

**Comparative Study
on Copyright Laws of
ARIPO Member States
and their Adherence
to International
Instruments on
Copyright and
Related Rights**

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Volume 1

**COMPARATIVE STUDY ON
COPYRIGHT LAWS OF ARIPO
MEMBER STATES (BOTSWANA,
GHANA, KENYA, RWANDA, SIERRA
LEONNE & UGANDA)
AND THEIR ADHERENCE TO
INTERNATIONAL INSTRUMENTS ON
COPYRIGHT AND RELATED RIGHTS**

Volume 1

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Executive Summary

The Copyright and Related Rights mandate was included in 2002 to the African Regional Intellectual Property Organization (ARIPO). This called for ARIPO to develop and implement strategies through which it can promote and support growth and effectiveness in the administration, management and enforcement of copyright and related rights. As a result, this desk research was undertaken by ARIPO and represents the position on stated variables based on available literature. The report presents a comparative study of six of the ARIPO Member States, whose copyright and related rights laws were reviewed at length as part of the study forming the first phase of the study. These are Botswana, Ghana, Kenya, Uganda, Rwanda and Sierra Leone.

The study further looks at the adherence to international treaties related to copyright and related rights of the six ARIPO Member States, mentioned above, as well as the benefits of international treaties both at the broad level and on a country-specific level. This is one of the tools that could inform ARIPO, its Member States and the general public of the status of compliance to international treaties and the national laws on copyright and related rights. Such information will contribute towards advising Member States on policy issues, harmonising the laws and also improving the national legislations for the benefit of all stakeholders nationally and internationally so as to ensure growth and development in the copyright and related rights arena.

Acknowledgment

This desk research is a result of concerted efforts by the African Regional Intellectual Property Organization (ARIPO) in its quest to bring value and growth transformation within the Member States copyright and related rights legislations through the comparative study of their laws on copyright and related rights. Many thanks go to ARIPO's Anderson Ray Zikonda Library for the favourable environment availed to conduct this desk research. We thank the Member States who gave their inputs to improve this study and all colleagues who assisted in one way or the other to make this work a success.

Acronyms & Abbreviations

ACRONYM

ARIPO	African Regional Intellectual Property Organization
Act	Copyright and Related/Neighbouring Rights Act
Art.	Article
CIPA	Companies Intellectual Property Authority
COSBOTS	Copyright Society of Botswana
CopyGhana	The Reproduction Rights Organization of Ghana
CMO	Collective Management Organisation
GDP	Gross Domestic Product
ICT	Information Communications Technologies
KECOBO	Kenya Copyright Board
KOPIKEN	The Reproduction Rights Society of Kenya
KAMP	Kenya Association of Music Producers
KOPIKEN	The Reproduction Rights Society of Kenya
MINICOM	Ministry of Trade and Industry
NISR	Rwanda National Institute of Statistics
PRISK	Performers Rights Society of Kenya
ppp	Purchasing Power Parity
PPP	Public Private Partnership
RDB	Rwanda Development Board
RSAU	Rwanda Society of Authors
S.	Section
Sq Km	Square Kilometre
TPM	Technological Protection Measure
URSB	Uganda Registration Services Bureau
UFMI	Uganda Federation of Movie Industry
UPRS	Uganda Performing Rights Society
URRO	Uganda Reproduction Rights Organization
USD	United States Dollars

I. Background

In implementing its mandate on Copyright and Related Rights, ARIPO undertook a comparative study on copyright laws of its Member States and their adherence to international instruments on copyright and related rights with the view to study the legal regimes on copyright and related rights. This includes; identification of provisions and gaps in the copyright laws and their compliance to international instruments on copyright and related rights. The study will contribute towards advising Member States on policy issues, harmonising the laws and also improving the national legislations for the benefit of all stakeholders nationally and internationally so as to ensure growth and development in the copyright and related rights arena.

