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# EXAMPLES OF DIGITAL COPYRIGHT INFRINGEMENT ACTIVITIES IN TANZANIA

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# **Examples of Digital Copyright**

## **Infringement in Tanzania**

**Prepared by Asherry Magalla\***

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## **1.1 An Introduction.**

Copyright is one of the important pillars of the doctrine of Intellectual Property.<sup>1</sup> My understanding as a thinker intellectual property is simply means the works that result from the emanation of human mind. Thus, it incorporates the following; first the human mind, second the manifestation of the human mind and last the results of the creativity of the human mind.<sup>2</sup>

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<sup>1</sup> Bainbridge argued that, intellectual property is concerned with the legal rights associated with creative effort or commercial reputation and goodwill. It is very wide and includes literary and artistic works, films, computer programs, inventions, designs and marks used by traders for their goods and services. David I. Bainbridge, Intellectual Property, Seventh Edition, Pearson Longman, Ashford Colour Press Ltd, Gosport, 2009. Pp.3.

<sup>2</sup> For example in copyright ideas are not protected but the expression of ideas. The ideas is expressed when seen by other person(s) other than the author himself, thus the creativity of human mind must been seen.

The aspect of Copyright in the digital environment is widely and extensively discussed in most of Intellectual Property and Information, communication and Technology Law texts.

This article describes different methods that are used for copyright infringement in the digital environment, whether accidentally or intentionally, and at the end to see whether or how the Act has responded to the said online activities. The attempt here is simply to familiarize the reader with a careful understanding of the term copyright and its brief history in Tanzania, also copyright infringement, and how these copyright infringement activities have affected the protection of copyright in Tanzania and the eligibility if the concerned law.

## **1.2 The Brief History of Copyright in Tanzania.**

In relation to the history of copyright in Tanzania, intellectual Property like other laws during colonial time was imported through a reception clause<sup>3</sup> as Tanzania<sup>4</sup> was under the British trustee and inherited or copied many British legal practices including laws through the Reception Clause.<sup>5</sup>

Soon after the independence of Tanganyika, there was no significant change brought in an intellectual property legal system. In 1966, after independence,

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<sup>3</sup> Leonila Kishebuka, WIPO Training of Trainers Program on Effective Intellectual Property Asset Management by Small and Medium-Sized Enterprises (Smes) August 22 To 26, 2011, Blue Pearl Dar Es Salaam, available at, <http://www.brela-tz.org/NATIONAL%20ADMINISTRATION%20FRAMEWO>.  
Extracted on 8<sup>th</sup> July 2013.

<sup>4</sup> Tanganyika by then.

<sup>5</sup> Section 2 subsection (ii) of the Judicature and Application of Laws Act, CAP.358 of 1920.

there was amendment of the Copyright Ordinance<sup>6</sup> of the same year, which at the end resulted in the enactment of the new Copyright Legislation. The legislature of the United Republic of Tanzania enacted the Copyright and Neighbouring Act.<sup>7</sup> The President gave his assent in June 1999 and the law became operational from December, 31, 1999 which it is still in operation up to now.

As stated in Chapter One that, the Act obliged with the principles of Berne convention<sup>8</sup> and the TRIPS<sup>9</sup>

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<sup>6</sup> Chapter 218 by Copyright Act No. 61.

<sup>7</sup> No. 7 of 1999, in April 1999, [Cap.218 R.E. 2002].

<sup>8</sup> The Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 as last revised at Paris on 24 July 1971 and amended in 1979. Available at [www.wipo.org](http://www.wipo.org). Retrieved on 6<sup>th</sup> September 2013

<sup>9</sup> The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation as

Agreement of the World Trade Organization<sup>10</sup> such as:

To protect the moral and economical interests of authors (creators) relating to their work; to provide protection for expression of folklore; to protect the interests of performing artists, producers of cassettes and broadcasting organizations; to provide for civil remedies and criminal sanctions against infringers and pirates; and to provide for Public Rights to access the author's work without conflicting author's rights.

The Act provides the monopoly granted to authors by copyright.<sup>11</sup> However, such monopoly has been

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applied to nationals of other WTO Members. See Article 1 (3) of Trips.

<sup>10</sup> Agreement on Trade Related Aspects of Intellectual Property Rights, April 15 1994, Annex IC of Marrakesh Agreement Establishing the World Trade Organisation, 1869 U.N.T.S. 299, 33 I.L.M. 81 (1994).

<sup>11</sup> Section 5 to 23 of [Cap. 218 R.E. 2002] Act No 7 of 1999.

positively affected by the right of the public to access the work.

The works that are protected under copyright in Tanzania are provided under Section 5 up to 23 of the Act.<sup>12</sup>

It has to be understood that, intellectual property<sup>13</sup> is non-union matter within the context of Tanganyika and Zanzibar political Union, as such; each part of the union has its own intellectual property regime that is in

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<sup>12</sup> [Cap. 218 R.E. 2002].

<sup>13</sup> Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. IP is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs. See <http://www.wipo.int/about-ip/en/>



Tanzania mainland there is COSOTA while in Zanzibar there is a copyright society of Zanzibar (COSOZA).<sup>14</sup> In this case even the aspect of copyright in Tanzania is operated independently.

Soon after the enactment of the Act,<sup>15</sup> COSOTA<sup>16</sup> was established with one among the functions is to maintain registers of works, productions and association of authors, performers, translators, producers of sound recordings, broadcasters and publishers.

The head of the Copyright Society of Tanzania is the Copyright Administrator. The Copyright Administrator is the Chief Executive Officer of the Society and is responsible for administration and management of the Society, including the supervision of other staff of the

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<sup>14</sup> See at <http://www.cosota-tz.org/>-Retrieved on 7<sup>th</sup> September 2013.

<sup>15</sup> No. 7 of 1999, in April 1999, [Cap.218 R.E. 2002].

<sup>16</sup> Copyright Society of 1999.

Society. One of the powers of the Copyright Administrator is to receive and register copyrights. Apart from registering new applications, the Copyright Administrator receives and registers copyright licenses, and assignments as explained in sections 16 and 17.<sup>17</sup>The Headquarter of the organization is Dar Es Salaam.<sup>18</sup>

### **1.3 The Meaning of copyright.**

In Tanzanian context, copyright can be defined as the exclusive right granted by law to the author of a work to disclose it as his own creation, to reproduce it and to distribute or disseminate it to the public in any manner

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<sup>17</sup>[Cap. 218 R.E. 2002].

