operations of collective societies. However, in Ethiopia the board of directors elected from representatives of copyright owners and government organs are not a member of the board of directors³⁹¹.

The German and Canada copyright act provide mandatory collective management society for some works and there is voluntary collective management society for the other works whereas as in Ethiopia as we understand from the definition given in the proclamation provides voluntary collective management society. No provision that can address the mandatory collective management system for the works that are protected under the Ethiopia copyright and neighboring right proclamation.

In spite of the fact that collective management organizations (CMOs) have become the pillar of copyright licensing in virtually every country, there is little attention from the Ethiopian government and even from the copyright owners³⁹². The efficiency of collective administration depends on the availability of a good working condition for the system to grow as well as international ties with other countries³⁹³. Foreign repertoires represent a major source of income of most collecting societies. It is important for collective management society to foster relationship with other relevant international bodies so as to repatriate all foreign royalties.

The new amended copyright and neighboring right proclamation grants power to copyright collective management society to sign reciprocal agreement to protect the interest of Ethiopian artists abroad though still there is no reciprocal agreement between the Ethiopian collective management society and foreign repertoires³⁹⁴. As discussed in chapter three most collective management societies in Canada, Nigeria, Germany and India have concluded reciprocal representation agreements with corresponding organizations in other countries representing the same categories of right owners. As a general rule, a collecting society in any given country therefore represents both national and foreign rights owners. Prospective

³⁹⁰ *Ibid*

³⁹¹ *Ibid*

³⁹² *Supra note (383)*

³⁹³ *Ibid*

³⁹⁴ *Ibid*

users are able to obtain licenses for almost the entire world repertoire from their national collecting society and at the same time right owners receive royalties for the use of their works worldwide. Making a reciprocal agreement will further foster the implementation of the provisions of international treaties requiring protection of foreign right owners. These countries established a comprehensive number of collective management societies which are very modern and functional and possess an inclusive legal frame work.

However, Ethiopia has not yet established vibrant and strong Collective Management Organizations or mechanisms necessary to implement copyright licensing and enforcement in copyright industries; only one such organization has been established in Ethiopia coined as the Ethiopian Copyright and Neighboring Rights Collective Management Society.

There might be a dispute between collective management society and users, between collective management society and members and between collective management themselves if there are more than two CMOs. No specific provision in Ethiopian amended copyright and neighboring rights clearly state on how to resolve when the dispute arises between CMO and other stake holders while in Germany a special arbitration is designed according to an action cannot be brought to a civil court before the claim is defended in the arbitration board. Under this system, the Arbitration Board supervised by the Patent office endeavors to obtain an amicable resolution to dispute arising between the CMO and its users or its members. In order to guarantee the quality of the Arbitration Board all its members should be competent to act as judges. So, in German legislation there is a clear provision on how to manage the relation between CMOs, CMOs and users, CMOs and copyright owners. However, there is no clear provision in the new amended Ethiopian copyright and neighboring rights proclamation in resolving when conflict arises between the stakeholders and collective management society.

Under the proclamation No.872/2014 Article 44(1) except cases related to extra contractual liability the power of adjudication of civil cases arising in relation to this proclamation shall be vested in the Intellectual Property Tribunal to be established under the EIPO the power of the intellectual property tribunal is not vividly stated under this provision. At the time of the interview conducted, the Intellectual Property Tribunal has not established yet.

In Germany and Canada Copyright Act collecting societies must publish their accounts and the annual report in the Official Gazette. The collecting society is obliged to give information on the rights and works it administers to any interested party. The collecting society is also obliged to make available to the Supervisory Authority its statutes, tariffs, framework contracts, reciprocal agreements, general meetings' resolutions and all committees, annual accounts and annual report as well as any court decisions on cases in which the society was a party and all changes relating to aforementioned documents.

The weakness in the copyright regime to be found not only just in the law, but also all the actors are responsible for the operation of the copyright. So, for example, the Ethiopian Intellectual Property Office, police, judges and professional associations, collective management society are vital to the operation of copyright. Though there are legislative provisions on collective management society in the new amended copyright and neighboring right proclamation, the challenges are the practical effects of these provisions on the collective administration of copyright. Still the established collective copyright management society has not started in discharging its power granted to it by the law and no royalty is collected and distributed to the copyright owners³⁹⁵.

The most common Collective Management Society in Europe is the German GEMA believes that telecommunication operators should pay royalty for transmission of musical works they facilitate; according to the German Society it is time for governments and European authorities to understand that these operators make a lot of money through the distribution of illegal content to the detriment of right holders and that they should pay for it. In Ethiopian Telecom deduct five birr every month from its customer for mobile ring tone and only twenty cents which will be granted to the artists without the consent of artists. This is not fair and completely unacceptable and this occurs without the consent of musicians³⁹⁶. So the Ethiopia Telecom is responsible for this unfair practice because it hurts the interest of the musicians³⁹⁷.

