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**ADDIS ABABA UNIVERSITY,
COLLEGE OF LAW AND GOVERNANCE STUDIES,
SCHOOL OF LAW,
MASTER OF LAWS (LL.M) IN BUSINESS LAW**

Significance of Copyright Registration in Ethiopia

**By
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Declaration

I, hereby, declare that this master thesis is my original work, has not been presented in any other University and that all sources of materials used have been appropriately acknowledged.

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List of Abbreviations

1. C.C The 1960 of the Ethiopian Civil Code
2. Cr.P.C The 1961 criminal procedure code of Ethiopia
3. CBP..... U.S.A Customs and Border Protection
4. E.C Ethiopian calendar
5. EIPO Ethiopian Intellectual property Office
6. Proc Proclamation
7. Regu Regulation
8. No Number

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Abstract

Copyright works will get automatic legal protection as long as the work is original and fixed in a material form, without formality requirement such as publication and registration. Despite this general principle optional copyright registration is introduced in the Ethiopian legal system. Even if registration is not a prerequisite to get copyright protection, registering a copyright work has a significant role for criminal and civil proceedings and it also plays a significant role for transfer of rights, for access of finance and for claiming tax credit services. However in this study the researcher concludes copyright registration law of Ethiopia is not designed to address the social, cultural, economic and archival objectives of the country and the laws are full of gaps in addressing issues related with registration. The Ethiopian Intellectual property Authority copyright registration system, mainly its data base, filing system and organization of the registered works do not meet the standards of the digital age. For instance the data system of the Authority does not give full information to those users who want to claim compulsory license on a certain work or to identify whether a given work period of protection is lapsed or not.

Introduction

Intellectual property rights are intangible assets and works of human mind. There are different types of intellectual property rights. These are patent rights, trade mark rights, patent of introduction right; copyright and neighboring rights so on and so forth. Copyright is one of intellectual properties recognized in the Ethiopian legal system. Copyright works get legal protection as long as the work is original and fixed in a material form. There is no a registration requirement for the copyright work to get protection. However, optional copyright registration is introduced in the country legal system.

Hence in this thesis the researcher tries to discuss the concept of copyright, copyright registration and its significance. Accordingly this paper is organized in six chapters. Chapter one covers the research proposal part where as chapter two contains the theoretical background of copyright registration.

Chapter three of the thesis focused on the comparative experience of copyright registration and its significances. Chapter four mainly contains the Archival, Social, cultural and Economic significance of copyright registration in Ethiopia and chapter five covers the significances of copyright registration in the judicial and Administrative proceedings. The last but not the least one, which is chapter six covers Conclusions and Recommendations.

Chapter One

Problem Statement and Methodology

1.1 Background of the Study

Intellectual properties can be defined in different ways by different legislations. For instance, the world intellectual property organizations defined Intellectual property as; it refers to the products of the mind: inventions, literary and artistic works, any symbols, names, images and designs used in commerce.¹ Whereas, the world trade organization defines intellectual property as, rights given to people over the creation of their minds. It goes on: creators can be given the right to prevent others from using their inventions, designs or creations.²

Copyright is one of intellectual properties recognized in the Ethiopian legal system too. Under proclamation No. 410/2004 of Ethiopia Copyright is defined as an economic right subsisting in a work and where appropriate includes moral rights. When we say it is a work, it means a production in the literary and artistic fields and it includes books, booklets, articles in reviews and newspaper, computer programs, lectures, addresses, sermons and other oral works, dramatic, dramatic musical works, pantomimes, choreographic works, and other works created for stage production, musical compositions, audiovisual works, works of architecture, works of drawing, painting, sculpture, engraving, lithography, tapestry, and other works of fine arts, photographic works, illustrations, maps, plans, sketches and works related to geography, topography, architecture or science.³

The author of a work shall, irrespective of the quality and the purpose for which the work have been created, be entitled to protection, for his work without any formality and upon creation where it is original and fixed in a material form.⁴ Unlike patent and trademark registration is not a prerequisite for a copyright work to get legal protection. So one may ask why an author could motivate for registration of his work. It is a question for most of us that has to be answered scientifically through research.

¹ Jennifer Davis, Intellectual Property Law, (4nd ed. Oxford University Press, 4th January 2012), pp. 4

² Ibid

³ Copyright proclamation number 410/2004 of Ethiopia article 2((30_

⁴Id, article 6(1)

In the United States of America registration of copyright works is required as a condition for filing a copyright infringement lawsuit. The registration is just the ticket for getting into court; however, you can register and sue even if you had not registered before you learned of the infringement.⁵

But in Ethiopia registration of copyright works is not a precondition to initiate an action for copyright infringement. Hence the researcher wants to find out the real and practical significances of copy registration in Ethiopia.

1.2 Statement of the Problem

Copyright holder can acquire moral and economic rights of his/her work as long as his/her work is original and fixed in a material form. Registration is not a pre request for copyright protection. The council of ministers regulation No. 305/2014 of Ethiopia introduced an optional copyright registration system. Under this regulation failure to register may not affect protection of copyright works. However, Copyright registration has a significant role in social, cultural and economic sector of a given country. For instance, registration can serves as an archive for copyright works. This enables the public to get easy access of the work to claim compulsory license and to capture right hand information on whether the protection period of a given work is lapsed or not. There are also instance in which the copyright holder can be a trader or a business organization registered for value add tax payer. Practically, in such a case the tax payer is expected to produce certificate of copyright registration for copyright works to claim tax credit. In this regard questions are raised whether the practice is backed by law or not. Hence, the researcher tries to dig out whether the Ethiopian copyright registration system is inaugurated to achieve social, cultural and economic objects or not.

Does a registration of a collective work constitute registration of a component individual work sufficient for the owner of rights in the individual work to be able to bring suit for copyright infringement? Does a registration of a copyright work constitute registration of the neighboring rights emanated from such work? How the Ethiopia law regulated such issues insists the researcher to conduct this study.

⁵ Mitchell zimmerman The Basics of Copyright Law, California Bar Journal, (@2006, 2015 frenwick and West LLp) pp. 2

The criminal investigators, namely police officers, take the confirmation from the Ethiopian Intellectual Authority that the act of the arrested person consists of infringement, to initiate copyright crime investigation. This raises a legal issue whether the Authority has a power to decide a given act/case consists of infringement or not before the ordinary court rules on the issue. However, in practice Police officers give more credit for the Authority opinion instead of certificate of copyright to launch investigation. The prosecution office is also not clear enough with the significance of copyright registration.

As per article 12(1) of council of ministers regulation No. 305/2014 of Ethiopia, certificate of registration of copyright works serve as a prima facie evidence of ownership. However, the practice of the court has not been examined so far. It is better to scrutinize whether the certificate of copyright registration shifts burden of production or burden of persuasion from the plaintiff to the defendant or vice versa. In addition the significance of the certificate is not examined in relation to boarder measure in case of infringement. Hence this triggers the researcher to focus on the subject matter so as to get the answers for it.

The Ethiopian government introduced movable collateral proclamation No. 1147/2019. This movable property security right proclamation opens up opportunities for copyright holder to access finance from bank loan using the right as collateral. The National Bank of Ethiopia enacted operationalization of movable collateral register directive number MCR/01/2020. Under article 19.1 of the directive the National Bank of Ethiopia impose on all banks the obligation to allocate at least five per cent (5%) of their credit disbursements of the year to individual against movable property as collateral which shall commence on July 2020. Hence the researcher tries to find out the role of certificate of copyright registration to access finance for the right holder.

As per article 9 and 10 of regulation No. 305/2014 the Ethiopian Intellectual Property Authority is empowered to perform only formality examination during registration process instead of substantive examination of the work. This creates the opportunity that one copyright works can be registered many times by different persons. This is a serious issue that should be addressed in this study.

Moreover as per article 6(1)a and 6(2)a of council of ministers regulation No. 305/2014 of Ethiopia an applicant should submit his full name, address, nationality and a copy of his identity

card or passport to register his work. From these provisions we can infer that those persons who want to use a pseudonym cannot register their copyright works unless they are willing to reveal their real name. This clearly violates the moral right of a copyright holder to remain anonymous which is provided under article 8(1) b of proclamation No. 410/2004. To make things worse the regulation in its article 15 (2) provides that any person may have access to information works entitling copyright by applying to the intellectual property office upon payment of the prescribed fee. This provision enables any person to know the identity of a copyright holder against his will and who wants to remain anonymous. So, can the Ethiopian intellectual property office compel the copyright holder to register his work in his real name instead of a pseudonym? This is the question that needs to be answered.

In the Ethiopian legal system there is no clear provision which requires a copyright registration certificate as a prerequisite to seek civil, criminal and administrative remedies for the right holder in case of infringement. Therefore the researcher tried to study these problems scientifically to create and add something on the existing knowledge.

1.3 Research Questions

The research questions that will be answered in this study are the following

1. Is the copyright registration law of Ethiopia comprehensive enough to address archival, social, economic and cultural objectives of the country?
2. What is the role of copyright registration certificate for copyright crime investigation and prosecution?
3. What is the practical relevance of copyright registration certificate in civil and criminal proceedings?
4. What is the significance of copyright registration certificate for the enforcement of border measures?
5. What is the significance of registration certificate for Value Added Tax administration and for access of finance?

1.4 Objectives of the study

1.4.1 General Objectives

The general objective of this research is, to find out whether the copyright registration system of Ethiopia is designed to achieve archival, social, economic and cultural objectives comprehensively. In addition it has an aim to examine its significance on judicial, administrative and law enforcement organs including its role in the financial sectors.

1.4.2 Specific objectives

Apart from the general objectives the research has also specific objectives. The specific objectives focused on the research questions mainly to examine the role of Copyright registration in criminal investigation and prosecution, in civil and criminal proceedings, for access of finance, for value added tax enforcement and for enforcement of boarder measure

In addition the research is designed to create awareness on the significance's of copyright registration to the public at large and specifically to the right holder, police officers, prosecutors, judges and the tax authority officers. Moreover this research is intended to be a base for the legislator to initiate a comprehensive law on the subject matter.

1.5 Methodology of the research

Doctrinal and empirical (Mixed), methods are employed since it is vital to investigate international and national laws that govern copyright registration and to investigate whether the practice is consistent with the laws or not. Besides, qualitative method is used to collect data and make an investigation of applicable laws relevant for evaluating the significances of copyright registration. In order to answer research questions, primary and secondary sources of data are used. For empirical questions, key respondents from federal Supreme Court, federal high court, Addis Ababa police commission and its departments, Ethiopian revenue and custom commission, commercial banks, copyright owners Associations, federal public prosecutors and the Ethiopian Intellectual property Authority are used as primary sources of data. Books, journal article, commentaries on laws, working and study papers, reports, thesis, relevant web sources, and cases are employed as secondary sources of data. Whereas for doctrinal questions text of the law mainly relevant international and national laws are used as a primary source and secondary sources are the same with empirical ones.

1.6 Significances of the study

This study is considered to have policy, academic and other significances. Specifically it will be relevant to evaluate whether registration of copyright works has significance for the right holder and the general public or not. It also gives a policy direction for the legislator to revise the copyright registration regulation and opens up further research in the subject matter.

1.7 Scope of the study

The significances of copyright registration may be analyzed in many perspectives. However in this study the focus is mainly restricted to evaluating the significances of copyright registration for the general public and the right holder. Hence it only focused on examining the role of copyright registration certificate in the justice system, the tax authority and the financial institution in the federal government of Ethiopia.

1.8 Limitations of the study

The researcher, confronted shortage of times, shortage of money and unwillingness of participants for interview and questionnaires. Hence, the researcher tried to work night and weakened to get time for collection of data and to analyze the collected data. Regarding the budget the researcher used the federal first instance court office materials such as pen, paper and other stationary materials. On the other hand the researcher used collaboration letter written from the Ethiopian Federal Judges Judicial Council to minimize unwillingness of the participants in the data collection.

1.9 Organization of the thesis

The thesis is divided into six chapters. Chapter one covers the research proposal part where as chapter two contains the theoretical background of copyright registration. Chapter three of the thesis focused on the comparative experience of copyright registration and its significances. Chapter four mainly contains the Archival, Social, cultural and Economic significance of copyright registration in Ethiopia and chapter five covers the significances of copyright registration in the judicial and Administrative proceedings. The last but not the least one, which is chapter six covers Conclusions and Recommendations.