<sup>18</sup> Lexglobe LLP, A Short Guide to Copyright Law in Tanzania, available at [www.lexglobelaw.com/assets/guide\\_copyright2.pdf](http://www.lexglobelaw.com/assets/guide_copyright2.pdf)- Retrieved on 21<sup>st</sup> July 2013.

or by any means and also to authorize others to use the work in specific ways.<sup>19</sup>

In the other words, copyright is a property right which vests in the authors of original literary, dramatic, musical and artistic works. Copyright also vests in authors of sound recordings, films, broadcasts, cable programmes and typographical arrangements of published editions. Several copyrights can exist in one work. For example, a song can be split into three (3) separate copyright works:<sup>20</sup>

1. Copyright in the music itself (a 'musical work');<sup>21</sup>

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<sup>19</sup> Section 4 of the Copyright and Neighbouring Rights Act of 1999, Cap 218.

<sup>20</sup> Lexglobe LLP, A Short Guide to Copyright Law in Tanzania, available at [www.lexglobelaw.com/assets/guide\\_copyright2.pdf](http://www.lexglobelaw.com/assets/guide_copyright2.pdf)- Retrieved on 21<sup>st</sup> July 2013.

<sup>21</sup> This term is not defined in the Interpretation section of the Act, A musical work consists of the musical notes and lyrics (if any) in a musical composition.. Available

2. Copyright in the lyrics (a 'literary work');<sup>22</sup> and
3. Copyright in the sound recording of the music (a 'sound recording').<sup>23</sup>

Tanzania is also a member of the Berne Convention for the Protection of Literary and Artistic Works<sup>24</sup>. Under the Tanzanian law, copyright is recognized as a property

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at [http://itlaw.wikia.com/wiki/Musical\\_work](http://itlaw.wikia.com/wiki/Musical_work)- retrieved on 8<sup>th</sup> September 2013.

<sup>22</sup> Is the work of a writer; anything expressed in letters of the alphabet (especially when considered from the point of view of style and effect). Available at <http://www.thefreedictionary.com/literary+work>- Retrieved on 8<sup>th</sup> September 2013.

<sup>23</sup> Is an electrical or mechanical inscription and recreation of sound waves, such as spoken voice, singing, instrumental music, or sound effects. The two main classes of sound recording technology are analog recording and digital recording. See [www.sound2record.com/sound-recording.html](http://www.sound2record.com/sound-recording.html)-Retrieved 8<sup>th</sup> September 2013.

<sup>24</sup> The Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 as last revised at Paris on 24 July 1971 and amended in 1979. Available at [www.wipo.org](http://www.wipo.org). Retrieved on 6<sup>th</sup> September 2013.

right which vests in the authors of original literary, dramatic, musical and artistic works.

Copyright also vests in authors of sound recordings, films, broadcasts, cable programs and typographical arrangements of published editions. Several copyrights can exist in one work.<sup>25</sup>

Bainbridge (2009) argues that, copyright is a property right which subsists (exists) in the various 'works', for example literary works, artistic works, musical works, sound recordings, films and broadcasts.<sup>26</sup>

It is a legal concept, enacted by most governments, giving the creator of an original work exclusive right to

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<sup>25</sup> Section 5 of the Copyright and Neighbouring Rights Act, [Cap.218 R.E.2002] 1999.

<sup>26</sup> David I. Bainbridge (2009). *Intellectual Property*, Seventh Edition, Pearson Longman, Ashford Colour Press Ltd, Gosport, Pp.5 and 31.

it, usually for a limited time.<sup>27</sup> Generally, it is "the right to copy," but also gives the copyright holder the right to be credited for the work, to determine who may adapt the work to other forms, who may perform the work, who may financially benefit from it, and other related rights. It is a form of intellectual property (like the patent, the trademark, and the trade secret) applicable to any expressible form of an idea or information that is substantive and discrete.<sup>28</sup>

The concept of expression of ideas in Tanzania is not well understood by most of the people especially underground artists. Most of their songs have been stolen by either music producer or prominent artist. The underground artist provides lyrics to the music

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<sup>27</sup> World Intellectual Property Organisation. "*Understanding Copyright and Related Rights*". WIPO. pp. 6–7. Retrieved January 26, 2013

<sup>28</sup>Ibid, Pp. 6–7.

producer, producer later on giving the same lyrics to the prominent artist who automatically became the first person to express it to the public and granted a copyright protection leaving the underground artist claiming the ownership of the lyrics without legal basis.

For example, it is believed that the song 'Cinderella' by Ally Kiba,<sup>29</sup> the famous bongo flavour artist was stolen from the underground artist Malaika Kamugisha.<sup>30</sup> The same happened to Diamond Platinum and Dayna

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<sup>29</sup> Ally Kiba is the famous Bongo Flavour Artist, famous with his song Cinderella, Usinicheke, and Currently My Everything. .Indeed, his debut album was Cinderella which was one of the biggest selling records in East Africa. He subsequently toured the US and Europe.

<sup>30</sup> Hivi karibuni, msanii aliyekuja juu kwa kasi katika Bongofleva hasa baada ya kutoka na singo yake `Cinderella` almaarufu kwa jina la Ali Kiba alifikishwa mahakamani akidaiwa shilingi milioni 10 kwa madai ya kuiba mashairi ya wimbo huo kutoka kwa Malaika Kamugisha-

[http://shermanamavazi.blogspot.com/2007\\_07\\_01\\_archive.html](http://shermanamavazi.blogspot.com/2007_07_01_archive.html)-  
acessed on 27th July 2013

Nyange when the producer Shedy Clever of Burn Records sold Dayna's beat to Diamond on his song 'Number One'. In the later case, the one who expresses the beat is Diamond, and in the former case is Ally Kiba.

Fishman (2008) describes copyright as a legal device that provides the creator of a work of art or literature, or a work that conveys information or ideas, the right to control how the work is used.<sup>31</sup> The intent of copyright is to advance the progress of knowledge by giving an author of a work an economic incentive to create new works.<sup>32</sup>

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<sup>31</sup> Fishman, S. (2008). *The copyright handbook: What every writer needs to know*. Berkeley, CA: Nolo, Pp.6.