³⁹⁵*Interview made With Mr. Getenet Yeshane Attorney and Consultant at Law, Collective Management Society Lawyer, Date April 25/4/2018*

³⁹⁶ *Ibid*

³⁹⁷ *Ibid*

Countries like Canada and German committed to strengthen their copyright regime in to enhance the competitiveness of its creative industries in a digital and knowledge-based global economy. Also they effectively protect the rights of authors to ensure just rewards and recognition for their intellectual efforts while also providing appropriate limitations and exceptions to guarantee access to creative works, encourage cultural interchange and advance public welfare and facilitate compliance with obligations arising from relevant international copyright treaties and enhance their capacity for effective administration and enforcement of the provisions of the Copyright Act. However, the Ethiopian government is not committed to strengthen the legal and institutional frame work to protect the interest of the copyright holders and to enforce the law³⁹⁸. Not only comparing with Nigeria but also in other countries in SSA, the administration of Copyright in Ethiopia is weak when comparing with East African country like Kenya, Tanzania and Rwanda³⁹⁹. For example, our neighbor Kenya collected millions of dollar royalty for their copyright owner⁴⁰⁰.

In addition to these, in German and Canada legal and institutional framework, there are essential elements for ensuring an efficient enforcement of copyright and related rights: an appropriate legal framework, a strong State administration in place, a developed collective management system and existence of functional Judicial administrative and customs system. These are the reasons why Germany copyright administration is a model for EU member states and Canada's collective management society is the first in the world because of the very strong, functional, and fruitful for their copyright owners. So, Ethiopia should adopt Germany and Canada copyright management system in realizing the interest of the copyright holders and consumers although Ethiopia is not economically strong as Canada and Germany.

The 2012 amendment makes Indian copyright law compatible with the internet treaties like the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaties. In copyright Act 2012, special attention has been given to the formation and administration of the copyright board. A number of new instructions are added to qualification for appointment as chairman and other members have been introduced. The chairman and other

³⁹⁸*Supra Note(360)*

³⁹⁹*Ibid*

⁴⁰⁰*Ibid*

members of the board shall be appointed by the president of India. This clearly symbolizes that the Indian government is highly committed to protect the interest of the copyright owners and users. Also new provisions are made regarding payment of salaries and allowances to the members of board. However, in Ethiopian there is no provision that addressed in the proclamation about the qualification of copyright board members and the payment paid to them. Hence, Ethiopia should adopt Indian experience so as to improve the copyright industry and to protect the interest of the copyright owners and consumers because collective management society requires a highly skilled expert of copyright law to enforce the effectiveness of the law and other professionals like economist and accountant to help in fixing the formula for royalty scheme.

4.4. International Copyright Treaties versus Ethiopian Copyright law

As stated in chapter three of the thesis countries like Nigeria, India, Canada and Germany are a member of these international conventions to protect their copyright holders abroad and make their legal frame work compatible with these international instruments. Ethiopia is silent on these conventions. Ethiopia is not party to the WIPO Internet Treaties and the WIPO Performances and Phonograms Treaty (WPPT) and is, therefore, not bound by these two international instruments. However, copyright owners can benefit if Ethiopia becomes a member of these international conventions.

As it is shown in chapter three of this thesis, the Nigerian copyright and neighboring rights protection system is stronger and well developed and Nigeria has active participation in international conventions and grows interest in Intellectual property protection in the international scene. However, Ethiopian has no such participation in international copyright arena. The Nigerian copyright act in favor of multiple collective societies for the same work or rights would have brought a viable solution to the Nigeria crisis and would have enabled a platform for rewarding right owners for creativity. As stated in chapter three, the Nigerian Copyright Commission formally launched the reform of the Copyright System. The key objective of the reform was to ease Nigeria's creative industries for greater growth; strengthen their capacity to compete more effectively in the global marketplace, and also enable Nigeria to fully satisfy its obligations under the various International Copyright Instruments which it has either ratified or indicated interest to ratify. Therefore, Nigerian can

be model for developing countries like Ethiopia for fully protect the rights of copyright owners.

4.5. Digital Technology and Ethiopian Collective Management Society

The emergence of digital technologies revolutionized the creative economy as production and dissemination of creative works became more accessible and lent themselves to global exploitation beyond national boundaries⁴⁰¹.

New technologies, from photocopiers, to printers, scanners, personal computers and the Internet have allowed new forms of use of copyright protected works. Some uses, such as small scale photocopying are either difficult to control or to administer individually, act by act⁴⁰². Authors and publishers therefore often mandate organizations to manage their copyrights collectively, either through a voluntary private agreement or through a legal license system enshrined in national law⁴⁰³. The advancement of the internet has changed the underlying assumptions of traditional copyright law since technological developments have made copyright material easier to access and reproduce, and more difficult to protect⁴⁰⁴.

With the invention of the new technologies, provisions on anti-circumvention measures and rights management systems had not been clearly included in the Ethiopian Copyright and related rights proclamation while German, India, Nigeria and Canada included it vividly in their Copyright Act. For instance, the Nigerian government under the theme of zero tolerance for piracy has advocated and adopted methods to fight piracy such as providing for the antipiracy measures under the copyright Act to assist the Nigerian Copyright Commission in its fight against piracy.