Chapter Two

Significance of Copyright Registration in General

2.1 Copyright Protection

Copyright is defined differently by different scholars and legal documents. For instance Tina hart, et al, defines copyright as: - it is a right to prevent others from copying or reproducing his or her works.⁶ This definition is not comprehensive. Because it does not include the moral rights of the Author and in addition it focused one element of economic rights of the Author, reproducing right, neglecting other economic rights of the Author such as translation, adaptation, arrangement or other transformation, distribution, importation, public display, performance, broadcasting of the work of the Author. So we cannot take this definition as a full-fledged meaning of copyright.

On the hand Deborah E. Bouchoux, defines copyright as; it is a right that protects the works of authors and artists to ensure their products are not unlawfully reproduced, distributed, performed, or displayed, acts that would deprive them of revenue and discourage further creative work.⁷ This definition is more explanatory than Tina hart, et, al definition; in a sense it elaborates economic rights of the right holder from reproducing, to distribution, performance, and display of works.

The 1979 Bern Convention for the Protection of Literary and artistic works prefers to list literary and artistic works instead of defining the term copyright. As per article 2(1) of the convention the expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatic musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works which are

⁶ Tina hart, Linda, et, al, Intellectual property law, (4th edition) pp. 161

⁷ Deborah E. Bouchoux, The Law of Intellectual Property, The Law of Trademarks, Copyrights, Patents and Trade Secrets, (4th edition, 2012) pp. 184

assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.⁸ In addition the convention recognized the Economic and moral rights of a copyright holder for his or her works.

In Ethiopia under article 2(8) of proclamation No. 410/2004 copyright is defined as an economic right subsisting in a work and where appropriate includes moral rights. When we say it is a work, it means a production in the literary and artistic fields and it includes books, booklets, articles in reviews and newspaper, computer programs, lectures, addresses, sermons and other oral works, dramatic, dramatic musical works, pantomimes, choreographic works, and other works created for stage production, musical compositions, audiovisual works, works of architecture, works of drawing, painting, sculpture, engraving, lithography, tapestry, and other works of fine arts, photographic works, illustrations, maps, plans, sketches and works related to geography, topography, architecture or science.⁹

As per article 7 of proclamation No. 410/2004 of Ethiopia economic rights of a copyright holder includes reproduction, translation, adaptation, arrangement or other transformation of the work, distribution, importation, public display, performance, broadcasting of the work of the Author. Whereas moral rights of the copyright holder includes,¹⁰ claiming authorship, to remain anonymous or to use a pseudonym, to object any distortion, mutilation or other alteration and to publish his or her work.

In Ethiopia the author of a work shall, irrespective of the quality and the purpose for which the work have been created, be entitled to protection, for his work without any formality and upon creation where it is original and fixed in a material form.¹¹ Unlike patent and trademarks registration is not a prerequisite for a copyright work to get protection.

2.2 Copyright Registration

The term registration is defined in different disciplines in different ways. For instance in Black's Law dictionary registration is defined as a recording; inserting in an official register; the

⁸ Article 2(1) of The 1979 Bern Convention for the Protection of Literary and artistic works

⁹ Article 2(30) of proclamation number 410/2010 of Ethiopia

¹⁰ Supra note 3, article 8

¹¹ Ibid article 6(1)

act of making a list, catalogue, schedule, or register, particularly of an official character, or of.¹² Whereas copyright registration is a legal formality intended to make public record of the basic facts of a particular copyright works.¹³ Obviously in Ethiopia we should know that registration is not a condition of copyright protection. Under the Bern Convention registration is not a condition of copyright protection too.

2.3 Types of Copyright Registration

There are two types of copyright registration, namely optional and mandatory registration. Optional or voluntary registration is a registration made based on the willingness of the copyright holder. The law is permissive in voluntary registration; it is up to the right holder to register or not to register his or her works.

Whereas mandatory registration is a type of registration in which the law obliges the copyright holder to register his or work to get lawful advantages, mainly to claim remedies in case of infringement, to get protection at all so on and so forth.

2.4 Copyright Registration in International law

Now a day, in the global community the utilization of intellectual property is widely spread. The main responsibility of a modern state in relation to intellectual property is to accommodate the interest of the general public; easy access and use of it, and the interest of the right holders; to get economic and moral advantages from his/her endeavor. To maintain these two interests international conventions are formulated by different sovereign states.

The 1979 Berne Convention for the protection of Literary and Artistic works is one of the international conventions which are ratified by different sovereign states. As per article 5(2) of this convention the Authors of literary and artistic works has an economic and moral rights stipulated under the convention without any formality.¹⁴ From this provision we can clearly understand that registration is not a mandatory requirement to get legal protection. It rather prohibits member states to stipulate registration of copyright works as a precondition for the right holder to enjoy the rights emanating from his or her works by the respective country laws.

¹² Black's Law dictionary, (2nd edition)

¹³ Craig Joyce, et al, copyright law, (6th edition, LexisNexis) pp. 458

¹⁴ Article 5(2) of the 1979 Berne Convention

Agreement on Trade Related Aspects of Intellectual property is another international agreement which deals with copyright. As per article 9(1) of this agreement member states are obliged to comply with article 1 through 21 of the 1971 Berne Convention. This provision cross refers to the 1971 Berne Convention in relation to literary and artistic works. When we examine article 5(2) of the 1971 Berne Convention Authors are entitled the enjoyment of their rights on their works without any formality. So from this provision one can easily understand that registration of copyright works is not a prerequisite to get protection from the law.

On the other hand compliance with certain formalities is prescribed by the Universal Copyright Convention revised in Paris on July 24, 1971. Article III (1) of the convention reads as follows

“Any Contracting State which, under its domestic law, requires as a condition of copyright, compliance with formalities such as deposit, registration, notice, notarial certificates, payment of fees or manufacture or publication in that Contracting State, shall regard these requirements as satisfied with respect to all works protected in accordance with this Convention and first published outside its territory and the author of which is not one of its nationals, if from the time of the first publication all the copies of the work published with the authority of the author or other copyright proprietor bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.”

From this article we can conclude that registration can be imposed by the contracting state of the Universal Copyright Convention. In addition as per article III (2-5) of the convention member states can stipulate copyright registration as a pre-condition to initiate file to the court.¹⁵

At the same time, several countries, including those that are members of the Bern convention have their own copyright registration systems for all or certain types of copyright items, which are not regulatory in nature, but are used to prove that copyright exists, mainly for the purpose of court proceedings, to make the work easily accessible to the people, to create an opportunity for

the right holder to use his or her economic rights in efficient ways (such as to get bank loans, to perform the work, to assign or transfer the work to third parties), so on and so forth.¹⁶

2.5 Benefits of Differentiating Between Registered and Unregistered Works

2.5.1 Constitutive Registration

Copyright work is the result of one's human mind creation. This creation should get legal protection to encourage innovation for the future. A policy that takes into account arguments of economic efficiency will try to balance between the need to incentivize authors and the need for access to users. It is implemented by limiting the time of protection and through endorsing the expression-idea-dichotomy.¹⁷ However, because of the technological development, almost anyone can engage in creation and commercialization of works of authorship using a computer and an Internet connection. Yet, beyond creating opportunities for a larger and more diverse group of authors, new kind of works, such as email correspondence, posts on forums and social media content, were created. As a result of these developments, the amount of works and authors that copyright law applies to have grown to enormous proportions. This extensive interaction requires the laws regulating these works to operate effectively in a number of aspects, such as creating a distinction between works that belong to the public domain and those that do not, and improving the ability to get permission to make use of protected works. Copyright formalities have the ability to assist in these aspects so that copyright will not serve as a barrier to the full exploitation of the benefits of the digital era. Besides the digital era factors to copyright law there are two additional factors that raise the need to distinguish between works that should receive protection and works that should not.¹⁸ These are giving automatic legal protection for copyright combined with the low originality threshold; legal protection is granted for too many works in which there is no justification to grant them this protection. For instances works with no commercial value, works that authors explicitly opposes the grant of protection are not as such

¹⁶ L.A.Novoselova and O.A.Ruzakova, Significance and purpose of copyright registration in the Russian Federation and Abroad, (journal of perm university herald juridical sciences) pp 137

¹⁷ Omri Alter, conceptualizing copyright registration, Hein online, downloaded: Thu April 14 08:20:35 2022, p.p 934-935

¹⁸ Ibid

important to give protection. Secondly by keeping works under protection of copyright law for longer times, the social costs paid for that protection is increased. Hence giving a longer period of protection for all works is not reasonable.¹⁹ Renewal formality will assist the public in evaluating whether a particular work should continue to receive protection under copyright. In light of all of the aforementioned reasons, creating a distribution between protected and unprotected works seems desirable. For registration to be able to create such a distribution, it must be of constitutive nature, which means that a lack of compliance with registration would prevent the grant of copyright to begin with, in the case of initial registration, or eliminate this protection after it was granted, in the case of registration at a later stage such as the renewal formality. The main difference between initial registration and a registration at a later stage is the date in which an author will be challenged by the registration requirement. This difference may carry significant repercussions because registration that is similar to the familiar renewal formality may be required many years after a work has been created, and the reasons for registering it that were valid with regard to the initial registration might change. Because registration that is similar to the familiar renewal formality may be placed at various milestones along the life span of a work, even dozens of years after its creation, it maintains a strong connection to the duration of protection. A constitutive registration that is not an initial registration transforms the term of protection into a differential term, creating a distribution between works that deserve a longer or shorter term of protection according to each specific case.²⁰

2.5.2 Non-Constitutive Registration

Registration can generate additional distributions, besides protected and unprotected works. For instance, a distribution between registered works in which their owners hold additional legal benefits at their disposal, and unregistered works in which the only benefits their owners enjoy are those that are granted by copyrights default.²¹ A real life example of this kind of distribution is the one generated by United States' registration, which provides statutory damages and attorney's fees from the moment the work has been registered, compared to unregistered works in which their owners do not hold these kinds of remedies. These benefits are merely benefits and

¹⁹ Ibid

²⁰ Ibid

²¹ Id p.p 937-939

copyright can exist without them.²² The justification for generating a distribution using non-constitutive registration is giving incentive to authors to register their work in a public registry. A disparity between registered and unregistered works will make sure that authors have reason to consider registration. From a policy perspective, there are many advantages for getting as many authors as possible to complete registration of their work, even if registration is not of constitutive nature and the work will not fall into the public domain as a result of not registering it. These advantages stem from the ability of a public registry to reduce some of the costs incurred as a result of the restrictions copyright law imposes on the ability to interact with works that are under its protection.²³

2.6 Significance of Copyright Registration

So far the researcher tries to define the concept of copyright registration and its legal status under international covenants. The question that comes to our mind is as long as copyright registration is not a condition of copyright protection, why we adopt it will be a circular idea that needs to be answered. However, even if registration is not a condition of copyright protection, the copyright law of different legal systems provides several advantages for the right holders to encourage registration. Among the significances attached with registration the following can be mentioned.

2.6.1 Public record of ownership

Copyright registration creates a public record of ownership. Formal registration of copyright can also help to deter potential infringers. When someone registers his or her work, it is going to be documented in his or her name. In addition it gives to him or to her the ownership and spreads his or her name more freely in the public domain. Moreover when the work of the right holder published in the copyright office's catalog, it will be searchable to the public. Anybody thinking of using this work will be able to search this catalog and see that his or her work is protected. Registration is considered notice to the world of your copyright claim and this helps people who wish to license your work to ascertain the status of your work and to find you.²⁴

²² Ibid

²³ Ibid

²⁴ Robert A. Gorman and Jane C. Ginsburg, copyright, cases and materials, (5th Edition, Michie contemporary legal Education series) pp, 411

2.6.2 Presumption of ownership

Copyright registration can be used as prima face evidence in law suits. This means ownership of the copyright is presumed, and anyone seeking to challenge ownership will have the burden to demonstrate otherwise. This is especially important when the copyright infringer has or is causing severe and irreparable harm that requires immediate legal attention. By formally registering your copyright, the courts will be able to quickly order the infringer to stop their unlawful actions.²⁵

2.6.3 Transfer of Titles

The copyright holder has economic and moral rights in his work. Among the economic rights distribution of the work of the copyright holder to the public either by sale or by rental and assignment of the right on the work to third parties are going to be effected through contract. Hence assignment, sale and rent contract should be made between the person who has the ownership right and the beneficial parties. So to know the real ownership of the copyright holder copyright registration certificate is required. Therefore copyright registration enables the right holder to transfer his economic rights to third parties easily. It facilitates economic transactions.