<sup>32</sup>Loren, L.P. (2000). *The purpose of copyright*. *Open Spaces Quarterly*, 2(1). Retrieved from <http://www.open-spaces.com/>, para 12. On 26<sup>th</sup> Jan 2013.



It is a legal regime that provides a limited form of monopoly protection for written and creative works fixed in a tangible (material) form.<sup>33</sup>

According to Sharma (2011) copyright arises as soon a work is created by fixed, and it does not extend to neither idea, procedure, process, method of operation, concept, principle or discovery, unless fixed in a tangible form.<sup>34</sup>

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<sup>33</sup> A. Story, C. Darch, and D. Halbert (2006). *The Copy/South Dossier: Issues in the Economics, Politics, and Ideology of Copyright in the Global South*, The Copy/South Research Group May. Pp.12.

<sup>34</sup> Vakul Sharma (2011). *Information Technology-Law and Practice*, 3<sup>rd</sup> Edition (New Delhi: Universal Law Publishing Co.Pvt. Ltd., Pp. 465.

Therefore, to him as long as the work is created and fixed in permanent form, then such work deserves to be copyrighted.<sup>35</sup>

Copyright is all about protecting original works of authorship that are fixed in tangible form or medium of expression which they can be perceived, reproduced, or otherwise communicated either directly or with the aid of a machine or device.<sup>36</sup>

By including the words, “*with the aid of a machine or device*” this means the author intended and intends to include copyright, meaning in the digital environment as the fact that nowadays artistic and literal works are being fixed in electronic devices with the aid of

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<sup>35</sup> Vakul Sharma (2011). *Information Technology-Law and Practice*, 3<sup>rd</sup> Edition (New Delhi: Universal Law Publishing Co.Pvt. Ltd., Pp. 465.

<sup>36</sup> 17 USC sec. 102 (a).

machines. Take an example of things like software programs, music, poems, articles and journals, newspaper, for instance Mwananchi Newspaper Corporation have online newspaper.

Burgunder (2007) defined copyright according to the principles of copyright protection. That is, Copyright is;

- i. Protection of expression of ideas and not the ideas themselves.
- ii. Such protection shall only last for a limited period of time.
- iii. When such period expires, the works enter into the public domain.
- iv. A person who lawfully obtains a copy of a copyrighted work may freely sell or otherwise transfer that copy.
- v. Member of a public may make a fair use of a copyrighted work under circumstances where a

public enjoys substantial benefits while creative incentives are maintained.<sup>37</sup>

These general principles of copyright can be also found in a digital environment.

Todd (2007)<sup>38</sup> explains that, copyright is a species of intellectual property and, as that description implies is a form of property. It is, however, not in anything tangible, and nor indeed (unlike, for example, property in a lease of land) need it even relate to anything tangible.<sup>39</sup>

Todd argued that, copyright protection extends to the internet in the same way as everywhere else. This

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<sup>37</sup> Burgunder L (2007). *Legal Aspects of Managing Technology*, Fourth Edition, Thomson/West Eagan, MN: Mason Ohio, Pp. 254.

<sup>38</sup> Paul Todd (2005). *E-Commerce Law*, Cavendish Publishing Limited: New York, Pp.78, para5.

<sup>39</sup> For a Fuller Introduction to the Nature of Copyright, see (e.g.) Cornish, WR and Llewellyn, D, *Intellectual Property*, 5<sup>th</sup> edn, 2003, London: Sweet & Maxwell, Chapter 9.

means that, the same way copyright is protected in traditional ways, the same is applied in cyber space.<sup>40</sup>

For example, for a web author to copy on his or her website and make it to public someone else's text or graphics can amount to breach of copyright, and the same would be if were published in magazines or newspapers. Thus, for him, what it means of copyright protection in traditional ways is the same as copyright protection in cyberspace.

It is important, however, to be aware of the nature of the copying process, since it is unlikely the process that occur in other media. The precise manner of applying copyright law is therefore unusual, and perhaps counterintuitive.<sup>41</sup>

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<sup>40</sup> Ibid, Paul Todd (2005). Pp.77, para 2.

<sup>41</sup> Ibid , Pp.77.

Reddy (2000) discusses copyright relating to artistic creations, such as poems, novels, music paintings, cinematographic works. He further states that, in most of European languages other than English, copyright is called author's rights.

Reddy is not different from Burgunder in the aspect of expression of ideas, but adding original creation, fixation and publication of the work in order for it to be completed copyrighted work.<sup>42</sup>

Tavani (2007) argued that, copyright is a legal protection given to a person or author. The author can be an entity<sup>43</sup> or the author can be an individual. He further argued that such protection is provided for an

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<sup>42</sup> G.B. Reddy's (2000). *Intellectual Property Rights and the Law*, 1st Edition, Gogia Law Publications, Navya Printer: Hyderabad. Pp.6-7.

<sup>43</sup> Such as an organization or corporation, such as Microsoft Corporation.

expression of an idea such as a book, poem, musical composition, photography, dance movement, motion pictures, audiovisual work, or computer software.<sup>44</sup>

Therefore, Tavani includes computer software program as one of the item composing of copyright that automatically concluded that, to him copyright exist in the digital environment. He also concurs with Reddy and Lee Burgunder in the aspect of protection of expression of an idea.

United Nation Educational Scientific and Cultural Organization (2010) argues that, copyright is part of intellectual property (IP) law, which protects other subject matter as well, such as; trademarks which is a

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<sup>44</sup> Herman T. Tavani (2007). *Ethics and Technology, Ethical Issues in an Age of Information and Communication Technology*, 2<sup>nd</sup> Edition, John Wiley & Sons, Inc, , United States of America, Pp.225-26.

distinctive sign which identifies certain goods or services as those produced or provided by a specific person or enterprise;<sup>45</sup> patents<sup>46</sup> and designs which is the specifications, plans, parameters, costs, activities, processes and how and what to do within legal, political, social, environmental, safety and economic constraints in achieving that objective,<sup>47</sup> plant seed varieties, trade secrets which includes sales methods, distribution methods, consumer profiles, advertising strategies, lists of suppliers and clients, and

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<sup>45</sup> Further see <http://www.wipo.int/trademarks/en/trademarks.html>. Retrieved on June 24th 2013.