Generally, Ethiopia has no clear regulatory environment which poses a problem to reducing piracy⁴⁰⁵. Copyright piracy has been recognized globally as constituting serious threat to creative arts. The prevalence of piracy in Ethiopia is caused by lax of government control,

⁴⁰¹Daniel Gervais, *Collective Management of Copyright: Theory and Practice in the Digital Age, in Collective Management of Copyright and Related Rights*, (Second edition, 2010)

⁴⁰² Christian Handke, 'Economic Effect of copyright: Report for National Academies of Sciences', (Rotterdam,2011), P(25)

⁴⁰³ International Publisher Association, *Collective Rights Management: an IPA Special Report*(21 November 2014)

⁴⁰⁴*Ibid*

⁴⁰⁵ Interview Made With Nasir Nura , Director Copyright Directorate , Date April24, 2018

lack of awareness of users, lack of technology, lack of interest of copyright owners to exercise their rights, and weak law enforcement⁴⁰⁶.

To fulfill its responsibility the Nigerian Copyright Commission has taken giant strides in the fight against piracy and also aligning with some organizations like Google for efficient and effective fight. Google is a global search engine; therefore, it assists the Nigerian Copyright Commission to fight against internet piracy. This vividly depicts that the Nigerian copyright administration is very strong and effective in managing the interest of the copyright holders and consumers or users. Dealing with service or content providers like Google is very important in fighting copyright infringement or internet piracy. Where as in Ethiopia no alignment has made with content or service providers which provide the downloading of files and shares from people to people without the permission of copyright owners and this encourages copyright piracy in Ethiopia⁴⁰⁷. It is very challenging for copyright collective management society of developing countries like Ethiopia to protect copyright or internet piracy since there is low operating efficiency as a result of inefficient management and poor technological infrastructure to tackle the overall crime against copyright holders.

One of the interviewees said that anyone can download Alibira's, Thilahun Gesese's music and films from content or service provider like dire tube or lomi tube and use it for commercial purpose without the authorization of legal copyright owners and transfers it to their friends without paying a coin which is unfair and unjust though not used for commercial purpose⁴⁰⁸. These are due to the fact that the Ethiopia collective management society still after its establishment incapable of exercising the rights of copyright owners because it lacks experience, financial problems and poor technical support⁴⁰⁹.

4.6. Obstacles to Setup a Strong Collective Management Society in Ethiopia

Collective management society is the combination of different copyright owners. Copyright holders join together to establish a strong and vibrant collective management according to the law. In addition to the legal gaps, there are other bottle necks which hinder for the formation

⁴⁰⁶ *Ibid*

⁴⁰⁷ *Ibid*

⁴⁰⁸ *Supra Note(389)*

⁴⁰⁹ *Ibid*

of a strong copyright collective management society in Ethiopia. Collaboration between the copyright owners, collective management society and EIPO are very weak for the enforcement mechanism in Ethiopia⁴¹⁰. The other challenge lack of trustworthiness by copyright holders on the recently established Ethiopian Copyright and Neighboring Right Management Society. In Ethiopia many authors and artists have been reluctant to join the newly established collective management society because of the lack of trust of the copyright owners⁴¹¹. Most of the musicians withdrew from the membership of collective management society.

Grounding the interview conducted, lack of unity among copyright owners is one of the biggest challenge for the establishment of a strong collective management society⁴¹². Artists are divided based on their profession, politics and ethnic identity and some artists are called developmental artist, they advocate government policy and some oppose the government⁴¹³. The other challenge of copyright is lack of commitment of government agencies to collaborate with other stake holders. For instance, the police and the public prosecutors lack the overall willingness and they consider copyright issue a secondary in their mandate⁴¹⁴. In addition, lack of commitment from government, lack of strong institution and short falls of law and the turnover of workers from the office also retarded the copyright law to be effectively implemented⁴¹⁵.

Ethiopian music association has no interest to join the other sectors to form collective management society and that is the reason why some musicians refuse to join a member of the existing collective management society and they started initiation to set up the Ethiopian Music Collective Management Society which was rejected by the EIPO⁴¹⁶. In addition to these, the copyright owners have no interest to exercise their rights management in protecting

⁴¹⁰ *Ibid*

⁴¹¹ *Supra Note(383)*

⁴¹² *Ibid*

⁴¹³ *Interview Made With, ' Isayas Hordofa Former Vice President of Ethiopian Writer's Association and Currently, President of Oromo Authors Association' (April 26,2018)*

⁴¹⁴ *Ibid*

⁴¹⁵ *Interview Made With Nassir Nura, Director, Copyright Directorate Date April 24,2018*

⁴¹⁶ *Supra Note (383)*

their creative industry due to the fact that they have lost hopes due to copyright infringement⁴¹⁷.

