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BY
YEMANE GESESEW

ADDIS ABABA
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**ADDIS ABABA UNIVERSITY
FACULTY OF LAW
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**INFRINGEMENT AND REMEDIES OF ECONOMIC RIGHTS OF
AUDIOVISUAL WORKS UNDER THE ETHIOPIAN COPYRIGHT
LAW: LAW AND PRACTICES IN ADDISABABA**

**BY
YEMANE GESESEW**

ADVISOR: DOCTOR MANDEFRO ESHETE (PHD)

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Approved by

1. _____

Advisor's Name

_____ **Signature**

2. _____

Examiner's / readers name

_____ **Signature**

3. _____

Examiner's / readers name

_____ **Signature**

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TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENT -----	i
TABLE OF CONTENTS -----	ii
LIST OF TABLE -----	vi
ABSTRACT -----	vii
CHAPTER ONE	
INTRODUCTION -----	1
1. Background of the Study-----	1
2. Statement of the Problem -----	5
3. The Objective of the Study -----	7
4. Significance of the Study -----	8
5. Methodology of the Study -----	8
6. Organization of the Study-----	9
7. Scope of the Study -----	9
CHAPTER TWO	
GENERAL OVERVIEW OF AUDIOVISUAL WORKS VIS A VIS THE	
ETHIOPIAN COPYRIGHT REGIME -----	10
2.1 Introduction to Audiovisual works -----	10
2.2 Definition of Copyright and Audiovisual Works -----	11
2.2.1 Motion Picture and Short Film -----	17
2.2.2 Trailer or Preview -----	18
2.2.3 Commercial -----	18
2.3. The Justifications for Protection of Audiovisual Works-----	18
2.4. Grounds for Protection Audiovisual Works under the Ethiopian Legal	
Systems -----	21
2.5. Audiovisual Works under the Copyright Law -----	23
2.6. Criteria for Copyright Protection of Audiovisual Works -----	24
2.6.1. Originality -----	24
2.6.2 Fixation -----	25

2.6.3 Registration-----	26
2.6.4 Duration of Audiovisual Works -----	29
2.7. Ownership as Exclusive right Audiovisual Works under Copyright Law -----	29
2.8. Important Ingredients in the Production of Audiovisual-----	34
2.8.1. Screenplay -----	35
2.8.2 Motion Picture Image-----	35
2.8.3 Recording Sound -----	36
2.9 Role Players in the Production of Audiovisual -----	36
2.9.1 Producer -----	36
2.9.2 Director -----	37
2.9.3 Scriptwriter -----	37
2.9.4 Actor -----	37
2.9.5 Editor-----	37
2.9.6 Cameraman-----	38

CHAPTER THREE

INFRIGEMENTS AND REMEDIES OF ECONOMIC RIGHTS OF

AUDIOVISUAL WORKS -----	39
3.1. Overview-----	39
3.2. Rights Comprised in Audiovisual Work -----	40
3.2.1. Right of Reproduction and Related Rights-----	41
3.2.2 Performing Rights -----	43
3.2.3 Recording in Public Performance Rights -----	44
3.2.4 Broadcasting Right -----	44
3.2.5 Translation Rights -----	45
3.2.6 Adaptation Right -----	46
3.2.7 Distribution right -----	46
3.2.8 Importation Right-----	46
3.3 Infringement of Audiovisual Works in the Copyright -----	47
3.3.1 Meaning of Infringement-----	47

3.3.2. Acts Constituting Infringement of Audiovisual Works -----	47
3.4 Types of Infringement in the Audiovisual Work -----	49
3.4.1 Primary Infringement -----	50
3.4.2 Secondary Infringement -----	51
3.5 Remedies for Copyright Infringement of Audiovisual Works-----	53
3.5.1 Types of Remedies -----	54
CHAPTER FOUR	
DATA PRESENTATION, ANALYSIS AND INTERPRETATION -----	61
4.1 Profile of the Respondents Questionnaires Distributed-----	62
4.2 Infringement of Audiovisual Works-----	73
4.3 Observation -----	74
CHAPTER FIVE	
CONTEMPORARY PROBLEMS ASSOCIATED WITH PROTECTION OF AUDIOVISUAL WORKS -----	80
5.1 Synopsis of the Problems -----	80
5.2 Proof of Infringements -----	84
5.3 Concluding Remarks-----	85
CHAPTER SIX	
CONCLUSION AND RECOMMENDATION -----	89
6.1 Conclusion -----	89
6.2 Recommendations-----	90
BIBLIOGRAPHY -----	93

Annexes

Annex 1-----	1
Annex 2-----	24
Annex 3-----	29
Annex 4-----	39
Annex 5-----	44
Annex 6-----	49
Annex 7-----	54
Annex 8-----	58
Annex 9-----	62
Annex 10 -----	65
Annex 11 -----	67
Annex 12 -----	74

LIST OF TABLE

	Page
Table 1: Members of Respondent -----	62
Table 2: Response of Respondents in Relation to different Audiovisual Infringement Issues -----	65
Table 3 Audiovisual Works Reproduced Illegally in Addis Ababa as Investigated by Police Presented by year-----	73
Table 4: Percentage of Original VCDs to illegally reproduced ones in Five Sub Cities of Addis Ababa -----	74

ABSTRACT

Audiovisual works are one of the important categories of copyrighted works intangible form of property. These works are internationally protected by the Berne Convention of 1886 and the Rome Convention of 1952. At the National level, specifically Copyright and Neighboring Rights protection Proclamation No 410/2004, the Ethiopian civil and criminal code in general.

Basically, as audiovisual works are part and parcel of intellectual property subsists in a work an exclusive economic right. The law operates to prevent any unauthorized person from exploiting the protected work without the permission of or the remuneration of the owner of audiovisual work, which may or may not be the author or creator of the work. Any exploitation of the work without such permission or remuneration is termed an infringement of the copyright law which the violator punishable by law and attracts various civil and some criminal penalties.

In order for an audiovisual work to have protection, it must satisfy the test of originality of the work and be fixed in a medium for communication. Unlike some intellectual property rights systems, therefore, there is no formal system of registration of Copyright under the Ethiopian legal system. Theoretically, this is based on the principle that Copyright is a fundamental right which should not require the time and expense of legal process for recognition. Practically, however, we can marvel at how much easier it might be the audiovisual works formed part of some official register to which we only needed to ascertain prove in court litigation and ownership and expiration of audiovisual work protection.

Once these requirements are fulfilled ,the audiovisual work, different from to other copyrighted works, gets protection for 50 years similar collective work of copyright owners, it commence counting which from date of fixed or communicated to the public which ever date of latest. However the script writer, the performers, composer or sound recorded incorporated the work will be exploited on separate Copyright protection .The audiovisual works are usually extended to the producer of the work who is designated as the author of the overall production, although he or she might have utilized several different component works in creating the audiovisual to which Copyright and Neighboring Right protection might extend.

However, it is now common to see that the audiovisual work of the country is respected more by breach than by its observance. This research paper examines the level of infringement of the economic rights arising out of audiovisual works with particular reference to practical challenges for the effective enforcement of the law and the legal remedy available by closely scrutinizing the Ethiopian copyright law and other relevant laws. To such end, the writer examined the extent of infringement of audiovisual works in Addis Ababa city and come to the conclusion that the violation is rampant. Numerous actors engage in this infringement including some recording and distributing companies, audiovisual renting shops, and peddlers. The audiovisual rental shops, for instance, rent films which are not original video cassette or VCD, and/or rent without consent of the author after purchasing one original work. They also reproduce such and similar works without the consent of the author by a machine such as computer.

CHAPTER ONE

INTRODUCTION

1. Background of the Study

Copyright is creation of mental labour and thus part of the broader subject of intellectual property concerned with the protection and exploitation of the expression of ideas in a copyrightable work¹. The audiovisual works are also integral part of copyright and consist of motion image accompanied with or without sound recorded in tangible medium² that can be read by device. Historically, the audiovisual works development was attached with copyright law. The copyright law came in to existence in response to the invention of the printing press, cinematography and other works which made possible to the mass production. Because before invention of video or recording materials, everything was manual and it was very difficult to reproduce original film in to similar copy for sale or rent hence there is no need of copyright law, where there is no person to exclude who get illegal benefit and to protect the creators of others work.³

The social context in which the copyright law developed explains the way in which copyright concepts have been formulated⁴. For example, the Ethiopian Copyright and Neighboring Rights law focuses on the rights of authors and those who claim through him. It also protects ‘original works and only if those works are fixed in a material form.’⁵

The central right which the Ethiopian copyright law confers to the producer of audiovisual works is to prevent unauthorized persons from copying or reproducing the work so that violators can not diminish the bundle of economic rights endowed to the creator of the work. Hence we can safely conclude that, ideas to be protected under such law must be expressed in an original manner, that is to say, the work has not copied from other person’s mental work to distinguish from mere idea it needs be fixed in a medium that can be readable by machine. Moreover, the copyright law

¹ Peter Groves ,Source Book on Intellectual Property ,(1997) p17 copyright Works means a production of in the literary scientific and Artistic

² Ibid

³ Copeling ,A.J.C Copyright Law in South Africa Durban, (1969) P7

⁴ Id p,30

⁵ Copyright and Neighboring Rights Protection Proclamation, Proclamation No. 410/2004,Federal Negarit Gazeta, Year 10, No. 54, Article 6,

extends protection to works irrespective of their quality once the essential conditions are fulfilled.⁶

During earlier times, the subject matter of copyright protection was printed literary and artistic works.⁷ But later on the reprographic technology has caused the widening of the scope which specifically extended to audiovisual works, technical drawings, maps, and paintings and to three-dimensional works such as sculptures and architectural works and to photograph works and includes computer programs which are treated as if they are artistic works or compilations of literary works⁸.

In the field, therefore, Ethiopian copyright law protection applies not only to scholarly books and articles but also other works including but not limited to audiovisual works on which this study focuses.⁹ The owner of a copyrighted audiovisual work can exclude others from using his works without his/her authorization. The acts which require the authorization of the audiovisual owner are usually: copying or reproducing the work; performing the work in public, making a sound and recording motion image of the work, broadcasting a works through the electromagnetic spectrum or through cable diffusion, and translating or adapting the work.¹⁰ These acts seriously affect the economic rights of the owner/producer of the audiovisual work.

A country depends to a very great extent on the innovative capacity of its human resources, and its encouragement by the society to individual who create and its legitimate dissemination is a condition for progress.¹¹ This fact also holds true to audiovisual works as the essential enrichment of a national cultural heritage depends directly on the level of protection afforded to musical,

⁶ Ibid, Provides the requirement for protection the producer of audiovisual work irrespective of the quality of the work and purpose for which the work may have been created ,be entitled the legal protection ,for the work without any formality and upon creation where the work is original and fixed.

⁷ G. Fox Harold Canadian Law of Copyright and Industrial Design , Second ed., (1967), Canada, p. 46

⁸ Copyright and neighboring right Supra note 5 in a similar fashion the Ethiopian copyright Art 2(30) provides that work that are extended protection are means a production in the literary scientific and artistic field includes in particular books ,booklets, article in reviews and newspaper ,computer programs; speeches ,lectures address ,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, photograph works ,illustrations, maps, plans ,sketches and three dimensional works related to geography ,topography ,architecture.

⁹ Ibid

¹⁰ Id Article 7

¹¹ Edward Wilhelm And Clark Haimlton, Copyright: Intellectual Property in the Information Age, (1980), P.26

dramatic or film works, etc expressed with sound or image movement fixed in a certain medium¹² that makes it capable of being perceived through a device. Audiovisual works can also serve as instrument of change of cultural attitude among the public, harmonization and acquaintance of each other in a diversified society like Ethiopian.¹³ The greater the number of a country's intellectual creations, the higher its renown; the greater the number of productions in literature and the arts, the more numerous their auxiliaries in record compact disk and entertainment industries as form of audiovisual works¹⁴; and indeed, in the final analysis, encouragement of intellectual creation is one of the basic prerequisites of all social, economic and cultural development.¹⁵

Audiovisual works protection, from the viewpoint of the producer of works, makes sense only if the creator actually derives benefits from such works¹⁶, and this cannot happen in the absence of publication and dissemination of his works and the facilitation of such publication and dissemination in protected means communication to the public is a necessary condition.¹⁷ This is the essential role that copyright law plays as it prohibits others from illegally copying and reproducing the work of the creator of audiovisual work.

There are different factors influencing creativity of audiovisual works in developing countries,¹⁸ like Ethiopia. Because of poverty and lack of awareness, some people factually will tempt to illegally copying and reproduce others' personal creative work and sell in the open market. On other hand those who cannot afford the higher price of the legally reproduced audiovisual works inclined to purchase the illegal copies with lower price. However, these acts dramatically jeopardize the producers of audiovisual works. It is easy to observe that what has been happening in Addis Ababa city and the writer of this paper had investigated the extent of violation of the audiovisual works.

¹² Copyright and Neighboring Rights, Supra note 5, Art 2(11) of this proclamation defines fixation as the embodiment of works or images or sound or of the representations thereof, from which they can be perceived, reproduced or communicated through a device prepared for the purpose

¹³ Edward Wilhelm and Clark Haimlton supra note 11, p 30 and The Federal Democratic Republic (FDRE) of Ethiopian constitution in its preamble recognize Ethiopia is multi-cultural society.

¹⁴ Ibid,

¹⁵ Copyright and Neighboring Right law supra note 5 the preamble of the proclamation on Copyright and neighboring right law states that the literary works and similar works like audiovisual have a great role to enhance the cultural ,social ,economic ,scientific and technological development of Ethiopia

¹⁶ Edward Wilhelm and Clark Hamilton, Copyright: Intellectual Property in the Information Age, (1979), p.10

¹⁷ Ibid

¹⁸ Fisher Arthur, Studies on Copyright, the Copyright Society of U.S.A, vol. 2, New York (1963) p .229

Many stakeholders now believe that the present infringement of copyrighted audiovisual works adversely affects socio-cultural development of the country. Moreover, the current level of infringement has been impairing the pecuniary condition of most of the producers of audiovisual works and intellectual creators who often desperately need to be offered incentives and if not subsidies.¹⁹ One of the known contemporary comedians, Mitku Fentie, for instance, told the writer that there are some artists who do not have even dinner to eat. Further more, some argue that the audiovisual industry lacks sufficient attention on the part of the Ethiopian government. Some creator of work due to financial shortage unable their production to be fixed in any possible in medium so that they can commercialize their work is problem by itself and Protection of their works from third party reproducing and selling at lower price is also another challenging.²⁰

Another issue that requires special attention is the perpetuation of the infringement of audiovisual works could be facilitated by the numerous types of material machines used to reproduce audiovisual works different corners of the city.²¹ The legally production can be transmitted through broadcasting of wireless instruments or uploading in the internet on websites and public display. These forms of violation are among the factors that threat the industry.²² The abovementioned comedian stated that some Ethiopian or any other person who are resident outside of Ethiopia take one original work of audiovisual within them and reproducing by different mechanism. They sell the illegal products to residents of Ethiopian in who pursue their livelihood depending on the such activities.

The role of governments and public at large in this regard must be protecting audiovisual work. In addition, the public should take the responsibility of financial assistance for the producers of audiovisual works²³ by purchasing the original audiovisual works that commensurate the effort of audiovisual work producers. The infringers must be criminally liable for their act of violating the original works of the producer. As different colleges are emerging to train in the film industry or any artist activities by using the audiovisual work for a teaching materials published in a cassette or compact disc there must be guidelines how to utilize and repay to the producer of the work

¹⁹ Id p 229

²⁰ Id p 275

²¹ Jon J Lee, The producer's Business Hand Book, (2000) p. 4

²² Ibid

²³ Ibid

because the training college is getting benefit from the work and can end the inputs for training tantamount as infringement.²⁴ This payment will contribute for expansion and the creation of the audiovisual works.²⁵

2. Statement of the Problem

Under the Copyright and Neighboring Rights proclamation 410/ 2004 audiovisual producer can exploit his rights either directly (i.e. selling copies of the work himself), or indirectly (i.e. giving others the right to exploit his work). Indirect exploitation can be achieved by the audiovisual owner through assigning or licensing his copyright to a third party, Such Copyright proclamation, 2004 sets out detailed rules on assignment and licensing of a copyright.²⁶ Generally, assignment must be in writing and it may be in whole or in part. Depending on the terms of assignment, the act of assignment generally transfers the title in the work such that even the assignor can subsequently be restrained from doing an act that infringes the rights of the assignee as the new owner of the copyright.²⁷ Licensing confers contractual right on the licensee and it does not pass any title in the work. The copyright may be licensed on exclusive or non-exclusive basis.

²⁴ Ibid

²⁵ Ibid

²⁶ Ethiopian copyright law supra note 5 under part four articles 23, 24 and 25 provides details about assignment and licensing of audiovisual works as part of copyrightable, the producer of audiovisual in a whole or part of his economic right can transferred by assigned or licenses to third party. The authorization has to be in writing by the owner or producer it also stipulates about presumption that any assignment or license has to be in clear and express manner. Any economic right not included in the in the agreement shall not be deemed to be included in assignment or license. The scope of application of the assignment or license shall be limited to use or exploitation of the economic rights specified in the agreement. The law, however, states that the agreement of assignment or license is not extended to the material object that constitutes the protected work. The agreement has to mention the means of use or exploitation of such economic rights if not the assignee or licensee shall be entitled to exploit the right by such ways and means necessary for the purpose envisage by the parties. If the agreement of assignment or licensing fails to specify the time when such contract lapses the assignment or licenses shall terminate after 10 or 5 year respectively. The law stipulates about revocation of agreement for assignment or license in the circumstance where the assignee or exclusive licensee does not exercise economic right conferred upon him or does only inadequately and producer or authors legitimate interest prejudiced by such failure. But there are exception that where such non exercise or inadequate use was ascribed which the author expected to give remedy. In addition revocation of an agreement of assignment or license cannot be effected within three years from date of agreement or from the date delivery of the work. It gives a notice that parties may not waive in advance the aforementioned grounds of revocation.

²⁷ Ibid Art. 25(2)

These being the two modes of legally justified copyright exploitations, any other form of use or exploitation of copyrighted works; unless it comes within the legally provided few exceptions²⁸ constitute infringement of copyright law. However, it is a common scenario that the Ethiopian copyright law, one may say, is more respected by breach than by observance. This is particularly true in relation to audiovisual works. As a result, it is common to observe the audiovisual community complaining about enforcement of their right.

The general statement of the problem therefore is what the level of infringement looks like and the reasons for the frequent breach of the Ethiopian copyright law in particular reference to audiovisual works? After examining the problems, solutions will be recommended. One can observe that copyright infringement related remedies are being taken by law enforcements such as police, public prosecutor the civil and criminal bench of the court and by different pressure group. But, practice shows that such measures and remedies did not bring the required solutions for the problem. What are the problems for this scenario is also another issue that this study will address.

The Copyright and Neighboring Rights proclamation of 2004 did not establish an organization which is concerned with registration of copyrighted works including the audiovisual works. Although the copyright law stipulate under article 2(25) the office means the Ethiopian intellectual property office but the duties of the office in respect to copyright was not envisaged on by the proclamation.

The legal systems of America and Canada adopt the principle of automatic copyright protection with the criteria of originality and publication copyrightable works.²⁹ However there exists an institution with function of among others fulfillment or otherwise as requirement to register of

²⁸ Ibid. Art 9 of copyright law, however, provides that the audiovisual producer cannot forbid for private single reproduction recorded or published or produced work by a physical person for his own exclusive personal use this is not extended to the master audiovisual used for production purpose which would conflict with or unreasonable harm to the exploitation of the work or legitimate interest ,for purpose of teaching the published audiovisual works and etc

²⁹ G.Fox Harold supra note 7 p 315 The Canadian law of copyright define originality ,the expression of idea ,the result of substantial degree of skill of the author the work must not copied from another existing work or must not have been in public domain. Registration confers no right but the work must be original of author created by his own skill, labour and judgment and publication the issue of copies of the work to the public by printing and sale and offering for sale copies to public. Thus no oral publication

copyrighted works if desired.³⁰ But the registration is simply a certificate of ownership affording an easy method of proof when required.³¹ Moreover of production or association of authors, performers, translators, producers of sound recordings or audiovisual producers, broadcasters and publisher register fruits of their work.³² The American experience shows that voluntary registration in such kind of institution contributes a lot towards effective enforcement of copyrighted audiovisual works³³ like during litigation in relation to determine the content or who is the owner of audiovisual adduce of evidence to prove for claimant. Is it necessary to establish or to empower any other institution the registration audiovisual work in Ethiopia and the need for establishing same, etc was scrutinized.

3. The Objective of the Study

As aforementioned in background and statement of the problem of the study, the general objective of the paper is to show the causes and level of infringement of copyrighted in audiovisual works and to assess the remedies being taken up to know and their effectiveness or weakness. Specifically, the paper has the following objectives:

- To assess the requirements for audiovisual copyright work to grant protection by looking carefully whether the copyright subsist in the work? Which is related with originality? Who is the owner of the audiovisual copyright? In case contestation is the work still within the copyright protection period? It is related with duration of protection the audiovisual work. Has there been any infringement and remedies available of audiovisual work?
- To analyze the legal regime governing audiovisual works in Ethiopia;
- To show the level of gap between the law and the practice;
- To examine the acts that do not constitute infringement of audiovisual but paramount violation the right the producers works;
- To examine as to why the remedies for infringement taken up to now are not effective to curb the existing problem of infringement of audiovisual works;

³⁰ Ibid p316

³¹ Ibid

³² Ibid

³³ Ibid

- To suggest recommendations that can help in resolving copyright infringement of audiovisual works

4. Significance of the Study

After critical analysis of the law and practice, the paper will recommend the mechanism to deal with the problem of infringement of audiovisual works. If gap exists, it will suggest the amendment of the law and institutional development that deals subject matter under consideration. Besides the paper may used by for further study by scholars who study or write a paper on the field of copyright in the area of audiovisual works, the law enforcement agencies and judiciary for investigating and litigating of infringement of audiovisual works.

5. Methodology of the Study

The first method of research to achieve these objectives would depend on the analytical method of both primary and secondary data. In the secondary data the main source of the material will be libraries books, report in the field of copyright law, the recent development in this regard will be compared with the policies adopted or enshrined in the copyright law of Ethiopia, Proclamation No 410/2004. The second research method which the writer intends to employ is conducting interview, distribution of questioners on the existing copyright law and procedure in the implementation of the audiovisual work. Judges, musicians, film producers, audiovisual shops owners, and producer was target to primary data collection. The third method of research is case study. The researcher will investigate audiovisual infringement related cases including how the copyright law was interpreted and applied in practices in disposing the infringements audiovisual works.

6. Organization of the Study

The thesis is organized in to six chapters. Accordingly, the first chapter deals with the introduction and proposal of the study. The second and third chapters discuss the details of related literature relevant in the area. It starts with definition of copyright in general and audiovisual works in particular. In these chapters, it explains about the economic rights of producers of audiovisual works granted under the law of copyright, the infringements the remedy

available and the civil and criminal liabilities resulting from infringement of copyrighted audiovisual works. The fourth chapter deals with the data presentation, analysis and interpretation. The fifth one is concerned with the existing problems associated with the practical protection of audiovisual works. And finally conclusions are drawn based on the analysis and possible recommendations are forwarded by the researcher based on the research findings of the research.