<sup>46</sup> A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.

<sup>47</sup>See Don Kumaragamage, Y. (2011). *Design Manual* Vol 1.



manufacturing processes,<sup>48</sup> integrated circuits,<sup>49</sup> topographies and geographic indications of source.<sup>50</sup> Plant seed varieties, integrated circuits, topographies and geographic indications of source are all within patents while trade secrets are within trademark even though sometimes they stand independently.

It is a branch of law that grants authors (writers, musicians, artists and other creators) protection over their works.<sup>51</sup> Such protection consists in providing authors with ownership or property rights (or

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<sup>48</sup>Further see [http://www.wipo.int/sme/en/ip\\_business/trade\\_secrets/trade\\_secrets.htm](http://www.wipo.int/sme/en/ip_business/trade_secrets/trade_secrets.htm). Retrieved on June 24th 2013.

<sup>49</sup>A monolithic IC, where the entire circuit is constructed in a single piece of silicon." Andrew Wylie (2009). "The first monolithic integrated circuits". Retrieved 7 July 2013

<sup>50</sup> United Nation Educational Scientific and Cultural Organization (2010). *The ABC of Copyright*, UNESCO Culture Sector, Paris, Pp.10, para 1-3.

<sup>51</sup> Literary and Artistic works.

exploitation rights),<sup>52</sup> which take into account their material interests.<sup>53</sup> Under copyright, authors are entitled to protection against unauthorized use of their works as well as to a possible share in any earnings from its use by the public.<sup>54</sup> The institution is not different from what other authors have been arguing about copyright.

Nwauche (2005) argues that, copyright is a person's exclusive right to authorize certain acts with respect to a wide range of works such as every original literary, dramatic musical artistic work and computer programs.

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<sup>52</sup> Moral and Economic Rights

<sup>53</sup>These material interests (Moral and Economic interests) are recognized as a human right under the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1966).

<sup>54</sup>United Nation Educational Scientific and Cultural Organization (2010). *The ABC of Copyright*, UNESCO Culture Sector, Paris, Pp.10, para.3

Copyright law protects the idea and not the expression of the idea.<sup>55</sup>

This serves as a general access mechanism because what is not protected by copyright is available to the public. This is because in the promotion of the public ideal of creativity, there should be no monopoly of ideas.

Nwauche advanced the argument that computer programs are copyrighted material, and the concept of idea and expression of idea, but further explained why an idea is not protected. This is what the previous authors did not explain through which the answer was simply that, there should be no monopoly of ideas in the promotion of the public ideal of creativity.

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<sup>55</sup>Enyinna S. Nwauche (2005). A Development Oriented Intellectual Property Regime For Africa, Paper presented at the 11 General Assembly of the Council for the Development of Social Science Research for Africa (CODESRIA) in Maputo Mozambique 6-10 December 2005. Pp.17, para1.

Generally, copyright is based on the idea that we are all entitled to the fruits of our labours. It is the ownership of intellectual property, like the patent, the trademark, and the trade secret. Copyright is a legal concept giving the creator of an original work of authorship exclusive rights to it, usually for a limited time, after which the work enters the public domain.

It is "*the right to copy*," but also gives the copyright holder the right to be credited for the work, to determine who may adapt the work to other forms, who may perform the work, who may financially benefit from it, and others.<sup>56</sup>

In my opinion copyright definition has to refer to the right to copy as other authors have been saying. But

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<sup>56</sup> Alliant Los Angeles librarian Stephanie Ballard (2008), *Give Credit Where Credit is Due: Avoiding Plagiarism and Copyright Infringement*. Available at <http://www.alliant.libguides.com/plagiarism-extracted> on 5th September 2013.

the difference is many of these authors on the right to copy; they only referred it to the exclusive rights of the owner of the work that means only the owner have the right to copy. However the right to copy is also involve other users of the work other than the owner of the work as long as permission and any other principles of the doctrine of fair use have been observed. Therefore, copyright is the right to copy the copyrighted material by both the owner of the work and other users of the work.

There are some exceptions to the copyright owner's rights. They are known as Free Use. For example, a person may be allowed to copy a work for non-commercial research and private study, criticism or review, reporting current events, judicial proceedings and teaching in schools. But if a person copy large amounts of material or making many copies, permission

is required. Also, the need to include in your work an acknowledgement of the name of the copyright work and its author. It is from these exceptions where by the other right of copy for the users emerged.

#### **1.4 Copyright Infringements.**

In order to fully understand the concept of copyright infringement, one must understand what rights the holder occupied. After understanding them, then a person is in good position to determine whether there have been infringements or otherwise.<sup>57</sup> Some of these rights are;

The right to reproduce the work,<sup>58</sup> the right to derivative works,<sup>59</sup> the right to distribute,<sup>60</sup> the public display rights,<sup>61</sup> and the public performance right.<sup>62</sup>

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<sup>57</sup> Many of these rights have been mentioned in Chapter Two which are mainly two, Economic and Social Rights.

<sup>58</sup> This is the right to reproduce, copy, duplicate or transcribe the work in any fixed form. Copyright infringement would occur if

Copyright infringement occurs when a party who does not own the copyright to a work exploits one of the rights without permission.<sup>63</sup> Most often, it involves a claim of improper copying or creation of a new work

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someone other than the copyright owner made a copy of the work and resold it.

<sup>59</sup>Copyright infringement would occur here if someone wrote a screenplay based on his favorite Adam Mambi's book and sold or distributed the screenplay, or if someone releases or remixes of one of your songs without your consent.

<sup>60</sup> It has been a behavior of many businessmen in Tanzania especially in the areas out of city centres, for instance Temeke District, rent and lending audio and visual works of various artists in public without the authorization of the owner of the work. This has become a big problem especially in music and film industry.

<sup>61</sup>Copyright infringement occurs if someone other than the copyright holder offers a work for public display. For example, a music producer publishing an album without artist permission. This right has been infringed by many of Kariakoo and Buguruni Small Retailers, showing the copies of the artists works unlawfully.

<sup>62</sup>Copyright infringement would occur if someone decided to give performances of the musical "Dear God!" without obtaining permission from the owner (Kala Jeremiah).