Absence of strong and smooth relationship between the collective management society and the EIPO is another bottle neck for the weakness of the collective management society in our country⁴¹⁸. The EIPO has no interest to give training for member collective management society⁴¹⁹. Also there is conflict of interest among the EIPO and members of collective management society and one of the interviewees said that the EIPO does not want to see a strong collective management society in Ethiopia because they will lose the personal benefit they get from training sponsored by WIPO abroad⁴²⁰. The researcher observed from the interview that there are some disagreements between the members of collective management society and the copyright owners⁴²¹.

One of the interviewee argues that Ethiopian legal infrastructure is insufficient to address the growing problem of copyright infringement. He said that the lack of effective administration of the law, and lack of awareness among stakeholders primarily referring to rights-holders as a recipe for a problematic copyright environment⁴²².

The recent established CMO in Ethiopia as developing country is normally very weak in terms of meeting their administrative cost to facilitate the operation of the institution and to cover its administrative expense and some money is collected from the members and even funded from individual artists⁴²³. This may be caused by the limited initial number of members in Ethiopian Collective Copyright and Neighboring Rights Management Society, the weak capacity of those members and even impossible to meet the collection of their membership fee for the necessary expense⁴²⁴. Moreover, the copyright owners have no

⁴¹⁷ *Ibid*

⁴¹⁸ *Ibid*

⁴¹⁹ *Ibid*

⁴²⁰ *Supra Note(341)*

⁴²¹ *Ibid*

⁴²² *Interview made With Mr. Getenet Yeshane Attorney and Consultant at Law, Collective Management Society Lawyer, Date April 25/4/2018*

⁴²³ *Ibid*

⁴²⁴ *Ibid*

interest to join the collective management society and there is a fear that most of the members of collective management society are going to withdraw from membership⁴²⁵.

⁴²⁵ *Ibid*

CHAPTER FIVE

Conclusions and Recommendations

5.1. Conclusions

Laws and policies are needed in shaping the economy, social and political aspects of society. Policy is a document or out lines what a government is going to do and what can achieve for society as a whole. Laws are enforceable in which the policy comply. The absence of a consistent and coherent national policy on IP issues as far as they relate to other developmental imperatives. Ethiopia does not address IP issues in their national developmental plans. Moreover, IP is still divorced from national economic planning goals. One of the challenges of Ethiopian copyright industry is lack of national IP policy specifically copyright policy. Collective Management Society is an indispensable element in the operation of any legislation on copyright and neighboring rights. It is very surprising that without copyright policy, Ethiopia enacted copyright law. Without sound copyright policy it is difficult to protect the interest of the copyright holders. Currently, the IP policy in Ethiopia is on draft and has not been finalized. However, in Canada, India, Nigeria and German, there are clear IP policy, strong state administration, strong collective management society, and the policy is supported by appropriate legal frame work and these entail that copyright industries are highly developed in these countries.

In Ethiopia it was difficult to protect the interest of creators before 2004 since the provision on artistic works in civil code was not enough to address the rights of copyright owners. Ethiopia enacted the first modern copyright and neighboring right law was introduced in 2004. This law does not address how to manage or administer copyright and neighboring rights. This means it does not address the copyright collective management society. However, Ethiopia has addressed the Collective management society in the new amended copyright and neighboring rights to protect the interest copyright owners because authors are unable to manage their rights individually by bargaining with different potential users. In spite of the enactment of the new proclamation, the provisions on collective management society are not adequate to protect the interest of creators in Ethiopia.

As a result, the first legal and institutional framework for collective administration was introduced in the Copyright proclamation No.872 /2014. The enactment of the revised

copyright and Neighboring Right Proclamation No. 872/2014 was primarily intended to introduce the collective management society which is a very recent so as to protect the interest of Ethiopia artists at national level but it is a good move. There are still shortcomings in the provisions on the newly promulgated copyright laws of Ethiopia. The question of protection of copy rights in Ethiopia is further confounded often by the lack of strict implementation of the existing provisions of the copyright law due to gaps in law enforcement.

There are ambiguities of the new amended copyright and neighboring rights proclamation. This legal uncertainty creates big problem in the formation of collective management society. The term sector in the proclamation is not clearly defined and causes misinterpretation among copyright owners and EIPO. Moreover, the proclamation imposes restriction that discourages the formation of multiple collective management societies in Ethiopia and hinders the formation of collective management organization for each sector in the future. Also, the law says so as to establish collective management society there shall be at least three sectors. However, the laws of Canada, Germany and Nigeria allow for the multiple collective management society and allow for a single sector to set up collective management society and an umbrella CMOs are allowed in Canada and this CMO supervises the other CMOs for the effectiveness to discharge their duties according to the law. Whereas, in Ethiopia grounding the copyright proclamation on collective management society to establish collective management society at least three sectors may involve in it. A single sector is not allowed to form a collective management society in Ethiopia according to the recent amended copyright and neighboring rights proclamation. Despite the fact that Ethiopia has established collective management society, commercial users are not identified, royalty scheme is not designed, royalty has not collected and distributed to copyright owners.