2.6.4 The ability to enforce copyrights by filing a lawsuit for copyright infringement

The copyright holder has criminal, civil and administrative remedies in case of infringement. In different countries such as in the United States of America and India copyright registration is a precondition for bringing a copyright infringement lawsuit. The copyright owner can only advance with a copyright violation lawsuit if the work has been formally registered. If not, he or she will not be eligible for advancing with the lawsuit.²⁶

2.6.5 Protection against importation of infringing works

The Certificate of Registration serves as the prima facie evidence that the work is original and owned by the registrant of the copyrighted work. This becomes very vital if it becomes essential for the copyright owner to get a preliminary injunction against a copyright infringer. For instance in the United States of America the owner of registered copyright is eligible to participate in a U.S. Customs and Border Protection (“CBP”) program, wherein CBP will seize and detain

²⁵ Ibid

²⁶ Supra note 16, pp, 341-343

imported goods that violate intellectual property rights in the United States. So registration is required to participate in this program.²⁷

2.6.6 Eligibility for statutory damages, attorney fees, and costs of suit

Another advantage of Copyright registration is related with statutory damages, attorney fees and cost of suit. For example in the United States of America when copyright works are registered prior to infringement a copyright owner becomes eligible for an award of statutory damages. This may be extremely valuable because proving damages in a case of copyright infringement can often be a difficult task.²⁸ An award of statutory damages allows the copyright owner to recover a certain amount for each work infringed, notwithstanding the owner's ability to prove actual damages. Eligibility for this additional measure of damages may provide the leverage necessary to conclude a lawsuit early, before significant expense is incurred in litigation. In addition Registration during this same period also qualifies a copyright owner to seek an award of attorney fees and costs of suit.²⁹

²⁷ Supra note 17, pp, 411

²⁸ Supra note 13, pp, 458

²⁹ Ibid

Chapter Three

Comparative Experience on Copyright Registration

3.0 Introduction

In this study comparative experience on copyright registration is included. The United States of America, India, and Kenya are selected for comparative analysis. These countries are mainly selected because of their developed copyright registration system. In addition the researcher selects these countries from different continent to be more representatives.

3.1 United States of America

The 1976 Act and 1909 Act of the United States America provide registration of copyright work is a pre-requisite for an infringement action of a law suit. Whereas the Berne convention implementation Act of 1988 makes few changes in the sections on deposit and registration as they were written in the 1976 Act.³⁰ The major change in this respect is that registration of copyright is no longer a prerequisite to an action for infringement of copyright in Berne Convention works whose country of origin is not the United States. This means that registration remains a prerequisite for an infringement action when the copyright work is first published in the United States or when the work, if unpublished, is by a United States author. The 1988 Acts creates a two-tier registration system, with works of U.S. origin being on the lower tier for the purpose of litigation.³¹

Although registration of copyright is permissive the act provided incentives for timely registration of copyright works. These are,³²

- ❖ Registration establishes a public record of the copyright claim
- ❖ Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin

³⁰ Supra note 17, pp, 411

³¹ Ibid

³² Supra note, 13, pp, 458

- ❖ If made before or within 5 years of publication, registration will establish prima facie evidence in court of the validity of the copy and of the facts stated in certificate
- ❖ If registration is made within 3 months after publication of the work or prior to an infringement of the work, statutory damages and attorney's fees will be available to the copyright owner in court actions. Otherwise, only an award of actual damages and profits is available to the copyright owner
- ❖ Registration allows the owner of the copyright to record the registration with the U.S. Customs Services for protection against the importation of infringing.

From this lists we can infer that copyright registration has economic, social, cultural, judicial, administrative and archival importance in the country. In addition Copyright registration holders may record their copyright with the U.S. Customs and Border Protection to stop infringing copies at the border. Copyright owners can maximize their protection against infringing copies at the border by recording their registered copyrights with the U.S. Customs and Border Protection (here after "CBP"). CBP is authorized to exclude, detain, and/or seize imported goods at the border that infringe recorded copyrights. While federal regulations indicate that copyright claims must be registered to be recorded with CBP for import protection, CBP's Intellectual Property Rights Electronic Recordation System accepts online applications for temporary recordation of unregistered copyrights while an application for registration is pending at the Copyright Office.³³ Moreover certificate of copyright registration has a role to access finance and it serve as evidence for ownership of a work in tax assessment or any other matters. Copyright registration certificate is required to initiate criminal investigation. Under special circumstances, e.g., anticipated litigation, the expedited processing of an application for registration of a claim to copyright ("special handling") may be requested. It is granted in a limited number of cases to those who have compelling reasons for this service, such as pending or potential litigation. If granted, the Copyright Office makes every attempt to process the application within 5-10 working days from the date of approval for this service by the Office. The Copyright Office maintains a searchable online catalog of the records of all registrations, renewals, and recorded transfers of ownership made since 1978. These records may be searched by title of the work, name(s) of author(s) or claimant(s), or by registration number. The

³³Ibid

registration record will contain the registration number, the title, a description of the physical work, the name of the author(s) and claimant(s), the year the work was created, the year published, and the date of registration. The record may also include a note as to any limitation on the scope of the claim, or an indication of whether there was correspondence concerning the application between the applicant and the Copyright Office during the processing of the application.³⁴

3.2 India

Copyright is a form of intellectual property protection granted under Indian Copyright Act 1956, to the creators of original works of authorship such as literary works, dramatic, musical and artistic works, cinematographic films and sound recordings.

Registration of the copyright creates a public record of the claim of copyright ownership with the statutory authorities that index the records on the copyright register which contains work's title and the author's name. The copyright register is accessible to anyone and helps people find out the owners of copyright whom they can get licenses from to use a copyright work and helps to prevent fraudulent transfers of copyright ownership. The purpose of copyright is to promote learning and progress in intellectual pursuits by encouraging authors to make their works available to the public.³⁵

In India, optional registration of copyright is introduced by six of the copyright Act of June 4, 1957 No. 14. The organ which is responsible to register copyright work is the Copyright Office and within the office the copyright council which a quasi-judicial body established mainly for the purpose of reviewing certain copyright works, including complaints against the decisions of the copyright Registrar.³⁶

Like the United States of America registration of copyright works, creates an evidentiary base for any legal disputes related to authorship.³⁷ Certificate of registration is a ticket for a law suit for the right holder. This means producing a copyright registration certificate is a pre-condition

³⁴ Ibid

³⁵ The 1957 Indian Copyright Act, articles 44-50 of the

³⁶ Supra note 16, pp, 342

³⁷ Ibid

for a right holder to be presumed as an owner and seek damages from the person who infringe the right of the holder.

On the other hand registration is not a mandatory requirement for police action under Copyrights Act 1957. Copyright comes into existence as soon as a work is created and no formality is required to be completed for acquiring copyright & registration is discretionary (section 45). In matters of Cognizable Offenses, the Police are bound to register a fir and start an investigation without being concerned about any authority in place. According to Section 64 of Copyright Act, Police Officer should only need to be convinced that infringement has taken place. Papers can be given any time before the filing of the charge sheet and at the most, an affidavit or an undertaking from the complainant should suffice. In India certificate of registration is not a pre-condition to launch criminal investigation. However it has an evidentiary role for investigation and prosecution purpose.³⁸ Copyright registration has a role to facilitate economic transactions such as sale, transfer and assignments of copyright works. Moreover the certificate has relevance to get finance using the right as collateral, for archival purpose (public record), for the assessment of tax amount from tax payer and it also serve as source of information for claiming compulsory and government use and to take boarder measures in case infringement exist.³⁹

3.3 Kenya

Copyright protection is vested in the work once it is in a concrete form without need for registration. This position is observed worldwide. The Kenya Copyright Board is however required under the Act to maintain a data bank of authors and their works by registering copyright works.⁴⁰ This registration is voluntary. Non-registration does not deny authors any rights under the Copyright Act.⁴¹

Registration of copyright works has the following advantage in Kenya. These are:-⁴²

- Acts as a public record of authors/owners.
- The registration facilitates the implementation of the anti-piracy security device.

³⁸ Ibid

³⁹ Pradip N. Thomas Copyright and Emerging Knowledge Economy in India, (Economic and Political Weekly Vol. 36, No. 24 (Jun. 16-22, 2001), pp. 2147-2156 (10 pages) Published By: Economic and Political Week)

⁴⁰ Article 22A (1), The Kenya Copyright Amendment Act, 2019

⁴¹ Kenya Copyright Amendment Act, 2019

⁴² Ibid

- The certificate of registration acts as evidence of ownership of copyright in a court of law in case of a dispute.
- The certificate of registration may in future be used as collateral in a bank or any other lending institution in case one wants to borrow funds.
- It makes easy to commercialize copyright i.e. in case of licensing or assignment.
- It makes easy for IP auditors to identify the different IP rights owned by a corporate.

The right holder may also choose to pursue criminal action against the infringer using certificate of registration as evidence. However the certificate is not a precondition to institute criminal investigation and prosecution. Moreover the certificate has a role to get finance using the right as collateral, to facilitate economic transaction: - sales, lease, assignment of rights, for archival purpose (public record), for assessment of tax and it serves as source of information for claiming compulsory and government use.

Chapter Four

Social, Cultural, Economic and Archival Significance of Copyright Registration in Ethiopia

4.1 Copyright Registration in the Ethiopian Legal System

In Ethiopia copyright law was introduced in the 1960 of the civil code. As per article 147(1) and (2) of the civil code the author of the work of mind shall have a right on the work he created by the mere fact of his creation, an incorporeal rights of ownership, regardless of the nature, merit or purpose of the work.

After the 1960 civil code of Ethiopia, the country proclaimed copyright and neighboring rights protection proclamation in 1996 Ethiopian calendar which repeals the laws provided under the civil code and brings many changes to copyright protection. Under this proclamation copyright works are recognized and the moral and Economic rights of the Author also given more attention. Here what we should take look under both the civil code and copyright proclamation is that copyright protection is allowed without any formalities including registration requirement.

Despite these laws, the registration of works entitling copyright and neighboring rights council of ministers regulation No.305/2014 of Ethiopia adopts registration of copyright works upon willingness of the right holder without defining the term registration. The Ethiopian Intellectual property Authority office (here after office) is the organ which is responsible to register works entitling copyright and neighboring rights and reserve sample work of the authors in accordance with the law.⁴³

In Ethiopia copyright registration is not a pre-condition for acquiring protection from the law for the right holder. The council of ministers regulation No. 302/2014 of Ethiopia nowhere explains the rationales for enacting such regulation. In many occasions the preamble of a certain regulation puts or lists the rational for enacting or introducing a given regulation. Unfortunately under this regulation noting is mentioned under the preamble regarding what triggers the

⁴³ The registration of works entitling copyright and neighboring rights council of ministers regulation number 305/2014 of Ethiopia, article 3(2)

regulation to be introduced. Having this limitation the regulation introduced optional registration system in the country legal system.

In Ethiopia the certificate of registration of work entitling copyright serves as a prima facie evidence of ownership of same. However failure to register any work entitling copyright may not affect the protection of copyright protection provided under copyright proclamation of Ethiopia.⁴⁴ From these provisions we can infer that registration of copyright works creates presumption of ownership for the owner in it.

Works entitling copyright and neighboring rights may be registered in accordance with the classification of, literary or oral works, artistic works, visual arts, computer programs, sound recordings and broadcast.⁴⁵ The right holder of a copyright works should submit registration application and the application shall contain; the full name, address and nationality of the applicant; nature of the applicant's interest in the work, class and description of the work; title of the work; language of the work; name, address and nationality of the author; if the author is deceased, the date of his decease; whether the work is published or unpublished; year and country of first publication and name, address and nationality of the publisher if the work is published; years and countries of subsequent publications, if any and names, addresses and nationalities of the publishers; and other information as determined by directive of the office.⁴⁶

The applicant shall introduce copy of the identity card or passport; if the applicant is a legal person, document showing the acquisition of its legal personality; power of attorney as may be necessary; if the applicant is not the author, document showing that he is a right holder; receipt of payment of services fee; Amharic or English version of the work and other documents determined by the office.⁴⁷ Unless the works are series publication works such as encyclopedia, any application for registration shall be only for one work entitling copyright or neighboring rights.⁴⁸ After the requirements of registration are fulfilled the office shall undertake formality examination on the application submitted to it to verify whether the requirements specified in copyright and neighboring right proclamation and in the copyright registration regulation or not.