7. Scope of the Study

The paper is concerned only with the audiovisual works as subject matter and economic rights in the field of copyright. The moral rights of an author are thus, out of the purview of the research. The focus of the study is on the economic rights arising out of audiovisual works and the status quo in respect to their enforcement in the country. Geographically, the research examines the practice in Addis Ababa. This is due to two main reasons. First, studies show that Addis Ababa is the level of infringement of the audiovisual works is significant which makes it the hub in this regard. Secondly, the financial constraints forced the writer to limit the research only in Addis Ababa. And thirdly, the infringements in the city and in the peripheries are more or less similar.

CHAPTER TWO

GENERAL OVERVIEW OF AUDIOVISUAL WORKS VIS A VIS THE ETHIOPIAN COPYRIGHT REGIME

2.1 Introduction to Audiovisual Works

Audiovisual works fall under the subject matter of copyrighted works which is intangible property in nature.³⁴ It is the creation of human intellect and expression of the idea. Actually, it is not the idea itself but the expression of idea that is protected by the copyright law.³⁵ The owner has exclusive rights to exploit the fruits of his work. Besides, the producer or the owner has the right to authorize other persons to do the acts endowed to him under copyright legal regime.

The copyright of audiovisual works could be infringed by different means. Audiovisual Copyright infringement is an act of somebody exercising the rights reserved exclusively for the producer without his authorization.³⁶

There are mainly two international conventions that deal with copyrighted works: the Berne convention and the Universal Copyright Convention both of which lay down minimum standards for protection to be attained³⁷ on audiovisual works and reciprocity of protection between those countries that are signatories to the convention. The conventions demand the harmonization of copyright law of each country and a foreign national can take legal action in the country where infringement occurred.³⁸ The Ethiopian copyright law clearly stipulates in the case of audiovisual works, any audiovisual producer whose headquarter or principal residence is in Ethiopia can invoke the law of Ethiopia to enforce his right irrespective of the Nationality or the place where the work originate.³⁹

2.2 Definition of Copyright and Audiovisual Works

As discussed above, audiovisual works are intangible rights which subsist in work that can confer up on the creator economic right protected by the copyright law. Nonetheless, in order to understand the works enshrined audiovisual works. It will be noteworthy to define copyright. What is then copyright? Copyright is a system of property that subsist in literary, scientific and

³⁴ Copyright and Neighboring Rights Proclamation, Supra note 5 Art 2(30) (e)

³⁵ Ibid Art 5 provides that any idea, system, method of operation ,principles ,concepts, general use etc embodied in the work are not protected

³⁶ G.fox Harold, Supra note 7, p 326

³⁷ James Skone and Copinger supra note 37 p 1102

³⁸ Ibid

³⁹ Copyright and Neighboring Rights Proclamation, Supra note 5, Art 3 (1)(c) on scope of application

artistic works which the law specifies them to be subject matter of copyright protection.⁴⁰ Generally speaking all forms of property can be classified into corporal and incorporeal or otherwise known as tangible and intangible properties.⁴¹ Copyright forms part of the category of intellectual property hence it is intangible or incorporeal property.⁴²

There is no clearly and universally accepted definition of the term copyright.⁴³ The main reason for lacking of universally recognized meaning of copyright is because every jurisdiction sets forth partly varying conditions and procedures to be included in the definition of copyright. Besides, the nature of the copyright varies accordingly.⁴⁴ As result, the definition is jurisdictional specific the consequence of which being having different definition with divergent elements. But it is noteworthy to have a glance about the definition of the respective legal system to come up with working definition that can serve as point of reference for this paper. Let's define the copyright from three distinct perspectives Anglo America, the socialist and individualistic European approach.⁴⁵

The Anglo American approach bases itself on the print and reprint copyright that is to say to print and reprint the work.⁴⁶ According to such approach, copyright is dependent up on an existing work which has a material form so as to be copied, printed and reprinted.⁴⁷ Accordingly, copyright would mean "...the right granted by law to authors of works of the mind in order to make possible the transfer of exclusive rights to the publishers".⁴⁸ Thus the author has monopoly with regard to use and exploitation of his work.

The dual rights (economic and moral) are not recognized under the Anglo- American legal system different from civil law system.⁴⁹ It is the economic aspect of copyright that has been

⁴⁰ David Bainbridge Intellectual Property ,4th ed , Pearson Education Limited, Harlow ,(1999), p. 29

⁴¹ Blen Telahin, Scope of Copyright Protection in Audiovisual Works under the Proclamation 410/2004, (Senior Essay, Unpublished, Addis Ababa University Faculty of Law,2001), p.1

⁴² Ibid

⁴³ Takele Seboka, Infringements of Copyright and Remedies Available under Ethiopian Law: the Law and the Practice, (Senior Essay, Unpublished, Addis Ababa University Law Library, 1999), P.1.

⁴⁴ Ibid

⁴⁵ Edward Wilhelm, Supra note 16 , P.26

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Takele Seboka, Supra Note 43, At P.2

given recognition.⁵⁰ Any protection therefore is extended to personal interests of the author has been incidental to the economic protection of the copyrighted works.⁵¹

The socialist approach which was followed by socialist countries bases itself on the premise that the fundamental criterion for copyright legislation is the interrelationship between the author and the society.⁵² In other words the approach is highly concerned in striking balance and making harmony between the interest of the public and that of the author.

According to this approach, the creation of an original work depends not only on the individual creative activity of the author but also within the given social framework which provides the sources of insight and experience expressed by the author.⁵³ In this approach creative works of the mind are not an exclusive result of the creator of the work but partly attributable to the environment out of which they spring out. Copyright work of “the works are not personal of the creator or of an artist but inherited from his ancestors such as his teachers and his critics gave him without he is being aware of it the form it which his work is molded and his methods execution”⁵⁴.

Unlike the Anglo-American approach, the socialist approach bifurcate the rights of an author as personal rights and economic rights.⁵⁵ By virtue of personal rights, the moral rights of an author are generally recognized.⁵⁶ However the exclusive commercial rights do not exist.⁵⁷ Thus the author may dispose of his work only under the conditions laid down by law and for a remuneration which is regulated by statute.⁵⁸

The individualistic European Approach gives an author the right over his work a natural and moral right that is a dual right. The moral rights cannot be transferred or disposed of during the life time of the author. Second, the economic rights which are associated with the exploitation of

⁵⁰ Ibid

⁵¹ Martin A. Roeder, “The Doctrine of Moral Rights: A Study in the Law of Artists, Authors and Creators,” 53 Harvard Law Review, (1976), P.28.

⁵² Takele Seboka, Supra Note 43, p.7.

⁵³ Miller Arthur And Davis Michael, Intellectual Property: Patents, Trade Marks And Copyright, (1990), P.15

⁵⁴ M. Planion and G. Ripert, Treatise on the Civil Law, (1959), Vol. I. Part ii, P.503

⁵⁵ Edward Wilhelm, Supra Note 16, P.28.

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

the work.⁵⁹ The moral rights of an author as per the approach being elevated to the level of natural right which are inalienable from the author and far from being the creation of the law.⁶⁰

The Ethiopian Copyright Proclamation No 410/2004 define the copyright in terms of both economic and moral rights have been clearly identified and recognized.⁶¹ Under the proclamation, copyright is defined as “an economic right subsisting in a work and where appropriate includes moral rights of an author.”⁶² Despite of the fact the approach to copyright have difference, their common feature are copyright is a creation of mental that subsist in a work confer a economic right upon the creator. Let us return towards jurist definition of copyright.

The definition offered by Copinger and James runs as “an exclusive right to do and to authorize other persons to do the acts restricted under the given copyright statute”.⁶³ As Per Fox Harold, “copyright is the exclusive right to intellectual productions conferred upon authors as a compensation for their contributions to the promotion of the general knowledge”.⁶⁴ Besides copyright has been defined in such a way that “the exclusive legal rights granted by the government to the creator of original literary or artistic work to reproduce display and distribute works or to prepare derivative works within certain limitations.”⁶⁵

Copyright therefore is the exclusive right of multiplying copies of an original work or composition and consequently preventing others from so doing. Copyright is a legal devise to give authors the exclusive right to exploit the market for their works.

In fact, some argue that the primary purpose of copyright is to submit not a reward to the author rather to ensure that the public will enjoy vibrant cultural protection.⁶⁶ Thus, the economic rights of the authors are secondary to the public interest. The idea is that copyright works as an incentive promoting authors to create new works that ultimately benefits a society.⁶⁷ The end beneficiary of copyright is, therefore, to make a strike fair balance between the authors’s right to

⁵⁹ Id,P.108.

⁶⁰ Roymond Sarraute, “Current Theory on the Moral Right of Authors and Artists under French Law,” 16 American Journal of Comparative Law, (1968), P.468.

⁶¹ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Articles 1 and 8.

⁶² Id Art. 2(8)

⁶³ James Skone and Copiner Supra note 37 , P.6

⁶⁴ G.Fox Harold, Supra Note 7, P.5

⁶⁵ Encyclopedia American, Vol. 7, Scholastic Library Publishing, Inc, (2006), P. 772.

⁶⁶ Ibid

⁶⁷ Ibid

control the dissemination of his works and in satisfying the public interest that fostering cultural development. Copyright law further aims at protection of intellectual property which is an incorporeal right separated from the corporate property out of which it arises.⁶⁸

Under the current Ethiopian copyright proclamation, copyright is defined as “an economic right subsisting in a work and where appropriate includes moral rights of an author.”⁶⁹ It is vital to draw a line between things which are subjects of copyright for instance literary and audiovisual works itself the distinction is that the transfer of one right does not constitute that of the other.⁷⁰ Because it should be clearly stated the right was transferred for the production derivative of the other work for instance if person because of licensing able to secure from author of book for publishing and sell to the market and share the profit proportionally. But if he wants to develop a film he has to made special contract otherwise the act of making the film depending on the book will be infringement of copyright.

Audiovisual work is part of the copyright that gives protection to the economics right the producer in order to exploit the fruits of work. Nevertheless it is vital to draw a line between things which are subjects of audiovisual works that require protection continuously and that can be transferred with the ownership.⁷¹ For example if ‘A’ buys a film of audiovisual work recorded in VCD from producer ‘w’, ‘A’ is entitled to enjoyment of ownership of the VCD itself and as owner of material object and he is at liberty to sell, donate or destroy the work. ‘W,’ on the other hand, continuously retains exclusive rights, as enumerated in Art 7 of the copyright law of Ethiopia among other things, to reproduce, copy or rent of the work or to authorize similar acts retained with owner. However the producer will lose first sale or exhaustion⁷² of the material compact disk.

⁶⁸ Paul Goldstein, Copy Right, Patent, and Trade Mark and Related State Doctrines: Cases and Materials on the Law of Intellectual Property, The Foundation Press, (1993), P.1.

⁶⁹ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art. 2(8)

⁷⁰ Takele Seboka, Supra Note 43, P.5

⁷¹ Ibid

⁷² Mustafa Faizian (DR) A comparative Study on copyright (1st ed) Delhi Bahrat offset, !997 p 114 state that first sale or exhaustion meaning as doctrine in which the distribution right has been viewed are extended only to the initial circulation of copies of a work after the first sale of a particular copy ,the distribution right was said to be exhausted in relation to that copy and subsequent purchase were free to resell or otherwise dispose off it. Similar manner the Ethiopian copyright supra note 5 Art 19 under the distribution copies of work where a copy of published work has been sold to the public ,such copy may ,without authorization and payment of remuneration ,be redistributed by means of sale.

Audiovisual works are therefore the exclusive economic right to multiplying copies of an original work or composition and consequently preventing others from so doing. Copyright is a legal device to give audiovisual producers the exclusive economic right to exploit the market for their works. Copyright law further aims at protection of audiovisual works which is an incorporeal right separated from the corporeal property.⁷³

Having defined the term copyright in referring to audiovisual general, let us now turn to define what an audiovisual work is all about. As is a case for the term copyright, different legal systems define audiovisual works differently terms but similar in content. The American copyright law, for instance, defines audiovisual work as following:

*“Audiovisual works” are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.*⁷⁴

From this definition we can understand that any copyright to say audiovisual work there should be series of interconnected images to mean motion of pictures with a sound or without sound that can be seen by any kind of device.

The Russian Federation the law on copyright and Neighboring Right under Article 4 on the title basic concept define audiovisual work as

“ audiovisual work - means a work consisting of a fixed series of interconnected images (with or without sound accompaniment) which is intended to be made visible and (where the images are accompanied by sound) audible with the aid of appropriate technical equipment; audiovisual works include cinematographic works and all works expressed by means comparable to cinematography (television films, video films, fixed projections,

⁷³ Paul Goldstein, Supra note 68, p143

⁷⁴ Ibid

*and the like), regardless of the manner in which they are initially or subsequently fixed*⁷⁵ .

This definition shows that there is a series interrelated image followed with or without sound or that is motion of picture but must be fixed on a device can herd with equipment it mentioning examples of audiovisual works.

In a similar fashion , the Ethiopian copyright law defines an audiovisual work as “a work that consists of a series of related images, which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible; in any appropriate devise, and includes a cinematographic or other film.”⁷⁶ The Three legal systems thus define audiovisual work in synonymous manner that the embodiment of moving images or of the representation thereof, with or without sound, from which they can be perceived, reproduced or communicated through a device;

Besides, any copyright that is either literary or dramatic work made into image with a motion and contains sound or without sound, is said to be an audiovisual work. For example a song with the image of the singer that consist his sound is an audiovisual work. Likewise, a written book can be converted into an audiovisual work or animations. In such a case, any copyrighted literary material, if it is converted to an audiovisual work, has dual protection as literary and audiovisual.

We can notice that the width of definition by mentioning of the term any medium or devise .The definition also includes sound track which accompanying an audiovisual work shall be treated as part of it. But it is obvious that it will have a separate copyright as a sound recording per the Ethiopian copyright and neighboring right 410/2004 Art 27 stipulates.

The definition audiovisual work which seems to presuppose the cumulative presence different rights protected under the copyright such as literary, sound and image. However, conform to the above provided definition as the sound element is not always a necessary element. Audiovisual in nutshell refers to motion pictures ("cinematographic works")⁷⁷ whether silent or with a sound

⁷⁵ WWW.http//Russian Federation_ Law on Copyright and Neighboring Rights - Wikisource.mht

⁷⁶ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art 2(1) s4

⁷⁷ Ibid

track, and irrespective of their purpose⁷⁸ their genre (film dramas, documentaries, etc) technical process used pictures on transparent film with movements. But slide show is not part audiovisual works as there is no series of interrelated images may protect under the photography works. Generally, an audiovisual work includes but not limited to the following:

2.2.1 Motion Picture and Short Film

Motion picture is synonymous with the term film. A film is a sequence of real or fictional events recorded in any medium from which a moving image can be seen by a device that is either with sound or without sound.⁷⁹ But nowadays sound tracks are included in audiovisual works and getting protection together with the image with motion. The feature film is the main instance of motion picture. The Encarta Dictionary defines as full-length film, which is the main item in a cinema program. The American and British institutes consider feature film that stay more than forty five minutes to two hours in a show.⁸⁰

Short film was defined differently by different countries. Short film in North America, for instance, means from twenty to forty minutes.⁸¹ Whereas New Zealand describe short film longer than one minutes and lasts not more than fifteen minutes.⁸² In the earlier time, live actions or animated comedy.⁸³ Since 1980 short film was changed into non commercial motion picture film substantial last shorter than average commercial feature⁸⁴ but this subjective definition does not contain time bound. From the given various definition short film means that lasts up to forty minutes. Although the writer tries to make distinction between short and feature film, it is necessary to mention that this does not have any implication in the protection of the audiovisual works in the copyright law.

2.2.2 Trailer or Preview

⁷⁸ Ibid

⁷⁹ Jane Thacker "international Standard Audiovisual Numbering (ISAN) Available at <http://www.lacbac.gc.ca/iso/tc.46sc/isan.htm>, Sptember Accessed on Oct. 31, 2009

⁸⁰ Feature film Wikipedia ,the Free Encyclopedia " available at <http://www.w3org.2001/>, Accessed on September 14, 2009

⁸¹ Short Subjects –Wikipedia ,The Free Encyclopedia "available at <http://www.w3.org/2001/Xhtm>, Accessed on Sep,14/2009

⁸² Ibid

⁸³ Ibid

⁸⁴ Ibid

Trailer and 'preview' are substitutable terms with the same meaning. Encarta Encyclopedia define trailer as short film on television and at cinema for the purpose of promotion on the forthcoming film or program. Movie trailer is advertising for a film that will be released in the future at a cinema shown when the film begins. The main objective of trailer film is to capture audience to the film.⁸⁵ They are usually extracted from funny or exciting part of the film preview is promotion material and it must be presented to the public with fascinating light. But the most important thing is that it is provided under the copyright law a protection irrespective of their objective.

2.2.3 Commercial

Commercial is a form of advertising film in which goods, service organization, ideas etc are promoted through the television or in medium.⁸⁶ This is conducted for preparing the promotion on audiovisual works consisting of brief display or speech with image advertising spots with few seconds. It is used to see every product from household to goods and service this audiovisual works fall under the copyright for protection.

2.3. The Justifications for Protection of Audiovisual Works

The justifications for audiovisual works protection are the same as that of copyright protection because such works are part and parcels of the subject matter which copyright laws are there to govern. Audiovisual work in copyright law is an obligation to protect an image with series movement. Audiovisual works are the result of the producer and other persons involved in the work, hence the result of their mental effort and therefore need protection from exploitation by other person as the author and/or owner is entitled to benefit from his fruits. The primary justification for the protection of audiovisual works is therefore rewarding the person who brings the work into being through his efforts.⁸⁷

⁸⁵ Trailer (film) Wikipedia Free Encyclopedia "available at <http://www.w3.org/2001/xhtml/>. Accessed on September 14, 2009

⁸⁶ Television Advertising –Wikipedia the free Encyclopedia' available at <http://www.w3.org/2001/xhtml/>, Accessed on September 14/2009

⁸⁷ David Bainbridge, Supra note 40, p. 18

The form of rewards obtained may be royalties which are compensations for the use of audiovisual material.⁸⁸ These royalties' are remunerations for intellectual efforts of the creator using his mental faculty. The payment of these remunerations to the producer of audiovisual work is ultimately borne by the consumers, i.e., purchasers of the products i.e., the viewers and listeners of the works. Therefore, the reward is a burden on these consumers for the benefit they get from the works.⁸⁹

Secondly, audiovisual works protection is justified by the cultural progress which audiovisual works contribute for. According to this justification, producers get encouraged to produce new creations only where their works are accorded protection and this is done by copyright law.⁹⁰ It is due to this reason that David Ladd offered the following "it is because of copy right that works of authorship are available in abundance and variety never known before".⁹¹ Audiovisual works protection enriches a country's store of literature, drama, music, and science recorded in image with or with sound. In the absence of the copyright protection, we can not imagine such kinds of cultural progress.⁹² This justification is clearly articulated in the Ethiopian copyright and neighboring right proclamation in its preamble.

Economic reason forms another justification for the protection of audiovisual works. According to this justification, investment is stimulated by the presence and enforcement of strong laws that give protection to new works.⁹³ Given the fact that audiovisual works is intangible; lacking copyright protection, the producer of works of the mind will find it difficult to recover his investment.⁹⁴

Creation of workers of the mind, as has been pointed out in justification of copyright in general , is a result of tremendous cost; it consumes time, money, labor, etc. By investing his time, money and labor, the creator of the work comes across useful information. In order for the author/owner of the audiovisual works benefit from the information he obtained through investing his time, money and labor, the law must extend him protection. Otherwise, much information gives raise to

⁸⁸ Takele Seboka, Supra Note 43, p. 9

⁸⁹ Ibid, P. 10

⁹⁰ Ibid, p. 9

⁹¹ David Ladd, Securing, "The Further of Copy Right: A Humanist Approach," 16 International Review Of Intellectual Property And Copy Right, (1985), P.81, cited in Takele, p. 10

⁹² Takele Suboka, Supra Note 43, P. 10.

⁹³ David Bainbridge, Supra note 40, p. 18

⁹⁴ Takele Seboka, Supra note 43, p. 10

no or little value to the person who produced it if he can not draw some benefits protected by the law.⁹⁵ To such end, the law should extend him sufficient protection “to control the use and exploitation of his work.

Further, protection of audiovisual works may also be justified on the ground of morality. This justification is premised on the basis of moral principle which holds that a person who created a work in some way has a right to own his work and to such effect, the law should extend him protection to control the use and exploitation of his work in exclusion of others.⁹⁶

Lastly, another justification for audiovisual work protection has to do with the freedom of expression and information.⁹⁷ Copyright protection has close nexus with the freedom of expression. Unless literature and art get sufficient legal protection, they would be endangered. Audiovisual works cannot be exceptions to this premise.⁹⁸ The works play significant role in enhancing the publication of creative works which enables the society to have access to new ideas and new works.⁹⁹ And an idea or information becomes useful only where it is communicated to the public.¹⁰⁰ To the extent that creative works are available, therefore, freedom of expression is enhanced and this in turn disseminates useful information to the mankind.¹⁰¹

Generally, two basic concerns are addressed by protection of audiovisual works. The first one relates to how works of mind are best promoted. The second one on the other hand has to do with the way the producer’s expenses or investments are recovered and his livelihood interests fulfilled.¹⁰² To conclude with, it goes without saying that creativity is vital for any time and any society. This, however, presupposes strong system of copyright protection and positive reaction on the part of the general public.¹⁰³ If this can not be achieved through positive behavior, however, imposing civil and criminal penalties on the violator comes as a remedy.

⁹⁵ Paul Goldstein supra note 68 P.10

⁹⁶ David Bainbridge, Supra note 40, p. 18

⁹⁷ Carter Ruck And Skone James, Copy Right: Modern Law And Practice, Faber Limited, (1993), P. 80.

⁹⁸ Ibid

⁹⁹ Takele Suboka, Supra Note 43, P.12

¹⁰⁰ M.Planion And G.Ripert, Supra note 39, P. 501

¹⁰¹ Takele Seboka, Supra Note 43, p. 21

¹⁰² Ibid

¹⁰³ Ibid

2.4. Grounds for Protection Audiovisual Works under the Ethiopian Legal Systems

The moderate comprehensive legal protection of copyrights in Ethiopia history begins with the 1960 Civil Code¹⁰⁴, which audiovisual work fall in artistic works¹⁰⁵. The title of law grants protection to literary and artistic works without clearly spell out audiovisual work but it goes without saying that as audiovisual works are not literary it can fall under the realm of artistic works as provided pursuant to article 1648 (2) of the 1960 Civil Code mentioning of cinematography and provide protection.

However currently, the Proclamation on copyright recognizes audiovisual under Art. 2(1) as one of economic right subsisting in a work where by the producer can get express protection from transgression of his work. As can be seen, it is defined from the perspective of the rights of the producer as it is based on the bundle of the producer economic and moral rights in his work that are provided under Art.7 and 8 of such copyright Proclamation. The works of productions could be in the form literary, scientific and artistic reduced in to audiovisual works.