<sup>63</sup> Burgunder, L. (2007). *Legal Aspects of Managing Technology*, 4<sup>th</sup> edn, Thomson/West Eagan, MN. Pp. 33.

based upon the original, but it can also involve a violation of the other rights as well. <sup>64</sup>In any case of copyright infringement, it is highly unlikely that actual copying could be proved by either the defendant confesses or a witness would have to testify that the alleged infringer was viewed copying the work or similar type if the evidence would have to be produced.<sup>65</sup>

The current example is a Tanzania Bongo Flavour Artist Tanzanite who copied a tune and the beat of the song Mbagala wrote by a famous artist Diamond Platinum. That was totally copyright infringement because the

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<sup>64</sup> [mindfusion.files.wordpress.com/.../basics-of-copyright-infringement.pdf](http://mindfusion.files.wordpress.com/.../basics-of-copyright-infringement.pdf)-Retrieved on 21<sup>st</sup> July 2013.

<sup>65</sup> In *Arnstein v. Porter*, 154 F.2d 464 (2d Cir. 1946). Judge Frank there stated, "It is important to avoid confusing two separate elements essential to a plaintiff's case in such a suit: (a) that defendant copied from plaintiff's copyrighted work and (b) that the copying (assuming it to be proved) went so far as to constitute improper appropriation."



former artist did not ask for permission from the owner. Even though there is no news on how the dispute was settled, but this is a good example of copyright infringement in Tanzania.

The British Academy and the Publishers Association (2008) argues that, copyright infringement occurs when one of the restricted acts<sup>66</sup> takes place in relation to a substantial part<sup>67</sup> of the copyright work without the prior authorisation of the copyright owner.<sup>68</sup> They continue to

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<sup>66</sup> The creator's economic and moral rights mean that they are restrictions on what we as users can do with copyrighted works. These restricted acts include: copying the work, Issuing copies to the public, importing infringing copies, dealing in infringing copies, and providing means for making infringing copies.

<sup>67</sup> Lord Reid in the case of *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 WLR 273 stated that "substantiality" depended more on the quality than the quantity of what has been taken".

<sup>68</sup> The British Academy and The Publishers Association (2008). Joint Guidelines on Copyright and Academic Research; Guidelines for

argue that, such infringement must be of substantial part and not trivial or small part which cannot be entertained by the law.

The act of the author saying that copyright infringements are the restricted acts means there are some acts which are allowed before the law, thus this definition implies that when the acts are not restricted then no copyright infringement exist which automatically falls under fair use.

However, such restricted acts must be of substantial part, the question is how substantial part of the infringed work is determined in the digital environment? That is depending on the jurisdiction of particular country on if their copyright law recognized such kind

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researchers and publishers in the Humanities and Social Sciences, British Academy and the Publishers Association. Pp .15.

of world (cyber world) in which to Tanzania legal system that is a problem.

Ahmad (2009), copyright in a work is infringed when the work is copied without the consent of the copyright owner. In infringement, it must be established that the defendant has copied the plaintiff form of expression and not his ideas.

A copyright law deals with the form in which the work is expressed .It doesn't monopolize the idea of information.<sup>69</sup> Thus computer programme, the expression is protected .This includes not only the code lines of the programme but also the structure.<sup>70</sup>

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<sup>69</sup> The US has well defined legal principle that copyright protects expression but not ideas, 17 USC s 102 (a) at <http://www.bitlaw.com/source/17usc/102.html>-Retrieved on 9th July 2013.

<sup>70</sup> Nehaluddin Ahmad (2009), Copyright Protection in Cyberspace: A critical study with reference Electronic Copyright Management

Ahmad continued that, the problem arises when these specific rights get violated through the medium of the Internet. In this context, one has to understand the very nature of the Internet.<sup>71</sup>

As a medium, it allows a person to access a large amount of information and to copy that information in the same state as it is displayed.<sup>72</sup>

Compared with the former author, this author tried to recognize copyright infringement in digital environment by trying to show what happening if the person does not understand the nature of the internet as the fact

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Systems (ECMS): Communications of the IBIMA Volume 7, ISSN:1943-7765.

<sup>71</sup> One can draw an analogy from the case of DAT (digital audio tape) which also allows one to make infinite copies without any loss in quality of music, *Sony Corp. of America v. Universal City Studios*, 464 U.S. 417, 104 S.Ct .774 (1984).

<sup>72</sup> James M. Jordan III *Copyrights in an Electronic Age* at <http://journal.law.ufl.edu/~techlaw/2/jordan.html> (visited on 14 July 2013).

that everything occurs very fast and in large quantity and quality. That means it affect the extent, nature, and the purpose of the work. This motivates a country to have laws which recognized such environment because without this law copyright infringement is inevitable.

Burgunder (2007) copyright infringement argues that, copyright allows its owner to enjoy the fruits of the creative energies by providing exclusive control over a bundle of rights to a work's original expression. One who intrudes on any of those rights without permission infringes the copyright unless the use falls within the exception such as fair use. In supporting of his arguments, there must be a proof on the alleging

infringements.<sup>73</sup> Proof that the copyrighted work was copied,<sup>74</sup> and that the copyrighted work was illicitly.<sup>75</sup>

In the case of *Sid & Marty Krofft Television Productions Inc. v. McDonald's Corp.*,<sup>76</sup> Sid and Marty Krofft alleged that the copyright in their H.R. Pufnstuf television programs for children had been infringed by a series of McDonaldland advertisements.<sup>77</sup>

After knowing what the advertisement require and completed it Needham promised to pay the Kroffts on

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<sup>73</sup> Burgunder, L, (2007). *Legal Aspects of Managing Technology*, Fourth Edition, Thomson/West Eagan, MN. Pp.299.

<sup>74</sup> If one cannot prove that the similarities in the works resulted from copying, then the circumstantial evidence is required such as access to copyrighted material in terms of ideas or expressions.

<sup>75</sup> Substantial similarity of original expression is required, looking at quality and quantity dimensions, total concept and feel. If that is proven then no one can claim for fair use defence.

<sup>76</sup> 562 F.2d 1157 (9th Cir. 1977).

<sup>77</sup> Bernard A. Galler (1995). *Software and Intellectual Property Protection: Copyright and Patent Issues*, Greenwood Publishing Group, Pp.82-83.