⁴⁴ Supra 43, article 12(2) and (3)

⁴⁵ Id, article 4

⁴⁶ Ibid, article 5 and 6(1)

⁴⁷ Ibid, article 6(2) and (3)

⁴⁸ Ibid, article 8

If the office finds a defect on the application, it shall give a written notice to the applicant or his agent to make correction within one month. If the applicant or his agent fails to make correction within one month, the application shall be considered as abandoned.⁴⁹

The Ethiopian Intellectual Property Authority office may not undertake substantive examination on the application for registration to proof ownership of the work entitling copyright and neighboring rights; provided, however, that the applicant shall ascertain through affidavit that he is the owner of it.⁵⁰ Lastly if the application fulfills the formality requirements the office will issue certificate of registration for the applicant.

Having said this much about procedural laws of copyright registration in Ethiopia it is better to take look at the data of registration in the Ethiopian Intellectual Property Authority Office. The researcher tries to get the number of registration of copyright works from 2006 E.C up to April 13/2014 E.C. Fortunately, the researcher find out the data from the office. Based on the data, registration has been conducted based on classification stipulated in the registration regulation. The Ethiopian Intellectual Property Authority Office registered a total of 3480(three thousand four hundred and eighteen) works of mind. Among the registered works literary works are the largest whereas data base and broadcast have the smallest registration record. On the other hand there is no work of sound recording which is registered at the office yet. For further clarification the data is depicted in the following table.

Table 1 Registration of Copyright Works

| Class of Registration | Date of registration | Number of Registered works | |
|-----------------------|---------------------------|----------------------------|---------|
| Literary works | 14/12/2006-19/02/2014 E.C | 2432 | 69.88% |
| Artistic works | 9/4/2007- 12/02/2014 E.C | 185 | 5.31% |
| Visual Art works | 01/08/2007-09/02/2014 E.C | 160 | 4.59% |
| Works of Architecture | 26/04/2006-16/7/2014 E.C | 17 | 0.488% |
| Computer Programs | 14/12/2006-19/02/2014 E.C | 684 | 19.655% |
| Broadcast | 04/07/2007 E.C | 1 | 0.028% |

⁴⁹Article 9 of registration of works entitling copyright and neighboring rights council of ministers regulation number 305/2014 of Ethiopia

⁵⁰ Article 10 of registration of works entitling copyright and neighboring rights council of ministers regulation number 305/2014 of Ethiopia

| | | | |
|-----------------|----------------|------|--------|
| Data Base | 14/01/2007 E.C | 1 | 0.028& |
| Sound Recording | None | None | 0 |
| Total | | 3480 | 100% |

Source: - This data is taken from the Ethiopian Intellectual Property Office, Copyright and Neighboring Rights Directorate in April 13/2014 E.C

From the above pivotal table we can infer that the registration of copyright is so limited in number as compared with works available in the market. Among the registered works literary works are dominant in number. On the other hand even if there are many sound recording works in the country available to the public, there is no a single work registered in the Authority yet. Hence the Ethiopian Intellectual Property Authority is expected to work more to create awareness for the people on the importance of copyright registration. In addition the copyright registration law should be revised and attach more benefits for works registered in the Authority. There must be provisions that encourage registration, such as subjecting a work that was not registered to compulsory license, granting additional legal remedies for the registered ones, making registration as a condition to bring suits and registration as a condition to transfer ownership.

4.2 Registration of Collective Works and Neighboring rights in Ethiopia

In Ethiopia Neighboring rights is defined as the rights of performers, producers of sound recordings and broadcasting organizations over their works.⁵¹ In a given work copyright and neighboring right can exist simultaneously. For instance in music the singer has a copyright on the song, the performer has a neighboring right on the performance made in such music. In such occasion one may ask that does a registration of a copyright work constitute registration of the neighboring rights emanated from such work. Apparently the copyright and neighboring rights registration regulation No. 305/2006 address such issue. It stipulated that any one application for registration to be submitted to the Office in accordance with this Regulation shall contain only one work entitling copyright or neighboring rights.⁵² However series publication works such as encyclopedia may be registered upon submission of only one application.⁵³ The regulation stipulated independent registration system for copyright and neighboring rights.

On the other hand there are circumstances in which collective works exist in a given business with different copyright owner on each works of the business. In such scenario one may argue registration of a collective work constitute registration of a component individual work sufficient for the owner of rights in the individual work to be able to bring suit for copyright infringement or otherwise. In USA legal system regardless of whether there can be or cannot be more than a single copyright in a work, the registration of a collective work does not satisfy the registration requirement regarding a component individual work. There is never more than one copyright in a work, even there can be multiple owners of exclusive rights.⁵⁴ However in Ethiopia the council of minister regulation does not deal the issue at all. The researcher does not get practical case in the federal High and Supreme Court from their data base system. The researcher conducted interview with Judge Dawit Belay⁵⁵ from High court copyright case bench judge and Judge Gebeyehu Felek⁵⁶ from the Supreme Court in the subject matter. And both judges confirmed that there is no case yet. In addition even if the researcher tried to study the files, no case is available there.

⁵¹ Supra note 3, article 2(14)

⁵² Supra note 43, article 8(1)

⁵³ Ibid, article 8(2)

⁵⁴ Supra note 13, p.p 471

⁵⁵ Federal High court Judge, civil bench, interviewed April 14, 2022

⁵⁶ Federal supreme court Judge, civil bench, interviewed April 15, 2022

4.3 Archival Significances of copyright registration

National Archives and Library was established with aim of managing the National Archives and Library in a coordinated manner, the collection of archives, books, related texts, audio and video recording, and the organization of modernized documentation services under one center and the promotion of information services by National Archives and Library Ethiopian Proclamation 179/1999. The National Archives and Library was empowered to register and store copyright works before the establishment of the Ethiopia Intellectual property Office. The rights and obligations of the Ethiopian National Archives and Library related to copyright under Proclamation No. 179/1999 was transferred to the Office.⁵⁷

As per article 3(2) of the Ethiopian council of ministers Registration of works entitling copyright and neighboring rights regulation NO. 305/2014 provided that the Ethiopian Intellectual property Authority office have a responsibility to register works entitling copyright and neighboring rights and to preserve sample works. The certificate of registration of work entitling copyright and neighboring rights issued by the office is expected to contain the registration number.⁵⁸ Therefore registration of copyright can serve as a public record and it preserves a copy for the right holder incase his/her work is destroyed by any means.

There are circumstances in which the copyright owner may not be able to produce enough copies of the work for the society. In this condition one may claim compulsory license to reproduce the work and make available to the public upon authorization from the Office. Government may also want reproduce the work for the general public.⁵⁹ Under the copyright and Neighboring Rights proclamation No. 410/2004 of Ethiopia production for personal purpose, for quotation, for teaching, for libraries and archives, for broadcasting to the public for informatory purpose, importation for personal purpose, for private performance free of charge is allowed as an exception to monopoly right of the holder.⁶⁰ To claim and use such rights the registration of copyright is going to be serve as an archive for the claimer.

To examine whether the filling system of the office is designed in way of easy access to the public or not, the researcher conducts observation on the archival department of Ethiopian

⁵⁷ Article 16(3) of Ethiopian Intellectual Property Office Establishment Proclamation No. 320/2003

⁵⁸ Supra note 41, article 12(1), (a)

⁵⁹ Supra note 3 article 17

⁶⁰ Ibid, article 10/16

Intellectual Authority office. Based on the observation the researcher gets the way of file arrangements, the room arrangement, the catalog and other indicators are not clear enough not only for the customer but also for the Authority employees to find out a given work. In addition the researcher conducted interview with the copyright registration directorate director Mr. Wesen Mulu and he confirmed that the office of registration is not arranged so as to conform the interest of the customers. Unlike USA, Kenya and India, the Ethiopian Intellectual Property Authority is not started online registration and online access of registered works yet. The public cannot access the catalog of registered works via online. Even physically it is not possible to easily access the registered works. The law is not clear enough to make accountable the Authority for such abuse of power or poor management system. This clearly shows that our law is not designed to achieve archival objective of copyright works. The regulation should be amended so as to create strong regulated data system or until amendment the office should introduce a directive to govern the subject matter effectively.

4.4 Economic Significance of Copyright Registration

(Mainly for Value Added Tax Administration and for Access of Finance)

As per article 89(1) of the Ethiopian federal constitution government shall have the duty to formulate policies which ensure that all Ethiopians can benefit from the country's legacy of intellectual and material resource. The government has a responsibility to protect intellectual resources to achieve the countries' economic development.⁶¹

In free market economy every transaction is determined by the market. The main feature of this type of economy is competitiveness. Price is determined by demand and supply. Quality product is also a base for competition among the market players. To be competitive enough in the market financing ability is so vital for a trader. Finance can be derived from the stock of a person, from the public through subscription and from bank loans.

Copyright holders may not have adequate finance to reproduce and to distribute his/her work in the market. In this situation bank loans may become important to fully utilize his/her work. He/she must have a chance to get bank loan by making his/her work as a collateral. Copyright Collateral means, collectively, all Copyrights and Copyright Licenses to which any Pledger is

⁶¹ The F.D.R.E Constitution, article 89(1)

becomes a party and all other General Intangibles embodying, incorporating, evidencing or otherwise relating or pertaining to any Copyright or Copyright License, in each case whether now owned or existing or hereafter acquired or arising.

In Ethiopia movable property security right including intellectual property security right is provided under proclamation No. 1147/2019. The main aim of this proclamation is provided in its preamble. These are to enable individuals and entity to use their movable assets as security for credit, generating new productive capital, expands investments, creates more job opportunity, increases production and productivity, fosters access to and usage of financial products and services creates opportunity to expand banking service to rural areas and to provide for the creation of security right in movable property, ensure their publicity and effectiveness through efficient enforcement mechanisms.

This movable property security right proclamation opens up opportunities for copyright holder to access finance from bank loan through intellectual property collateral. The National Bank of Ethiopia enacted operationalization of movable collateral register directive number MCR/01/2020 and under article 19(1). It imposes on all banks the obligation to allocate at least five per cent (5%) of their credit disbursements of the year to individual against movable property as collateral which shall commence on July 2020.

The security right will be created by a security agreement provided that the grantor has right in the asset to be encumbered or the power to encumber it.⁶² From this concept we understand that a copyright holder should prove he/she is an owner of the work to make it collateral for bank loans. Hence certificate of copyright registration can be presented as proof of ownership of the right holder. Therefore copyright registration has significance for the right holder to get access of bank loan as a proof of ownership.

The researcher made interview in April 16 up to 20/2022 G.C with credit analysis and appraisal department head of United Bank, Nib International Bank, Dashin Bank, Abay Bank and Zemen Bank.⁶³ All heads of the banks confirmed that there is no any instance of bank loans for individuals or persons given upon intellectual property right as collateral. However, they are

⁶² The proclamation to provide for movable security right number 1147/2019, article 4(1) of

⁶³ Mr. Meseret yazachew from Dashin Bank, mr. Melaku Taddesse from United Bank, mr. Alemu semaye from Nib International Bank, mr. dereje Mihiretu from Zemen Bank, mr. Abebaw Abebe from Abay bank

doing their best to make available credit upon intellectual property as collateral for any person who can bring a certificate of ownership.

The Ethiopian development Bank gave credit for film work named who is the father of Hirut (Hirut Abatua Man new) before 57 years, which is a land mark step for other banks to take a lesson.⁶⁴ The Ethiopian Development Bank Communication Affairs Directorate Director his Excellency Mr. Yabsira Kebede⁶⁵ confirmed the fact to the researcher during interview conducted with him in April 21/2022 G.C. He told to the researcher that the film was fortified by the bank because of inability to repay the loan. This could be an example for copyright holders to be confident on access of finance to promote their work through credit from banks.