As specified under the proclamation on Ethiopian copyright law the purpose of protection of audiovisual works as part of copyright is to promote the cultural, scientific, technological development of Ethiopia¹⁰⁶ even if creators are allowed to control their work. In countries like the USA the preamble of copyright law stated that copyright is important for the society.¹⁰⁷ Similarly, copyright law in Ethiopia has the public purpose in that to rewarding authors or producer as well as to benefit society out of the work¹⁰⁸. Thus it is possible to encourage the creators of the work and produce useful to the society.

¹⁰⁴ Balew Mersha and G/hiwot Hadishu Teaching Material on intellectual property (unpublished) Justice and legal system research institute ,Addis Ababa , Ethiopia p67

¹⁰⁵ Civil Code Of the Empire of Ethiopia Proclamation number 165 of 1960 NEGARIT GAZETA 19th Year No 2 Addis Ababa 5th may Art 1647 stipulates the author of a work of the mind shall have on the work created by a mere fact of his creation an incorporeal right of ownership. He will acquire the right regardless of the nature ,form of expression ,merit or purpose of the work

¹⁰⁶ copyright law Supra note 5 it's the preamble clearly provide the purpose is to promote such development

¹⁰⁷ Teaching material on intellectual property Supra note 104

¹⁰⁸ copyright law Preamble Supra not 5

When we see the preamble of the copyright proclamation as the justification of why copyright protection, it is because of the role of those works to give more emphasis, bringing about overall change that protection is extended on audiovisual works. Moreover it is obvious that the preamble of any law has an implication in the interpretation of many cases. The Ethiopian copyright law preamble is also in line with such reality. In addition “literary, artistic and similar creative works derive in audiovisuals works have a major role to the cultural, social, economic, scientific and technological development of Ethiopia¹⁰⁹.” It seems that the Ethiopian legislator wants to strike balance between societal benefit and individual ones .Thus, it may be argued that utilitarian theory is the one of envisage in the protection of copyright in the Ethiopian copyright law¹¹⁰.

Copyright in general audiovisuals works in particular as natural right is also reflected in the Constitution of the Federal Democratic Republic of Ethiopia (FDRE). The FDRE Constitution recognizes the right to private property as one of the democratic rights. Private property as defined in Art.40 (2) of the constitution includes any intangible product having value. Audiovisual works being a property right on an intangible product of labor and creativity, and having value, becomes the private property of the producer , thereby being recognized as one of the democratic rights. Therefore, it is a natural right of a person to create an intellectual property, have ownership right over it thereby making it private property.¹¹¹ This implies that a natural right theory is recognized in the Ethiopian legal system.

¹⁰⁹ Ibid

¹¹⁰ Supra note 104 the teaching material on intellectual property on p 61 provides that the utilitarian starts with the premise that individual will be encouraged to produce new creations if there be some reward as an incentive. It means a creation of mind is merely a contribution to a common stock of knowledge and enjoyment of mankind in which the public have heritage. In this theory, copyright is relegated to the level of an artificial right and a creature of the municipal law of each country to be enjoyed for such time and under such regulations as the law of each state may direct. The theory dictates that had it not been for the need to encourage new creations, the creator or works of the mind would have been denied of the right or ownership to his creations.

¹¹¹ Ibid the natural theory right states that audiovisual works as copyright is not the creation of the law but always existed in the consciousness of human being. The product of mental labour is by right the property of the person who created it. It follows then that the public has no more right or justification to take away or impair the originator’s property in his mental creation than it has to deprive him of any other of his ownerships. Thus, what the law has to do is just recognize this natural right which is deserving of protection

2.5. Scope of Audiovisual Works under the Ethiopian Proclamation Copyright and Neighboring Law

Pursuant to the copyright and neighboring rights proclamation of Ethiopia, audiovisual works protection includes every production in the literary, dramatic or scientific and artistic domain transformed into medium that can be viewed its contents by a device and that combined the image and sound, whatever the mode or form of expression.¹¹² For an audiovisual work to enjoy protection, however, it must be an original creation and fixed in a medium.¹¹³ The ideas in the work do not need to be new but the form, be it literary ,artistic or dramatically converted into audiovisual in which they are expressed must be an original creation of the producer.¹¹⁴ And, finally, protection is independent of the quality or the value attaching to the work.¹¹⁵ It will be protected whether it is considered, according to taste, a good or a bad literary or musical work in the audiovisual form and even of the purpose for which it is intended¹¹⁶, because the use to which a work may be put has nothing to do with its protection.

Audiovisual works as subject matter Copyright protects the expression of thoughts and ideas having mixture of motion picture and sound¹¹⁷. Ideas and thoughts as such are not by themselves protected.¹¹⁸ Novels, stories, poems, dramatic works and any other writings, irrespective of their content (fiction or non-fiction), length, or short musical works or dancing transformed into motion image visible to our eye with or without sound or with the consent of the original author of the work will get dual¹¹⁹ protection as far as the test of originality and Fixation requirements are fulfilled. Hereafter we will discuss the criteria for protection audiovisual under the copyright law.

2.6. Criteria for Copyright Protection of Audiovisual Works

¹¹² Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art (5)

¹¹³ Ibid Art 6(1)

¹¹⁴ Ibid

¹¹⁵ David Bainbridge, Supra Note At 40, P 39.

¹¹⁵ Ibid

¹¹⁶ Id 43

¹¹⁷ Ibid

¹¹⁸ Copyright law supra note 5 Art (5)

¹¹⁹ Dual protection in the sense meaning that the producer of the works constituting the audiovisual work, whether from preexisting (for instance, the author of the novel from which the scenario is taken) or created in the making of the audiovisual work. The literary and audiovisual are protected under the copyright law get separate protection

Audiovisual works are the subject matter of copyright as it is stated under Art 2(30) (e) of copyright law; however, in order to get copyright protection the work must fulfill the following requirements.

2.6.1. Originality

The Ethiopian proclamation on the copyright and neighboring rights protection, Proclamation No 410/2004 imposes upon the producer of audiovisual work to have the requirement of originality but does not specifically define originality. Consequently, originality problem arises in disposition of cases. There are two legal parameters as yardstick for originality.¹²⁰ The continental system uses the existence or exercise of creative or skill on the part of the producer for measurement,¹²¹ whereas Anglo-Saxon or common law countries use the subsistence of investment of labor, skill and capital as a standard of originality.¹²²

The Ethiopian copyright do not take into consideration from the above legal standards directly however we can draw that originality in respect to audiovisual work emanates from personal intellect of the creator of the work and not copied or reproduced from others work because the producer is awarded for what he created. It must express the producer's way of thinking or feeling with the minimum standard of excluding previously created works by others. The idea of who can create audiovisual work is not protected but the expression of the idea in the form of audiovisual work is what is protected under the copyright law.¹²³ Because the copyright law do not protect ideas as it is mode of freedom of expression endowed by the constitution for citizens and even very difficult to identify the originator of the idea.¹²⁴ The copyright law does not protect concepts, procedures or discoveries revealed in the producer of audiovisual works.¹²⁵

2.6.2 Fixation

Fixation means embodiment of the works protected in the copyright in image and sound representation as audiovisual work from which it can be perceived or communicated through a

¹²⁰ Takele Seboka, Supra note at 43, P.1.

¹²¹ Ibid

¹²² Edward Wilhelm And Clark Haimlton supra note 11, P.26

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art (5)

device prepared for such purpose¹²⁶ like, for instance, where a film, dramatic or theater work is printed in video cassette, CD or VCD, etc and can be displayed in Television or computer or transmitted through broadcasting or the internet.¹²⁷ Fixation is making the work to be sensually communicated in tangible medium of expression so that it can be perceived and heard with aid of machine.

The proclamation does not stipulate the type of material on which the audiovisual work is fixed such as long or short lasting material. However, we can conclude that irrespective the material as far as embodied and sensually perceived; it could be of any material. Fixation is crucial in the audiovisual work because it is a condition for the existence of copyright protection to be accorded. For instance, a work can subsist in complete manner in the mind of the producer but it has to pass through further steps in order to get protection which is fixation. Protection of audiovisual, therefore, begins at the time of fixation.

Any work that is protected by copyright but not fixed in a medium may, however, be transmitted to the public by broadcasting organization¹²⁸ directly (live) and this can get protection as neighboring right for broadcasting agency and if somebody records the performance of the work without consent of the performer, it constitutes infringement of copyright law. But it does not come with in the requirement for protection of audiovisual works because publication is not a requirement for protection under Ethiopian law.

2.6.3 Registration

Under the Ethiopian copyright law, audiovisual works is an immediate right that subsists whenever the work qualifies the tests of originality and fixation in tangible medium of communication. Thus protection begins without any further application when the above requirements are fulfilled. In some countries, however, there is further requirement which is registration of the work. But Copyright registration is new phenomenon that does not exist in

¹²⁶ Ibid Art(2)(1)

¹²⁷ Ibid Art 2(3) define broadcasting as transmission by wireless means for public reception of sound or image and sound

¹²⁸ Copyright law supra note 5 Broadcasting organization means, according to Art 2(4) of the proclamation, radio ,television and cable television station or satellite

many jurisdictions including the Ethiopian legal system. As such, difficulty arises in defining the term itself but the American regulations on copyright define it as claim in the original or renewed and extended term of copyright.¹²⁹ The main purpose of registration is as evidence to proof of ownership.

A) American Experience

In the US, copyright law authorizes the copyright office to registration any copyright work. The owner of the copyright by filing the form prepared will apply for registration with the appropriate fee and, typically, two copies of the best edition of the audiovisual work are delivered to the office¹³⁰.

The office then provides eight types of forms among which the applicant selects and fills the most appropriate to the nature of authorship in which copyright is claimed.¹³¹

In the USA copyright office has various rules relating to copyright registration. One of the rules specifies that only one basic initial copyright registration may be made for the same version of a particular work. Taking into account the practical problems that may ensue; the rule has an exception provided three situations where a work can be registered more than one. When a work has been registered as unpublished, another registration may be made for the first published edition.

When someone other than the 'author' is identified in a registration as copyright claimant, the author may make another registration for the same version in his or her own name as copyright claimant. When an application for registration alleges that an earlier registration for the same version is unauthorized and legally invalid, a registration may be made by the applicant, assuming eligibility in other aspects.¹³²

As regards the number of works per registration, the rule differs for published and unpublished works. In the first instance, the rule is that an application should relate only to a single work. For this purpose a single work constitutes all copyrightable elements that are otherwise recognizable

¹²⁹ Jeffrey M. Samuels, eds., *Patent, Trademark and Copyright Laws*, (2006), p. 460

¹³⁰ Donald F. Johnston, *Copyright Handbook*, 2nd ed., P. 97. The current fee payable to register copyrighted works for examination of an application is U\$ 30.

¹³¹ Ibid

¹³² . Id, P. 99

as self-contained works, that are involved in a single unit of publication, and in which the copyright claimant is the same. On the other hand, the rule for unpublished works is the same but deviates as the later contemplates circumstances where it is possible to put together a collection of individual works, works that are otherwise recognizable as self-contained and are combined in a single unpublished 'collection', and register the material with a single registration and a single fee.¹³³

As to the information that is to be filled in the application forms, it depends on the type of application. For instance, for an application of a work consisting principally of textual material, individual issues of a serial audiovisual works of performing and a sound recording, complete information has to be provided about the title of the work for identification.¹³⁴

Moreover, information should be given about every author who contributed any appreciable amount of copyrightable matter to the version of the work to be registered.¹³⁵ The year in which creation of the work was completed and the date and nation of first publication has to also be specified. In addition, the applicant has to give information about the fact previous registration has been made for the work or not.

B) Canadian Experience

The Canadians do follow the same procedure as the Americans. Registration is optional as it is left to the discretion of the author to choose so.¹³⁶ It is recommended the author to take into account the economic benefit he/she derives from the work. The more the real the economic potential of the work is, the better to register the work, so the reasoning goes. This means, as in USA, copyright registration has economic or monetary benefits. After the proper form has been filled by the applicant, and if the 'Office' deems it fit, a work will be registered in the copyright office. Upon registration, with the payment of the appropriate fee¹³⁷, a certificate will be issued.

C) Significance of Registration Audiovisual Works

¹³³ . Id, p. 101

¹³⁴ Id, p 102

¹³⁵ Id, p 103

¹³⁶ .Jacques E.Labreche, Protecting Intellectual Property, Leger Robic Richard/ROBIC, 1996/7, p. 1, available at www.robic.ca/publications/pdf/185.06E.pdf

¹³⁷ Ibid, the amount of fee is 35\$

The registration of audiovisual works may help during violation the right of the producer in order to sue the infringer. The information about it goes to the records of the copyright office, where it is available for public inspection similarly will be available for the government bodies as well as any person upon request, and in certain circumstances upon payment of a certain sum.¹³⁸ It seems that placing information about a work on public record has advantages for both the author of the work and third parties as well. The important advantage is that it gives prior information for anybody who wants to create similar works. However the Ethiopia copyright did not provide registration of audiovisual works but the writer of this strongly believes registration of audiovisual is necessary condition to court litigation and enforcement the right of the producer from transgress.

Thus under the Ethiopia copyright and neighboring there is no other formality for copyright protection other than originality and fixation. Audiovisual works are copyrightable irrespective of their quality and their purpose for which they are created. Registration and notice which would be considered as formality requirement for some other legal systems as discussed above but has no legal significance in Ethiopia legal system. In other words, there is no formality requirement for audiovisual works to get protection in Ethiopian law like registration, examination, depositing of copy. This is reinforced under Article 6 of the copyright proclamation which states "...without any formality and upon creation of the audiovisual work" The incorporeal right of ownership, to be acquired when prepared in a 'material form.

Therefore any audiovisual work As soon as recorded in any medium, copyright subsists in that work. Nevertheless the copyright law impose obligation on the producer of audiovisual work state on the label on the recording or its container¹³⁹ and notice for protection¹⁴⁰. The problem with such notice it cannot help in determine the content of the audiovisual work but a matter of a form because most litigation in the court reproducing the original product in a copy in relation to

¹³⁸ Ibid, It is the police and courts that are exempted from payment when requesting to make use of the registers.

¹³⁹ copyright law Supra note 5 Art 28 provides that audiovisual work producer should mention on the label of the recording or the container the title of the work or works, the name of the author and the main performers, the name or distinguish mark of the producer and that the right accruing to the producer under the copyright law are reserved.

¹⁴⁰ Ibid Art 29 notice for protection stated that where a copy of an audiovisual is made for commercial purpose a notice shall be printed on the label or its container consisting of: the symbol (p) and year in which the first record was published, place in such as to give reasonable notice claim to protection of the right of the producer. This notice shall be prima facie evidence of the fact stated thereon for the purpose of any proceeding brought under this proclamation with respect to the right of the producer.

substantive. In addition, this protection is, for most forms of copyright works, available without further formalities¹⁴¹ even the symbol ©, commonly seen on copyright works other country like USA and Canada.

2.6.4 Duration of Audiovisual Works

The basic rule for determine the duration of the economic right belong the author during life time and to his heirs or legatee for fifty years from the date of death of the author¹⁴². However in the case audiovisual works including films the economic right subsist shall be protected for fifty years beginning from the date of making of the work or communication of the work to the public which ever date is latest¹⁴³. The audiovisual works the copyright law grants only 50 years which is identical collective works as provided under Art 20(4) different from joint authorship which the term commence to run from the death of the last surviving author.

2.7. Ownership as Exclusive right Audiovisual Works under Copyright Law

Ownership of audiovisual fall under the creator works normally the producer where the exclusive economic rights are vested upon him. He has the right to authorize other persons to do, the acts restricted to other person but endowed to him by the copyright.¹⁴⁴ Audiovisual copyright is the right of a producer to control the reproduction of his intellectual creation.¹⁴⁵

However, as long as the author or producer keeps control is a physical fact¹⁴⁶ one can hardly think of copyright in any of its form unless the author discloses its creation to the public.¹⁴⁷ It is doubtless that it is only upon disclosure the author makes it possible for others to reproduce.¹⁴⁸ It is this time in point that audiovisual copyright comes as a legal device to give the copyright owner (producer of audiovisual) to control its reproduction, prevent other from reproducing his

¹⁴¹ Formality in the sense meaning that registration and depositing copy of the work in the authorized body to do so.

¹⁴² Id Art 20(1)

¹⁴³ Id Art 20(8)

¹⁴⁴ Sterling and Carpenter, Copyright Law in the United Kingdom, Legal Books Pty Ltd, (1986), P. 176.

¹⁴⁵ L.W. Metville, Forms and Agreements on Intellectual Property and International Licensing, Clark Boardman Co. Ltd, (1983), Vol. I, P. 122

¹⁴⁶ Ibid.

¹⁴⁷ Zekarias Mintesnot, Defenses Available to the Alleged Violator under the Copy Right Law of Ethiopia: Comparative Analysis, (Senior Essay, Unpublished, AAU, Law Library, 2002), P.15.

¹⁴⁸ Ibid

individual expression without his consent; of course, any one is free to create his own expression of the same concept without copying others similar works.¹⁴⁹

It is interesting to note the issue of audiovisual works under copyright as a property. There will be no controversy, currently, that audiovisual copyright is regarded as a form exclusive property to owner without forgetting fair use for educational and personal use features.¹⁵⁰ The audiovisual works a form of property which is peculiar in nature that they are incorporeal.¹⁵¹ Nevertheless, they give rise to legal rights in which are sustainable against an indefinite class of persons.¹⁵² Like most rights in rem. Audiovisual copyright as intellectual properties are negative in character, being enforceable by injunction against others wrongfully assuming the same rights as the owner.¹⁵³

At this Juncture ,worth to note that the thing to which the property right attaches (the author's of intellectual work which is the producer of the work) is incapable of possession except as it is embodied intangible articles(medium) per see , such as book, or dramatically or theater recorded in audiovisual work¹⁵⁴. The tangible articles containing the work may be in the possession of many persons other than the audiovisual copyright producer, but copyright restrains them from reproducing the work without the producer consent.¹⁵⁵

Justice Holmes rightly observed and has to offer the following.

“The notion of property starts from confirmed possession of a tangible object and consists in the right to exclude others from interference with the more or less free doing with it as one wills. But in copyright property has reached a more abstract expression. The right to exclude is not directed to an object in possession or owned, but is now vacua, so as to speak. It restrains the spontaneity of men where but for it, there would be nothing of any kind to hinder their doing as they saw fit. It is a prohibition of conduct from the

¹⁴⁹ Ibid

¹⁵⁰ L.W. Melville, supra note 145, p 122

¹⁵¹ Takele Seboka, Supra Note At 43, P.15

¹⁵² L.w.Melville Supra note 145

¹⁵³ Ibid

¹⁵⁴ Zekarias Mintesnot, Supra Note At 147, P.15.

¹⁵⁵ Arthur Fisher, Supra note 18, P. 1204.

person's on tangible of the party saving the right. It may be infringed a thousand miles from the owner and without his becoming a war of the wrong','.¹⁵⁶

According to the above quotation, the audiovisual work which is protected under the copyright property is not something corporeal or tangible which can be expressed in the form of articles. But audiovisual is a species of incorporeal property and distinguished from physical ownership of the work in which copyright subsists. Thus, copyright is therefore the right to prevent others from reproducing the work without the copyright owner's consent as well as the right of issuing copies to the public.

Copyright has sometimes been said to be a monopoly.¹⁵⁷ This is in the sense that the copyright owner is given exclusive control over the market for his work and hence copyright is said to be a monopoly to such extent. And if his control is exclusive as regards printing, publishing, copying and vending the copyrighted work he can be said to have a monopoly on his work.¹⁵⁸

The reason copyright said to be a monopoly is lies in the general benefits derived by the public from the labors of producer.¹⁵⁹ It is the equivalent given by the public for the benefits bestowed by the genius and skill of individuals and there need incentives to further efforts for the same important objects.¹⁶⁰

Audiovisual work is therefore a limited monopoly having its origin in production and protecting the fruits of an author's exertion. It is essential to note here that the audiovisual owner has no right to prevent an independent producer who arrives at the same results by independent means¹⁶¹. In audiovisual work law presupposes the existence of the person who exercises the right in creative works of the mind.¹⁶² The issue that brings itself therefore here is who is/are audiovisual owner(s). It is indicated that the author, or creator of the work, automatically owns

¹⁵⁶ Ibid

¹⁵⁷ Fisher Arthur , Supra Note 18, P.1205

¹⁵⁸ Earl W. Kinter And Jack L. Lahur, An Intellectual Property Law Premier, (1975), P.343

¹⁵⁹ G. Fox Harold supra note 7 , P.343

¹⁶⁰ Zekarias Mintesnot, Supra Note At 147, P.17.

¹⁶¹ G.fox Harold, Supra Note At 29, P.4

¹⁶² Takele Seboka Note At 43

the audiovisual work on creator of an original work and fixation in a tangible medium¹⁶³. Who is the owner of audiovisual work?

In the Ethiopian copyright law owner means the person who has intellectually created the work usually author and in the case of audiovisual, person who has produce the work where the economic right will be vested on him, however the script writer, Director, cameraman, lyrist composer enjoy the right of author in the audiovisual work¹⁶⁴ and have the right to be paid remuneration in accordance with agreement concluded with the producer.¹⁶⁵ Where the audiovisual work is the work of several producers the co-authors shall be original joint owners of the economic rights to the extent of their contribution audiovisual work or may enjoy the economic right separately from the audiovisual work.¹⁶⁶

Nevertheless regarding presumption of authorship, Art 22 (1) clearly provides that the person in whose name the work was published shall be deemed to be the author thereof unless there is a contrary proof. Also, writing anonymously or under a pseudonym doesn't prevent authors from owning the copyright in their work. In other words, even though the author used a pseudonym in the publication, he shall be deemed to be the author thereof, provided that there is no doubt as to his identity Art, 22(2)) of the copyright proclamation).

Lastly, save sub articles (1) and (2) of Art 22, a publisher whose name appears on the work shall be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the economic rights of the author. But as any presumption it is reputable In other words, it uses is proof to the contrary, the publisher can't represent the author. Moreover, this presumption shall cease to apply when the author reveals his identity (Art. 22(3) of the proclamation).

But the economic right may be transferred by assignment or license to third party. Indeed as stated above the economic rights are originally within the natural person but employee in performing their duty work created the legal entity or employer will be the owner of the

¹⁶³ Encyclopedia Americana, Supra Note At 65 , P.774

¹⁶⁴ Copyright And Neighboring Rights Proclamation, Supra Note 5, At, Art. 21(4) (a)

¹⁶⁵ Ibid However the Author of the screen play ,musical works and other works that are incorporated in the audiovisual work and can be exploited separately shall be entitled to exercise their copyright independently

¹⁶⁶ Ibid Art 21(6) states that the co-authors of the pre-existing works include in or adapted for making of the audiovisual work shall maintain their rights in their contribution or pre-existing work can be subject of acts covered by the economic rights separately from the audiovisual work.

audiovisual work. There are circumstances where the ownership of the economic rights has been transferred to a natural person or legal entity¹⁶⁷.