McDonaldland advertisements but later informed the brothers that the ad campaign had been cancelled and that no money was forthcoming. But later Needham started to show the advertisement. The Kroffts promptly sued when the McDonaldland commercials began to air.

The Court held that, if the idea was similarly shared, then there would be no infringements. However, both worlds were inhabited by anthropomorphic plants and animals, shared the same topographical features such as trees, caves, a pond, a road, and a castle. Both works present talking trees with human being features and characters with round heads and wide mouths, evil features. The McDonaldland Expression is substantially similar to that in H.R. Pufnstuf.

McDonaldland captured the total concept and feel of Pufnstuf show.<sup>78</sup>

### **1.5 Examples of Copyright Infringement Activities in Tanzania through the Internet.**

Since its inception, copyright law has responded to technological change. Recently, the changes that are grabbing all the headlines relate to digital technology and digital communications networks, such as the Internet and personal computers.

These technologies, like many innovations, are both promising and potentially harmful to various parties interested in the use and exploitation of works of

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<sup>78</sup> Burgunder, L, (2007). *Legal Aspects of Managing Technology*, Fourth Edition, Thomson/West Eagan, MN.Pp.300-03.



authorship, from books and music to films and web pages.<sup>79</sup>

### **1.5.1 File Swapping.**

In another word, this is known as a peer-to-peer file sharing. It is the transmission of digital files from one computer to another by using internet.<sup>80</sup> Sometimes it may be regarded as the network of personal computers, each of which acts as both client and server, so that each can exchange files and email directly with every other computer on the network.<sup>81</sup>

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<sup>79</sup> George Clack and Marybeth Peters (2006). The Challenge of Copyright in Digital Age: U. S. Department of State Bureau of International Information Programs Focus on Intellectual Properties Rights, Pp. 50

<sup>80</sup> Vakul Sharma (2011). *Information Technology-Law and Practice*, 3<sup>rd</sup> Edition (New Delhi: Universal Law Publishing Co.Pvt. Ltd., Pp.466.

<sup>81</sup> Ronald Deibert et al. (2012). *Security, Identity, and Resistance in Asian Cyberspace*, The MIT Press Cambridge, Massachusetts: London.

Each computer can access any of the others, although access can be restricted to those files that a computer user chooses to make available. Peer-to-peer networks are less expensive than client/server networks but less efficient when large amounts of data need to be exchanged.<sup>82</sup>

In Tanzania the most applicable file swapping websites is; 4shared, Mega upload, Media fire, File Stube, Rapid share, The Pirate Bay, File serve, Hot foil, Torrents, deposit file, Mp3skull and Hulk share. It is through these sites, whereby many of the artistic and literary works both of the Tanzanians and throughout the world are shared illegally by the netizens.

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<sup>82</sup> See <http://www.thefreedictionary.com/File+swapping-Extracted> on 4<sup>th</sup> September 2013.

### **1.5.2 Downloading**

This means receiving information, typically a file from another computer by using a modem.<sup>83</sup> This is mainly affecting music and film industry in Tanzania. Even though the film industry is not that affected by the infringement through downloading but for music industry it is worse. There have been so many claims for copyright infringements through illegal downloading of the artists' works in Tanzania. When you visit websites such as Hulk share, Mp3skull hassbaby.blogspot.com, and Waptrick people are free to download the work. The question is that does the owner of the work permit such action to be performed? Sometimes you may find

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<sup>83</sup> Downloading is the transmission of a file from one computer system to another, usually smaller computer system. From the Internet user's point-of-view, to download a file is to request it from another computer (or from a Web page on another computer) and to receive it. See <http://searchnetworking.techtarget.com/definition/downloading>- Retrieved on 4th September 2013.

that it is the artist themselves who posted or gave go ahead for the work to be accessed. But sometimes, it can be either the owners of the sites or the subscribers of the sites who make such work to be available to the public without the permission of the owner.

### **1.5.3 Uploading**

In the aspect of downloading we see that, a person receives information, this is quite different with uploading whereby a person now instead of receiving the information, send information typically a file from another computer by using a modem.<sup>84</sup> Many of the Web 2.0 blog owners upload so many things in their

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<sup>84</sup> Transmission in the other direction: from one, usually smaller computer to another computer. From an Internet user's point-of-view, uploading is sending a file to a computer that is set up to receive it. People who share images with others on bulletin board systems (BBS) upload files to the BBS. See <http://searchnetworking.techtarget.com/definition/uploading-> Retrieved on 4th September 2013.

blogs. Sometimes it can be pictures, musics, videos, articles, books and other things which may obtain intellectual property rights such as copyright.<sup>85</sup>

There are many academicians in Tanzania who have joined in many academician sites, for example academia.edu. The sites provide for opportunities for the academicians to upload their various research papers. But it came to be noticed that, some of the paper are not well presented in terms of acknowledging the source of the information. That renders to copyright infringement. This is the same apply to pictures, musics and videos.

There has been confusion on the two concepts in most of Tanzanians, download and upload. It has to be understood that, from the ordinary workstation or small

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<sup>85</sup> Catherine Sweet Kian & Richard Kua Yong Meng (2001). *E-Commerce Law*, Time Book International Singapore

computer user's point of view, to download is to receive a file and to upload is to send a file. When you send an attached file with an e-mail note, this is just an attachment, not a download or an upload. In practice, many people use "download" and "upload" rather indiscriminately so you just have to understand the context. For example, if someone says to you "Download (or upload) such and such a file to me by e-mail," They clearly mean "Send it to me as an attachment."<sup>86</sup>

#### **1.5.4 Browsing**

Hjørland (2011b) provided the following definition: "Browsing is a quick examination of the relevance of a number of objects which may or may not lead to a

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See

<http://searchnetworking.techtarget.com/definition/downloading->  
Retrieved on 4th September 2013.

closer examination or acquisition/selection of (some of) these objects.<sup>87</sup>

In the internet world browsing is to inspect something leisurely and casually: browsed through the map collection for items of interest, to read something superficially by selecting passages at random: browsed through the report during lunch, to look for information on the Internet, to feed on leaves, young shoots, and other vegetation; graze, to look through or over (something) casually: browsed the newspaper;

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<sup>87</sup> Hjørland, Birger (2011b). *Theoretical clarity is not "Manicheanism": A reply to Marcia Bates*. In *Journal of Information Science*. 37(5), p. 546-552. Postprint: [http://pure.iva.dk/files/31053333/JIS\\_1568\\_v3.pdf](http://pure.iva.dk/files/31053333/JIS_1568_v3.pdf)-retrieved on 21st July 2013.

browsing the gift shops for souvenirs, to read (websites) casually on the Internet.<sup>88</sup>

The bad use of browsing may result to copyright infringements. Take an example a person is browsing a website where free copies of books, movies, or songs are available without the owner's permission. It is easy today for a Tanzanian to browse torrent sites and obtain the type of series, movies, books or songs desired by him, and easily downloading it.