Ethiopia has not been a member of international copyright conventions like WIPO internet treaty. Copyright owners are the victims of digital technology and it will be a big challenge for the Ethiopian collective copyright and neighboring right society in managing the right of the artists. With the more widespread application of digital technology, including the advent of multimedia productions and the use of digital network like the Internet, conditions the exercise and the management of right ought to face new and stiff challenges. On the other

hand, German, Canada, India and Nigeria have a strong vibrant and modern and comprehensive copyright law which is compatible with digital environment and international conventions and their collective management societies are well developed, rich in infrastructure, filled with highly trained staffs and very functional where as the Ethiopian collective management society is still weak underdeveloped, very poor infrastructure, suffering from financial constraint even to pay office rent and not functional. Hence, the experiences of German, Canada, India and Nigeria in the area of collective administration of copyright provide important lessons for possible legislative and institutional developments in Ethiopian's copyright regime and to set up a strong institution for enforcing the rights of the copyright owners.

In Canada and Nigeria authors and holders of neighboring rights can choose to participate in a collective scheme or to form a collective of their own. In the current legal environment, Canadian and Nigerian rights holders may create a new Collective Management Organization if they are not happy with an existing one. So, Canadian and Nigerian copyright act provision allow authors are free to set up collective management society any time when they are not happy with the existing one where as the Ethiopian copyright and neighboring rights are not encouraging for the formation of collective management society.

The Ethiopian copyright and neighboring right is not compatible with digital environment. Internet piracy will be a challenge for copyright administration for collective management society and the copyright owners and it hinders the effectiveness of collective management society. Illegal downloading of the protected works through the internet brings risk for development and causes serious economical prejudices to right holders. This issue is not seriously addressed in Ethiopian new amended copyright and neighboring right proclamation where as in German and Canada the internet piracy is clearly stated and protected. In Canada and Germany to protect copyright piracy through internet, the law maker of the governments of Canada and Germany enacted Digital Millennium Copyright Act in fighting internet piracy. On the other hand, in Ethiopia there is still no universal solution for copyright piracy because no technology to block the illegal download of music or film from content provider on the internet and no agreement is made between content provider and collective

management society and this will be a challenge for Ethiopia copyright collective management society.

In addition to legal gaps, there are other challenges that affect for the establishment of collective management society in Ethiopia. These are lack interest of government agencies in enforcing the law, inadequate funding of enforcement agencies, lack of trained staff, lack of cooperation among government agents and lack of well developed collective management society negatively affected the enforcement of copyright law. These issues together with a weak institutional and non established intellectual property tribunal are at the heart of the ineffective enforcement regimes in Ethiopia, lack of trust of copyright owners on CMS, lack of cooperation between copyright holders and CMS. The government agencies like police, public prosecutors, judges, and custom duties consider copyright issue as secondary. In Ethiopia enforcement of copyright rights laws is often weak aspect of the law because intellectual property law is a recent one.

5.2. Recommendations

Based on the findings, the researcher recommended the following points to be seriously considered by the concerned body:

- The Ethiopia government should design a sound and clear copyright policy to protect the interest of creators and show strong commitment in implementing it and this policy ought to be supported by strategic plan, strong institutions like collective management society and comprehensive law which protect the interest of authors and to provide adequate payment for the creators in the industry and take in to consideration for copyright enforcement problems such as inadequate public or government support, and institutional problems such as weakness of collective management society and EIPO. The EIPO should help in creating awareness among all stakeholders: right holders, users, and law enforcement institutions, the public in general and promote intellectual creative activities. For instance, through the national policy, Nigeria has managed not only to raise public awareness about the copyright law and its importance to all the stakeholders and public in general but also to promote indigenous artists. And this resulted in a boom in indigenous music and film industries.
- The new copyright and neighboring proclamation should be revised by clearly stating the term “sector” in the proclamation since this term creates legal ambiguity for the formation of collective management society because it hinders to have a strong institutional frame work of copyright industry introducing the provision on minimum members for the formation of collective management society.
- The legislature should revise or amend the provision which sets criteria to establish the collective management society there shall be at least three sectors and should revise its legal regime on the legal monopoly position of its single collective rights management society and allow for the creation of other collective management societies. The law should allow multiple collective management society and another umbrella CMO.
- The Ethiopian government should enact independent legal regime for collective management society or should make the existing legal regime comprehensive. For instance, In addition to copyright Act, Germany enacted an independent special legislation

called Collecting Societies Act which is autonomous and governs only the copyright management organization.