It is possible that, like other kinds of property, audiovisual works producer can be transferred by selling, assignment, inheritance to the within the limited time allowed in the copyright law as discuss above. A license is, it has to be noted that, a transfer the audiovisual work owner of less than the entire. A transfer of the entire copyright is an assignment.¹⁶⁸ Although ownership initially rests in the producer, most audiovisual works are not owned by the original authors¹⁶⁹ instead, are owned by legal person. “Audiovisual Work made for hire” as a rule the employers become the authors of the work.

Audiovisual works created by employment contract stipulated under Art 21(4). The work will be owned by the employer or the person who commissioned the work. This is a significant departure from the civil code which provides ownership in favor of the author alone¹⁷⁰. The civil code was blamed for not encouraging investment by investors partly because the prevailing ideology by then was copyright is a protection to creative minds. Thus, legal persons were not entitled to own copyright as they lack mental faculty. Then, to provide ownership to employers may be in contradiction with such ideology. But currently the employers are owners of works created through contract of service. However, what the employer owns is economic right.

In conclusion it is possible to say that the producer of audiovisual in a work is generally, at least in the first instance, the person who created the work that is to say, the author of the work. There is a can be exceptions to this general principle. Such exceptions are regulated by Ethiopian copyright law. For example, the law may provide that, when a work is created by an author who is employed for the purpose of creating that work, then the employer unless otherwise contrary agreed, owner not the author of the work.

Thus the owner of the audiovisual copyright may transfers it to another person or entity, who becomes the owner of the copyright. When such authorization or license extends to the full

¹⁶⁷ Ibid, Art. 2(16)

¹⁶⁸ Encyclopedia Americana, Supra Note At 65

¹⁶⁹ Ibid

¹⁷⁰ Civil code supra note 105 Art 1647 the author of the work of the mind shall have on the work he created by the mere fact of his creation as incorporeal ownership irrespective that he executed the work in pursuance of the contract of employments or contract for performance of a project entered into with a third party

period of copyright and when such authorization or license extends to all the right protected by copyright, the licensee is, vis-à-vis third parties and for all practical purposes, in the same position as an owner of copyright.

2.8. Important Ingredients in the Production of Audiovisual

Audiovisual works can be produced with the involvement various role players called performers. The performers are defined as performers”

“are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform audiovisual works”¹⁷¹

From the above definition among others are screenplay, photographic image and sound track are the basic elements that constitute audiovisual let us discuss one by one the meaning of the terms and their role in the audiovisual works.

2.8.1. Screenplay

In the producing audiovisual works like dramatic, comedy, music, film, promotions or theater prepared in the in the form motion picture screenplay is essential part of it. Mostly based on the past works such as novel, legend play story or real history proposes for producing a motion picture.¹⁷² But the screenplay may be exclusively for audiovisual works and original in nature.¹⁷³ This is written by the script writer in the production of a film¹⁷⁴. The screenplay is a guide from which the Director works. Screenplay is the original written material that the audiovisual works use as point of departure for its commencement to constitute as a film. It obvious that before the production of a film there should be an express idea or story in which the creator of the work desired to communicate with the audience so that screenplay can write about the film. The main parts of a screenplay are the action and words spoken by the character in the film. It is related

¹⁷¹ copyright law Supra note 5 Art 2 (19)

¹⁷² David Trotter ,The Screen Writer Bible,(1998) p513

¹⁷³ Ibid

¹⁷⁴ Robert A. Armour ,Film: A Reference Guide, 11th Ed., (1980) p74

with what happen in the film. The screenplay may describe the character visually¹⁷⁵. As result to develop a film based on the screenplay requires plan and strategy referred as scenario¹⁷⁶. Finally it can be conclude that any film cannot be begins without screenplay and the first ingredient in the film production.

2.8.2 Motion Picture Image

The other essential part in the production audiovisual works which make the process of production possible is the photographic image, if there is no image then no film. For example watching a film is not the same seeing a paint stage of performance or slide film¹⁷⁷. In the production of a film there exists succession of speedy image that can be display visually.¹⁷⁸ The film maker create non photographic image on the filmstrip by drawing or painting but most film producers rely on camera, printer and other photographic image¹⁷⁹.

2.8.3 Recording Sound

In filmmaking, sounds are picked up by microphone and recorded on tape accompanying the visual medium such as motion picture, television show or video game¹⁸⁰. Usually the term sound track refers to the music or dialogue between the actors which is used in the film. However such music may record just for purpose of the film or the music previously composes to accompany the film¹⁸¹. In the production audiovisual works a complete sound track is built from tracks that have been recorded separately in order for manipulation independently¹⁸². The dialogue is on several tracks, the music on others. Sound track of a film use to capture the attention of audience with the image and give watchers complete, understanding of the film including the audio.¹⁸³

2.9 Role Players in the Production of Audiovisual

¹⁷⁵ Ibid

¹⁷⁶ G. Fox Harold, Supra note 29

¹⁷⁷ David Bordwell and Kristin Thompson, Film Art introduction, 5th Ed., (1997), p. 3 15

¹⁷⁸ Ibid

¹⁷⁹ Id p 210

¹⁸⁰ Ibid

¹⁸¹ Ibid

¹⁸² Stertling and Carpenter, Supra note 144

¹⁸³ John J. Lee, Supra note 21

The production of audiovisual works is a teamwork which demands participation of different professional in the field. Hence the production of audiovisual depends on the collaboration of different expert. The main participants in the production of a film are producer, Director, screenwriter actors and cameraman.

2.9.1 Producer

The producer is the creator the audiovisual work or film.¹⁸⁴ in the process of production of the audiovisual work he has many responsibility to be performed such as initiation ,supervision and control issues like fund raising contracting with key personal and arranging means of distribution.¹⁸⁵ In fact the director has the duty to make the film and the producer is chief of staff and the producer of the film with management capacity he has the power of terminating the director of the audiovisual.¹⁸⁶

2.9.2 Director

Directors who guide the film ,technical crew and actors entails of imaging the screenplay, monitoring audiovisual works dramatic feature in fulfilling his vision.¹⁸⁷ In brief the director who put together the audiovisual from its commencement up to the end. He plans and supervises the performance of the actors including the implementation of the creative idea.¹⁸⁸ Furthermore the director can also select, describe convenient and appropriate location for filmmaking. Thus he plays a decisive role in the manufacturing process of the audiovisual work.

2.9.3 Scriptwriter

The script writer known as screenwriter with position who writes the film into paper and film in suitable manner to put on the screen of film.¹⁸⁹ The screenwriter works as script doctor who

¹⁸⁴ Ibid

¹⁸⁵ Ibid

¹⁸⁶ Film Director _Wikipedia The free Encyclopedia available at <http://www.w3org/2001xtml>, Last Accessed on October 14, 2009, p. 1

¹⁸⁷ Ibid

¹⁸⁸ Ibid

¹⁸⁹ Screenwriter –Wikipedia ,The Free Encyclopedia available at http://www.w3.org/2001_xtml/october Last Accessed on October 14, 2009

attempts to convert the script in to suit director and studio¹⁹⁰. The screenwriter either condenses or expands a given story so that a best film may make. It is also recommended as the film is based on the screenplay the screenwriter participate on the whole process of filmmaking.

2.9.4 Actor

The actor is a person who plays a role in the film production by his activities¹⁹¹. The actor show the action indicated on the screen play camouflaging the fictional character. But if the film based on true story, an actor may a real person.¹⁹² Thus without the actor a film cannot be performed.

2.9.5 Editor

It is connecting of the different shots of camera for the aim forming a sequence and subsequent movie or film.¹⁹³ A film editor is a person who does a film correction by assembling shots to constitute the audiovisual work¹⁹⁴. The editor takes the responsibility putting the all elements of story in progressive and creative manner like the dialogue, movie, sound effect, visual effect rhythm and speed of the film.¹⁹⁵ The editor function continues up to the finishing of the film, he has to be aware of on the timing of the shots on the screen and their relationship to each shot.¹⁹⁶

2.9.6 Cameraman

A cameraman is responsible to photographing of the motion picture with camera or cinematography art¹⁹⁷. The cameraman has a stringent responsibility in obtaining artistic and technical decision related to image of the film.¹⁹⁸ In summary any kind of audiovisual works are manufactured in collaboration the aforesaid experts. Because of each of the above experts have their own contribution for the success of production of the audiovisual work. It is very difficult

¹⁹⁰ Tesfahun Kasshun, *The Art of Film Videography*, Samuel printing, (2000), Addis Ababa, p. 13

¹⁹¹ Konstaifin Stanistavski, *Theater Art books*, (1989), p45

¹⁹² Ibid

¹⁹³ Film Editing Wikipedia, *The Free Encyclopedia* " available at <http://www.w3.org/2001/xhtm> October 14/2009

¹⁹⁴ Ibid

¹⁹⁵ Ibid

¹⁹⁶ David Trotter supra note 172 p 318

¹⁹⁷ Cinematographic –Wikipedia, *The Free Encyclopedia* available at <http://www.w3.org/2001/hxtm>, visited on October 26,2009

¹⁹⁸ Ibid

to think any film without the activities and participation of these experts. Finally these experts have the right to use the fruits of their mind.

CHAPTER THREE

INFRINGEMENTS AND REMEDIES OF ECONOMIC RIGHTS OF AUDIOVISUAL WORKS

3.1. Overview

Audiovisual work has been explained in the previous chapter and it gives rise to exclusive economic right of the owner or producer to do or to authorize certain things. Its corollary is that the right holder can take action to stop anyone else who illegally exploiting his work or doing unauthorized acts until his permission is obtained to refrain from doing such acts.¹⁹⁹ The need to put an end to such acts of non-owners arises when an unauthorized person, transgress the exclusive economic right reserved for the right holders or owner of the economic right.²⁰⁰ In other words, the need to put an end to unfair practice come it to play whenever there is an act of

¹⁹⁹ Takele Suboka, Supra Note 147, At 63

²⁰⁰ Arthur Miller And Michael Davis, Intellectual Property: Patents, Trademarks And Copyright, 1990, P.334

infringement.²⁰¹ Thus, we can safely conclude that the rights of an owner of copyright are infringed when one of the acts requiring authorization of the owner is done by someone else without his consent. The unauthorized copying of copyrighted materials for commercial purposes and the unauthorized commercial dealing in copyrighted materials, for instance, constitute infringements.

As per the copyright act of countries like Canada, infringement of copyrighted audiovisual works cannot be understood by an independent catalogue of acts that amount to infringement, but by reference to the rights conferred on the producer of the audiovisual works.²⁰² It is to be noted that, the question of infringement of copyrighted audiovisual works may usefully be approached by inquiring whether or not a certain act constitutes an infringement or not. That is to say whether or not the act done by the owner of the audiovisual work by himself or have been exercised by another person the statutory right conferred on to producer.²⁰³

Many scholars also define the term infringement in a similar fashion, although there is little difference. One, for instance, defines audiovisual work infringement as the act of somebody exercising the rights reserved exclusively for the audiovisual owner without his authorization.²⁰⁴ For another “audiovisual works shall be deemed to be infringed by any person who, without the consent of the audiovisual owner of the copyright, does anything he sole right to do which is by the act conferred on the owner of copyright.”²⁰⁵ Accordingly, it is an infringement if the perpetrator made unlawful use of the form in which the thought of information is expressed.²⁰⁶ As per Uganda’s copyright law on the other hand “an audiovisual works is infringed by a person who does, or causes any other person to do, an act falling within the copyright without the license of the person in whom is vested either the whole or a partial assignment or partial testamentary disposition, to the relevant portion of the audiovisual work.”²⁰⁷

There can be no infringement unless use of the audiovisual work of a certain producer has been made. The audiovisual owner, on the other hand, has the legal right to prevent unauthorized

²⁰¹ Takele Suboka, Supra Note 147, p 63

²⁰² G.fox Harold , supra note 7, P, 3692

²⁰³ Ibid

²⁰⁴ Arthur Miller And Michael Davis, Supra Note 200, p. 334

²⁰⁵ G. Fox Harold, Supra Note 7, p. 362

²⁰⁶ Copinger and Skone Jances supra note 63 (1991), P.165

²⁰⁷ Copeling supra note 2 Uganda Copyright Act, 1964 (Ch 215), Art.13

persons from committing an infringement.²⁰⁸ The under the Ethiopian Copyright and Neighboring Rights Protection law, the term infringement of audiovisual work is not expressly defined. But we can understand its meaning by contrary reading of the provisions of article (7) which enumerates the rights arising from copyrighted works. What are then these rights?

3.2. Rights Comprised in Audiovisual Work

The owner of copyright in a protected work may use the work as he wishes, of course, with due regard to the legally recognized rights and interests of others and may exclude others from using it without his authorization.²⁰⁹ Therefore, the rights bestowed by law on the producer of audiovisual work in a protected work are frequently described as "exclusive rights" and rights to authorize others to use the protected work. The Ethiopian copyright law defines the acts in relation to a work which cannot be performed by persons other than the producer of audiovisual work without his authorization.²¹⁰ Acts requiring the authorization of the audiovisual producer, normally, are the following: copying or reproducing the work; performing the work in public; making copy of the sound track which subsist on audiovisual work; copying the motion picture of the work; broadcasting the work; translating the work or adapting the work and renting or lending the work to the general public.²¹¹

An audiovisual work is infringed by any person who does or authorizes others to do any of these acts restricted by copyright for audiovisual works without the permission of the producer.²¹² Here it is noteworthy to mention that an independent producer may, however, arrive at the same result by independent means without copying other works of audiovisual producers and at this time, he has no right to prevent to that extent the invasion of his monopoly.²¹³

This is due to the fact that the right conferred by copyright law to audiovisual work is merely negative right, a right to prevent the appropriation of the labors of producer by another and not to

²⁰⁸ Bernard Sihanya, Constructing Copyright And Literary Creativity In Kenya Cultural Politics And The Political Economy Of Transnational Intellectual Property, 2003. P.25

²⁰⁹ What is intellectual property? Available at [http://www.wipo.org/Free publications /P.19](http://www.wipo.org/Free_publications/P.19)

²¹⁰ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art (7)

²¹¹ Id, Art. 7

²¹² David Bainbridge, Supra Note 40, p. 121

²¹³ G.Fox Harold Fox, Supra Note 7, P. 175

prevent the creation of similar independent works.²¹⁴ As it is stated herein above, in the production of audiovisual works capital, labor and skill are expended by those who take part in creating the work. Hence the one who has made expenditure in producing audiovisual work should be economically real creator for which he is conferred economic rights. The exclusive economic rights in audiovisual works that are susceptible for infringement are briefly discussed in this section of the paper. Let us now direct our attention to examining these exclusive economic rights of the producer. This means that anyone who violates these activities will be considered as violator of the audiovisual works.

3.2.1. Right of Reproduction and Related Rights

Subject to fair use²¹⁵ which is beyond ambit this paper as provided under the Proclamation on copyright and neighboring rights protection, the right of the producer of audiovisual to prevent others from making reproduction of copies of his work form the most basic right.²¹⁶ Reproduction is the making of one or more copies of a work in any manner or form.²¹⁷ For example, reproducing or duplicating cassette of an audiovisual work performed by a person who wishes to distribute copies of audiovisual work to the public whether in the form of recorded video cassette or digital media such as CD-ROM* or VCD (video recording compact disk) has infringe the right of audiovisual producer.²¹⁸ Likewise, the right of audiovisual work producer to reproduce and distribute compact discs (CDs) containing recorded performances of audiovisual musical works is based, in part, on the authorization given by the composers of such works to reproduce their compositions in the audiovisual work or to support a film. Therefore, the right to control the act

²¹⁴ Ibid

²¹⁵ Copyright and Neighboring rights protection law supra note 5 In accordance with the Proclamation number 410/2004 acts permitted that do not constitute infringement of audiovisual works like single reproduction for personal use which shall not conflict with normal exploitation of the producer ,quotation for criticism, reproduction for teaching ,libraries, Archives, broadcasting for informative purpose for public as enumerated under from Art.9 to 19 on the same act.

²¹⁶ Michael Blakeney, Copyright (2007), P.4. The Encarta Dictionary define CD_ROM* as compact disk that Read only Memory with fixed content containing a large amount of data including text and image that can be viewed using a computer but cannot be altered or erased.

²¹⁷ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art 2(25)

²¹⁸ What is intellectual property? Available at http://www.wlpo.org/Free_publications/P.19

of reproduction is the legal basis for many forms of exploitation of protected works for the producer.²¹⁹

Ethiopian copyright law recognizes and ensures the basic rights of reproduction.²²⁰ It includes a right to authorize distribution of copies of audiovisual works.²²¹ The right of distribution is usually subject to exhaustion upon first sale or other transfer of ownership of a particular copy of the product.²²² Thus, after the audiovisual producer has sold or otherwise transferred ownership of a particular copy of a work, the owner of that copy may dispose of it without the producer's further permission. The prohibited act is reproducing of the work without the consent of the owner.²²³

However, special agreement is required for authorizing rental of copies of certain categories of audiovisual works.²²⁴ The right of rental is justified because technological advancement has made it very easy to copy these types of works.²²⁵ Experience in America, United kingdom and India has shown that copies were made by customers of rental shops²²⁶, and therefore, that the right to control rental practices was necessary in order to prevent abuse of the audiovisual work right of an owner. Finally, The Ethiopian copyright and neighboring rights protection proclamation includes a right to control importation of copies as a means of preventing erosion of the principle of territoriality of copyright.²²⁷ That is, the legitimate economic interests of the audiovisual work legally speaking owner would be endangered if he could not exercise the rights of reproduction and distribution on a territorial basis.²²⁸

3.2.2 Performing Rights

²¹⁹ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art 7(1) (a) in accordance with Art 2(25) of the proclamation, reproduction means making copies of audiovisual work recording in any manner or form including any permanent or temporary storage of work in electronic form or reprographic making of facsimile copies of the original or copy of audiovisual by means other than printing such as photocopying whether or not they are reduced or enlarged in scale

²²⁰ Ibid

²²¹ Ibid

²²² David Bainbridge, Supra Note 40, p. 198

²²³ Ibid

²²⁴ Faizan Mustafa, supra note 72, p. 113

²²⁵ Id, p. 107

²²⁶ Ibid

²²⁷ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art 7(1) (e)

²²⁸ Faizan, Mustafa Supra note 72, p. 132

Public performance is also another act in audiovisual work that requires authorization from the copyright owners. Public performance indicates showing dramatic with motion pictures or film and other audiovisual works for gathering of people.²²⁹ Public performance is also referred to as showing the image in sequence.²³⁰ It is stated in the copyright proclamation that the author or owner of an audiovisual works shall have exclusive right to perform his work.²³¹ We can infer from the above statements that anybody who wants to perform audiovisual work protected by copyright should first obtain authorization from the owner of the work. However, the owner of copyrighted audiovisual work cannot exercise his exclusive right where the work is privately performed free of charge at a family gathering or in school.²³² What is called a fair use, for example, a work written originally in a particular way in order to watch at home or in a library may be transformed ("adapted") into a drama designed to be performed in public on the stage of a theater for educational purpose with recorded in video cassette or VCD.

3.2.3 Recording in Public Performance Rights

So far as music is concerned, sound and motion picture recording is the most favored means of communicating a work to a public.²³³ This serves much the same purpose for musical works as books serve for literary works.²³⁴ Sound and image recordings can incorporate music alone, or supporting a film. The right to authorize the making of a sound and image with motion recording belongs to the owner or producer of the audiovisual work. If the two producers are different, then, in the case of a sound recording incorporating music in the image motion, the maker of the sound recording in to audiovisual work must obtain the authorization from the music owner.²³⁵ Ethiopian copyright and neighboring right law requires the maker of a sound recording to obtain the authorization of the performers who play the music and who sing or recite the words. This is another example of the fact that the owner of copyright in a work cannot use it or authorize the use of it in a way which is contrary to the legal rights of others..

²²⁹ Copyright primer (2006), Available at <http://www.mtholyoke.edu/> visited on November P.2

²³⁰ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art 2(24)(b) in case of audiovisual ,showing the image in sequence

²³¹ Ibid Art 7(1) (g)

²³² Id Art 7(1)(a)

²³³ Faizan , Mustafa Supra note 72, p. 119

²³⁴ Ibid

²³⁵ Ibid

3.2.4 Broadcasting Right

The act of broadcasting audiovisual works is another category of acts restricted by copyright.²³⁶ Authors of audiovisual works are entitled to exercise exclusive right of authorizing the broadcasting of their works to the public by any other means of wireless diffusion of sound with sounds or image or cumulative.²³⁷ The Copyright and Neighboring Rights Protection Proclamation under article 7 (1) (h) provides that the producer of audiovisual work has an exclusive right of broadcasting his work. When we say broadcasting it refers to the transmission of sounds, or images and sounds to the public by wireless means.²³⁸

It's logical to conclude that broadcasting organization that needs to broadcast the audiovisual work to the public must get first consent of the producer or pay remuneration.²³⁹ Hence, unless the copyright owner of audiovisual work permits the broadcasting or rebroadcasting of the work, it is forbidden to broadcasting film or audiovisual work.

Although the law grants exclusive right of broadcasting to the owner of copyright of audiovisual work, this right is not absolute. Ethiopian intellectual property office is empowered to grant non voluntary license to authorize broadcasting of the audiovisual works.²⁴⁰ It is also stated that the conditions, forms in which the authorization is effected, and the fair compensation to be made to the copyright owner shall be determined by the regulations.²⁴¹ However, there is no regulation provided in order to determine the conditions, forms and the fair compensation to be made to the owner of copyright of audiovisual works.

In addition to the above briefly discussed exclusive economic rights of an author of audiovisual works, communicating his work to the public is also copyright audiovisual works granted to the owner of the work.²⁴²

3.2.5 Translation Rights

²³⁶ Michael Blakeney, Supra note 216, P.6

²³⁷ Copyright and Neighboring Rights Protection Proclamation, Supra Note 4, Art. 17(1)

²³⁸ Ibid Art 2(3)

²³⁹ Id Art 7(h)

²⁴⁰ Ibid Art 17(1) provides even if heirs or legatee or owner opposition to act the office may issue a license to authorize the reproduction or translation or broadcasting of published works this similar to compulsory license.

²⁴¹ Ibid Art 17(2)

²⁴² Id, Art. 7 (1) (i)

The acts of translating or of adapting a work protected by copyright require the authorization of the copyright owner. "Translation" means the expression of a work in a language other than that of the original version.²⁴³ Hence, translating a copyrighted work is the exclusive right reserved to the author or owner of the audiovisual work under the proclamation.²⁴⁴ It is to mean that a film produced in one of the Ethiopian language, says Afaan Oromo, cannot be translated into another Ethiopian language, say Amharic, without the prior authorization of the author or owner of the film.

However, the intellectual property office is given the power to grant license for the translation of the audiovisual work without the consent of the author or owner of copyright.²⁴⁵ Except in case provided by law in order to translate the original work into another language, one who wants to translate must have the authorization of the owner of the copyright in the original work.