#### **1.5.5 Caching**

Caching is a common technique used to reduce the time it takes for a computer to retrieve information. The term cache is derived from the French word cacher, meaning "to hide. Recently accessed information is stored in a cache so that a subsequent repeat access

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<sup>88</sup> <http://www.thefreedictionary.com/Browsing-> Accessed on 5th September 2013.



to that same information can be handled locally without additional access time or burdens on network traffic.<sup>89</sup>

In order for a cache to operate successfully, it must make identical copies of all cacheable information that travels across its path. Much of the information transmitted across the internet receives copyright protection because it consists of files containing graphics, sounds, and text. When protected works are copied and stored by computer caches, the rights of

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<sup>89</sup> Hjørland, Birger (2011b). *Theoretical clarity is not "Manicheanism": A reply to Marcia Bates*. In *Journal of Information Science*. 37(5), p. 546-552. Postprint: [http://pure.iva.dk/files/31053333/JIS\\_1568\\_v3.pdf](http://pure.iva.dk/files/31053333/JIS_1568_v3.pdf)-retrieved on 21st July 2013.

authors and the public interest of maintaining a workable internet collide.<sup>90</sup>

The action of Caches of duplicating and saving the information they retrieve from a web server for the future use of any other person who request them amount to the reproduction and distribution of the original work. In *Playboy Enterprises, Inc. v. Frena*,<sup>91</sup> Playboy sued the operator of a computer bulletin board, or the BBS. The defendant placed to protect works online in the form of photographs belonging to the plaintiff. The plaintiff alleged violations of its exclusive rights, including the exclusive right of public distribution.

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<sup>90</sup> Richard S. Vermut (1997), File Caching on the Internet: Technical Infringement or Safeguard for Efficient Network Operation? 4 J. Intell. Prop. L. 273. Available at [cyber.law.harvard.edu/metaschool/fisher/ISP/cache1.html](http://cyber.law.harvard.edu/metaschool/fisher/ISP/cache1.html)-  
Extracted on 9<sup>th</sup> July 2013.

<sup>91</sup> 839 F.Supp. 1552 (1993).

Playboy case is significant to the issue of file caching because cache servers are very similar in their operation to computer bulletin boards. They store a large number of files which are copied and then sent to any user that requests them. By placing cache servers on the internet, they are accessible to any of the millions of users connected to the internet. As a consequence, a public distribution makes the first time a cached file is hit.

The Playboy court focused on another point of law that is controlling on file caching. The court found that "*it does not matter that the defendant Frena claims he did not make the copies itself.*"

The fact that the computer was controlled by users and followed the instructions given by them is not relevant. While caches copy the information to their hard disks,

they are only distributed upon the request of a user. Under this rationale, the cache server operator is liable even though the copies are made automatically and done solely at the request of a user.<sup>92</sup>

Caching is not famous in Tanzania society like any other means of copyright infringements. This is simply because many of the people do not understand the term, even how the term work, but suffers the consequences caused by it.

#### **1.5.6 Mirroring**

The act of improving service for the users by replicating a web site across various servers all over the world and make available the critical information to all users at all

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<sup>92</sup> Richard S. Vermut (1997), File Caching on the Internet: Technical Infringement or Safeguard for Efficient Network Operation? 4 J. Intell. Prop. L. 273. Available at [cyber.law.harvard.edu/metaschool/fisher/ISP/cache1.html](http://cyber.law.harvard.edu/metaschool/fisher/ISP/cache1.html)-  
Extracted on 9<sup>th</sup> July 2013.

the times.<sup>93</sup> In computing, a mirror is an exact copy of a data set. On the Internet, a mirror site is an exact copy of another Internet site. Mirror sites are most commonly used to provide multiple sources of the same information, and are of particular value as a way of providing reliable access to large downloads. Mirroring is a type of file synchronization.<sup>94</sup>

Mirroring is not common in Tanzania. May because of the nature of technology or lack of expert on the subject. But as long as the information is obtained from the site whether in Tanzania or in Europe through these

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<sup>93</sup> Vakul Sharma (2011). *Information Technology-Law and Practice*, 3<sup>rd</sup> Edition (New Delhi: Universal Law Publishing Co.Pvt. Ltd., Pp.466.

<sup>94</sup> The good examples of mirroring sites are Wikileaks, Sourceforge, and Torrents. Torrent used mirroring when the site was under the threat of being closed due to the various claim of copyright infringements of various artist works. This is why it is very difficult to avoid the site.

mirrored sites, then copyright infringement could be available even to Tanzania artistic and literary works.

#### **1.5.6 Copying and Pasting**

This is the most form of copyright infringement through the digital medium in Tanzania. The word copying has two meanings. As a verb, copying means reproducing the same content from one work into either another work.<sup>95</sup>The copying may also regarded in terms of transforming into another form. For example, a person may copy Professor Jay Album, "*Chemsha Bongo*" CD onto his iPod).

Pasting according to computer science means, to insert a text, graphics, or other data into a document or

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<sup>95</sup> We normally say one song was "copied" from another song, for instance Tanzanite's song (Uchawi na Wanga) was copied from Diamond's song Mbagala.

file.<sup>96</sup> Therefore, when combining the two terms copying and pasting means, to reproduce and insert the work. This has become a problem for most of Tanzanian Artists. This also affects academicians as the fact that there has been a tendency of plagiarism for many students, because the developments of digital word have made copying and pasting easily, no acknowledgement of the source of the material. Take an example of a Lecturer who found some notes on the internet which resemble to his course outline, and decided to take the same notes teaching his students and intending to continue teaching by using the same notes for the coming semesters. Totally, this amount to

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<sup>96</sup> See <http://www.thefreedictionary.com/pasting>-Retrieved on 5th September 2013

copyright infringement, the doctrine of fair use cannot exist in such circumstances.<sup>97</sup>

Some people have argued that, even the film industry in Tanzania, there have been a claim of copying and pasting of movies from the title to the theme of the work, mostly from Nigerian and Ghanaian Movies. However, this claim has been rejected by some actors and actress by the concept of *consensus ad idem*,<sup>98</sup> means the meeting of the minds, that both actors or actress of a different place had the same thought or ideas during the making of the movie or sometimes referred as conflicts or collision of minds.