The study is being done in phases. Phase one of the study consists of the review of the copyright laws of Botswana, Ghana, Kenya, Rwanda, Sierra Leone and Uganda. The review reveals that the copyright laws of those countries were enacted as follows: Botswana – 2006, Ghana – 2005, Kenya – 2001, Rwanda – 2009, Sierra Leone – 2011 and Uganda – 2006. Phase two of the study will cover Mozambique, Sudan, Lesotho, Swaziland, The Gambia, Liberia, Zimbabwe and Zambia.

The following countries Malawi, Namibia, and Tanzania are at an advanced stage of amending their copyright and related rights laws and hence cannot be part of this review. The copyright law of São Tomé and Príncipe is the 1912 legislation in Portuguese and it is currently being revised. In the case of Somalia, it is not possible to obtain reliable responses due to the prevailing political situation.

The study applied desk research on comparative study of the copyright and related rights regime in the six countries.

II. Country Profiles

(i) Botswana

Botswana is situated in Southern Africa surrounded by Angola, Zambia, Zimbabwe, South Africa and Namibia. The country has a total land size of 581 730 sq. km; a population of 2 155 784 (July 2014 est.); a GDP purchasing power parity of USD 34 Billion and an 85.1% literacy rate. A study on the contribution of the creative industry on the GDP

has not been undertaken though music, photography and dramatic works are some of the major copyright sectors which contribute to the national economy. The key industries are mining, livestock agriculture and textiles. The currency used is the Botswana Pula.

In Botswana there is an established system for intellectual property. The Companies and Intellectual Property Authority (CIPA) has three Offices within the Authority, namely, the Companies and Business Names Office, the Industrial Property Office and the Copyright Office.

CIPA's functions include promoting and enabling the full protection of the rights of investors and right-holders obtained under the Companies Act, Registration of Business Names Act, Industrial Property Act and Copyright and Neighbouring Rights Act. The Copyright Office is responsible for all matters affecting copyright in Botswana; supervises the activities as provided for under section 36A of the Copyright and Neighbouring Rights Act; maintains an effective database on copyright matters and on authors and their works; maintains a register of works published in Botswana; issues a licence, prescribed by the Minister, for the operation of the Copyright Society; designs and issues the security device under section 35A of the Copyright and Neighbouring Rights Act; administers the fund established under section 35G (2) of the Copyright and Neighbouring Rights Act; be responsible for such matters related to copyright, as the Minister may direct for the better carrying out of the purposes and provisions of the Copyright and Neighbouring Act and this Act; and exercises any other powers conferred on it by the Act or any other Act, or which the Minister may by regulations prescribe.



The Copyright and Neighbouring Rights Act of Botswana provides for technical device levy which is charged on all technical items with potential to copy protected works. The Levy on Technical Devices Fund was established and is used to fund projects whose intended objective is to promote creativity in Botswana. The Technical Devices Fund Committee issues open calls inviting individuals, government departments, associations, nongovernmental organisations and private entities to submit project proposals to be considered for funding.

The Copyright Society of Botswana (COSBOTS) is the Collective Management Organization in Botswana, incorporated in 2008 as a Private Company limited by guarantee. COSBOTS is mandated by the Copyright and Neighbouring Rights Act CAP 68:02 to among others license and collect royalties from users of copyright works and distribute to right holders. By virtue of representing copyright owners or owners of protected works, that is music, photography, film and video, visual arts, literary and dramatic works; through legislation by the Copyright and Neighbouring Rights Act CAP 68:02.

(ii) Ghana

The country situated in West Africa, is formerly known as the Gold Coast, and is surrounded by Togo, Cote D'Ivoire and Burkina Faso. Ghana has a total land size of 238 533 sq. km; population of 25 758 108 (2014 est.); a GDP purchasing power parity (ppp) of USD 90.41 Billion and a 71.5 % literacy rate. The main economic activities are estimated at Agriculture (21.5 %), Industry (28.7 %) and Services (49.8%). Ghana is reputed for its cloth designs, a rising film industry and the creative industry in general. The currency used in Ghana is the Ghanaian Cedi.