3.2.6 Adaptation Right

Adaptation can be understood as the modification of the audiovisual work to another type; for example adapting motion picture so as to make novel, or the modification of the audiovisual work so as to make it suitable for different conditions of exploitation, for example a dramatic work produced for adults into a dramatic work suitable for children.²⁴⁶ Under proclamation No. 410/2004, adaptation is the exclusive right exercised by producer of the audiovisual work.²⁴⁷ Therefore the author or owner of audiovisual work has the right to make or authorize others to make the adaptation.

3.2.7 Distribution right

The right to distribution is also one of the exclusive rights in audiovisual works to be exercised by the producer of the work. Distribution involves distributing copies or original of the work to

²⁴³ Copyright Primer, Supra at note 229, P.6

²⁴⁴ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art 17(1) b

²⁴⁵ Ibid 17(1)

²⁴⁶ Copyright Primer, Supra note 229, P.6

²⁴⁷ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art 7(1) c

the public by sale or other transfer of ownership by rental, lease or lending.²⁴⁸ As it is indicated under Art 7 (1) (a) of the proclamation the author or owner of an audiovisual work has an exclusive right to distribute the original or copy of his work to the public by sale or rental. Hence it is not allowed to anyone to distribute the work without obtaining authorization from the author or owner of the audiovisual works. It is only in the case provided under Article 19 of the proclamation, that the copies of the work can be redistributed by means of sale without securing authorization from the copyright owner.

3.2.8 Importation Right

In accordance with Article 7 (1) (e) of the proclamation, the right to importation of the work is an exclusive right granted to the author or owner of the copyrighted work. Here nobody is allowed to import into Ethiopia the original or copies of the work to which copyright protection is extended.²⁴⁹ Especially, where the work is published outside of Ethiopia, the exclusive right of distribution depends on the exclusive right of importation.²⁵⁰ However, this exclusive right of importation is not without exception. Exclusive right of importation does not extend to the extent of forbidding importation of a copy of an audiovisual work by a physical person for his personal purposes.²⁵¹ Hence, with the exception of importing the work for personal use, somebody who wants to import the audiovisual work should get authorization from the author or owner of the work.

3.3 Infringement of Audiovisual Works in the Copyright

It is already stated in the preceding discussion that copyright protects the expression of ideas from being infringed by unauthorized person. Therefore, in this part of the paper that acts constituting infringement and the modes of infringing the copyrighted audiovisual works will be considered as following.

3.3.1 Meaning of Infringement

²⁴⁸ Margaret C. Mehugh and William T. Gallagher, Strategic Consideration in U.S. Copyright Litigation, available at <http://library.findlaw.com> 1,P.3

²⁴⁹ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art 7 (1) (e)

²⁵⁰ Blen Tilahun supra note 41 P. 37

²⁵¹ Copyright and Neighboring Rights Protection Proclamation, Supra Note 4, Art. 15

Infringement of copyright is the act of violating any of the exclusive rights of owners.²⁵² Here, when we talk about infringement of copyright, we are referring to the encroachment into the exclusive rights of an author or owner of audiovisual work. Copyright infringements are also defined as “the unauthorized use of material which is covered by copyright law, in a manner that violates one of the original copyright owner’s exclusive rights, such as the right to reproduce or perform the copyrighted work.”²⁵³ Copyright infringement of audiovisual works occurs when unauthorized copies are made of music, movies and similar owner of the work.²⁵⁴ Here copyright is said to be infringed if anyone, who is not authorized to do so, involved in any act exclusively granted to the owner of copyright.

3.3.2. Acts Constituting Infringement of Audiovisual Works

The following are some of the commonly known acts involving infringement, the copies the original audiovisual work for sale or hire or in similar manner imitating performance of audiovisual works, in public where such performance constitutes infringement of the audiovisual works of copyright.²⁵⁵ Besides, without permission of the owner any place for the performance of works in public where such communication constitutes an infringement of the audiovisual work.²⁵⁶ That is to say, for instance in India, if a person permits for profit any place to be used for the communication of a work to the public, where such communication constitute an infringement of the audiovisual work, he will be deemed to have committed an offence.²⁵⁷ On other hand, infringing copies for the purpose of commercial; or to the extent that affect the interest of the owner of audiovisual deemed to be violation right of the audiovisual owner.²⁵⁸ Moreover Public exhibition of infringing copies by way of trade and importation of infringing copies are among acts constituting copyright infringement.²⁵⁹ In UK, it is said that infringement of copyright may take place in relation to copyright subject matter by doing or authorizing

²⁵² Bryan A. Garner (editor), Black’s law Dictionary (7th ed), (1999), P. 783

²⁵³ Copyright Infringement available at <http://encyclopedia.thefreedictionary.Com/>, Last accessed on Oct 30, 2009

²⁵⁴ Copyright infringement of Audiovisual works, Available at <http://en.allexperts.com/p>, Last accessed on Oct. 30, 2009

²⁵⁵ Government Of India Ministry Of Human Resource Development, Of Secondary Education An Higher Education, A Hand Book Of Copyright Law, , P.15

²⁵⁶ Ibid

²⁵⁷ Ibid

²⁵⁸ Ibid

²⁵⁹ Ibid

another person to do, any of the acts restricted by the audiovisual works protected by copyright without authorization.²⁶⁰

Thus, the person who does or authorizes another person to do any of the act restricted by the copy right of audiovisual works should the owner of the copyright and without the license of the owner there of to be considered as violation.²⁶¹ The restricted acts are those acts so designated in relation to works namely, as regards literary like story dramatic or musical works comedy converted in to audiovisual works , reproduction the work in any material form, publishing the work, performing the work in public, broadcasting the work, are infringements etc.²⁶²

Under Chinese jurisdiction, “copyright shall be infringed by any person, not being the owner of the copyright, who, without the license of such owner, does or cause any other person to do, in the Republic, any act which the owner has the exclusive rights to do or to authorize.²⁶³ Sub-article 2 of same provision goes on to say that copyright shall be infringed by any person who, without the license of the owner of the copyright and at a time when copyright subsists in a work.²⁶⁴

Besides, the copyright in a literary or musical worked as audiovisual works shall be infringed by any person who permits a place of public entertainment to be used for a performance in public of the work, where the performance constitutes an infringement of the copyright in the work, provide that the person who permits the place is aware of or has no reasonable grounds for supporting that the performance would be an infringement of the copyright²⁶⁵ become liable.

²⁶⁰ Sterling and Carpenter, Supra note 144, P.502-503

²⁶¹ Ibid

²⁶² Ibid

²⁶³ Chinese Copyright Act Available at <http://www.budde.com.au/Research.htm>, (1978,) Art 23(1 visited on October 15/2009).

²⁶⁴ Ibid, Art. 23(2) Importing an article into the Republic for the purpose other than for his private and domestic use; Sells, lets or by way of trade offers or exposes; Distribute in the Republic any article for the purpose of trade, or for any other purpose, to such an extent the owner of the copyright in question is prejudicially affected or Acquires any article related to a computer program in the Republic.

²⁶⁵ Ibid, Art. 23(3)

3.4. Types of Infringement in the Audiovisual Work

The owner of audiovisual work of copyright has the exclusive right to do certain specific acts in respect of the work.²⁶⁶ That is to say, the producer has exclusive rights to ban others from exercising such acts.²⁶⁷ The producer can authorize to a third party to use such exclusive rights and, in case of infringement, he may institute court action against any unauthorized performance those acts.²⁶⁸ It has to be stressed that the bedrock of audiovisual work is the protection of original expression of ideas. That is to say, it is the expression of idea which is regarded as a property.²⁶⁹ Thus, when we talk about audiovisual work copyright infringement, it has to be understood as referring to the expression of the underlying idea.²⁷⁰

However, the exclusive rights arising from audiovisual works may be infringed in different ways and for different motives. What kind of infringements do exist in relation to these works is the subject matter of discussion in this section. Generally, infringement can be categorized as direct and indirect by taking into account the role played by persons participated in the act of infringement. Accordingly these categories of infringement are going to be discussed under this section.

3.4.1 Primary Infringement

Primary infringement refers transgression those rights which are left exclusively for the owner of audiovisual work.²⁷¹ Or it involves making the infringing copy or making the infringed performance.²⁷² Thus, for the existence of primary copyright infringement, it is enough that the plaintiff proves his exclusive right is violated directly by the act of the defendant.

Direct infringement refers to the case whenever a person who not being an owner of the copy right and has no authorization thereof does or authorizes another person to do any of the acts the doing of which exclusively belongs to the producer or owner audiovisual work.²⁷³ Thus, two

²⁶⁶ Ibid

²⁶⁷ Tina Hart And Linda Fazzain, Intellectual Property Law, (1997), P.145

²⁶⁸ Ibid

²⁶⁹ Takele Seboka, Supra Note 43, P.69

²⁷⁰ Ibid

²⁷¹ J.M. Cavendish and Kate Pool Hand Book of Copyright in British Publishing Practice, (1993), P.48

²⁷² David Bainbridge, Supra Note At 40, P.14,

²⁷³ Ruck Carter And James Skone, Copyright: Modern Law And Practice, (1965), P.198

important elements are revealed; making use of those rights and authorizing the doing of such acts when the authorizing person has no legal right to do so.²⁷⁴

In the case of dramatic, comedy, film or theater sport or musical artistic published in audiovisual work direct infringements includes, reproducing the work in any material form, including storing the works in any medium by electronic means or the authorization of these acts.²⁷⁵ Or TV broadcast, cable program direct infringement constitutes the making of reproduction of the whole or any substantial part or their authorization.²⁷⁶ This includes making a facsimile copy of the arrangement or its authorization by perpetrator constitutes direct copy right infringement.²⁷⁷ Direct infringement of copyright occur where any person does or authorize another to do any of these acts restricted by copyright without having the license of (authorization from) the owner of copyright.²⁷⁸ It is obvious that copyright infringement arises where there is no contractual relationship between the owner of the copyright and the person infringing the copyright.

Article 2027 (1) of the civil code of Ethiopia provides that a person who causes damage to another by an offence shall be liable, even though there is no any undertaking. Whether it is an intentional or mere negligence, an offence consists in an act or failure to act.²⁷⁹ From article 2027 (1) and 2029 of the civil code, we can infer that a person is liable where he directly by himself trespass to the rights of others. It is to mean that direct infringement occurs where a person directly involves in the acts infringing the rights of the copyright owner. Copyright may also be infringed vicariously, where a person without securing permission from the owner of copyright authorizes another person to do an act exclusively provided to the owner of the copyright.²⁸⁰ Under Ethiopian law the principle for vicarious liability is provided in the civil code of Ethiopia. It is stated that “a person is liable where a third party for whom he is answerable in law incurs a liability arising out of an offence or resulting from the law”.²⁸¹ It can be concluded from this that where a third party for whom a person is liable may involve in an act infringing one

²⁷⁴ J.M. Cavendish And Kate Pool, Supra Note 271,

²⁷⁵ David Bainbridge, Supra Note At 40, P.124

²⁷⁶ Ibid

²⁷⁷ Ibid

²⁷⁸ Ibid

²⁷⁹ Civil Code supra note 105

²⁸⁰ David Bainbridge, Supra note 40, P. 120

²⁸¹ Civil code Supra note 105, Art-2027(3)

or more of the exclusive right reserved to the copyright owner, that person is called to answer for the act of that third party.

The circumstances in which a person is answerable for the act of third party is provided under Article 2124 (liability of parents for their minor child), article 2125 (liability of guardians), Article 2126 (liability of the state), and Article 2130 (liability of Employer).

The father is liable where his minor child is involved in doing an act restricted to the copyright owner.²⁸² For instance if the child found distributing copyrighted audiovisual work without the consent of the copyright owner, the parent of the child are answerable for damage caused to the copyright owner due to the act of their child. In this case the parent is said to infringe copyright of audiovisual work vicariously. Similarly where 'A' who is working in B's music shop found distributing copies of a copy righted films CD in the music shop, the owner of the music shop (B) is liable for the act of A. This is because there is an employer employee relationship between A and B that rendered B liable for the act of A.

3.4.2 Secondary Infringement

It is indicated that, copyright may be infringed by knowingly importing illegal copies, possessing or dealing with infringing copies and also permitting premises to be used for an infringing performance and providing apparatus for an infringing performance.²⁸³ This constitutes the case of secondary copyright. It seems important to note that the distinction between primary and secondary copyright infringement is that the previous involves making the infringing copy or making the infringing performance, while the latter involves dealing with those copies, providing the premises or apparatus for the performance or making an article for the purpose of making infringing copies.²⁸⁴ It deserves mention here that, for a secondary infringement the alerted violator must have knowledge or reason to believe that the copies are infringing copies.²⁸⁵ Thus, actual knowledge or at least subjective reasonable belief, unlike the case of primary infringement, is important element to proof the existence of secondary infringement. There must, therefore,

²⁸² Ibid, Art 2124

²⁸³ Jeremy Philips, Robyn Durie And Lan Karef, Where On Copyright, (1993), P.46

²⁸⁴ David Bainbridge, Supra Note 40, P.141.

²⁸⁵ Ibid

already have been an act of primary infringement for an act of secondary infringement to be committed.²⁸⁶

For the purpose of this paper article 37 of the criminal code is relevant to consider secondary infringement. A person who provides assistance in the commission of an offence by whatsoever means is referred to as accomplice.²⁸⁷ For example if a person permits his premises, to anyone who wants to reproduce the copyrighted audiovisual work, that person is said to infringe the copyright of owner in its secondary capacity. To succeed in secondary infringement claim, the person alleged to have committed the act of infringement must have knowledge or reason to believe that the copies are infringing copies.²⁸⁸ From this we can draw a conclusion that secondary infringement must be committed intentionally. In other word we can conclude that secondary infringement is criminal. This is because it is article 721 (1) of the criminal code that provides that “whosoever intentionally...violates laws regulations or rules issued in relations to rights on literary, artistic or creative work is punishable...” If it is proved that secondary infringement has been committed, it can certainly be said that, there exist corresponding direct (primary) infringement.²⁸⁹

This shows that infringement of copyright of audiovisual works are carried out on an organized basis, since not only is the unauthorized reproduction of a work involved, but also the subsequent sale or distribution, of the illegally reproduced work, which will require some form of organized distribution network or contact with potential purchaser.²⁹⁰

In conclusion, it is important to bear in mind that whether the infringement is primary or secondary it violates the exclusive right reserved to copyright owner. The former involves illegally reproducing a copyrighted work and the later distribute illegally reproduced work to the public which adversely affect the economic and moral interests of the owner or copyrights. For all infringing acts there are different sanctions/remedies provided by copyright law. These remedies available to a person whose exclusive rights are infringed are made the subject this discussion.

²⁸⁶ Zekarias Mintesinot, Supra Note 147, P.43

²⁸⁷ The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No.414/2004 NEGARTI GAZZTTA, 9th may 2005, Addis Ababa Art 37.

²⁸⁸ David Bainbridge supra note 40, P. 141

²⁸⁹ Ibid

²⁹⁰ Michael Blakeney, Supra note 216,P. 9

3.5 Remedies for Copyright Infringement of Audiovisual Works

Once a copyright owner feels that the economic rights in his work have been violated, there are different remedies available to him to offset the injury caused up on him. When we say remedy it is to refer to a means of enforcing rights or preventing or redressing a wrong committed against oneself through legal or equitable relief.²⁹¹ The remedies available to the claimant include both civil remedies and criminal penalties depending on the acts committed and relief claimed by the person to do under the law.²⁹² One who can claim under copyright is he who “has vested interest in the subject matter of the suit”.²⁹³ The defendant, on the other hand, is any person capable under the law, against whom the plaintiff brings his claim.²⁹⁴ Since the purpose of civil litigation is to provide relief for an injury one person has sustained at the hands of another person,²⁹⁵ the statement of claim for remedies must state the relief demanded by the plaintiff.²⁹⁶ In the same token, the criminal case is instituted where one who entitled to bring criminal action is convinced that “there are sufficient grounds for prosecuting the accused.”²⁹⁷

A copyright owner can take legal action against any person who infringes the copyright in the work.²⁹⁸ Copyright violation, if proved gives rise to a range of remedies.²⁹⁹ The available remedies are either civic or criminal. The civil remedy encompasses injunction, damages, and destruction of the copies. On the criminal side, there are punishments to be inflicted on the criminal. In the following sections, the writer of this paper will discuss each category of remedy in a detail manner.

3.5.1 Types of Remedies

As it is stated here in above, the remedies available to enforce the right of plaintiff are provisional measures, civil, criminal and border measure. The provisional measure deals with prompt action

²⁹¹ Bryan A. Garner supra note 252 P. 1296

²⁹² David Bainbridge, Supra Note 40, P. 143

²⁹³ The Civil Procedure Code of the Empire of Ethiopia, Decree No. 52/1965, Negarit Gazeta, 25th year No. 3, Art. 33 (2)

²⁹⁴ Id, Art 33 (1)

²⁹⁵ Robert Allen Sedler, Ethiopian Civil Procedure, (1968) P. 59

²⁹⁶ The Civil Procedure Code , Supra note 292, Art 224 (1)

²⁹⁷ Criminal Procedure Code of the Empire of Ethiopia, Proclamation No. 185/1961, Negarit Gazeta 21st year No. 7, Art 40 (1)

²⁹⁸ Government of India, Supra Note 255, P.15

²⁹⁹ Takele Seboka, Supra Note 47, P.97

in order prevent an infringement of right from occurring specifically indulging in to the channel commerce of goods. In addition Civil remedies involve injunctive relief, to restrain the defendant from continuation copying and dealing with the work during law suit and from copying the work for the future awarding of material and moral damage if decided in favor of plaintiff³⁰⁰ Criminal penalty involves the prosecution of a person involved in commercially dealing with infringed works. Under copyright and neighboring rights protection proclamation No. 410/2004, remedies available to the plaintiff are provided under its articles 33-36.

A) Provisional Measures

In most law books Provisional measures and injunction are confused and blend in definition. But provisional measures are taken in promote order to prevent infringement of the right from occurring to control the entry in to the channel of commerce goods including imported goods immediately after custom clearance.³⁰¹ Provisional measures are intended to take effect pending the full trial.³⁰² Pursuant to the proclamation on copyright provides provisional measures under article (33) as ordered by the court to prevent infringement of a right from occurring and to preserve relevant evidence from being lost.³⁰³ Provisional measures may also be adopted with the absent of the defendant where the court is convinced that any delay may cause irreparable damage to the holder of the right, or where demonstrable risk that evidence may being destroyed.³⁰⁴

Since the purpose of provisional measure to protect the plaintiff against the injury by violation of his right whether threat is imminent for which he could not be sufficiently compensated in damages, if the suit is resolved in his favor, the corresponding needs and interest of the defendant to be protected against injury resulting from his having been prevented from exercising his legal right should also be given due attention.³⁰⁵ The plaintiff must undertake to provide security to pay the defendants losses resulting from the court order should the defendant succeed at the full trial.³⁰⁶ Article 33(5) of the proclamation also provides that the court can order the plaintiff to

³⁰⁰ David V. Rodack, *Remedies for Copyright Infringement*, available at <http://www.tms.org/pubs/journal>, P. 2

³⁰¹ Michael Blakeney, *Supra* Note 216, P. 12

³⁰² Bainbridge, *Supra* note 40, P. 150

³⁰³ Copyright and Neighboring Rights Protection Proclamation, *Supra* Note 5, art 33 (1) (a) and (b)

³⁰⁴ *Ibid*, Art. 33 (2)

³⁰⁵ David Bainbridge, *supra* at note 49, P. 151

³⁰⁶ *Ibid*, 150

provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

B) Civil Remedies

The available civil remedy of Audiovisual works infringement contains injunctive relief, damages (materials or moral) and destruction of illegal copies.

1. Injunctions

An injunction is an order of the court which prohibits the committing or the continuance of an act of infringement any right protected under the law.³⁰⁷ An injunction, to put differently, is an order of the court directing a party under litigation, to do or refrain from doing an act.³⁰⁸ It is submitted that in the intellectual property field, an injunction is almost always prohibitory as not to enjoin the continuance of wrongful acts.³⁰⁹ For instance, an injunction perhaps ordered by court to the effect a person to cease making infringing copies of a work of copyright, or to destroy some article in his possession which is used for making infringing copies.³¹⁰

Injunction has the forms; temporary stops purported to take effect pending final discussion the full trial.³¹¹ It does not conclude a right. Interlocutory injunction is sought not to enforce an established right but to maintain the status go until the trial of the merits can take place.³¹²

To granted injunction with a view to prevent any further repetition of the infringing action.³¹³ Under the proclamation this type of civil remedy is provided under its article 34(1) (a). It is stated that the court that have jurisdiction to try suit arising under copyright law is empowered to grant injunction that prohibit the acts infringing any of the exclusive right protected to the right holder.³¹⁴ Injunction will not usually be granted by the court if the court is convinced that

³⁰⁷ Ibid , P.150

³⁰⁸ Takele Seboka, Supra Note 43 p. 97

³⁰⁹ Ibid

³¹⁰ David Brainbridge, Supra Note 40, p. 150

³¹¹ Ibid

³¹² William Rodolph Cornish, Intellectual Property, Patent, Copyright, Trademarks, and Allied Rights, (1989), P.37

³¹³ Michael Blakeney supra note 216, P. 12

³¹⁴ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art 34 (1) (a)

damages will fairly compensate the plaintiff.³¹⁵ Therefore, the court has to investigate whether or not the damages will adequately compensate the plaintiff before ordering injunction.

To sum up the court who has jurisdiction to adjudicate the case may grant injunction that prohibit the committing the continuation infringement of any right.³¹⁶

Furthermore, the court may order the confiscation of the infringed work that is made or imported without the authorization of the copyright owner.³¹⁷ In addition, the court may order to impound the packaging and implements that could be used for the making of documents, accounts or business papers referring to such copies.³¹⁸

2. Damages

Damages refer to compensation awarded to remedy the damage sustained by the plaintiff due to copyright infringement. Damages may be material or moral. Material damages refer to harm to a plaintiff's materials interest affecting his pockets or pecuniary interest.³¹⁹ Material damages are intended to redress just what the plaintiff has lost.³²⁰

The copyright proclamation grants compensation, as usual, the copyright owner whose material interest is injured.³²¹ When the court fix material damages, it should taking into account the extent of material damages suffered by the owner of the right.³²² Besides, the court is expected to consider the amount of profit attributable to the act of infringement.³²³ The second aspect of damage is moral damage. It refers to injury affecting plaintiff's feelings, his emotions and

³¹⁵ David Bainbridge, *Supra* note 40, P. 152

³¹⁶ Copyright *Supra* note 5 Art 34(10) (B)

³¹⁷ *Ibid*

³¹⁸ *Id* Art. 34(1) (C)

³¹⁹ Henry Campbell Black Black's Law Dictionary, (1991), P.270

³²⁰ Takele Seboka, *Supra* Note 43 At .102

³²¹ Copyright and Neighboring Rights Protection Proclamation, *Supra* Note 5, Art. 34 (4,5)

³²² *Ibid*, Art. 34(4)

³²³ *Ibid*

physical well-being.³²⁴ Thus, infringement of moral rights is an attack on his personality which causes upon him moral damage.