- Ethiopian creators have established collective management society. The primary purpose of establishing CMS is to protect the interest of creators by collecting royalties. However, still no royalty has been collected and distributed to the owners. The collective management society should identify potential users, develop royalty scheme and collect and distribute royalties to the copyright owners. Also, the potential users should be cooperative for the success of getting license to use and pay royalty for the work of artists.
- Ethiopia should be a member of international conventions, and should revise the copyright proclamation and make it compatible with international instruments to provide a welcoming trading environment for local industries and their international trading partners and to collect royalty from abroad through reciprocal agreement with other CMOs. The revision of the proclamation is very important in filling the gaps of the provisions on the collective management of society. The government, collective management society and other stakeholders should strictly enforce the copyright law to protect the interest of creators.
- Ethiopia should revise the copyright and neighboring right provision in compatible with digital technology and the law should provide legal provision to control internet piracy. Digital Right Management should be introduced to enforce usage rules on content or service provider. CMOs in developed countries like Germany, Canada and India can be a role model for Ethiopia because of the very high level of digital technological advancement they have attained and the strong positions they have and amended their law to make it compatible with digital era and international legislations. The EIPO and ECCNRCMS should be committed to protect the interest of copyright holders by introducing of methods of licensing, effective mechanisms in monitoring use and collection and distribution of royalties in proportion to the actual use of their works.
- The copyright owners, the government and the collective management society members and other stakeholders should work hard together to have a strong, well developed collective management society, to have an appropriate legal framework, and advanced

collective management system like Canada, Nigeria, India and Germany in realizing the interest of the copyright holders and consumers.

- There is a lax attention from the Ethiopian government in protecting the interest of the copyright owners. Adequate attention should be given from the government to move the copyright industry forward and enhance the level of socio-economic contributions of the industry and to establish the vibrant collective management society to promote the rights of copyright owners. The establishment of a strong collective management system will solve the problems of the copyright owners and plays a key role in mitigating piracy.
- Copyright owners should develop trust on collective management society. The EIPO and CMS should create awareness on copyright holders the objectives, functions, roles and advantages of collective management society and this develops trustworthiness on collective management society. A transparent, logical, open and understandable manner of managing of collective management society is a prerequisite which enhances the trust of authors and holders of copyright and related rights, of users, and of the general public in the system of collective management of these rights.
- There should be a chain of cooperation among the collective management society, the EIPO, police, custom authorities, copyright owners, the Ethiopian Telecom, Ministry of Cultural and Tourism, and Ministry of Science and Technology and Ministry of Justice for the successful achievement of protection of copyright in Ethiopia. Moreover, these government sectors should become a member of board of collective management society because they feel a sense of belongingness and they do not consider copyright issues as secondary.
- Finally, the Ethiopian government particularly the EIPO should create a periodic forum and advocacy among the stakeholders to discuss issues of copyright to create public awareness on copyright. The list but not the last that the researcher recommends further research will be done on this issue since the issue of collective management society is a recent phenomenon.

BIBLIOGRAPHY

Books, Journals and Unpublished Materials

Berihu T, 'Exceptions and Limitations under Ethiopian Copyright Law: A Comparative Analysis, Addis Ababa University LLM Thesis, unpublished (2013)

Buinickaite Z, 'Collecting societies under European Competition Law scope and the contribution of the Commission and Court of Justice of the European Union in applying competition rules in collective rights management', (2001)

Caroline M, 'General Manager,, Collective Management Of Copyright And Neighboring Rights, Corporate Services Division, Copyright Agency Limited, Australia', (2016)

Christian H, 'the Economics of Collective Copyright Management, Assistant Professor in Cultural Economics at Erasmus University Senior Researcher at the Institute for Information Law at University of Amsterdam' (Rotterdam, April 2011)

Cole A, T' Collective management of copyright and related rights in the Caribbean, publication, (2003)

Dara L, 'Legislative Summary Bill C-11: an act to amend the Copyright Act', (2016)

Demissew S' Historical development of copyright in Ethiopia, African Intellectual Property Journal' (2008), V (1), P (66)

Dorcas A. Odunaike, 'Comparative Analysis of Collective Administration of Performance in Australia and Nigeria', (2017)

Dutfield G, ' Global Intellectual Property Law' (2008)

Fitzegerald B, 'Copyright Law, Digital Content and the Internet' Sydney University Press' (2008)

Fiscor M., 'Collective Management of Copyright and Related Rights at A Triple Crossroads: Should It Remain Voluntary or May It Be "Extended" or Made Mandatory?' (2003)

Ficsor M, 'The WIPO 'Internet Treaties: the John Marshall Review of Intellectual Property Law, USA', (2006)

Gebremedhn K ‘the Emerging Ethiopian Copyright and Related Rights Collecting: Assessment of Challenges and Prospects’, Thesis, Addis Ababa University, (2013)

Gillerieron P ‘Performing Right Societies in the Digital Environment’ (2006)

Ginisburge J. C., ‘International Copyright Law: U.S. and E.U. Perspectives’, (2015)

Gervais D, ‘Collective Management of Copyright: Theory and Practice in the Digital Age, in Collective Management of Copyright and Related Rights, (second ed, 2010)

Gervais D, ‘Collective Management of Copyright and Related Rights’,(Kluwer Law International 2015, BV the Netherland) (3rd ed.)