II. Country Profiles

Ghana has not yet undertaken a study on the creative industry's contribution to the national economy but a study was commissioned by the Musicians Union of Ghana in 2014 titled "Comprehensive Study of the Music Sector in Ghana" funded by the Government of Ghana with the support from World Bank. The study established that the sector is estimated to employ over 27,000 along the value chain and it contributes approximately 0.20% to the GDP of the country.

The copyright system in Ghana is governed by the Copyright Act No. 690 of 2005, which established the Copyright Office responsible for administration of copyright. Its functions include: implementing copyright and copyright related laws and regulations and providing for copyright administration; registering right holders' works, investigating and redressing cases of infringement of copyright, and settling disputes of copyright where those disputes have not been reserved for settlement by the Copyright Tribunal; be responsible for the administration of external copyright relations; administration of copyrights of which the State is the owner; carrying out other duties in relation to copyright administration. A copyright monitoring team was setup too.

The Copyright Office has Copyright Regulations 2010 L.I. 1962 which has provisions to be followed for any person who wants to establish a Collective Management Organization. They have to get the approval of the Minister in writing if they meet the conditions in the regulations such as a body corporate registered as a company limited by guarantee under the Companies Act, 1963 (Act 179). If it is a music, audio-visual rights, performers rights or literary rights society, have to provide evidence of having functional presence in the society. If it is a music rights or performers rights society that it has at least twenty members in each of the regions in which it is functional. If it is a literary rights or audio-visuals rights society that it has at least fifty members at the national level, and each member has at least one published work or holds the entire economic rights on one published work.

There are three Collective Management Organization in Ghana. These are Ghana Music Rights Organization (GHAMRO), CopyGhana (Reproduction Rights Organization), and Audio-visual Rights Society of Ghana (ARSOG).

GHAMRO are collecting royalties on behalf of the music right-holders and the right holders are fully involved as they accompany GHAMRO officials to negotiate and collect royalties. Distribution of royalties is also done through the use of mobile phones.

Authentication devices will soon be re-introduced in Ghana to mitigate piracy in the country. Piracy kills creativity, piracy is illegal, piracy is unacceptable it needs concerted efforts from all players the public, users, right holders, police, customs, judiciary, copyright office and the CMOs to curb it.

GHAMRO has come up with a system called AGRIMS (Age, Right holders Monthly Stipend) which intends to financially support the retired members of the society. Some of the right holders as they get old some can no longer produce songs. So AGRIMS supports right holders when need arises. It is very helpful to the retired members surety of having something to sustain themselves.

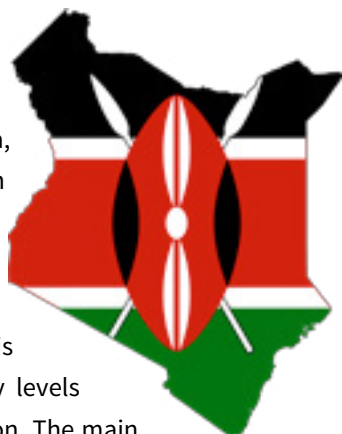
The Audio-visual Rights Society of Ghana (ARSOG) was established in 2011 to protect the rights of owners of Audio-Visual works in Ghana. These right owners are producers, writers and performers. ARSOG collects royalties on behalf of right holders from users.

CopyGhana is the Reproduction Rights Organization which has mandate from five (5) member associations namely, Ghana Association Writers, Ghana Book Publishers Association, Ghana Journalists Association, Ghana Association of Visual Artists and Ghana Union of Professional Photographers and other individual rights holders. CopyGhana has licensed four tertiary institutions and ten polytechnics, namely Accra Polytechnic, Bolgatanga Polytechnic, Cape Coast Polytechnic, Koforidua Polytechnic, Ho Polytechnic, Takoradi Polytechnic, Kumasi Polytechnic, Sunyani Polytechnic, Wa Polytechnic and Tamale Polytechnic as at April 2016. Eight (8) of the Polytechnics have been upgraded to Technical Universities with effect from September 2016.