In Ethiopia, the present legislation of copyright provides for remedies of moral injury by copyright infringement. It is stated that the amount of moral damages for moral damage shall be determined based on the extent of the damage.³²⁵ The base line or the minimum amount to be paid for moral damages is fixed to be 100,000 birr.³²⁶

3. Destruction of copies

Some jurisdictions order copies of the infringement to be given to the plaintiff.³²⁷ In Ethiopia however there is no provision that allows such copies to be delivered to the plaintiff. It is submitted that there will be no ground to let the defendant to keep these copies, and if allowed, it may open a room for further distribution of these copies by the defendant thereby bringing about further infringement.³²⁸ It is established that under the current copyright legislation, the court shall make the copies outside the channels of commerce, order their destruction or other reasonable disposition.³²⁹

4. Returning of copies to the rightful owner

Returning of the copies of a work to the rightful owner is available where the infringing copy of the work is found in the possession, custody or control of the person involved in the acts infringing the holder of the right.³³⁰ Where the application is made to the court by the copyright owner, the court may order that infringing copies are delivered to him.³³¹ Under the proclamation the concept of returning of the copies to the copyright owner is inferred from its article 34(6). It is stated that where copies and packages that infringe a right of the holder are discovered, the court shall order that these copies be outside the channel of commerce, or order their destruction, if the

³²⁴ Willian, Rodolph, Supra note 312, p 40

³²⁵ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5 Art 34(4)

³²⁶ Ibid

³²⁷ David Brainbridge, Supra Note 40, p .155

³²⁸ Takele Seboka, Supra Note 43, p 114

³²⁹ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art. 34(6).

³³⁰ David Bainbridge, Supra note 40, P. 155

³³¹ Ibid, p.15

right holder does not requires otherwise.³³² Here the phrase “unless the owner of the right otherwise requires” provided in article 34(6) of the proclamation indicates that the right holder may require the returning (delivery) of copies of the work. The writer of this paper didn’t come across the court order for returning of the copies of the work to its rightful owner.

5. Border (custom) measures

As it is stated under Article 7(1) (e) of the proclamation, the right to importation of original or a copy of the audiovisual work is the exclusive right of the owner. Any person who has obtained authorization from the author or owner can also import original or copies of the work.³³³ Border measure, which is contained under article 35 of the proclamation, is provided with a view to prevent the importation of audiovisual items which may infringe the right of copyright owner. The custom authority is required to retain under its control the audiovisual items which may violate the right of the owner of the work.³³⁴

The Trade Related Intellectual Property (TRIPS) Agreement of the World Trade Organization (WTO) to which Ethiopia is in the course of accession also provides similar concept by stating that pirated copyright goods must be suspended by the custom authority, where a right holder suspect that their importation damages his interest in the work.³³⁵ The custom authority retains the goods which are under its control for not more than 10 days where the claimant fails to provide sufficient and justified evidence within 10 days.³³⁶

The applicant must make sure that his application is founded on sufficient grounds in the absence of which he is responsible for the damage caused as the result of retention.³³⁷ With regard to border measure, there is no experience in Ethiopia since reproducing the work abroad and importing it to Ethiopia is expensive. Here, audiovisual producer or other holder of the right can notify the custom authority in writing that they object to the importation of copyright material that would have infringed their copyright if it had been made in Ethiopia.

³³² Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art 34 (b)

³³³ Id, Art. 7(1) (e)

³³⁴ Id, Art 35 (1)

³³⁵ Agreement on Trade Related Aspects of Intellectual Property Rights, Art. 51

³³⁶ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art. 35(3)

³³⁷ Id Art35(4)

C) Criminal sanction

For the purpose of this paper, criminal remedies are available to criminal offences committed against the exclusive rights reserved to the right holder. Criminal offences against copyright is said to be committed where a person makes unauthorized copies of music or films on to CD or DVD, distributes the copies copyrighted work by sale or rental to the public, possesses unauthorized copies with a view to distributing, selling or hiring these copies to other people.³³⁸

The criminal code of Ethiopia and the copyright and neighboring rights protection proclamation provide provisions for certain criminal acts associated with copyright infringement. It is stated that criminal sanction is aim at preventing commission of further crime and through imposition of punishment on criminals.³³⁹ With a view to achieve this purpose the criminal code under it article 721 provides that infringement of rights relating to audiovisual work is a crime. A person who intentionally or negligently committed an offence relating to audiovisual work is punishable with either rigorous imprisonment or simple imprisonment depending on his state of mind during the commission of the offence.³⁴⁰

The proclamation No 410/2004 also provides that whosoever intentionally or through gross negligence infringe the right protected by copyright law is punishable with rigorous imprisonment.³⁴¹ Under both the criminal code and the proclamation No. 410/2004 intentionally infringing the copyright author or owner is punishable with rigorous imprisonment. However regarding negligence the criminal code seems to favor simple imprisonment.³⁴² The proclamation stipulates gross negligence from the infringer even punishment with rigorous imprisonment.³⁴³ The criminal penalty may also extend to seizure, forfeiture and destruction of the materials and implements used in the commission of the offence.

³³⁸ Copyright infringement, available at <http://encyclopedia.thefreedictionary.com/p.1> Visited on October 14/2009

³³⁹ The Criminal Code Supra Note 287, Art. 1

³⁴⁰ Id, Art. 721 (1) (2)

³⁴¹ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5 Art. 36

(1) and (2) anybody intentionally violates rights protected under the copyright shall be punished from 5year up to 10 years in case gross negligence a term of 1year up to 5 years of imprisonment

³⁴² The Criminal Code of Supra note 287, Art. 721 (2)

³⁴³ Copyright and Neighboring Rights Protection Proclamation, Supra Note 5, Art 36 (2)

CHAPTER FOUR

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

This portion of the paper deal with the presentation, analysis and interpretation of the data gathered through documents, court cases, questionnaires and interviews. This chapter is divided into two parts. The first part deals with the characteristic profile of the respondents. The second part of the chapter is devoted to showing the practical enforcement of the Ethiopian copyright regime in comparison with the level of infringement of the audiovisual works.

Data from different documents, open-ended questioners, interviews and court case are presented and analyzed the content of data. The analytical analysis method is used with classification, organization and comparison of the content of the document or communication. The communication took in terms of response to open-ended questionnaires or conversation as the result of interview or description of observed activities. Data from documents such as judicial

decisions are mostly written in Amharic language. These data are therefore presented and analyzed by translating into English and briefing the existing situation.

Some of the data are obtained from documents published by different bodies such as the Ethiopian Audiovisual Association. These are presented and analyzed using table to show the extent of infringement and the remedy rendered to the audiovisual work holder of a right by the law enforcement agencies such as court, public prosecutor and police.

Part One: Salient Facts in relation to Audiovisual Works

4.1 Profile of the Respondents Questionnaires Distributed

Table 1: Members of Respondent

No	Particulars	Respondents	
		No	% age
1	Judges	5	4.1%
2	Public prosecutor	10	8.2%
3	Police	20	16.4%
4	Copyright and related rights joint administration association	5	4.1%
5	Ethiopian Audiovisual Producers Association	5	4.1%
6	Film producers association	10	8.2%

7	Film performers associations	10	8.2%
8	Comedian association	5	4.1%
9	Audiovisual producers, recording and/or distribution shops	10	8.2%
10	Audiovisual rental shops and peddlers	30	24.6%
11	Broadcasting agencies	5	4.1%
12	Cinema Houses	5	4.1%
18	Audiovisual instruments (CD VCD DVD *,(digital video disk) Cassettes Manufacturing and/ or distributing companies	2	1.62%
	Total	122	100%

The table indicates the composition of the respondents. As it is easy to discern from the table, the respondents are from different institutions having different backgrounds, roles and responsibilities in relation to audiovisual works. This creates good ground or potential to apprehend the issue of audiovisual work in the diversified manner. As it can be discerned from the table, the respondents can generally be categorized into four broad groups though not put in order in the table. Each group is constituted with different groups of respondents.

The first category comprises the different pressure groups who are consistently echoing their sound to use the public original audiovisual works and combat the illicit reproduction and distribution of audiovisual works. These are directly or indirectly victims of the existing gross violation of the copyright law and are many in number. The Copyright and related rights common administration association, Ethiopian Audiovisual Association, Film producers association, Film performers association,³⁴⁴ comedian association, Audiovisual producers, recording and distribution shops, and cinema houses.³⁴⁵ These are the main role players in the campaign against infringement of audiovisual works and more generally for observance of the copyright law in the country. About 40% of the questionnaires were distributed to these groups of respondents due to the stake they have in the subject matter under consideration.

³⁴⁴ As revealed in the table, ten questionnaires were distributed to two film performers' Association. These are Alsations Film performers association and Ethiopia Film Performers Association

³⁴⁵ The cinemas which the writer distributed questionnaires are Alem Cinema, Ambassador Cinema, Ethiopia Cinema, Empire Cinema, and Wizh Kids Film

The second category of respondents consists of law enforcement bodies. Judges, public prosecutors and the police are included in this group. These play significant role in fighting the illegal audiovisual works through bringing the infringers to justice, awarding compensation to those who sustain damage as a result of the infringement and convicting the infringers of audiovisual works. They have crucial role in giving effect to the copyright law of the country including the law dealing with the audiovisual works and in deterring future infringements.

These groups of respondents are presumed to have high legal knowledge with regard to the issue of audiovisual works and infringement of same as they are very close to the subject. As the Federal High court is the court which has first instance jurisdiction in audiovisual works,³⁴⁶ all of the judge-respondents are from this court. The number of questionnaires distributed to these categories of respondents exceeds 28% from which the police take the lion's share. This is due to the special and at times first in time role the police play in the area which includes bringing the infringers to justice and investigating the crimes.

Broadcasting agencies, audiovisual renting houses and peddlers come with in the third category of respondents. The widely spread audiovisual works renting shops and the numerous peddlers who sell such works by moving from place to place and in the streets of the city are included in this group. These groups of respondents are mainly known for, knowingly or unknowingly, grossly infringing audiovisual works.³⁴⁷ That is the reason for the writer to distribute large number of the questionnaires as compared to the other stakeholders.

Totally, 25 questionnaires were distributed to audiovisual renting houses taking 5 samples from each sub city. The remaining six were distributed to the peddlers. The other group of respondents included in this category is broadcasting agencies. This group basically refers to the Ethiopian Television (hereinafter "ETV"). But as there are a number of programs transmitted via the ETV like the ones prepared by Oromia, Amhara, Tigray, Addis Ababa, Somali mass communication agencies, about five questionnaires were distributed to different stakeholders in the ETV. Totally, this category comprises about 28% of the total respondents.

³⁴⁶ It is to be noted that copyright cases come within the jurisdiction of the Federal courts. Federal Courts Proclamation, Procl. No 25/1996, Art 5(8), Federal Negrit Gazeta, 2nd Year No. 13. And the high court is in charge of such kind of proceedings as per Art 2(9) cum Part Six of the Copyright and Neighboring Rights Protection Proclamation.

³⁴⁷ Interview with Ato Abdi Abdishikur, Mare Music Shop, December 17, 2009

The fourth categories of respondents are the manufacturers of CDs, DVDs, VCDs, cassettes, etc. In this respect, the writer has distributed to two companies: Sheba system Share Company and Super Shine Investment Private Limited Company. The companies, among others, fix the covers we found in the original CDs, DVDs, VCDs and cassettes. Thus, they have an interest in the subject matter under consideration as the spread of illegal reproduction meant there will no much flow of such works to them hence it adversely affects their business activities.

Table 2: Response of Respondents in Relation to different Audiovisual Infringement Issues³⁴⁸

Part One: (Questions for all Respondents)				
No	Particulars	Agree	Disagree	I Do not Know
1	Audiovisual work is part of copyright that can enhance and promote science, cultural and economic development of a country.	87%	2%	11%
2	Do you agree with the definition of audiovisual works as a work that consists of a series of related images, which impart the impression of motion,	78%	15%	7%

³⁴⁸ Note, however that the percentage is prepared by writing the full number to which the percentage is in close proximity

	with or without accompanying sounds, susceptible of being made visible by any appropriate device, and includes a cinematographic or other films.			
3	The performer or script writer or anybody who has the idea of preparing audiovisual works approach to producer and distributors shop and the later evaluates and estimates the price. If agreed ownership will be transferred to the producer. The producer again gives the master to a reproducer or company. The reproducer with all precaution and putting straps or logo delivers the order to producer. The producer distributes the audiovisual work to retailers for selling or renting purpose. You know such process.	56%	12%	32%
4	Individuals who have not trade license, without consent of the producer, make illegal copies and distribute to the public by sale or rent.	99%	0%	1%
5	Only an owner of an audiovisual work has an exclusive right to distribute the original or copy of his work to the public by sale or rental. Hence it is not allowed for anyone to distribute audiovisual works without obtaining authorization from the author and/or owner of the works.	92%	0%	12%
6	Nobody except the producer is allowed to import into Ethiopia the original or copies of an audiovisual work to which copyright protection is extended where the work is prepared outside of Ethiopia, because the exclusive right of distribution depends on the exclusive right of importation.	72	12	26%
7	Public performance indicates showing dramatic, motion pictures and other audiovisual works publicly.	53	2%	45%

	Public performance also refers to showing the image in sequence. The author or owner of an audiovisual works shall have exclusive right to perform his work. We can infer from the above statements that anybody who wants to perform a work protected by copyright should first obtain authorization from the author and/or owner of the work.			
8	The cost of the original audiovisual work is more expensive than the illegally reproduced one and that the later is more accessible than the former and this has contributed to the gross illegal reproduction of audiovisual works, hence to infringement.	100%	0%	0%
Part Two: Questions to different Respondents				
1	Unless the copyright owner permits the broadcasting or rebroadcast of the audiovisual work, it is forbidden to broadcast film or any audiovisual work such as musical clips. <i>(For all respondents except renting shops and peddlers)</i>	45%	5%	50%
2	Broadcasting in the internet of audiovisual work is infringement of audiovisual works. <i>(For all respondents except renting shops and peddlers)</i>	49%	5%	46%
3	As an owner of an audiovisual work, you have been asked by some one to modify so as to make it suitable for different conditions of exploitation, for example a dramatic work produced for adults into a dramatic work suitable for children. <i>(Only for producers)</i>	12%	88	0%
4	Public display or showing the image in sequence needs to be secured consent from producer. <i>(For recording and distributing shops and audiovisual renting shops)</i>	3%	0%	97%

5	You reproduce original audiovisual work in to copy by computer or any other machine if you face shortage or scratch on the VCD or DVD or video cassette. <i>(For recording and distributing shops and audiovisual renting shops)</i>	9%	91%	0%
6	The legal producers or audiovisual renting shops are also illegally reproducing audiovisual works. <i>(For Audiovisual and performers Associations)</i>	28%	51%	21%
7	Producers, in order to prevent its illegal reproduction, prefer to rent cinema house to show their audiovisual works to the public with payment. After some time, the master work is sold to recording and distributing shops. This is, presently, effective method of protecting audiovisual works from infringement. <i>(For producers, Audiovisual associations, performers associations)</i>	96%	4%	0%
8	There clear understands of the problem of audiovisual infringement on the part of law enforcement agencies and have institutional and technical capacity to investigate collect the proper evidence and convict the suspect. <i>(For all respondents except broadcasting agencies, renting shops and peddlers)</i>	63%	33%	4%
9	There is a trend on the part of the police in respect to evidence that witnesses (mostly from the adversely affected segment of the society like performers, artists, musicians) and supporting documentary evidence stating the seized audiovisual works are illegally produced as sufficient enough to prove the case. <i>(Only for law</i>	69%	16%	15%

	<i>enforcement bodies)</i>			
10	In developed countries like America and Canada the producers, on voluntary basis, register their audiovisual work for purpose of evidence in court litigation. Adopting similar system in Ethiopia has a role to play in solving the existing infringement problems. <i>(For category one and two respondents)</i>	42%	24%	24%
11	You have been asked for making of one or more copies of an audiovisual work in any manner or form for purpose of sale. And you reproduced some copies of the work. <i>(Only for recording and distributing shops and renting shops)</i>	5%	95%	0%
12	Special agreement is required for audiovisual works to rent to the public from the producer. <i>(Only for audiovisual works renting shops)</i>	6%	0%	94%

As it can be easily discerned from the table, the questions are classified into two categories. The first 9 questions were commonly posed to all of the respondents. And the remaining 11 questions were asked to some category of respondents or specific respondents with in the abovementioned groups. In order to make what question was posed to whom in the second part; the writer indicated it in parenthesis at the end of each question. The general purpose of the questionnaires is to assess the level of knowledge of the respondents in respect to the copyright law of the country governing audiovisual works and their appreciation of the existing wide-range of infringement of the works, and the remedies they suggest.

The questions and the response of the respondents, the first question deals with the overall objective of audiovisual works as means of enhancing and promoting a country's scientific, cultural and economic development. In this respect, overwhelming majority of the respondents has sufficient knowledge. It is only 11% and 2% of the respondents mostly from the renting shops and peddlers who don not know and disagree respectively. The second question is about the definition of audiovisual work. 78% of the respondents have provided more or less similar

definition to that one provided in the table. 15% including from the audiovisual community on the other hand disagree with the definition and 7% do not have sufficient knowledge about it. The fact that audiovisual work includes motion pictures without sound was in particular an element which the 22% do not know or disagree.

The third deals with the salient process in relation to audiovisual works and the knowledge of the respondents about authorship vis a vis ownership of audiovisual works. Interestingly, it is only 56% of the respondents that know this fact. The majority of these respondents comprise the audiovisual community, recording companies, performers and the law enforcement agencies except the police. About 12% on the other hand disagree with this. The main argument forwarded by these respondents who are mainly from the audiovisual community and recording enterprises is that this does not always hold true. But about 32% do not have clear information with respect to this question. Majority of the police officers, respondents from the broadcasting agencies, peddlers and renting shops come with in this group.

The fourth question is assess the knowledge of the respondents to the effect that individual infringers who have even no trade license in the area reproduce illegal copies at their homes. In this regard, it is only two respondents from the police and the renting shops who replied that they have no knowledge about it. The remaining 98% know or suppose so.

The fifth question examines the level of understanding of the respondents pertaining to the distribution right of the producer by way of sale and/or rental. With respect to this question, while 73 of the respondents mostly from the audiovisual, recording enterprises, and law enforcement agencies agree, about 27% of the respondents most of them coming from the rental shops, peddlers, broadcasting agencies, and the police officers do not have sufficient knowledge except sale of illegal copy constitutes infringement of the copyright law. Question 6 is similar except in that it deals with importation right. The respondents hold similar opinion in respect to this question also except that about 12% argued to the contrary. Many of the respondents who disagree reasoned out based on the position of Ethiopian copyright law's position that it does not protect works prepared outside Ethiopia.

The seventh question is concerned to testing the knowledge of the respondents in respect to public performance. Surprisingly, only 53% have sufficient knowledge about this fact. What is

special in this respect is that even majority of the respondents from the audiovisual community, the performers and producers associations, and the law enforcement bodies do not have the required level of understanding in this respect.

The eighth question scrutinizes the expensiveness or otherwise of the present audiovisual works. To my surprise, all of the respondents agree that it is more expensive than the illegally reproduced copies. But most respondents from the audiovisual community justify this on the expenses the producers pay to finish one work. Therefore, the current price of the original audiovisual works reflects the market price of same plus little marginal profit.³⁴⁹

Let's now direct our attention to the second group of questions which are posed to some category of the respondents. In this regard, the first question assesses the knowledge of the respondents as to authorization is a requirement to broadcast a certain audiovisual work such as musical clips. The second question is also similar except in that it is exclusively concerned with transmitting of audiovisual works via the internet. These questions were forwarded to all respondents except renting shops and peddlers. And their response was similar in that more than 50%% of the respondents supposed that buying an original work is sufficient to broadcast a certain audiovisual work via TVs or the internet.

The third question is raised to producers and assesses the extent of modifications made legally with the agreement of producers. From the response of the respondents, however, this is not as such widely practiced activity. In the music shops, recording and distributing enterprises and the audiovisual renting shops, it is easy to observe that audiovisual works are displayed to the public. The fourth question pertains to this activity. But while overwhelming majority of the respondents do not know that that constitutes infringement, only 3% of them are aware of it.

One and allegedly the main way of infringing audiovisual works is illegal reproduction. In this activity, many believe that the renting shops and the recording and distributing shops take the lion's share. Some persons further say that even some legally licensed producers participate in

³⁴⁹ But some argue that even reduction of price of the audiovisual works may not bring the required level of achievement. The president of the Ethiopian Audiovisual Producers Association, for instance argue that the association instructed its members to reduce the price and these days the price is much lower than the previous days. Yet, this did not bring fruits as the illegal reproducers made more, relatively, discount than the legal producers do. Interview with Ato Ukubay Berhe, President, Ethiopian Audiovisual Producers Association, Dec. 4, 2009

this illegal activity particularly.³⁵⁰ Infringement of audiovisual works is also made by individuals at their homes using different devices such as computers.³⁵¹ Due to this, the writer asked these three groups of respondents. Nevertheless, while about 91 % of the respondents from the renting shops and recording shops disagree with the assertion, about 28% of the respondents from the audiovisual community and performers associations agree that the legal producers are not free from infringement. But about 9% of the renting shops admit that they reproduce audiovisual works or order the reproduction of same from recording companies in different areas mostly in Merkato.

Now, producers prefer to display their audiovisual works to the public in cinema houses for long time depending on the number of viewers. The seventh question is whether this has been an effective method of preventing infringement. Regarding this, about 94% of the respondents comprising producers, producers associations and performers associations agree with the statement. Most of the respondents raise two concerns in this regard. First, this is not enabling the producers to get the required benefit from the works. And secondly, this is not always effective way of utilizing such works as some of them do not stay in cinema houses due to lack of required number of viewers and lack of sufficient cinema houses in all corners of the country. The remaining 4% on the other hand disagree with the statement and their reason is that there is possibility of disclosure due to reasons such as theft and breach of confidence on cinema houses.³⁵²

The eighth question assesses the capacity of the law enforcement agencies. They are asked whether these agencies have the required technical and institutional capacity of enforcing the law, more than 60% of the respondents to the negative. They argued that had the law enforcement agencies been capable in doing that, there would not have been such a gross and visible level of infringement. Many of the respondents from these bodies also admit the problem. The next question pertains to the allegedly existing trend on the part of the police that the police basically focus on two things, .i.e., on seizing the illegal copies and the documents that verify the legality

³⁵⁰ Interview with Comedian Mitku Fentie, Comedian, Nov. 12, 2000

³⁵¹ Interview with Ato Natnael Addis, Ardi Communications, Dec. 17, 2009

³⁵² The cinema houses, on the other hand argue that they never breach their confidentiality agreement. Ato Wondwosen of the Addis Ababa Cinema Houses Administration, for instance, argue that this has never happened in his cinema houses. Interview with Ato Wondwosen Hailu, Addis Ababa City Cinema Houses Administration, December 17, 2009

or illegality of the copies issued from the Ethiopian Audiovisual Association and they do not go further steps. In this regard, about 83 of the respondents from the law enforcement agencies mostly from the prosecutors and the judges agree and about 16% disagree.