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<sup>97</sup> See Jeremy Phillips, et. al. (1997). *Whale on Copyright*, London: Sweet & Maxwell, Pp.15.

<sup>98</sup> The Latin term *consensus ad idem*, an "agreement of the minds". It is mostly used in contracts to stipulate the understanding of the agreements of the contracts so as other obligations may proceeds.



### **1.5.7 Scanning**

Scanning in an ordinary meaning is a technique person often using when looking up a word in the telephone book or dictionary for searching the key words or ideas. Scanning involves moving your eyes quickly down the page seeking specific words and phrases. Scanning is also used when you first find a resource to determine whether it will answer your questions. Once you've scanned the document, you might go back and skim it.<sup>99</sup>

The developments of science and technology have transformed the means of how people used to scan documents through the use of electronic device known

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<sup>99</sup> Richard S. Vermut (1997). File Caching on the Internet: Technical Infringement or Safeguard for Efficient Network Operation? 4 J. Intell. Prop. L. 273. Available at [cyber.law.harvard.edu/metaschool/fisher/ISP/cache1.html](http://cyber.law.harvard.edu/metaschool/fisher/ISP/cache1.html)-  
Extracted on 9<sup>th</sup> July 2013.

as a scanner.<sup>100</sup>Hence it is easy for a person to scan a book, picture, lyrics or any written documents of another person in a matter of a second and stored it in a computer. In Tanzania, this is frequently done in many of the Stationaries.

### **1.6 Whether the above Activities really infringe Copyrighted materials.**

The question is whether such activities really infringe the five exclusive statutory rights of a copyright owner. The answer is yes, activities such as caching, scanning, file

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<sup>100</sup> A scanner is a device that captures images from photographic prints, posters, magazine pages, and similar sources for computer editing and display.  
<http://whatis.techtarget.com/definition/scanner-extracted> on 6th Sept.2013.

swapping, browsing, copying and pasting, downloading and uploading may result in ;<sup>101</sup>

- i. The transmission of information from one computer system to another, involving temporary storage (RAM).
- ii. Such unauthorized storage amount to violation of the copyright owner's exclusive rights, such as the right to make copies.
- iii. They affect the right to distribution, for instance caching and mirroring activities.
- iv. The appearance of a copyrighted image in a web browser infringing the right to public display.
- v. The right to derivative works is also infringed.

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<sup>101</sup> Vakul Sharma (2011). *Information Technology-Law and Practice*, 3<sup>rd</sup> Edition (New Delhi: Universal Law Publishing Co.Pvt. Ltd., Pp.466.

### **1.7 Conclusion.**

These are the major copyright infringement activities which are mainly occurred throughout the universe, therefore without a proper legislation to decide what is right and what is wrong under any given circumstance normally renders many problems to the owners of the literary and artistic works. Looking back to our copyright legislation none of the above internet activities have been described in one way or another in which for the purpose of keeping pace with the development of science and technology it is crucial to describe them in the legislation even if the developed countries such as South Africa, the United kingdom, the United States of America, Australia and India did not describe them in their copyright legislations.

Currently, the President of the United Republic of Tanzania, Honorable Dr. Jakaya Mrisho Kikwete has

signed the new law **THE CYBERCRIMES ACT, 2015**, in February 20.

This Act to a certain extent has tried to solve some problems relating to protection of intellectual property rights in digital environment.

For instance Section 3 of the Act<sup>102</sup> has defined what intellectual property rights mean state that;

"intellectual property rights"  
means the rights accrued or  
related to copyright, patent,  
trade mark and any other  
related matters;

Also the same section has tried to explain the meaning of property as;

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<sup>102</sup> The Cybercrimes Act, 2015

"Property" means property of any kind, whether movable or immovable, tangible or intangible, and includes-

(a) Any currency either as a legal tender in the United Republic of

Tanzania or not;

(b) Information, including an electronically produced program or data or copy thereof, human or computer-readable data; or

(c) Any right or interest in property.

Furthermore section 24 of the Act state  
that;

(1) A person shall not use a  
computer system to violate  
intellectual property rights  
protected under any written  
law.

(2) A person who contravenes  
subsection (1) commits an  
offence and in case the  
infringement is on -

(a) non-commercial basis, is  
liable to a fine of not less than  
five million shillings or to  
imprisonment for a term of not  
less than three years or both;  
or

(b) Commercial basis is liable  
to a fine of not less than  
twenty million shillings or to  
imprisonment for a term of not  
less than five years or to both.

In this Act digital copyright infringement may be claimed, but I still have some questions, what about those international and regional treaties which the country is not the member, for example the country has not signed and ratified the Convention relating to the distribution of program carrying signals transmitted by the satellite of 1974.<sup>103</sup> This brings challenges especially on the copyrighted materials which are transmitted through satellites. If the Treaty is not signed or ratified

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<sup>103</sup> See Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite at [http://www.wipo.int/treaties/en/text.jsp?file\\_id=283796](http://www.wipo.int/treaties/en/text.jsp?file_id=283796)-retrieved on 21<sup>st</sup> July 2013.



can the local legislation enable to solve the problem which can be solve by such Treaty?

Also the Act does not discuss the concept of fair use that means if it started to be operated (as the fact that the Act it is not yet put into practice despite of the fact that it has been already signed by the president) only one right will be claimed digitally (private rights) and leaving the other rights (public rights) hanging, thus twisting the balance between the protection of both public and private rights.

Despite of having this **CYBERCRIMES ACT, 2015**, still we need to improve our other written laws such as Copyright and Neighbouring Rights Act, [Cap.218 R.E. 2002] so as to support these changes which have been brought by this Act so as to strike a balance between the protection of private rights and public right in intellectual property rights particularly in copyright.

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