The Ethiopian Writers Association manager and the Ethiopian music copyright and neighboring rights collective management association officer replied for questionnaires prepared to assess the certificate of copyright registration and they confirmed that the certificate has a role to get finance from the bank.

Certificate of Copyright registration has many advantages other than those discussed so far in this paper. When the researcher made interview with the Ethiopian Intellectual Property Office Copyright and Neighboring Rights directorate director his Excellency Mr Wesen Mulu⁶⁶ confirmed that certificate of copyright registration facilitates economic transaction such as sale, lease, donation and license of a given copyright work. In addition it serves as an evidence for liquidation of succession. Moreover it crates legitimacy for the right holder to bargain with publishers, to reproduce the work and to perform the work publically. The Ethiopian Writers Association manager and the Ethiopian music copyright and neighboring rights collective management association officer confirmed that the significances of the certificate for liquidation of succession and easy economic transaction on copyright works.

On the other hand certificate of copyright registration serve as an evidence to claim tax credit in value added tax. A person registered for value added taxation has a right to claim tax credit. A tax credit is a tax incentive which allows certain tax payers to subtract the amount of the credit

⁶⁴ Addis Admass Newspaper, published, 14/05/2014 E.C, pp. 6

⁶⁵ Mr. Yabsira Kebede The Ethiopian Development Bank Communication Affairs Directorate Director, interviewed, April 21/2022

⁶⁶ Mr Wesen Mulu, Intellectual Property Office Copyright and Neighboring Rights directorate director, interviewed April, 12/2022

they have accrued from the total they owe the state.⁶⁷ The economic right holder of a certain copyright work may become a tax payer who is registered for value added tax. In such occasions the tax payer may claim the tax credit for the purchased material as long as the purchase is used directly for the business. In practice the Ethiopian revenue minister require certificate of copyright registration from the claimer for tax credit service. However there is no clear pertinent provision which obliges the tax payer to produce certificate for tax credit claim. To trace the practice the researcher made interview with Mr. Habtamu,⁶⁸ a lawyer in the ministry of revenue, and his Excellency confirmed that there is no tax law that governs the practice in the subject matter. His Excellency added that the practice is mainly depends on identifying the tax source which is stipulated under the F.D.R.E Constitution. As per article 100(1) of F.D.R.E Constitution, in exercising their taxing powers, States and the Federal Government shall have a responsibility to ensure that any tax is related to the source of revenue taxed and that it is determined following proper considerations. Hence according to such constitutional provision the tax authority practice seems logical. But as long as the tax payer trade registration and license is clear enough on the area of business it is going to be ridicules to require certificate of copyright registration for tax credit service. This practice exposes the copyright holder for misappropriation of his trade sector. Copyright works such as data base, computer program and others has security code for operation. So if the right holder is obliged to present copyright registration to claim tax credit, he will be forced to register his work without his free consent so as to get the tax credit. This could be against the principle of copyright protection without any formality. The Ethiopia Intellectual Authority has no any systematic structure to protect trade secret. There is no pertinent provision which regulates such issue in advance. To make things worse the council of minister regulation No. 305/2014, in its article 15 (2) provides that any person may have access to information works entitling copyright by applying to the intellectual property office upon payment of the prescribed fee. This provision shows the probability of abuse of secrecy of a work registered in the Authority. Despite this fear practically certificate of copyright registration serve as one of evidentiary value for the tax payer to claim tax credit.

⁶⁷ The value added proclamation N0. 285/2002, article 21(1)

⁶⁸ Legal officer at ministry of revenue, interviewed April 5/2022

4.5 Social and cultural Significances of Copyright Registration

Under the Ethiopian federal constitution government shall have the duty to support, on the basis of equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals, and to the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security.⁶⁹ These constitutional provisions impose obligation on the government to regulate social and cultural interest of the society comprehensively.

Copyright has social and cultural advantages for a given society. Artistic and literary works are works of minds. The author can get economic and moral advantages from his works. As the same time the public gets knowledge from such works. It creates incentive for the right holder and it serve as an enjoyment for the public. The copyright law gives protection for applied arts. This enables the society to promote one's cultural values. The social setup is connected with artistic and literal works. Art and sciences are the backbone of social cohesion. Peoples need music and film for enjoyment, book for knowledge, so on and so forth. Artistic and literal works are the result of one's culture and economic development.

Society prefers to use copyright works not only from the beginning but also after the protection period is lapsed. They want to know which work is protected and not protected. Hence if there is a strong a registration system the society my effectively use the work in accordance with the law. Even this creates awareness for protected works for the society. As per article 20(1) of proclamation No. 410/2004 Economic rights belong to the author during his lifetime and to the heirs or legatees for fifty years from the date of death of the author. After these fifty years any person can reproduce without securing the author consent. Therefore effective registration system enables identification of each work protection period.

According to article 17(1) of the copyright and neighboring right proclamation No. 410/2004 the Ethiopian Intellectual Property Authority may grant, notwithstanding the copyright, heirs or legatees owners' opposition, a license to authorize the 'reproduction or translation or broadcasting of a published work. From this article we can understand that there are circumstances in which the copyright owner may not be able to produce enough copies of the work for the society. In this condition one may claim compulsory license to reproduce the work

⁶⁹ See article 90 and 91 of F.D.R.E constitution.

and make available to the public upon authorization from the Office. Even the government may also want reproduce the work for the general public. Hence registration makes easy access of a given work for the compulsory license claimer or for the government.

Unfortunately our copyright registration law does not address the issues of compulsory license and government use. The Ethiopian Intellectual Property Authority does not have a catalog which shows unprotected works because of lapse of period of protection.

Under the copyright and neighboring right proclamation No. 410/2004 of Ethiopia reproduction by Libraries, Archives and Similar Institutions, reproduction for Teaching, reproduction, broadcasting and other communication to the Public for informatory purpose is allowed as an exception to protection of copyright.⁷⁰ To exercise such rights the registration office can be served as a source to copies of a given work. However the copyright registration regulation is not designed to achieve enforcement of such rights.

4.6 Practical and legal gaps of copyright registration in Ethiopia

Copyright holder can acquire moral and economic rights of his work as long as his work is original and fixed in a material form. Registration is not a pre request for copyright protection. The Ethiopian copyright law prefers optional copyright registration system under regulation No.305/2014. The certificate of registration of work entitling copyright and neighboring rights issued by the Office shall serve as a prima facie evidence of ownership of the same.⁷¹

As per article 9 and 10 of the copyright and neighboring rights regulation the intellectual property office has only a power to undertake a formality examination on the application submitted by the applicant instead of substantive examination of copyright works. If this is so one copyright works can be registered many times by different persons. The only obligation required from the applicant is to ascertain through affidavit that he is the owner of the work. In the technological era affidavit is becoming untrusted. In free market economy the buyer and seller are more sensitive to price and product quality instead of moral standards of the party.

The researcher conducted interview with the Ethiopian Intellectual Property Office head his Excellency Mr. Nasir Nuru Reshid⁷² and he assured that there is no mechanism to avoid double

⁷⁰ Articles 11,12 and 13 of copyright and neighboring rights proclamation of Ethiopia No. 410/2004

⁷¹ Article 12(2) of registration of works entitling copyright and neighboring rights council of ministers regulation number 305/2014 of Ethiopia

⁷² Nasir Nuru Reshid, Ethiopian Intellectual Property Office head, interviewed 09/2022

registration in one work as long as formative examination is the only way to investigate the applicant registration application. The copyright and neighboring rights registration directorate director his Excellency Mr. Wesen Mulu also confirmed Mr. Nasir Nuru Reshid stand when the researcher interviewed him. In addition to interview the research conducted questionnaires' in the subject matter for the staffs of copyright and neighboring rights registration directorate of the Authority. Based the data collected from the office staffs we can understand that the respondent of the copyright and neighboring right registration directorate have different view on examination type of copyright registration. Those who support formality examination of copyright registration uphold the applicant liberty as a reason for their stand. Whereas respondents who support substantive examination strongly argues that, adopting substantive examination in addition to formality examination helps to avoid fraud and ascertain originality of the work. Hence having both side of argument as it is, it would be better to come up with some sort of substantive examination in addition to formality examination to avoid double registration of one work for more than one person and to make registration certificate more credible for presumption of ownership. Otherwise the certificate of registration becomes untrusted and it could be a myth for making it a prima facie evidence for ownership of the work.

On the other hand as per article 6(1)a and 6(2)a of council of ministers regulation No. 305/2014 of Ethiopia an applicant expected to submit his full name, address, nationality and a copy of his identity card or passport. From these provisions we can infer that those persons who want to use a pseudonym cannot register their copyright works in pseudonym. This clearly violates the moral right of a copyright holder to remain anonymous or use a pseudonym which is provided under article 8(1) b of proclamation 410/2004. To make things worse the regulation in its article 15 (2) provides that any person may have access to information works entitling copyright by applying to the intellectual property office upon payment of the prescribed fee. This provision enables to know the identity of a copyright holder against his will and who wants to remain anonymous or use a pseudonym.

The researcher conducted interview with the Ethiopian Intellectual Property Office late head his Excellency Mr. Nasir Nuru Reshid on this issue and he shares the possibility of violation on a copyright holder to remain anonymous or use a pseudonym. The copyright and neighboring rights registration directorate director his Excellency Mr. Wesen Mulu also confirmed Mr. Nasir

Nuru Reshid stand. Both officials informed the researcher that when any person wants access to information on works entitling copyright, he or she cannot screen out the document rather it is only permitted to get limited information by the database officers of the organization. This is also against the law provided under copyright registration regulation.

Another legal problem regarding copyright registration is related with registration fee. The council of minister regulation number 305/2014 of Ethiopia included schedule of service fees of copyright registration as annex.

Table 2 schedule of Service fees of Copyright Registration

| No. | Type of service | Amounts of fees in Birr | |
|-----|---|-------------------------|------|
| | | Individual | Firm |
| 1 | Application for Registration | 250 | 315 |
| 2 | Correction of Application | 250 | 315 |
| 3 | Renewal of Registration | 250 | 315 |
| 4 | Registration of Assignment of Rights | 300 | 375 |
| 5 | Access to Information of Registered works | 100 | 125 |

Source: this data is taken from council of ministers regulation number 305/2014 of Ethiopia

From the above table the service fees of copyright registration is linear for adults, men, women, students, traders, public servants, and for any individuals. The regulation does not provide exceptions for students or for those who do not have ability to pay. There must be a room for registration application by pauper. The fees required to be paid for registration, correction and renewal application for each class is the same irrespective of the work. Literary works, artistic works, visual arts, applied art, computer programs, data base, sound recording and for all other works the payment is similar. It has to be differentiated based on the class provided under the registration regulation. In addition to payment ability the fees are equal for a small book or a series of encyclopedia. There must be a classification based on the weight of the work using different criteria, such as number of page, sophisticated of the work so on and so forth.

The council of ministers regulation No.305/2014 of Ethiopia introduced classification of works for the purpose of registration under its article 4. In addition the copyright and neighboring rights

protection amendment proclamation number 872/2014 introduced applied art as a copyright work.⁷³ Applied arts are not clearly defined under the proclamation. This may create confusion with artistic works and visual arts. Therefore inadequate illustration of each classification brings obstacles to register with perfect class.

The other legal gap related with copyright registration is administrative and judicial remedies for those whose registration application is disregarded by the Ethiopian Intellectual Property office. As per article 9 of the registration regulation the office is empowered to undertake formality examination on the application submitted by the applicant and if it finds defect on the application it will notify to the applicant or his agent to make correction within one month. If the applicant or his agent fails to make correction within one month, the application shall be considered as abandoned. From this provision we can infer that if the applicant has good cause that makes him unable to correct and submit within one month there is no way for it. Even if there is force majeure from the side of the applicant the law is ignorant to address such reasonable circumstances.

Moreover if the applicant is dissatisfied with the decision of the Ethiopian Intellectual property Office regarding copyright registration, the applicant remedy is not stipulated under the regulation. Unlike patent and trade mark registration when copyright registration is refused, the applicant seems do not have administrative and judicial remedy provided in the regulation.