GervaisD, ‘Collective management of copyright and neighboring rights in Canada: an International perspective’ (2001)

Jiang Y, ‘Changing Tides of Collective Licensing in China, Michigan State International Law Review’

Kefalas A, ‘the Relevance of Traditional Collective Management Organizations in the Digital Age Current Challenges and Future Possibilities’ MA Thesis

Khanh P, M. S, ‘Fair Use of Copyrighted Works in Digital Age’

Knopf H. P. ‘Canadian Copyright Collectives and the Copyright Board’, Ottawa Ontario’, (2008)

Lanchidi P ‘Collective Management of Music Rights and Competition Policy in the European Union’, (2010)

Lewinski S, ‘Mandatory Collective Administration of Exclusive Rights: A Case Study On Its Compatibility With International and EC Copyright Law’

Marshall, L S. ‘Music and copyright. Edinburgh: Edinburgh University Press Ltd’, (2004),

Macedo M. G, ‘Hellenic Foundation for European and Foreign Policy, European Parliament: Collecting Societies and Cultural Diversity in Music Sector’, German Copyright Act section 20b (2)

Merso F 'The Ethiopian Intellectual Property Rights: Copyright, Trademarks, Patents, Utility models and Industrial Designs, A Textbook' (School of Law, Addis Ababa University) (2012)

Mestmäcker E.J 'Collecting Societies' in Claus Dieter Ehlermann and Isabela Atanasiu, European Competition Law Annual 2005: The Interaction between Competition Law and Intellectual Property Law (Hart Publishing, Oxford-Portland Oregon 2007)

Merso F The Ethiopian Intellectual Property Rights: Copyright, Trademarks, Patents, Utility models and Industrial Designs, A Textbook (School of Law, Addis Ababa University) (2012),

Nwauche E.S, 'Intellectual Property Rights, Copyright and Development Policy in a Developing Country'

Obianuju N, M. I, 'the Challenges of the Nigerian Copyright Commission (NCC) in the Fight Against Copyright Piracy In Nigeria, Global Journal of Politics and Law Research (II)

Olsson H, 'The Importance of Collective Management of Copyright and Related Rights' [2005]

Ouma M. N. 'Enforcement of Copyright in the Music Industry: A Critical Analysis of the Legal and Institutional Framework on Enforcement in Sub Saharan Africa', Unpublished PhD Thesis, Queen Mary University of London', (2009)

Olukunel O 'Copyright Collective Administration in Nigeria, Lessons for Africa:

Rochelandet F 'An Evaluation of Collective Administration of Copyright in Europe'

Rossoglou K, 'the European Consumer Organization, Collective management of Copyright and Related Rights and Multi territorial Licensing of Rights in Musical Works for Online.'

Schepens P, 'the Administration Society at the Service of Authors and Users, UNESCO' (2000)

Schonning P 'Licensing Authors on the Internet, International Review of Intellectual Property and Completion Law' V (31)

Shepherd P, 'Collective Management in Reprography: President of IFRRO'

Shushik, M and Khanh, P, 'Fair Use of Copyrighted Works in the Digital Age'

Singh R, 'Transforming Dimension of Intellectual Property Right Challenges for New Age Libraries, Published by National Law University',

Sopefolu O, A, 'Intellectual Property Rights in Sub-Saharan Africa, Senior Thesis.' (November 28, 2011)

Sunaina M & D. M 'Legal Framework of Copyright Societies and Competition Law in India, Indian Competition Law Review', V (2)

Talus K, 'Geo-Blocking of Online Copyright Protected Content v Free Movement of Services within the European Union', (University of Eastern Finland, 2016,)

Tom M 'Collective management of Copyright under Rwandan Law Kigali', (December 2015)

Walter K 'Collective Management of Copyright and Related Rights, (Third edition).

Watal J.' Intellectual Property Rights in the WTO and Developing Countries: Kluwer Law International' (2001),

WattR, 'Collective Management as a Business Strategy for Creators: An Introduction to the Economics of Collective Management of Copyright and Related Rights' (WIPO Publication, 2016)

Zhang, Z 'Rationale Of Collective Management Organizations: An Economic Perspective' V (10),(2016)

Reports

German Patent and Trademark Office, Annual Report (2008)

Emmanuel M, 'Copyright Licensing and Collective Management: Policy Proposal Ottawa, Seminar on Intellectual Property Policy, (December7, 2015)

Emmanuel P, 'Copyright Licensing and Collective Management Policy Proposal'

Handke C, 'Economic Effect of copyright: Report for National Academies of Sciences', (Rotterdam, 2011),

WIPO, 'Promotion and Development of Collective Management of Copyright and Related Rights', Geneva (1999)

WIPO "WIPO Guide on the Licensing of Copyright and Related Rights", World Intellectual Property Organization, (2004)

WIPO National Seminar on Copyright, Related Rights, And Collective Management' (May 24,2018

National Legislations

Ethiopian Copyright and Neighboring Rights Protection Proclamation, Proclamation No. 410/2004

Ethiopian Copyright and Neighboring Rights Protection (Amendment) Proclamation No. 872/2014

The Constitution of Federal Democratic Republic of Ethiopian, Proclamation No.1/1995.