II. Country Profiles

(iii) Kenya

Kenya is situated in East Africa and it borders Ethiopia, Somalia, Tanzania, Uganda and Southern Sudan. The country has a total area of 580 367 sq. km, a population of 45 010 056, GDP purchasing power parity is at USD 79.9 billion and literacy levels are 87.4 % of the total population. The main economic contributors to GDP are agriculture (29.3%), industry (17.4%) and services (53.3%) (2013 est.). The currency used in Kenya is the Kenyan Shillings. A study on creative industry which was undertaken in 2009 showed that in 2007 copyright industries contributed 5.3 % to GDP and 3.4% to employment.



The Copyright Act Cap 130 governs the copyright system in Kenya. This Act established the Kenya Copyright Board to direct, co-ordinate and oversee the implementation of laws and international treaties and conventions to which Kenya is a party. It also performs all other functions that relate to copyright and other rights recognised by this Act and ensure the observance thereof. Further KECOBO also licenses and supervises the activities of collective management societies as provided for under this Act. KECOBO also devise promotion, introduction and training programs on copyright and related rights, to which end it may co-ordinate its work with national or international organisations concerned with the same subject matter. Apart from this it also organises the legislation on copyright and related rights and propose other arrangements that will ensure its constant improvement and continuing effectiveness. Other functions are to enlighten and inform the public on matters relating to copyright and related rights; maintain an effective data bank on authors and their works; and administer all matters of copyright and related rights in Kenya as provided for under the Act and to deal with ancillary matters connected with its functions.

KECOBO grants certificates of registration for a period of twelve months from date of issue to associations who have

satisfied the criteria to carry on the collective administration of copyright that include: the body is a company limited by guarantee and incorporated under the Companies Act (Cap. 486); it is a non-profit making entity; its rules and regulations contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of members of the collecting society are adequately protected; its principal objectives are the collection and distribution of royalties; and its accounts are regularly audited by independent external auditors elected by the society.

KECOBO shall not approve another collecting society in respect of the same class of rights and category of works if there exists another collecting society that has been licensed and functions to the satisfaction of its members. Furthermore, by notice in the Gazette, KECOBO may de-register a collecting society if it is satisfied that the collecting society is not functioning adequately as a collecting society; is not acting in accordance with its Memorandum and Articles of Association or in the best interests of its members; has altered its rules so that it no longer complies with subsection 4 of section 46; and it has refused or failed to comply with any of the provisions of the Act.

There are four collecting societies in Kenya, namely: Kenya Association of Music Producers (KAMP), Reproduction Rights Society of Kenya (KOPIKEN), Music Copyright Society of Kenya (MCSK) and Performers Rights Society of Kenya (PRISK).

The Music Copyright Society of Kenya (MCSK) is a collective management organization registered in 1983 as a Company limited by guarantee under the Companies Act (Cap 486 of the law of Kenya) and licensed by KECOBO as a collecting society. It aims at building, mobilizing, institutionalizing, and supporting the music fraternity within Kenya. Integrating, sustaining and enhancing earning for their works for authors, composers, arrangers and publishers.

The Performers Rights Society of Kenya (PRISK) is a collective management organisation licensed by the Kenya Copyright Board to represent performers in sound recording and audio-visual works.

II. Country Profiles

PRISK is a non-profit company limited by guarantee, and not having a share capital. PRISK negotiates, sets tariffs with users of sound recordings and audio-visual works in respect to any exploitation of works relating to broadcasting, communication to the public, making available by wire or wireless including transmission to subscribers to a diffusion or any digital service, copying or similar reproduction such as digital copying and collects license fees and distributes royalties to its right holders.