⁷³ The Amendment Proclamation of copyright and neighboring rights proclamation number 872/2014, article 1

Chapter Five

Significance of Copyright Registration in Judicial and Administrative Proceedings

Copyright registration has different importance for enforcement of the rights related with copyright works. Hence to scrutinize its significances, first it is advisable to discuss remedies of copyright infringements.

5.1 Remedies of copyright infringements

Copyright holder has both moral and economic rights on the work he/she created. Among the economic rights, the right holder has exclusive right to carry out or authorize reproduction of the work; translation of the work; adaptation, arrangement or other transformation of the work; distribution of the original or a copy of the work to the public by sale or rental; importation of original or copies of the work; public display of the original or a copy of the work; performance of the work; broadcasting of the work and other communication of the work to the public can be cited as an example.⁷⁴ Whereas the author of the work has a moral right irrespective of whether or not he is owner of economic rights such as, he/she have the right to claim authorship of his/her work, to remain anonymous or to use a pseudonym, to object any distortion, mutilation or other alteration of his/her work where such act is or would be prejudicial to his honor or reputation and to publish his or work.⁷⁵

Hence when the rights of the copyright holder are infringed by third parties either the economic right or the moral right, he/she has judicial; civil and criminal remedies and administrative remedies which is border measures. The remedies of copyright infringement can be provisional measures or non-provisional measures.

⁷⁴ Supra note 3, article 7

⁷⁵ Ibid, 8

The court may order prompt and effective provisional measures to prevent an infringement of a right from occurring, in particular to prevent the entry into channels of commerce goods, including imported goods immediately after customs clearance and to preserve evidence in regard to the alleged infringement. The court shall have the power to adopt provisional measures, in *audita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed. In addition in a suit for restraining the defendant from committing an infringement, the plaintiff may apply to the court for a temporary injunction to restrain the infringement until the suit is disposed of.⁷⁶

In addition to the provisional measures the court has a power to render civil and criminal remedies for the right holder in case his/her right is infringed by third parties. The civil remedies can be awarding adequate compensation for the material and moral damage suffered including payment of the right holder's expenses, and grant injunction. The criminal remedy available for the infringer is rigorous imprisonment.⁷⁷

The copyright holder has also a right to claim border measures. The Customs authority has a power to retain under its control the goods which in the opinion of the applicant constitutes infringed goods, based on a written application of the owner of copyright or neighboring right.⁷⁸

Having said this much about remedies of copyright infringement for the right holder it shall focus on the significances of copyright registration. Copyright registration has different advantages. Among the advantages it serves as evidence to proof ownership. The researcher tried to analyze the relevance of copyright certificate in accordance with laws, the data gathered from interview, questionnaires and court decisions as follows.

5.2 Significances of Copyright Registration in criminal investigation

Criminal investigation is a power of police officers. Whenever the police know or suspect that an offence has been committed they shall proceed to investigate the case.⁷⁹ In addition any person has the right to report any offence, whether or not he has witnessed the commission of the

⁷⁶ Supra note 3, article 33

⁷⁷ Id, 36

⁷⁸ Ibid

⁷⁹ The 1961 criminal code of Ethiopia, article 22(1)

offence, with a view to criminal proceedings being instituted.⁸⁰ Crime report can be presented to the police officer either upon complaint or upon accusation. Based on this report the police officer is expected to investigate the crime notwithstanding that he/she is of opinion that the accusation, complaint or information received is open to doubt.⁸¹

Whoever intentionally violates a right protected under copyright and neighboring right proclamation number 410/2004 is going to be punished with rigorous imprisonment of a term not less than 5 years and not more than 10 years and whoever by gross negligence violates a right protected under the same proclamation will be punished with rigorous imprisonment of a term not less than 1 year and not more than five years.

From thus provisions of the copyright and neighboring right proclamation number 410/2004 of Ethiopia, we understand that a person whose copyright work is infringed can bring criminal action against the suspect to the police office and the police officer is responsible to investigate the accusation.⁸² The central idea here is that does certificate of copyright registration is a precondition to start criminal investigation or not and its role for criminal investigation. The researcher collects information from the police officers through questionnaires.

⁸⁰ Id, article 11(1)

⁸¹ Id, article 23

⁸² Supra note 3, article 36(1) and (2)

The data is collected from Lideta, Kirkos, Kolfe, Arada, sub city police department and Addis Ababa police commission. A total of 45 police investigators were participated in the study. Based on this the respondents agree that certificate of copyright registration has a role to start criminal investigation in copyright cases. In addition to the questionnaires the researcher tries to examine 8 police investigation files.⁸³ Based on this investigation the police officer uses the Intellectual Property Authority written opinion as a base to start criminal investigation. The Authority gives opinion for the police officers whether the act of a suspect amounts to infringement or not. This is the practice without having a legal backup. The police officer receives this opinion in written form from the authority and the prosecutor also cites such opinion as evidence while instituting a charge. Surprisingly the court also takes such evidence for judgment. This culture overshadows the significances of copyright registration certificate.

Moreover there is a belief and a tendency in the investigator that certificate of copyright registration is a precondition for launching copyright criminal investigation. As per article 12(2) of the Registration of works entitling copyright and neighboring rights council of ministers regulation No.305/2014 the certificate of registration of work entitling copyright and neighboring rights issued by the Ethiopian Intellectual Property Office shall serve as a prima facie evidence of the same. From this provision one clearly understands that the certificate is a prima facie evidence, but not conclusive evidence. It can be rebutted by other evidences. If this is so, making the certificate as a prerequisite for criminal investigation does not compatible with the law. Beyond such practice even if copyright registration is not a pre-condition for protection; it has a practical significance for criminal investigation.

Another important task in criminal investigation is public prosecutor decision on investigated criminal files. As soon as the investigation of the crime by police officers completed the investigating police officer is expected to forward the report to the public prosecutor. On receiving the police report the public prosecutor may prosecute the accused on charge, order a preliminary inquiry to be held, order further investigation or it may refuse to institute

⁸³ Federal High Court criminal file numbers, 253638, 148977, 148974, 149801, 165026, 149706, 149598, 164558

proceedings.⁸⁴ The same is true for copyright crime investigation files. Here one may raise question where lies the importance of certificate of copyright registration for the decision of the public prosecutor. Hence the researcher collected data in the subject matter to evaluate the significance of the certificate for public prosecutor decisions.

⁸⁴ Supra note 72, article 38

The researcher collected data from 35 federal public prosecutors to examine the practical relevance of copyright registration for prosecution through questionnaire. Based on the data five of the total respondents believe certificate of copy right registration is a precondition to prepare charge against the suspect while they decided criminal files and others believes the certificate is not a precondition for charge. As per article 12(2) of the Registration of works entitling copyright and neighboring rights council of ministers regulation No.305/2014 the certificate of registration of work entitling copyright and neighboring rights issued by the Ethiopian Intellectual Property Office shall serve as a prima facie evidence of the same. From this provision one clearly understands that the certificate is a prima facie evidence, but not conclusive evidence. It can be rebutted by other evidences. If this is so, making the certificate as a prerequisite for criminal prosecution does not compatible with the law. However, almost all of the respondents are agreed that certificate has a great evidentiary role for copyright crimes. Therefore we can easily conclude that even if there are misunderstandings about the evidentiary value of the certificate, the certificate of copyright registration is significant for public prosecutor to decide on police investigation report.

The researcher tests the practice of the court on the Intellectual Property Authority written opinion given to the police officer during investigation. The Authority gives opinion for the police officers whether the act of a suspect amounts to infringement or not. This is the practice without having a legal backup. The police officer receives this opinion in written form from the authority and the prosecutor also cites such opinion as evidence while instituting a charge. Surprisingly among the four criminal cases of the federal High court, the judges take such evidence as relevant and admissible evidence for judgment.⁸⁵ This is clearly against the significance of copyright registration certificate stipulated under article 12(12) of council of ministers regulation number 305/2014.

5.3 Significances of Copyright Registration in civil and criminal proceedings

The copyright holder has both criminal and civil remedies in case his/her copyright is infringed by the third party. The criminal remedy is imposing penalty on the accused person, whereas the civil remedy includes material compensation, moral compensation, injunction and provisional measures. In any case there must be evidence that should prove the infringement of the right and

⁸⁵ Supra note 76

at the same time the existence of the right itself. Among the evidences certificate of copyright registration is one of the evidence that can prove ownership of the work.

As per article 12(2) of the Registration of works entitling copyright and neighboring rights council of ministers regulation No.305/2014 the certificate of registration of work entitling copyright and neighboring rights issued by the Ethiopian Intellectual Property Office shall serve as a prima facie evidence of the same. From this provision we can understand that the certificate has a role to proof that who is the real ownership of the work which at dispute in the court. The researcher collected data through questionnaires seven presiding judges from the federal High Court and five presiding judges from the Supreme Court of Ethiopia to assess the practical relevance of the certificate of copyright registration in civil and criminal proceedings. Hence even if there are few who are differ from the majority, most respondents agreed that certificate of copyright registration can serve as an evidence for criminal and civil cases; without the certificate there may a possibility of proving the infringement of copyright works and it serve as prima facie evidence for ownership of the work until the other party refuted the certificate otherwise. Therefore we can conclude that, in Ethiopia certificate of copyright registration is not the only required evidence but it can serve as evidence and it shifts burden of persuasion from the plaintiff to the defendant and vice versa for civil and criminal case litigations. As per article 12(2) of the Registration of works entitling copyright and neighboring rights council of ministers regulation No.305/2014 the certificate of registration of work entitling copyright and neighboring rights issued by the Ethiopian Intellectual Property Office shall serve as a prima facie evidence of the same. From this provision one clearly understands that the certificate is a prima facie evidence, but not conclusive evidence. It can be rebutted by other evidences. Hence we can conclude that the practice of the court is related with the pertinent law of copyright registration certificate.

Regarding files decided by the federal Supreme Court cassation bench the researcher only gets one file number, i.e. file number 99082 decided in 23/02/2008, in relation to copyright works rendered after the promulgation of council of minister regulation number 305/2014. Unfortunately this case is not about certificate of copyright registration. So the researcher cannot able to assess the case experience in the subject matter.

The Ethiopian Writers Association manager and the Ethiopian music copyright and neighboring rights collective management association officer filled questionnaires prepared to assess the certificate of copyright registration and they confirmed that the certificate has a role to claim protection against the infringer.

To make the research full-fledged and rich in evidence the researcher tries to examine civil and criminal cases decided in the federal high court from 2006 E.C up to 2013 E.C. Based on this motive the researcher take the evidence from the court case management software. 14 civil files are opened in the given year interval among those 4 are only related with copyright and neighboring rights and the remaining cases are patent and trade mark cases.

On the other hand 46 criminal files are existed among which 30 files are related with copyright and neighboring rights and the remaining cases are patent and trade mark cases. In addition from 30 files 12 files are decided and the remaining are closed because of absence of the accused or witnesses. Among the decided files certificate of copyright registration is presented as evidence from the public prosecutor and the court takes it admissible and convict the accused on the alleged crimes.⁸⁶ From the civil cases under two of them the certificate of copyright registration is presented as evidence and the certificates are used an evidence to prove the ownership of the work contested in the case.⁸⁷ Whereas on the remaining cases certificate of copyright registration were not presented as evidence. But without certificate a plaintiff win the case by other evidences. The certificate transfers burden of persuasion from plaintiff to defendant and vice versa. Therefore we can conclude that certificate of copyright registration can be one type of evidence to proof ownership of the contested copyright work in the court litigation.

5.4 Significances of Copyright Registration in Boarder measures

Border measure is one of the remedies of copyright infringements. This right is recognized in the Ethiopian legal system under copyright and neighboring rights proclamation No.410/2004. Since 2004 a copyright holder has a right to take action on those who tried to import or export his/her works. The then Ethiopian customs Authority, the present Custom Commission has the power to retain under its control the goods, which in the opinion of the applicant constitutes infringed goods upon a written application of the owner.⁸⁸

As per article 35(2) of copyright and neighboring right proclamation number 410/2004 after the detention of the goods, the commission shall forthwith inform the applicant or the owner of the good of the measure taken to retain the said goods and the measure to retain goods shall be lifted where the applicant fails to provide with any justifiable evidence within ten days beginning from the date of the notification of retention of goods.⁸⁹ From this provision we can infer that the copyright holder who applies a border measure to the commission should present certificate of copyright registration to prove he is the owner of the goods applied to be retained. The

⁸⁶ Federal High Court file numbers 253638 and 165026

⁸⁷ Federal High Court file numbers, 116946, 117093, 169950, and 175008

⁸⁸ Supra note, 3 article 35(1)

⁸⁹ Id, article (2) and (3)

researcher collected information through questionnaires from the Ethiopian Custom Commission in this subject matter.