The Civil Code of the Empire of Ethiopia, Negarit Gazeta Proclamation No.165/1960

The Criminal Code the Federal Republic of Ethiopia, Proclamation No.414/2004.

International Legislations

Canada Copyright Act C-42 (1989)

Canadian Copyright Act (2017)

Canadian Copyright BillC-32(2010)

German Collecting Societies Act of 24 May 2016 Federal Law Gazette I p. 1190

German Copyright Administration Act as Amended (1998)

Indian Copyright Amendment Act (2012)

Nigerian Copyright Act (2004)

Nigerian Copyright Regulation (2007)

Internet Source

Canada Copyright Board/ <<http://www.cbcd.ca/societies/index-f.html>> assessed November 23, 2017

Collective management of copyright trights together with stating the role of collective management organizations/<<http://www.belipo.bz/wp-content/uploads/2011/12/>>, accessed December10, 2017

Collective management organizations (CMOs) act on behalf of their members to negotiate rates and terms of use, issue licenses, collect and distribute royalties<http://www.apaaonline.org/pdf/APAA_63rd_council_meeting/>accessed November 15,2017

Ethiopian-Musicians-Association-

Ema<<https://www.musicinafrica.net/Directory/>>accessedDecember17, 2017

FisherW, 'TheoriesofIntellectualProperty'<<http://cyber.law.harvard.edu/people/tfisher/iptheory>>, accessed on Nov /9/2017

Frank N, Extended Collective Licensing a Valuable Catalyst for the Creative Content Economy in Europe, <<http://www.eurovision.com/>> accessed on November18, 2017

Greenfield K. 'Chilongo from the Harare-based national RRO: Currently IFRRO African Development Committee sits in Zimbabwe'<<http://www.ifro.org/node/>> accessed, December25, 2017

Handke C, 'The Economics of Collective Copyright Management, Senior Researcher at the Institute for Information Law at University of Amsterdam' <<http://www.eshcc.eur.nl/handke/>>

International Confederation of Authors and Composers the Importance of Collective Management, <<http://www.cisac.com/>>, accessed October 15, 2017

Introduction to Collective Management of Copyright and Related Rights/<<http://uatm.com.ua/laws/int/Introduction%20to%20Collective%20Management%20of%20Copyright%20and%20Related%20Rights>> accessed on December 15, 2017

Major Copyright Collectives in Canada, <<http://www.cb-cda.gc.ca/societies-societes/index-e.html>> assessed November 21, 2017

NCC, Historical Background of NCC, <<http://www.copyright.gov.ng/historicalbackground>> accessed on December 25, 2017

Olukunle O'Copyright-Collective-Administration-Nigeria:Copyright Collective Administration in Nigeria' /<<https://www.bookdepository.com/>>, accessed 23th December2017

The Annual Reports Of The German Patent And Trade Mark Office Contain Informative Figures And Statistics Relating To IP Applications In Germany And On All Other Activities Of The DPMA<https://Www.Dpma.De/English/Our_Office/Publications/Annual_Reports/Index.Html>, Accessed December12, 2017.

The Ethiopian Filmmakers Association (EFIMA) is a professional association of filmmakers with the prime objective of developing and expanding the film art and industry in Ethiopia<<http://www.coloursofthenile.net/about/organisers/the-ethiopian-filmmakers->>assessed December17, 2017

WTO 'the TRIPS Agreement', <http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm> assessed, November24, 2017

WIPO Intellectual Property Handbook: Policy, Law and Use, (2nd ed.), Geneva. <<http://www.wipo.int/about-ip/en/iprm/index.html>> (2004)

Zakir T, 'Overview of Changes to the Indian Copyright Law<<http://nopr.niscair.res.in/handle/123456789/14460>> assessed November23, 2017

List of Interviewees

Interview Made with Artist Desalegn Hailu, ‘Members of Board of Directors’, Date, April 26, 2018

Interview Made with Getenet Yeshane, ‘Attorney and Consultant at Law and Legal Adviser of Collective Management Society’, date, April 24, 2018

Interview Made with Isiyas Hordofa, ‘former president of Ethiopian Writer’s Association and President of Oromo Authors’ date April 26, 2018

Interview Made with Nasir Nure, Director Copyright Directorate, Date April 23, 2018

Interview Made with Artist, Attorney Tewodros Mosisa; ‘Vice President of Collective Management Society’, Date April 25, 2018

Interview Made with Tewedaje Kifile , ‘Director of Collective Management Society’, Date April 24,2018

Interview Made with Yasin Omer,‘Copyright and Community Knowledge Study, Registration and Information Team Leader,’ Date April 24, 2018

Interview Made with Yared Alemayew; ‘Copyright and Community knowledge Law Enforcement Expert’, Date April 25, 2018

Interview made with Dr. Muse Yakob President of Ethiopian Copyright and Neighboring Rights Collective Management Society, Date April 26, 2018