The Kenya Association of Music Producers (KAMP) is a collective management organization registered as a non-profit making private company, with no share capital limited by guarantee in 2003 under the Companies Act, Chapter 486 of the Laws of Kenya and licensed by the Kenya Copyright Board to operate as a collective management organisation in May 2008. KAMP represents the rights and interests of producers of sound recordings, it negotiates with users, collects license fees and distribute royalties for communication to the public and broadcasting in accordance with the Copyright Act of 2001 of the Laws of Kenya.

KOPIKEN is a CMO established in 2005 under the Copyright Act as a company limited by guarantee. KOPIKEN licenses reproduction of printed literary, artistic and musical works used by way of photocopying, scanning, printing and similar means such as digital reproduction against payment of fees where it is not practical for individual right holders to do so. KOPIKEN represents authors (non-fiction, fiction and oral literature), publishers, photographers illustrators and designers through their respective associations which include, Kenya Non Fiction Authors Association (KENFAA). This is an association of non-fiction writers and translators who have published at least 100 pages works comprising of books, periodicals and professional and scientific journals. Writers Association of Kenya (WAK), which is an association of writers in Kenya, who have published creative literary works such as poems, short stories, novels, plays, biographies, autobiographies and memoirs, literary criticism and other kinds of literary scholarship. Kenya Oral Literature Association (KOLA). Which is a professional association of researchers, scholars in Kenyan Universities and oral artists.

Kenya Union of Journalists (KUJ), which is an association of persons engaged in journalistic works in Kenya and the Kenya Association of Photographers Illustrators and Designers (KAPIDE) which is an association for artists, visual creators, photojournalists, illustrators and designers are represented too by KOPIKEN. Song lyricists and writers of sheet music are also represented by KOPIKEN and the Kenya Publishers Association (KPA) which is an association bringing together all companies, organizations or individuals engaged in book publishing in Kenya.

(iv) Rwanda

Rwanda is a landlocked country situated in East Africa, bordered to the North by Uganda, to the East by Tanzania, to the South by Burundi and to the West by the Democratic Republic of the Congo. Considered to be among the smallest countries on the continent, Rwanda's total area is estimated to be 26 334 sq km. According to Rwanda's National Institute of Statistics (NSIR), in 2015, the population density in Rwanda was estimated to be 445 people per square kilometre and the total population is approximately 11,262,564. Rwanda's economy is increasingly experiencing the predominance of the service sector. The country experienced a GDP per capita of US\$ 1,536 Billion for the 2016 first quarter according to the NISR and 71.1 % literacy rate. The currency used is the Rwandan Franc.



Rwanda through the Ministry of Sports and Culture in 2014 undertook mapping on creative industry and in 2016, started its first cultural and creative industries survey. The objective of the survey is to identify institutions, organizations and individuals working in the sector. The survey will also collect information on employment, revenue, expenditure and marketing strategies from institutions, and build a database of the creative and cultural industries as well as a management system for the exploitation of the data to establish their contribution to the economic growth of the region.

II. Country Profiles

The law governing copyright matters is the Law on Intellectual Property, Law N° 31/2009 of 26/10/2009. The Ministry of Trade and Industry (MINICOM) is responsible for: the policy framework, preparing policy related to the promotion of intellectual property, preparing orders related to the application of the law and to supervise the organ in charge of intellectual property.

The Ministry of Sport and Culture is responsible for protecting the moral rights of creators of copyrighted works, promote artists and performers, promote and protect Rwanda's national culture and heritage and to prepare orders related to copyright. The Office of the Registrar General is in charge of daily registration of intellectual property, to establish measures allowing for just remuneration of copyright owners and equitable distribution of remunerations available under the copyright and related rights, to monitor activities of private institutions that manage jointly copyright and related rights and to arbitrate all disputes arising from intellectual property.

In Rwanda there is one multi-purpose collective management organization called Rwanda Society of Authors (RSAU). The RSAU was established and registered with the Rwanda Development Board (RDB) in May 2010. RSAU is the first collective management organization comprising of the Association of Musicians (INGOMA Music Association), the Association of Cinema Artists (IRIZA CARD), the Association of Writers (LA PLUME D'OR) and ISOKO Arts Rwanda. RSAU has started licensing process in May 2016 the distribution is expected to be in 2017.