Fourteen lawyers are participated in the questionnaires'. Based on the respondents data practically certificate of copyright registration is necessary to order border measure for the right holder incase infringement of rights occur and the owner applies to the custom commission. In the questionnaires the respondents assured that without copyright registration certificate it would be difficult to identify the real owner of the copyright work. And boarder measure is not be given for those who do not have a certificate.

The copyright and neighboring right proclamation number 410/2010 under its article 35(1) seems application of border measure is possible without evidence of ownership. It is because as per article 35(3) of the proclamation it is provided that the measure to retain goods shall be lifted where the applicant fails to provide with any justifiable evidence with ten days beginning from the date of notification of retention of the goods. From this provision the applicant is expected to present evidence that show his ownership on the goods within ten day beginning from the notification of retention of goods by the custom commission. Therefore the practice of the commission is not adhered to the pertinent provision of the law in this regard.

Chapter Six

Conclusions and Recommendations

6.1 Conclusions

The researcher comes to the conclusion that, Copyright works are eligible without any formality including registration requirement. In Ethiopia optional registration is recognized under the council of ministers regulation No. 305/2014. Optional registration is adopted by other countries such as United States of America, India and Kenya too. Unlike USA and India, Ethiopian legal system does not have provisions which encourage registration, such as subjecting a work that was not registered to compulsory license, granting additional legal remedies for the registered ones, making registration as a condition to bring suits and registration as a condition to transfer ownership.

The copyright registration law as well as the practical registration system are not designed or organized to enable the public to get easy access of the work to claim compulsory license and to capture right hand information on whether the protection period of a given work is lapsed or not. Even if there is no specific tax law provision, practically, to claim tax credit a value added tax payer expected to produce certificate of copyright registration for transactions of copyright works. In addition the certificate has evidentiary value to take boarder measure in case of infringement and serves as proof of ownership to access finance from banks.

In Ethiopia, registration of a collective work does not constitute registration of a component individual work. Registration of a copyright work does not constitute registration of the neighboring rights emanated from the same work too. Independent registration system is introduced.

Practically the Ethiopian Intellectual Authority give written opinion to the police officers that the act of the arrested person consists of infringement, to initiate copyright crime investigation. There are discrepancies between the law and the practice in relation with certificate of copyright registration. The police officers system of evidence collection related with copyright crime is not backed by law. The police officer uses the Intellectual Property Authority written opinion as a base to start criminal investigation. The police officer receives this opinion in written form from

the authority and the prosecutor also cites such opinion as evidence while instituting a charge. Surprisingly the court also takes such evidence as reliable and admissible for judgment. The Police officers give more credit for the Authority opinion instead of certificate of copyright to launch investigation. This practice is clearly not backed by law. Besides this malpractice, when certificate of copyright registration produced as an evidence in litigation, it serve as a prima facie evidence for proof of ownership and, it shifts burden of persuasion from the plaintiff to the defendant or vice versa.

The Ethiopian Intellectual Property Authority, data base system, file arrangement and the grievance handling procedure does not meet the interest of the public. The registration system and the enforcement of rights of reproduction by Libraries, Archives and Similar Institutions, reproduction for Teaching, reproduction for broadcasting and other communication to the Public for informatory purpose is not interconnected with copyright registration system in law as well as in practice. The copyright registration practice and its archival arrangement are not compatible with the interest of the public. Especially it is not accessible for the potential persons to claim compulsory license on a registered work. There is no a single provision which regulates the relation between compulsory license and registration of copyright works.

Despite the practical problems, the Ethiopian copyright registration law is not comprehensive enough especially in addressing social, cultural, economic and archival objectives of the country. Among the legal gaps, empowering the Ethiopian Intellectual property Authority to undertake formality examination instead of substantive examination of the work during registration is the one that creates the possibility of registering one work many times for many persons. Without conducting substantive examination it could be meaningless to take the certificate as prima facie evidence for presumption of ownership.

The other legal gap is concerned with moral rights of an author. As per article 6(1)a and 6(2)a of council of ministers regulation No.305/2014 of Ethiopia an applicant should submit his full name, address, nationality and a copy of his identity card or passport. From these provisions we can infer that those persons who want to use a pseudonym cannot register their copyright works in pseudonym. This clearly violates the moral right of a copyright holder to remain anonymous which is provided under article 8(1) (b) of proclamation No. 410/2004. To make things worse the regulation in its article 15 (2) provides that any person may have access to information works

entitling copyright by applying to the intellectual property office upon payment of the prescribed fee. This provision seems to serve as exposing the identity of a copyright holder against his will and who wants to remain anonymous. And the Ethiopian Intellectual property Authority has not been addressed these problems yet.

The regulation stipulated the class of works for registration purpose. However Artistic works and Visual art works provided in the copyright and neighboring right proclamation No.410/2004 and applied arts provided in the copyright and neighboring right amendment proclamation No. 872/2014 creates ambiguity to classify a certain work in the three classes of works. In addition the fees of registration are the same for all works irrespective of the volume of the work and there is no possibility to register ones work on pauper.

Under the council of ministers regulation No.305/2014 there is no provision which allows administrative remedies for those whose registration application is rejected. If the applicant is dissatisfied with the decision of the Ethiopian Intellectual property Office regarding copyright registration, the applicant remedy is not stipulated under the regulation. Unlike patent and trade mark registration when copyright registration is refused, the applicant seems do not have administrative and judicial remedy provided in the regulation.

Therefore, the researcher concludes that even if the law is not comprehensive enough certificate of copyright registration has a significant role for justice, administrative and financial sectors of Ethiopia.

6.2 Recommendations

Based the conclusion made above, the researcher recommends the following:-

- ❖ The copyright registration regulation should be amended to include
 - substantive examination in addition to formality examination before issuing of certificate of copyright registration
 - Provisions that link registration with compulsory license and for the enforcement of rights of reproduction by Libraries, Archives and Similar Institutions, reproduction for Teaching, reproduction for broadcasting and other communication to the Public for informatory purpose recognized under copyright and neighboring rights proclamation No.410/2004
 - Provisions that create interconnectedness between copyright registration system and banks, courts, police commissions, public prosecutor institutions, Custom and revenue authority
 - provisions that encourage registration, such as subjecting a work that was not registered to compulsory license, granting additional legal remedies for the registered ones, making registration as a condition to bring suits and registration as a condition to transfer ownership
 - provisions to use pseudonym for registration copyright works
 - provisions that enable to determine registration fees based on the volume of the work and to introduce pauper registration
 - provisions that address administrative as well as judicial remedies for those whose registration application is rejected by the Authority
- ❖ To encourage and make reliable copyright registration, the copyright and neighboring right proclamation No. 410/2004 and its amendments No. 872/2014 should be amended to clarify Artistic works, Visual art works and Applied arts and should include indicative lists of each class for the purpose of registration
- ❖ The justice sectors mainly, the police, public prosecutor and courts should give priority for copyright registration for a prima facie evidence for presumption of ownership of a given work, instead of taking the Ethiopian Intellectual Authority opinion which has not a legal backup.

- ❖ The Ethiopian Intellectual Property Authority should start online registration and should make the registered works available in its website upon adopting online payment system and ways to protect the business secret of a registered work
- ❖ The filing system, the data base system and the registration process should be designed to address the social, cultural and economic objectives of the country and the law should be revised so as to address such issues comprehensively
- ❖ The Ethiopian Intellectual property office should promote awareness creation for police officers, public prosecutors, judges, custom and revenue authority professionals and for the concerned ones to avoid practical problems concerned with certificate of registration

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List of persons who are interviewed

1. Dawit Belay, Federal High Court of Ethiopia Judge, Civil bench
2. Gebeyehu Felek, Federal Supreme Court of Ethiopia Judge, Civil bench
3. Mr. Meseret yazachew from Dashin Bank Credit analysis and appraisal director,
4. mr. Melaku Tadesse from United Bank, Credit analysis and appraisal director
5. mr. Alemu semaye from Nib International Bank, Credit analysis and appraisal director
6. mr. dereje Mihiretu from Zemen Bank, Credit analysis and appraisal director
7. mr. Abebaw Abebe from Abay bank Credit analysis and appraisal director.
8. Wesen Mulu , Ethiopian Intellectual Authority, copyright registration directorate director
9. Mr. Yabsira Kebede, The Ethiopian Development Bank Communication Affairs Directorate Director
10. Mr. Habtamu, a lawyer in the Ethiopian ministry of revenue
11. Mr. Nasir Nuru Reshid, Ethiopian Intellectual Property Office head

Annexes

Forms of Questionnaires

ለኢትዮጵያ አዕምሯዊ ንብረት ጽ/ቤት የቅጅ መብት ምዝገባ ክፍል ሰራተኞች የተዘጋጀ

ቃለመጠየቅ

ይህ ቃለ መጠየቅ እኔ ተማሪ ሽፈራው አበበ ለአዲስ አበባ ዩኒቨርሲቲ የህግ ትምህርት ክፍል የማስተርስ ትምህርት

የመመረቂያ ማሟያ ፅሁፍ ለማዘጋጀት ብቻ የምጠቀምበት ነው።

ይህን ቃለ መጠየቅ ለመሙላት ፈቃደኛ ስለሆኑ አመሰግናለሁ

አጠቃላይ መረጃ

1. ስም.....

2. ዕድሜ

3. ጾታ

4. የትምህርት ደረጃ

5. የስራ ድርሻ

ዝርዝር ጥያቄዎች

1. በቅጅና ተዛማጅ መብቶች አዋጅ ቁጥር 410/1996 መሰረት የምዝገባ ሁኔታ ለቅጂ መብት ጥበቃ
ለማግኘት ቅድመ ሁኔታ ባልሆነበት ሁኔታ የቅጅ ምዝገባ ለምን አስፈለገ
2. የቅጅ ምዝገባ ጠቀሜታዎች ምን ምን ናቸው፣ በዝርዝር ቢገለጹልኝ
3. በቅጅ ምዝገባ ላይ በተግባር የሚያጋጥሙ ችግሮች ምንድን ናቸው
4. የቅጅ ምዝገባ ላይ በተግባር ለሚያጋጥሙ ችግሮች መፍትሔያቸው ምን ሊሆን ይገባል ብለው ያስባሉ
5. የቅጅ ምዝገባ ላይ የህግ ክፍተት አለ ብለው ያምናሉ ወይ፣ ካሉ ምን ምን ናቸው
6. የቅጅ ምዝገባ ላይ የፎርማሊቲ ምርመራ እንጂ የይዘት ምርመራ አይደረግም መባሉ አግባብ ነው ወይስ አይደለም
7. በተራ ቁጥር 6 ላይ መልስዎ አይደለም የሚሉ ከሆነ ምክንያትዎ ምንድን ነው
8. በተራ ቁጥር 6 ላይ መልስዎ አግባብ ነው የሚሉ ከሆነ ምክንያትዎ ምንድን ነው ይህን ቃለ መጠየቅ ስለሞሉልኝ በጣም አመሰግናለሁ

በአዲስ አበባ ከተማ ፖሊስ ኮሚሽን ስር ባሉ ፖሊስ መምሪያዎች ለሚገኙ መርማሪ

ፖሊሶች የተዘጋጀ ቃለመጠየቅ

ይህ ቃለ መጠየቅ እኔ ተማሪ ሽፈራው አበበ ለአዲስ አበባ ዩኒቨርሲቲ የህግ ትምህርት ክፍል የማስተርስ ትምህርት

የመመረቂያ ማሟያ ፅሁፍ ለማዘጋጀት ብቻ የምጠቀምበት ነው።

ይህን ቃለ መጠየቅ ለመሙላት ፈቃደኛ ስለሆኑ አመሰግናለሁ

አጠቃላይ መረጃ

ስም

ዕድሜ

ጾታ

የትምህርት ደረጃ

የስራ ድርሻ

ዝርዝር ጥያቄዎች

1. ከቅጅ መብት ጋር በተያያዘ የወንጀል ምርመራ ስራ ገጥሞዎች ያውቃል

ሀ. አዎ

ለ. አልገጠመኝም

2. የቅጅ መብት ላይ ወንጀል ተሰራብኝ ብሎ የሚያመለክት የግል ተበዳይ ምርመራው እንዲጀመር ማቅረብ የሚጠበቅበት ሰነድ ምንድን ነው