One of the instruments that minimize infringement of copyrighted works is registration of the works. In this regard, about 42% of the respondents agree that it has its own role if it is adopted in Ethiopia. And the remaining 46% do not agree or don't know the system or how it works.

Lastly, the writer asked a question to the audiovisual works renting shops as to renting such works is exclusive right of the producers; hence they can't do so unless they get prior authorization of same. Amazingly, however, about 94% of the respondents do not know this fact.

4.2 Infringement of Audiovisual Works

Table 3 Audiovisual works reproduced illegally in Addis Ababa as investigated by police presented by year

Year	Suspected persons	Illegal Reproducer machine seized	Number of VCD seized
2004	43	9	No data
2005	11	9	10,790
2006	146	21	3,322
2007	162	2	8,924
2008	144	18	736
2009	161	18	1,280
Total	667	77	25,052

Source: Ethiopian Audiovisual Association

As it is easy to observe from the table, the level of infringement of the audiovisual works in the city of Addis Ababa is increasing from time to time and the situation is increasingly worsening.

In a discussion I hold with the officers of the Ethiopian Audiovisual Association, the later informed me that, recently, there have been 604 defendants charged with infringement of audiovisual works of which 48 cases are disposed by the federal high court. But most of the files are closed because the accused after released with bail abscond from the area. According to this institution, this is due to the insufficiency of the surety the defendants secured. In addition, the court has been acquitting many defendants due to insufficient evidence.³⁵³

Under the auspice of the Ethiopian Audiovisual Association, a survey was made in hotels and audiovisual and music rental shops situated in 5 sub-cities of Addis Ababa to assess the amount of original and illegal copies VCD are under their possession in the year 2009. The findings are presented in the following table.

Table 4: Percentage of original VCDs to illegally reproduced ones in Five Sub Cities of Addis Ababa

Sub city	Original VCD	Illegal copy of VCD	% age original	% age of illegal copy
Arada	81	5703	0.5%	35%
Addis Ketema	66	5403	0.41%	33%
Bole	366	861	2.21%	5.3%
Kirkos	152	1654	0.93%	10.2%
Yeka	138	1841	0.85%	11.32%
Total	803	15,462	5%	95%

Sources: Ethiopian Audiovisual Producers Association

From the table, it is possible to observe that the percentage of legally produced original copies of audiovisual works is getting close to none in the entire sub cities except Bole which is, relatively, better one. The data in this table thus shows how the illegally reproduced copies of audiovisual works are flourishing in a way that endangers the economic rights of producers. Another data

³⁵³ See part two of this chapter for some cases which show some instances of the situation

from same institution reveals that since 1998 up to middle of 2009 around 160 artists have been off the business because of infringement of audiovisual works. As a result, the growth of the audiovisual work, as opposed to the expected very speedy growth, has been retarding as a result of the gross violation of the works.³⁵⁴ The source further shows, in contrast to the very big population in Ethiopia, only 212 films, music, and comedy with VCD and 10 with video cassette were produced in the country from 2002 up to 2008.

4.3 Observation

On November 2009, the writer of this paper made night and day visit to about 20 entertainment places like night clubs, hotels and bars particularly on Saturdays and Sundays. In this tour, I observed that the comedies, musical clips or films embodied in VCDs which are protected under the copyright law being displayed to the public and/or the works of famous artists being performed by simulators in the clubs. The owners often charge extra amount on the beverage with a flat price or with entrance fee up to 20 birr such as in Concord Hotel. And the discussions I held with the owners or managers reveal that the extra payment or entrance fee was because the dancing or film or comedy performed on the stages but none of them paid commission to the owners of the audiovisual works nor asked permission from same. The owners are getting benefit or unlawfully enriching where as the producers are getting nothing from such acts. Interestingly, none of them do know as their act constitutes violation of the copyright law of the country as, by virtue of Article 7(1) (g) of the Proclamation No 210/2004 the exclusive right of the author and/or owner of the work.

The other visit the writer made in order to observe the situation was to the audiovisual renting shops. In this regard, the writer observed that the renting shops rent or sell the copies to the buyers as if they are legal. Some of the owners even ask the buyer whether they need the original ones or the illegally produced copies and most people buy the copied ones. On November 12, 2009 in particular, the writer asked a certain audiovisual renting shop keeper in Sidist Killo area to buy some comedy works. At this time, there was Artist Mitiku Fente one of the contemporarily famous comedians. When we asked the shop keeper to buy these illegally reproduced copies, he

³⁵⁴ Comedian Mitku also agrees with this assertion and he himself is desperate of the situation and is planning to engage in another line of business unless the situation gets better. Interview with Comedian Mitiku Fentie, Supra Note 325

simply sold us with out even asking the purpose for which I was buying before the comedian as if they are legal. And two of these copies were this comedian's works.

From the above data collected and observation, the writer safely concludes that the infringements of audiovisual works that diminish the economic right of producer in Addis Ababa in different forms are rampant and need urgent solution. The producers or performers of audiovisual works understand infringement is illegally reproducing of the original VCDs. However they have overlooked their bundle of rights as specified on the law of Ethiopian copyright law or they are desperate of the existing gross infringement.

Part Two: Case Analyses

From the data and observations propounded and analyzed above, one may easily observe that the level of infringement of audiovisual works in Addis Ababa is pretty terrible. At this juncture, we are going to examine the status quo of cases in the Federal High Court of Addis Ababa. The section discusses the present situation in relation to both civil and criminal cases.

In relation to the civil aspect, the writer is unable to get many audio-visual related cases. This is really paradoxical scenario as one would normally expect record amount flow of cases in view of the wide-range infringement of such works. The reasons for failing to defend once work by instituting court action vary from one case to another. Generally, however, they have to do with one of the following reasons. First, there is lack of awareness as to what specific rights have including the right to protect one's work on the part of the owners of the economic rights of these works. In this respect, bulks of the complaints come even from the authors or performers who surrendered their economic rights rather than the producers. In fact, it is true that the infringements have serious impact on these segments of the society as the producers would not buy their works. But the producers are the immediate victims for which they should take primary

responsibility in the anti-infringement campaign including in bringing the infringers to justice and get compensated for the damage they sustained.

The other thing this writer has observed is that the audiovisual community simply lingers for government action rather than taking leading role in the anti-audiovisual infringement campaign. This itself has direct negative impact for the effectiveness of the present outcries. This is manifested by, among other things, the failure to bring civil cases for compensation comparable with the degree of infringement on the ground.

Even the proceedings in relation to the few cases filed in the court didn't go until the final judgment stage. The trend looks like the following: once the proceedings are commenced, the parties agree outside the court and file their agreement to the court for ratification and, up on ratification, the proceedings are discontinued.

In a certain film titled, "Agazi Operation," for instance, the plaintiffs sued the defendant for allegedly adapting their literary work into audiovisual work.³⁵⁵ In this case, Kaza Film Production for which the defendant is General manager produced the abovementioned film. The script for this film which is based on true story, according to the defendant, was written by a person called Kidane Yilak in 1987 E.C with whom the company concluded a contract of film script. The writer delivered his work to Cultural Center of Tigray but it was unpublished.

The plaintiffs Berhanu Abadi and Haile Ayalneh on the other hand jointly wrote a book on similar theme a year before the film production commenced. In fact, the plaintiffs had another contract with another producer which entitles the later to transform the book into film script and ultimately into audiovisual work. The two films were in course of production in parallel with same title. One important action the court took in respect to this suit, however, was that, as the film produced by the defendant's company was already produced; it passed an injunction order before it was being available to be seen by the public in cinemas and the status quo continued like that for a number of months. Finally, the parties agreed in respect to many matters including the title of the film outside the court and the court ratified their agreement. And both works are still being displayed to the public in cinema houses in titles, roughly, "Agazi Operation" and "The 15 minutes Operation."

³⁵⁵ Berhanu Abadi v. Tilahun Tafere (Federal High Court, 2008, Civil Case No 62651) (Unpublished)

Here, the writer wants to comment over two or so things. The first the contestation of the parties were on the scrip but definitely it has affected film production although the film will prepared based on true story . In this regard, we have seen above that expressions but not ideas are protected by copyright regimes.³⁵⁶ Therefore, the fact that the plaintiffs wrote a book based on the story by itself can not be a ground of claim unless the producer uses directly adapts their work for the script on the film production. The related and most relevant thing with this work is whether an independent work on same idea transformed in a film amounts to infringement of copyrighted work hinders from proceeding in developing a film . But it is to be noted that independent work does not constitute infringement though it may have same title with another work. Secondly, the absence of registration as a requirement for protection of copyrighted work has contributed its own role for this dispute. Had there been registration requirement in place, the first writer would have registered his work before the concerned body even if his work was unpublished.³⁵⁷

Audiovisual related criminal proceedings take a bit different trend. Though they are not still comparable with the level of infringement currently existing on the ground, there are many cases flowing to the court. Many of the defendants are persons who illegally reproduce CDs, DVDs and VCDs. The remaining ones are those who distribute infringed works moving from place to place and on the streets. In this regard, the 10th criminal bench has been devoted to entertain intellectual property related criminal cases.

Currently, the police, the public prosecutor and the audiovisual association are working together. When the police seize audiovisual works which they suspect to be illegally reproduced, they send them to the Ethiopian Audio Visual Producers Association for verification of the legality or otherwise of the works. And the later do so in respect to each work and sends back to the police based on which public prosecutors institute criminal proceedings.

But the criminal bench in itself is not free from any drawback. In fact, there are many problems in this regard as well. To begin with, the court does not require the suspects/accused to produce sureties, which is often secured in amount of money rather than personal guarantee or both, proportional to the level of infringement he is alleged to commit when the later applies for bail. This makes the

³⁵⁶ Takele, Supra Note 94, p. 1

³⁵⁷ This argument is forwarded because the defendant argued that if there is violator after all, it is the plaintiffs who are infringers as they wrote on the same subject which Ato Kidane Yilak write on in his statement of defense

defendants simply fail to appear before the court as required during the course of proceedings or to abscond. The writer has come across about eight files closed in June and July of 2009 only due to this.³⁵⁸ This has been disincentive for the audiovisual community to institute court actions as a solution to the existing gross level of infringement of audiovisual works.³⁵⁹

Secondly, the present conviction judgments do not have deterrent effect on potential infringers. In a certain case, for instance, the defendant was found distributing 442 illegally reproduced CDs and VCDs in Merkato area. But the court convicted him only for one year simple imprisonment on the ground that the defendant infringed the copyright and neighboring rights proclamation negligently which is the minimum in case of gross negligence.³⁶⁰ The court reasoned out that the fact that the defendant was distributing the illegally works in the Merkato area proves his negligence.

In another case, the defendants were accused for illegal reproduction and distribution of an audiovisual work.³⁶¹ In this case, there were five defendants. Three of them were released without a need to defend the case for lack of evidence proving their involvement in the alleged crime. The two of the defendants on the other hand were released mainly on the ground that the work does not fulfill the requirements for protection as provided under Art 6(1) of the proclamation as the work was not publicized. The writer wonders here as to whether publication is a requirement for protection based on the copyright regime of the country after all. The requirements provided in this provision are originality and fixation. The work was not, of course, marketed though it was ready for that at the time. So, it was original and fixed hence qualifies for protection. The court on the other hand wrongly supposed that a work can be protected only where it is made available to the public.

The third problem which the writer observed from the criminal cases he came across is insufficiency of evidences produced before the court. Many cases have been closed for insufficiency of evidence. In the case public prosecutor v. Anteneh Gebeyehu,³⁶² for instance, the prosecutor accused the defendant for illegally reproducing and distributing of copyrighted musical and audiovisual works. To such end, the prosecutor produced witnesses and exhibits of about 81 works and a machine which reproduces 7 CDs, DVDs or VCDs at once. The court then convicted the defendant for one year imprisonment

³⁵⁸ See, the annexed case for instance, Criminal cases No. 77541/2009, 77417/2009, 79770/2009, 77410/2009, 77539/2009, 77839/2009, 77540/2009

³⁵⁹ Interview with Ato Habtamu Dejene, Electra Recording and distribution Shop, Dec. 17, 2009

³⁶⁰ Public Prosecutor v. Moges Alemayehu Birru, (Federal High Court, 2008, Criminal Case No. 46776) (Unpublished)

³⁶¹ Public Prosecutor v. Kamil Jemil, (Federal High Court, 2007, Criminal Case No. 40555) (Unpublished)

³⁶² Public Prosecutor v. Anteneh Gebeyehu, (Federal High Court, 2008, Criminal case No. 63382) (Unpublished)

according to Art 36(2) for negligent violation of the copyright and neighboring rights proclamation based on the exhibits and testimony of the witnesses. The court also confiscated the machine. The court stated the reason for convicting the defendant based on the negligent violation was that the time when the defendant committed the crime during a time when there is no much awareness about the Copyright and Neighboring Rights Proclamation. The decision was, however, reversed by the Federal Supreme Court on the ground that the evidence did not fully support the commission of the crime.³⁶³

CHAPTER FIVE

CONTEMPORARY PROBLEMS ASSOCIATED WITH PROTECTION OF AUDIOVISUAL WORKS

5.1 Synopsis of the Problems

Although the copyright law provides bundles of exclusive rights to the producer of audiovisual works, the above presented and analyzed data reveal that there are diverse alarming acts which are grossly violating the exclusive rights of same. The author/owner of the work is entitled to do or authorize to do one or more of the exclusive rights granted to him under the law. It is when these rights are protected that the author comes with another new work and the public can sustainably benefit from his works.

However, despite the Copyright and Neighboring Rights Protection Proclamation provides a number of exclusive rights reserved to the author/owner of the work. However, these wide-ranges of rights are respected more by breach than by observance in the country. While this is true in relation to almost all copyrightable works, the degree of violation by far outweigh in respect to audiovisual works.³⁶⁴ This is due to the degree of entertainment they give to the viewers as the works comprise motion pictures.³⁶⁵ This part of the paper assesses the problems being encountered in the course of enforcement of law and the possible solutions the writer of this paper think to be appropriate in the present status quo.

³⁶³ Anteneh Gebeyehu v. Public Prosecutor, Federal Supreme Court, Criminal Case No. 39071) (Unpublished)

³⁶⁴ Interview with Mitku Fentie, Supra note 325

³⁶⁵ Ibid

Nowadays, it can be said that every music shop has involved in selling unauthorized copies of the works and at every hotel and night club, it is not unfamiliar to play an illegally produced copies of audiovisual work.³⁶⁶ From a simple study conducted in hotels in 5 sub-cities of Addis Ababa by Ethiopian Audiovisual Producers Association office it was, as presented in the previous chapter, found that the number of original VCDs played in those hotels is 5%; whereas the number of illegal copies of CD played is 95%.³⁶⁷ From this figure one can easily observe how illegal copies of audiovisual works are widely spread and then affected the right of copyright owners.

There are different government bodies and professional associations involved in the enforcement and protection of copyright in general and audiovisual works in particular. Ethiopian Intellectual Property Office (EIPO), courts, public protectors, and police, are the principal government bodies empowered to enforce the copyright law in general. An Ethiopian Audiovisual Producers Association, on the other hand, is established in 1997 with a view to create awareness and encourage the protection of audiovisual works in particular. However, when we see the practice, the enforcement and protection of copyright of the author/owner of audiovisual works is much far behind from what is intended by the law.

The principal government body which is responsible to implement or follow the implementation of copyright regime in Ethiopia is the Ethiopian Intellectual Property Office. Facilitating the provision of adequate legal protection for copyright in the country and promoting knowledge and understanding of copyright among the general public are among the objectives for which the office is established.³⁶⁸ Accordingly, with a view to assess the extent of implementation of copyright law and the problems encountered in enforcing the proclamation, the office conducted certain study and identified the following main problems.³⁶⁹

- Failure to clearly understand the peculiar features of intellectual property on the part of courts, public prosecutors, and the police;

³⁶⁶ Interview with Ato Ekubay Berhe, Supra Note 324

³⁶⁷ Ibid,

³⁶⁸ Ethiopian Intellectual Property Office Establishment Proclamation, Proclamation No. 320/2003, Art. 5 (1) (4), Federal

Negarit Gazeta, 9th year, No. 4

³⁶⁹ Interview with Ato Essayas Asmelash, Copyright Promotion Team leader, at Ethiopian Intellectual Property Office, Nov.30, 2009

- Failure to give due attention to copyright violation. This is expressed by imposing penalty by the court below what the law provides and failure of the police to follow copyright offence through its day to day (regular) crime follow up;
- Considering violation of copyright as only criminal case and failure of the victim of copyright violation to institute civil cases; and
- The involvement of copyright holder in acts violating copyright and failure to consider infringement of copyright of audiovisual works as other offences.

The difference in cost between, on the one hand, the making of the original recording by an author and his business partners and, on the other hand, the reproduction of such a recording by others has contributed is significant. The producer incurs a lot for preparing the original copy of a certain audiovisual work.³⁷⁰ In the case of film, for instance, a producer has to finance the script writer and other literary author involved and the use of sophisticated visual and sound recording equipments.³⁷¹ Once a tangible record has been made of the film, however, further records of the work can be reproduced with considerable ease and at little cost.³⁷²

The illegal reproducer on the other hand incurs nothing except for the blank VCD or DVD and the reproducing machine. Moreover, advances in recording technology makes easy the reproduction of illegal version of the original work. This in turn inevitably results in difference in price charged by the producer and the illegal reproducer. Since the illegal copy has not made, and therefore does not need to recover the cost of any investment in the production of the original work, the illegally produced copies are usually sold at reduced prices, thereby undermining the original authors and/or owners' possibility of obtaining a just moral and economic reward for their work and investment.³⁷³

Thus, those who are involved in the violation of copyright through illegal reproduction and distribution of the work get much more benefit than the owners of the original copies, it becomes difficult to control the infringement of copyright of audiovisual works as the gap is wide enough

³⁷⁰ Michael Blakeney, *Supra* Note 186, p.10

³⁷¹ *Ibid*

³⁷² *Ibid*

³⁷³ *Ibid*

that tempts the public to buy the illegally reproduced copies.³⁷⁴ This fact has therefore contributed a lot for the infringement of audiovisual works.

It is obvious that since the past years, the Film and musical industry have been growing in a promising rate and create job opportunities to citizens and revenue to the government.³⁷⁵ However, if the infringement of copyright of audiovisual works continues in its present condition, it becomes difficult to get a person who can participate in this industry.³⁷⁶ The data in the previous section has even shown that this has started to practically take place as many artists are now switching from this to another line of activity. But it is stated that the Ethiopian Audiovisual Producers Association in collaboration with concerned government bodies is working its best so that the right of copyright owners of audiovisual works be protected.³⁷⁷

Lack of awareness in the community also encouraged the commission of copyright related offences since the purchaser frequently wants to buy the copy of the work that is available at cheaper prices than the original one.³⁷⁸ In Addis Ababa, at present time, there are about 4200 persons who are involved in distributing (selling) illegally reproduced copies of audiovisual works.³⁷⁹ This number of distributors shows that there are also potential buyers of the illegally copied audiovisual works. By this, it is the reproduction and distribution rights of owners that are found frequently infringed.³⁸⁰ Thus, special effort should be done in respect to the public as well.

From the above explanation of the official of the office, and interviewees from different segments of the audiovisual society, it can be said that much has to be done to primarily enhance the awareness of the public in general and of those directly entrusted with the power of enforcing copyright(judges, public prosecutors, and police) in particular. In addition, extensive awareness creation programs targeting different segment of the community involved directly or indirectly in the business of audiovisual works is mandatory. In fact, this activity should not be limited to these involved in different aspect of the business of audiovisual works. Rather, it should cover the

³⁷⁴ Interview with Ato Dawit Fikiru, President, Ethiopian Musicians Association

³⁷⁵ Interview with Ato Tesfaye Mamo, Film Professional, Dec. 17, 2009

³⁷⁶ Ibid

³⁷⁷ Interview with Ato Ukubay Berhe, supra note 324

³⁷⁸ Interview with Ato Tewodros Teshome, Film professional

³⁷⁹ Interview with Ato Hailat Taddese, Secretary General, Ethiopian Audiovisual Producers Association, Aug. 17, 2009

³⁸⁰ Ibid

general public. As it is part of the problem, it, at the same time should be part of the solution as without which, any measure taken would never bear fruits.

To such end, different awareness creation activities were taking place across different times. In this year, for instance, a sort of public awareness movement with the motto of “Respect the Art” was organized by the Ethiopian Audiovisual Producers Association in collaboration with the Ministry of Science and Technology and other associations on December 17th up to 19th. The objective of the symposium as communicated through pamphlets and circulating papers was “literary, artistic and similar creative works have a major role to enhance the cultural, social, economic, scientific and technological development of Ethiopia and its people.” For the achievement of those goals by the literary, artistic and similar creative works, there should be copyright protection. The preamble of Ethiopian copyright law also states similar statement that it is necessary to protect works that make literary, artistic and similar creative works. The outcome of this symposium was broadcasted to the public by way of live television and radio transmissions.

5.2 Proof of Infringements

A right is nothing without proof of the infringement in which it has its origin. The moment the act or fact is contested, it must be proved in order to convince the judge of the existence of the right, without which it cannot be respected. It is thus the proof of one’s right which gives life to the right and makes it of value.

As in other civil cases, the burden of proof of infringement is upon the claimant who is the owner of the right whenever there is no admission or presumptions. In our law, unlike copyright owners, there is no presumption in favor of the audiovisual owner. Hence the only option for owners of right is admission by the defendant. If the defendant admits that he has infringed the right, that resolves the problem and the court proceeds with the issue of compensation.

When the alleged infringer denies, the author or audiovisual owner is expected to prove that it has violated the audiovisual works, may be by showing that it is him who the copyrightable works and the notice of protection.³⁸¹ In this regard, the proclamation requires a notice of protection to

³⁸¹ Copyright and Neighboring Rights Protection Proclamation, Supra note 45 Article 29(1)

be affixed on the production to serve as a prima facie evidence of the facts alleged by the author or copyright owner with respect to his rights.³⁸²

Likewise, the burden of proof of violation of the criminal provisions of the proclamation lies on the public prosecutor. As revealed in the section discussing case analysis and as many of the respondents agree, however, there, often times, exists lack of undertaking extensive investigations and as a result, many cases are being closed. Due to this, the producers are getting fed up of such situations.³⁸³

5.3 Concluding Remarks

The Ethiopian Copyright and Neighboring Rights Protection Proclamation protect audiovisual works recorded on the medium of such as video cassettes, VCDS or DVDs from illegal reproduced. These rights will be enforced and action taken on the basis of a complaint by the lawful right-owner to police, public prosecutors or the judiciary authorities.

There are several reasons for a state to take efficient measures against piracy activities. The first and perhaps most important reason is that the rights under the Proclamation are violated, which means that the authors, performers producers of audiovisual works copyright and broadcasters without consent of producer suffer considerable economic loss. Thus, the need to accord protection to author of audiovisual owners for their musical or film records is justified from a purely economic interest. Thus the state should strongly engage in the business of protection of audiovisual works.

The owner of audiovisual works invests a considerable amount of money for recording. Thus it is a given fact that he needs and expects reward from his investment. If others are allowed to reproduce or produce his record, their acts prevent him from getting a reward for the investment. Hence, he needs protection for his work. This means that others should not only secure his permission to produce or reproduce his records but also able to compensate for his innovative and

³⁸² Id, Art 29(2)

³⁸³ Ato Hbtamu of Electra Recording and Distribution Shop, for instance, states that he is fed up of the almost frequently done reporting to the police with out seeing the fruits and he thinks that this is mainly due to lack of committed investigation and follow up on the part of the police. Interview with Ato Habtamu Dejene, Supra Note 334

investment. In other words, it is to underline that he has to be encouraged with reasonable rewards for his investment. Otherwise, if he is not given the right to resist unauthorized reproductions or productions of his audiovisual works he will not get enough reward from his investment and refrain or withdraw from the business of audiovisual works.

It is also a well known fact that infringement of audiovisual works is detrimental not only to the personal economic interests of beneficiaries but also to the whole society in many respects. From government perspective, for instance, audiovisual works may be used for many things such as educating the public in respect to many things such as government policies.³⁸⁴ Secondly, the government is losing revenue from the industry which would have contributed to the realization of its policies and strategies.³⁸⁵ Thirdly, it hampers creativity which has an adverse impact on the overall socio-economic and cultural development of a nation.³⁸⁶ Even one of the main reasons for recognizing copyright rights is that they make literary, artistic and audiovisual works productive. Thus, it goes without saying that if the rights of authors and/or owners of audiovisual are violated, it will have a negative impact on the productivity of literary, artistic and scientific works.

It should be noted that infringement generally affects productions of audiovisual works which were successful. In the film industry, for example, only a small share of the productions are economic successes and it is the income from this share that makes it possible for the industry to supply more valuable productions of film . If this incentive is lost, the industry may not be able to continue those productions and the output will be quantitatively lower, something which is, in the long run, detrimental to the interests of the consumers and of the society as a whole.

Thus, the reasons for fighting infringements should be seen both in short and long term perspectives. It is sometimes said that reproduction without the consent of owner of audiovisual work is not a bad phenomenon because it supplies the market with popular products at low prices. But to pursue this objective through illegal reproduction is doubly misguided. Firstly, this will be unjust to those who create, produce and distribute legitimate audiovisual.³⁸⁷ Secondly, such a policy inhibits the development of local producers; and this prolongs dependence upon foreign

³⁸⁴ Interview with comedian Mitku Fentie

³⁸⁵ Ibid

³⁸⁶ Interview with Ato Ukubay Berhe, Supra note 325,

³⁸⁷ Interview with Ato Abraham Mamo, Salesman, Dibora Records, December 17, 2009

music and films. This in turn creates cultural confusion which may even entail in loss of identity.³⁸⁸ Thirdly, the society is ultimately a victim in many respects such as the quality of the products it buys, durability of the same and the quality of the pictures it views.³⁸⁹ Hence, infringements must be eliminated if national culture, national record production, national authorship and producers of film are to be protected and encouraged.

To continue reproduction without consent of owner has apparent benefit to the dissemination of information and culture but will have in the long run contrary to the interests of a country, in the same way as the evils of drugs far outweigh any immediate economic returns generated by their cultivation and sale. Accordingly, infringement of the rights of author of audiovisual of copyrightable works has a multi-faceted effect on the different sectors of the public at large and the author and/or owner of copyright in particular.

Obviously, the first groups of people who are victims of infringement are authors and/or audiovisual copyright owners. They invest their money, waste their time and energy, exert their personal skill to produce their original work. The act of infringement, which is committed in advanced technology and which doesn't require much cost jeopardizes the right of author or audiovisual owners to a great extent. Authors or audiovisual producers are not entitled to recover their cost of production and could not derive economic benefits from their work. In case of infringement, there is a misappropriation of economic returns that would have been paid to audiovisual producer. This diversion of economic rewards from authors and their business partners by the violators removes the incentive to the investment of time, effort, skill and resources in the creation of new works. This act usually demoralizes authors, audiovisual producers, owners and performers. They would in the long run be discouraged to make an attempt to produce an original work. This in turn will affect the cultural development of the nation as a whole.

In spite of the short term benefit that a consumer would derive from illegal copies, these copies are usually of inferior quality. While consumers may sometimes see short-term benefit in the availability of cheaper works as a result of violation, the quality of reproductions made often are very inferior. Consumers will be affected in the long run as being left with non-durable copies.

³⁸⁸ Interview with Ato Ukubay Berhe, Supra note 324

³⁸⁹ Ibid

Also, consumers as members of the community will also be affected in the long run if new creative works are not encouraged and author or audiovisual producers are desperate to produce any more original works. In other words, consumers are disadvantaged in the long term. The abstraction of fruits their work authors or performers of audiovisual works result in misappropriation of the economic returns to producer of audiovisual work.

Infringement can be seen to have detrimental effects, therefore, on each of the elements that make up the copyright and neighboring rights system. In consequence, infringement threatens to reduce the evolution and development of national cultural identity which the copyright and neighboring right system is designed to promote.

Accordingly, nationwide dissemination of counterfeit infringement has different facets of implications. The first of this is its economic impact. As we have seen, the reproductions are sold for a very low price as compared to the original ones. This makes them the preference of most customers. On the other hand, we have the author or copyright owner who has spent a large amount of time and money but as a result of the wide spread unauthorized reproduction cannot even cover his production cost, let alone earning profits.

These days, sometimes, it has been difficult for the returns from sales to cover even the cost of production.³⁹⁰ According to Alemayehu form Sima Trading, a single audiovisual work requires the producer more than 100,000 Birr cost up to its marketing. In order, for the producer to cover his expense, he has to sell more than 5,000 original copies. This is not, however, true in the present situation.³⁹¹ This has a number of effects. Firstly, it makes the audiovisual industry lose its attractiveness. And it discourages authors of audiovisual owners from producing copyrightable works.

Nowadays, there are so many authors of audiovisual works that have been engaging in the business. However, if things go worsening from time to time, the author or performer will have no body in the future that produces his copyrightable works. In fact, this has, as mentioned above, practically started to happen as more than 160 artists have withdrawn from the business. In addition the society will be affected by declining number of new audiovisual works from time to

³⁹⁰ Interview with Alemayehu Abebe, Salesman, Sima Trading

³⁹¹ Ibid

time. The government is also a party to the economic prejudice by illegal production because it loses a significant amount of tax revenue that would have been collected.

The last but not the least far-reaching consequence of the rampant violation of the reproduction right is that it becomes one factor for the spread of other violations of the rights of authors. As the audiovisual business becomes discouraging and authors are discouraged economically and morally, they will not be initiated to create new musical works or film or dramatic works. Also performers will not participate on the works of authors since they will not get return from releasing albums. This forces them to resort to already created works without securing the consent of the owners. Hence, the unlawful reproduction indirectly encourages the spread of other unlawful reproduction, distribution and performance.

CHAPTER SIX

CONCLUSION AND RECOMMENDATION

6.1 Conclusion

Audiovisual works are one of the subject matter of copyright to which the law provides protection. As it is indicated in the proclamation for an audiovisual works to get the available copyright protection it must be original work of the author and it must be fixed in tangible form of expression.

The owner of copyright of audiovisual work is entitled to do or authorize to do one or more of the exclusive rights given by the copyright law for a certain time period. However we have to bear in mind that these exclusive rights do not extend to the fair use exceptions which do not require authorization from the holder of the right and which is designed to encourage research and creative activities on the basis of an already published copyrightable audiovisual works.

If anyone found involved in acts that violates the exclusive rights granted to the owner of the rights, an author/owner whose copyright is violated can seek remedies available under the law to discourage the acts of violation. There are a number of remedies available to the right holder, such as civil and criminal as well as border measures. Under civil remedies the author/owner of the work is entitled to material and moral damages as well as temporary and permanent

injunction. With respect to criminal remedies intentionally infringing a copyrighted audiovisual work is prohibited and entails imprisonment and monetary penalties.

In Ethiopia, however, it is difficult to say that the authors/owners audiovisual are exercising their rights and enjoying the benefits that emanates from their works. Their copyrights are found infringed by those persons involved in illegal reproduction and distribution of their works. However, In order to stop/minimize this infringement it is difficult to say that the owners of the work clearly know the extent of their copyright. The peculiar feature of copyright is also not clearly known by those government bodies empowered to apply and enforce the proclamation.

6.2 Recommendations

On the basis of the above findings of the research and the conclusions drawn above, the writer recommends the following points which he thinks will contribute in minimizing the illegal activities involved in the infringement of copyrights of audiovisual works and in providing equitable remedies for those whose rights are violated.

1. Awareness creation activity should be done continuously. It is only when people are aware of the problems, consequences of the problem and the remedies that can act positively towards fighting the problem. The public should at the same time be aware of the economic and social benefits of the copyright industry and the dangerous of failure to protect these rights. Strong and continuous awareness creation activities must be made through coordination and cooperation among those government bodies entrusted with the enforcement of this rights and concerned professional associations to business communities involved in this field and to the public at large the benefits accrued from the protection of these rights to both the author of the works and the public. The public must be aware the job opportunity that may be created to citizens by this industry sector and the tax that may be obtained from it by the government.

2. Judges, public prosecutors and the police must also be made to have a clear understanding on the peculiar features of copy right and copyright laws in general and audiovisual works in particular. In this regard more work must be done to implement and enforce the laws consistently. The fact that infringements of audiovisual works may be made at distant times and places is complicating the solution and bringing the offenders to serve justice. Thus any measure to be taken by these organs to solve the problem should take into account such peculiar problems. In this regard, the writer also suggests the establishment of division or subdivision in the police which is exclusively concerned with the investigation of intellectual property infringement. This helps to give to the problem due attention and to increasingly become familiar with the nature of the crimes in the field and take appropriate measures on time. Moreover, a series of trainings and workshops should be organized to this category of stakeholders as they have significant role to play for which sufficient knowledge about the subject matter is a prerequisite.
3. Ethiopian intellectual property office should do its best to facilitate the proper implementation of copyright law and to promote the understanding of the public and concerned bodies about the benefit of protection of copyright of audiovisual works. It has to conduct detail research to identify more the problems that contributed for the infringements of copyrights of audiovisual works and the possible measures that will be taken to eliminate /minimize the identified problems.
4. Ethiopian Audiovisual Producers Association must still exert its maximum effort to enhance the awareness of its members and stakeholders by organizing different awareness creation programs and by publishing the problems and the measures to be taken through its quarterly published bulletin.
5. System of registration of copyrighted works including audiovisual ones should be introduced as soon as possible. This avoids or at least minimizes the existing problem. This resolves problems such as those similar works prepared simultaneously.
6. The audiovisual community in general and producers in particular should be active in taking court action for civil remedies including actions for compensation. If they do this in

a required manner, it may be disincentive for the infringers as it may be very difficult for them to fully compensate the entire damage sustained by a producer.

7. A whistleblower's commission system should be introduced. This in particular would be of significant help in finding the infringers who reproduced the illegal copies at their homes or at any places but not publicly. It will also have significant role in maintaining evidences as the illegal reproducers may be caught while they are reproducing the illegal copies through the information obtained by the whistleblowers.
8. All of the recording and distribution producers, companies, and others call for the government to take special action to arrest the problem. The government should therefore give due emphasis to the problem and try its level best in this regard. Some of the informants even go to the extent of recommending the active involvement of the government in matters such as the manufacturing of CDs, DVDs, and VCDs which indirectly has role in solving the problem. This may, for instance, solve at least two problems. First, it may has a role in decreasing the present price of blank CDs, DVDs and VCDs. And secondly, it may minimize the degree of being divulgence of audiovisual works during the reproduction.
9. Finally, the writer suggests for the making away of the peddlers of audiovisual works from the market. The writer believes that these intermediaries are exacerbating the situation by distributing the illegal copies to the public. Unlike the renting shops, it is not also possible to control their activities. In addition, these intermediaries do not pay tax and after all, they don't have license.

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Questioner to be Filled by Police, Public Prosecutor and Senior Judges

Dear sir/madam

My name is Yemane Gesesew conducting research on LLM thesis on in infringement and remedies of economic rights audiovisual works under the Ethiopian copyright law. Law and practices in Addis Ababa.

I have devised some question related to the theme of my research. I anticipate you are too busy handling other matters. However your genuine and diligent response is indispensable for the successful completion of my study. Hence I kindly requested to help me in filling this questionnaire.

Thanks in you in advance.

I. Part one

1. General information

- 1.1** Name _____
Position _____
Responsibility _____
Work experience _____

2. Questionnaire

1. What are the common types of audiovisual works in Addis Ababa

2. Who apply in the police station enforce his right

3. What are the types of evidence you collect to proof the case

4. Who are the violators in the audiovisual works?

5. What is audiovisual work?

6. What type's remedies do you provide when rights are violated?

7. How does the suspect reproduce the audiovisual works?

8. What mechanism do use to distinguish between original work and reproduce audiovisual works.

10 What is the educatoreal qualification of the perpetrators of audiovisual works related violators?

- a. Illiterate _____
- c. Elementary and junior level ____
- d. Secondary level _____
- e. college /university____
- f. All educational level_____

13. What is the economic status of must of the suspect?

- A. Very poor b. Rich
- C. middle income d. very rich e. mixed

14. What are the justifications provided by criminals for their involvement in audiovisual works?

15. How do you evaluate the operational and institutional capacity of law enforcement agents in tacking audiovisual related crimes?

- A. the police is operationally efficient and strong_____.
- B. The police is weak and inefficient_____
- C. The law enforcements agents have financial and other problems_____
- E. The police has institutional weakness other reasons_____

16. How do you assess the judicial system in Addis Ababa in combating audiovisual work infringement?

17. Is the existing law comprehensive enough to give solution to the problem of infringement of audiovisual works?

18. Who are the main victims of infringement of audiovisual works?

19. What the possible solution would you propose to curb the infringement of the audiovisual works?

20. Any other comment if you have

በፍርድ ቤት፣ በፓሊስና የዐ/ህግ የሚሞላ

እኔ ስም የማን ገሠሠው ሲሆን በአዲስ አበባ ዩንቨርሲቲን የማስተር ተማሪ ነኝ በመጨረሻ የመመረቂያ የሒፍን የአእምሮ ወጤት የሆነ የቅጅ መብት ጋር የተያየዘ በተለይ ከኦድዩ ቨዥቸዋል የሥራ አመጭ ባለቤት የመብት ጥሰትና በህግ አስከበሪዎች የሚወሰዱት የመፍትሔ እርምጃ ተግባራዊ እንቅስቃሴ ምን ይመስል። የሚለው በማጥናት ላይ እገኛለሁ። በእርግጠኝነት ብዙ ስራ እንደሚኖርት አውቃለሁ። ይሁን እንጂ የእርስዎ በጥሞና ይህን መጠይቅ መምላቱ በጥናቴ ወሳኝ በመሆኑ እንዲሞሉሉኝ በማክበር እጠይቃለሁ።

ክፍል አንድ አጠቃላይ ሁኔታ

- 1. ስም _____
- ኃላፊነት _____
- የሥራ ልምድ _____

ክፍል ሁለት

- 1. በአዲስ አበባ የሚመረቱ የአድዶ ቨዥቸዋል ሥራዎች ምን አይነት ናቸው

- 2. በፓሊስ ጣቢያ ወይም በፍርድ ቤት ቀርበው መብቴ ተጥሳል ብለው ቀርቦ የሚያመለክት ማን ነው

- 3. ክሱን ለማስረዳት የሚያያዝ በማስረጃ አይነት ምንድነው

4. የወንጀል ድርጊቱ የሚፈፀሙ ምን አይነት የሀብት ሁኔታ ናቸው

5. ለመሆኑ የአዲዱ ቪዝዋል ሥራ ማለት ምን ማለት ነው

6. አመልካች የመብት ጥሰት ደርሳኛል ብሎ ሲያመለክት የሚሰጠው የመፍትሔ አይነት ምን ነው።

7. የወንጀል ድርጊቱ ፈፃሚ በምን አይነት መንገድ ቅጅን ያባዘዋል።

8. ትክክለኛ የሆነ ቅጅ ከተሰጠው ለመለየት ምን አይነት መንገድ ነው

9. የህግ አስከበረዎች የቅጅ መብት ጥሰት ለመቆጣጠር ያላቸው ብቃት ምን ይመስላል

10. አሁን ያለው ህግ የቅጅ መብት ጥሰት መፍትሔ ለመስጠት በኩል እንዴት ያገመገሙታል

11. በቅጅ መብት ጥሰት ተጠቀሞች እነማን ናቸው

12. የቅጅ መብት ጥሰት ለመቆጣጠር መፍትሔ ብለው የሚገሞቱት ምንድን ነው።

13. የወንጀል ድርጊት ፈፃሚዎች ለመብት ጥሰት ምክንያት የሚሉት ምንድን ነው።

14. የወንጀል ድርጊት ፈፃሚዎች የዕድሜ ሁኔታ

15. የወንጀል ድርጊት ፍፃሜዎች የትምህርት ደረጃ

16. የወንጀል ድርጊቱን ለመካከል የህግ አስከባሪዎች የኘሬሽናል ብቃት እንዴት ይገመገሙታል

17. አዲዩ ቪዥኖል ባለ መብት ማን ነው።

18. አዲዩ ቪዥኖል ሥራ ላይ ተሳታፊዎቹ ያላቸው መብት ምንድን ነው

በአዲዬ ቪዥኖታ ባለሙብት የሚሟላ መጠይቅ

እኔ ስም የማነ ገሠሠው ሲሆን በአዲስ አበባ ዩንቨርሲቲን የማስተር ተማሪ ነኝ በመጨረሻ የመመረቂያ የሒፍን የአእምሮ ወጤት የሆነ የቅጅ መብት ጋር የተያየዘ በተለይ ከአድዩ ቫዥኖታ የሥራ አመጭ ባለቤት የመብት ጥሰትና በህግ አስከበሪዎች የሚወሰዱት የመፍትሔ እርምጃ ተግባራዊ እንቅስቃሴ ምን ይመስል። የሚለው በማጥናት ላይ እገኛለሁ። በእርግጠኝነት ብዙ ስራ እንደሚኖርት አውቃለሁ። ይሁን እንጂ የእርስዎ በጥሞና ይህን መጠይቅ መምላቱ በጥናቴ ወሳኝ በመሆኑ እንዲሞሉሉኝ በማክበር እጠይቃለሁ።

ክፍል አንድ ጠቅላላ ሁኔታ

ስም _____

ኃላፊነት _____

የሥራ ልምድ _____

ክፍል ሁለት

1. አዲዬ ቪዥኖታ ማለት ምን ማለት ነው

2. በአዲዬ ቪዥኖታ ውስጥ የሥራ ኃላፊነትዎ ወይም ሚናዎ ምንድነው የሚሠሩት

3. በኢትዮጵያ ቅጅና ተዛማጅ ህግ መሠረት ምን ምን አይነት መብት አለዎት

4. ያመረቱትን የአዲዬ ቪዥኖዎል ከተባዛ የት ሄደው ያመለክታሉ

5. ማነው ብዙ ጊዜ መብትዎን የሚጥሰው

6. ለተሰሪው ሥራ ተመጣጣኝ ክፍያ ተፈፀሞል ለማለት ይቻላል ወይ

7. በአዲዬ ቪዥኖዎል ቅጅ በማባዛት ከሥራ ያቆሙ አርቲስት ያውቃሉ ወይ

8. የመብት ጥሰት በገጠሙ ምክንያት ወደ ፍርድ ቤት ወይም ፖሊስ ጣቢያ ሄደው ያውቃሉ ወይ

9. አዎ ከሆነ መልስዎ የተሰጥዎት መፍትሔ ምንድነው

10. የማስሚዲያ ለማሰራጨት፣ ለሙዚቃ ቤት ለማከራያት ወይም በማታ ምሽት ሰዎች ለማሳየት ፊቃድ እንደሚያስፈልግ ያውቃሉ ወይ

11. አዎ ከሆነ ያመረቱትን የአዲዬ ቪዥዋል ሥራ ምን ያህል እንዲከፈሉ ይጠይቃሉ ወይ

12. በአዲዬ ቪዥዋል ሥራ ትክክለኛ ቅጅ ለመሆን የማስተወደድ ምልክት ይደረግበታል ወይ

13. በጉምሩክ ክልል ውስጥ ለቅጅ መብት ተጥሳት ከውጭ አገር እንዳይገባ አመልክተው ያውቃሉ ወይ

14. መብቱ የበለጠ ለማስጠበቅ ምዝገባ ያስፈልጋል ብለው ያምናሉ ወይ

15. አንድ አይዬ ቪዥዋል ሥራ ጥበቃ እንዲያገኝ ሊያሟሉቸው የሚገባ መስፈርት ምን ምን ናቸው

16. ሥራዎ በክራይ መልክ ወይም በፍቃድ መልክ ሌላ ሰው እንዲጠቀምበት ሰጥተው ያውቃሉ ወይ ከሆነ ምን ያህል ያስከፍሉታል

17. አሁን ያለው ህግ የቅጅ መብት ከማስከበር አንጻር እንዴት ይገመግሙታል።

በሌሎች የአዶዩ ቪዥኖች ተጠቃሚዎች የሚሞላ መጠይቅ

እኔ ስም የማን ገሠሠው ሲሆን በአዲስ አበባ ዩንቨርሲቲን የማስተር ተማሪ ነኝ በመጨረሻ የመመረቂያ የሎፍን የአእምሮ ወጤት የሆነ የቅጅ መብት ጋር የተያየዘ በተለይ ከአድዩ ቪዥኖች የሥራ አመጫ ባለቤት የመብት ጥሰትና በህግ አስከበሪዎች የሚወሰዱት የመፍትሔ እርምጃ ተግባራዊ እንቅስቃሴ ምን ይመስል። የሚለው በማጥናት ላይ እገኛለሁ። በእርግጠኝነት ብዙ ስራ እንደሚኖርት አውቃለሁ። ይሁን እንጂ የእርስዎ በጥሞና ይህን መጠይቅ መምላቱ በጥናቱ ወሳኝ በመሆኑ እንዲሞሉሉኝ በማክበር እጠይቃለሁ።

ክፍል አንድ ጠቅላላ ሁኔታ

ስም

ኃላፊነት

የሥራ ልምድ

ክፍል ሁለት

1. የአዶዩ ቪዥኖች ሥራዎች ለህዝብ ሲያቀርቡ ለሥራ አመንጭ ፍቃድ ወይም ክፍያ ይሰጣሉ ወይ

2. ለጥያቄ አንድ መልስዎ አዎ ከሆነ ምን ያህል ይከፍላሉ

3. ያለ ሥራ አመንጭው ፍቃድ መጫወት ወይም ለህዝብ ማሳየት ክልክል መሆኑ ያውቃሉ ወይ

4. ፊልም በኢትዮጵያ የተመረተ ሲያከራዩ ከሰበሰቡት ክሪይ ምን ያህል ለሥራ አምጪው ያከፍላሉ።

DECLARATION

I the undersigned declare that this thesis is my original work and has never presented for degree in any other university that all sources of materials used in the thesis have been duly acknowledged.

Declare by

Name Yemane Gesesew

Signature _____

Date _____