3. የቅጅ መብት ምዝገባ ሰርተፊኬት ለወንጀል ምርመራ ያለው ጠቀሜታ ምንድን ነው

ይህን ቃለ መጠየቅ ስለሞሉልኝ በጣም አመሰግናለሁ

ለፌደራል ዐቃቤያነ ህግ የተዘጋጀ ቃለመጠየቅ

ይህ ቃለ መጠየቅ እኔ ተማሪ ሽፈራው አበበ ለአዲስ አበባ ዩኒቨርሲቲ የህግ ትምህርት ክፍል የማስተርስ ትምህርት

የመመረቂያ ማሟያ ፅሁፍ ለማዘጋጀት ብቻ የምጠቀምበት ነው።

ይህን ቃለ መጠየቅ ለመሙላት ፈቃደኛ ስለሆኑ አመሰግናለሁ

አጠቃላይ መረጃ

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የትምህርት ደረጃ

የስራ ድርሻ

ዝርዝር ጥያቄዎች

1. ከቅጅ መብት ጋር በተያያዘ የወንጀል ምርመራ መዝገብ ገጥሞዎች ያውቃል

ሀ. አዎ

ለ. አልገጠመኝም

2. የቅጅ መብት ላይ ወንጀል ተሰራብኝ ብሎ የሚያመለክት የግል ተበዳይ ምርመራው እንዲጀመር ማቅረብ የሚጠበቅበት ሰነድ ምንድን ነው

3. የቅጅ መብት ምዝገባ ሰርተፊኬት ያላቀረበ የግል ተባብሮ የወንጀል ምርመራ መዝገብ ላይ ዐቃቤ ህግ በሌላ ማስረጃ ብቻ ክስ ሊመሰርት ይችላል ወይስ አይችልም፣ ለምን
4. ለዐቃቤ ህግ ውሳኔ የቅጅ መብት ምዝገባ ሰርተፊኬት ያለው ጠቀሜታ ምንድን ነው

ይህን ቃለ መጠየቅ ስለሞሉልኝ በጣም አመሰግናለሁ

ለጉምሩክ ኮሚሽን ባለሙያዎች የተዘጋጀ ቃለመጠየቅ

ይህ ቃለ መጠየቅ እኔ ተማሪ ሽፈራው አበበ ለአዲስ አበባ ዩኒቨርሲቲ የህግ ትምህርት ክፍል የማስተርስ ትምህርት

የመመረቂያ ማሟያ ፅሁፍ ለማዘጋጀት ብቻ የምጠቀምበት ነው።

ይህን ቃለ መጠየቅ ለመሙላት ፈቃደኛ ስለሆኑ አመሰግናለሁ

አጠቃላይ መረጃ

ስም

ዕድሜ

ጾታ

የትምህርት ደረጃ

የስራ ድርሻ

ዝርዝር ጥያቄዎች

1. ከቅጅ መብት ጥሰት ጋር በተያያዘ ወደ ሀገር ውስጥ እንዳይገባ የቅጅ ስራ ይታገድልኝ የሚል አቤቱታ ገጥሞዎት

ያውቃል

ሀ. አዎ

ለ. አልገጠመኝም

2. የቅጅ መብት ላይ የመብት ጥሰት ተሰራብኝ ብሎ የሚያመለክት የግል ተባብሮ ወደ ሀገር ውስጥ የቅጅ ስራ እዳይገባ ዕገዳ ለማሰጠት ማቅረብ የሚጠበቅበት ሰነድ ምንድን ነው

3. የቅጅ መብት ምዝገባ ሰርተፊኬት ያላቀረበ የግል ተባብሮ ወደ ሀገር ውስጥ የቅጅ ስራ እዳይገባ ዕገዳ ማቅረብና ማሰጠት ይችላል ወይስ ይችልም፣ ለምን

4. ለኮምፍሽ ኮሚሽን ውሳኔ የቅጅ መብት ምዝገባ ሰርተፊኬት ያለው ጠቀሜታ ምንድን ነው

ይህን ቃለ መጠየቅ ስለሞሉልኝ በጣም አመሰግናለሁ

ለፌደራል ክፍተኛ ፍርድ ቤት ዳኞች (ለወንጀል ችሎት) የተዘጋጀ ቃለመጠየቅ

ይህ ቃለ መጠየቅ እኔ ተማሪ ሸፈራው አበበ ለአዲስ አበባ ዩኒቨርሲቲ የህግ ትምህርት ክፍል የማስተርስ ትምህርት

የመመረቂያ ማሟያ ፅሁፍ ለማዘጋጀት ብቻ የምጠቀምበት ነው።

ይህን ቃለ መጠየቅ ለመሙላት ፈቃደኛ ስለሆኑ አመሰግናለሁ

አጠቃላይ መረጃ

ስም

ዕድሜ

ጾታ

የትምህርት ደረጃ

የስራ ድርሻ

ዝርዝር ጥያቄዎች

1. ከቅጅ መብት ጥሰት ጋር በተያያዘ የወንጀል ክስ ገጥሞዎት ያውቃል

ሀ. አዎ

ለ. አልገጠመኝም

2. የቅጅ መብት ምዝገባ ምስክር ወረቀት በወንጀል ክስ ላይ ያለው ጠቀሜታ ምንድን ነው

3. የቅጅ መብት ምዝገባ ምስክር ወረቀት ያልቀረበበት የወንጀል ክስ በሌላ ማስረጃ ተከሳሽን ጥፋተኛ ሊስብለው ይችላል ወይስ አይችልም፣ ለምን

4. የቅጅ መብት ምዝገባ ምስክር ወረቀት ቀዳሚ የባለቤትነት ማስረጃ በመሆን ያገልግላል ሲባል፣ በተግባር ያለው ትርጉም ምንድን ነው

ይህን ቃለ መጠየቅ ስለሞሉልኝ በጣም አመሰግናለሁ

ለፌደራል ክፍተኛ ፍርድ ቤት ዳኞች (ለፍታብሔር ችሎት) የተዘጋጀ ቃለመጠየቅ

ይህ ቃለ መጠየቅ እኔ ተማሪ ሸፈራው አበበ ለአዲስ አበባ ዩኒቨርሲቲ የህግ ትምህርት ክፍል የማስተርስ ትምህርት

የመመረቂያ ማሟያ ፅሁፍ ለማዘጋጀት ብቻ የምጠቀምበት ነው።

ይህን ቃለ መጠየቅ ለመሙላት ፈቃደኛ ስለሆኑ አመሰግናለሁ

አጠቃላይ መረጃ

ስም

ዕድሜ

ጾታ

የትምህርት ደረጃ

የስራ ድርሻ

ዝርዝር ጥያቄዎች

1. ከቅጅ መብት ጥሰት ጋር በተያያዘ የፍታብሔር ክስ ገጥሞዎች ያውቃል

ሀ. አዎ

ለ. አልገጠመኝም

2. በተራ ቁጥር 1 ላይ የሰጡት መልስ አዎ ከሆነ የክስ አይነት በአጭሩ ምንድን ነው

3. የቅጅ መብት ምዝገባ ምስክር ወረቀት በፍታብሔር ክስ ላይ ያለው ጠቀሜታ ምንድን ነው

4. የቅጅ መብት ምዝገባ ምስክር ወረቀት ያልቀረበበት የፍታብሔር ክስ በሌላ ማስረጃ ተከሳሽን ኃላፊነት ሊያስከትልበት ይችላል ወይስ አይችልም፣ ለምን

5. የቅጅ መብት ምዝገባ ምስክር ወረቀት ቀዳሚ የባለቤትነት ማስረጃ በመሆን ያገልግላል ሲባል፣ በተግባር ያለው ትርጉም ምንድን ነው

ይህን ቃለ መጠየቅ ስለሞሉልኝ በጣም አመሰግናለሁ

ለፌደራል ጠቅላይ ፍርድ ቤት ዳኞች የተዘጋጀ ቃለመጠየቅ

ይህ ቃለ መጠየቅ እኔ ተማሪ ሽፈራው አበበ ለአዲስ አበባ ዩኒቨርሲቲ የህግ ትምህርት ክፍል የማስተርስ ትምህርት

የመመረቂያ ማሟያ ፅሁፍ ለማዘጋጀት ብቻ የምጠቀምበት ነው።

ይህን ቃለ መጠየቅ ለመሙላት ፈቃደኛ ስለሆኑ አመሰግናለሁ

አጠቃላይ መረጃ

ስም

ዕድሜ

ጾታ

የትምህርት ደረጃ

የስራ ድርሻ

ዝርዝር ጥያቄዎች

1. ከቅጅ መብት ጥሰት ጋር በተያያዘ የፍታብሔር ክስ ገጥሞዎት ያውቃል

ሀ. አዎ

ለ. አልገጠሙኝም

2. በተራ ቁጥር 1 ላይ የሰጡት መልስ አዎ ከሆነ የክስ አይነት በአጭሩ ምንድን ነው

3. ከቅጅ መብት ጥሰት ጋር በተያያዘ የወንጀል ክስ ገጥሞዎት ያውቃል

ሀ. አዎ

ለ. አልገጠሙኝም

4. በተራ ቁጥር 3 ላይ የሰጡት መልስ አዎ ከሆነ የክስ አይነት በአጭሩ ምንድን ነው

5. የቅጅ መብት ምዝገባ ምስክር ወረቀት በወንጀል ክስ ላይ ያለው ጠቀሜታ ምንድን ነው

6. የቅጅ መብት ምዝገባ ምስክር ወረቀት ያልቀረበበት የወንጀል ክስ በሌላ ማስረጃ ተከሳሽን ጥፋተኛ ሊስብለው ይችላል ወይስ አይችልም፣ ለምን

7. የቅጅ መብት ምዝገባ ምስክር ወረቀት በፍታብሔር ክስ ላይ ያለው ጠቀሜታ ምንድን ነው

8. የቅጅ መብት ምዝገባ ምስክር ወረቀት ያልቀረበበት የፍታብሔር ክስ በሌላ ማስረጃ ተከሳሽን ኃላፊነት ሊያስከትልበት ይችላል ወይስ አይችልም፣ ለምን

9. የቅጅ መብት ምዝገባ ምስክር ወረቀት ቀዳሚ የባለቤትነት ማስረጃ በመሆን ያገልግላል ሲባል፣ በተግባር ያለው ትርጉም ምንድን ነው

ይህን ቃለ መጠየቅ ስለሞሉልኝ በጣም አመሰግናለሁ

ለቅጅ መብት ባለቤቶች ማህበር የተዘጋጀ ቃለመጠየቅ

ይህ ቃለ መጠየቅ እኔ ተማሪ ሽፈራው አበበ ለአዲስ አበባ ዩኒቨርሲቲ የህግ ትምህርት ክፍል የማስተርስ ትምህርት

የመመረቂያ ማሟያ ፅሁፍ ለማዘጋጀት ብቻ የምጠቀምበት ነው።

ይህን ቃለ መጠየቅ ለመሙላት ፈቃደኛ ስለሆኑ አመሰግናለሁ

አጠቃላይ መረጃ

ስም

ዕድሜ

ጾታ

የትምህርት ደረጃ

የስራ ድርሻ

ዝርዝር ጥያቄዎች

1. የቅጅ መሰብሰቢያ ምዝገባ አስፈላጊ ነው ብለው ያምናሉ

ሀ. አስፈላጊ አይደለም

ለ. አስፈላጊ ነው

2. የቅጅ መሰብሰቢያ ምዝገባ አስፈላጊ ነው ካሉ ለባለሙያዎች የሚሰጠው ጠቀሜታ ምንድን ነው

3. የቅጅ መሰብሰቢያ ምዝገባ ከባለሙያዎች ውጭ የሚያስገኛቸው ጠቀሜታዎች ካሉ ቢዘረዝሩልን

ይህን ቃለ መጠየቅ ስለሞሉልኝ በጣም አመሰግናለሁ