(v) Uganda

Uganda is located in East Africa, to the northwest of Lake Victoria surrounded by South Sudan, Democratic Republic of the Congo, Rwanda, Kenya and Tanzania. The country



has a total area of 241 038 sq km, a population of 35 918 915, a GDP purchasing power parity of USD 54.37 Billion and the literacy levels of 73.2 % of the total population.

Agriculture is the mainstay of the economy. The currency used is the Ugandan Shillings.

Uganda has a relatively vibrant information sector, including a small but fast-growing publishing industry. Furthermore, Uganda has a liberalized telecommunications industry which has contributed tremendously to growth of the country's ICT sector. Given this infrastructure, education and research institutions are making increasing use of digital technology for both instruction and research. The country however has a growing film and music industry, rich cultural heritage and other diverse copyright and related rights activities. A creative industries study to establish potential contribution of copyright to the national economy has not yet been undertaken.

The law governing copyright matters is the Copyright and Neighboring Rights Act 2006. Section 2 of the Copyright Act provides the scope for copyright protection and defines the different types of works. Section 5 of the Act outlines the specific types of works that are eligible for protection under copyright. Besides economic rights including publication, distribution, broadcasting and communication to the public, which are outlined in detail in Section 9, the law also recognizes and protects moral rights under Section 10. The types of works that will receive protection, include literary, scientific and artistic works (including computer programmes, illustrations and traditional folklore and knowledge), as well as derivative works such as translations, transformations and collections. However, Section 6 makes it clear that ideas are not protected by copyright and Section 7 excludes from copyright protection 'public benefit works' such as laws and government reports. The 2006 Copyright and Neighbouring Rights Act affords copyright protection for 50 years after the lifetime of the author in most cases, but otherwise the term of protection varies depending on the type of work. With reference to audiovisual work, sound recordings and broadcasts, the economic rights of the author are protected until the expiration of 50 years from the date of making the work or from the date the work is made available to the public with the consent of the author. In general, the duration of copyright term in Uganda keeps to the minimum requirements laid out in Article 12 of TRIPs.

II. Country Profiles

The Uganda Registration Services Bureau (URSB) is the National Copyright Information Center. Section 41 of the Act, provides for a Registrar of Copyright and other officers. The Registrar of Copyright shall: process applications for licenses; register works and productions to be registered under this Act; register collecting societies; give guidance to and discipline collecting societies; register assignments, licences and transfers of copyrights; register copyright contracts relating to exploitation of rights; provide copyright and neighbouring rights information service to the public and users of copyright works; in collaboration with the collecting societies, advise Government, on matters relating to copyright and neighbouring rights; perform any other duty or function relating to copyrights, neighbouring rights and collecting societies as may be necessary for the better functioning of the Act or as the Minister may by regulation prescribe. As at August 2016, URSB has registered and licensed three collecting management organizations' namely: Uganda Federation for Movie Industry, Uganda Performing Right Society and Uganda Reproduction Rights Organisation.

The Uganda Federation for Movie Industry (UFMI) was formed in 2006 as a company limited by guarantee having no share capital. On 24 July 2009 UFMI was licensed as a collective management organisation. The CMO manages members' rights in audiovisual works.

Uganda Performing Rights Society (UPRS) was formed in 1985 by authors (mainly musicians) to advance the cause of copyright administration in Uganda. It is registered with the Registrar of Companies as a company limited by guarantee having no share capital. UPRS administers performing rights of members in musical works and sound recording both foreign and local works falling within their repertoire.

Uganda Reproduction Rights Organisation (URRO) was approved as a collective management organization for reproduction rights in 2011. URRO represents the Uganda Publishers Associations, Uganda Visual Artists and Designers Association, Uganda Children Writers and Illustrator's Association, Uganda Female Writers Association, Uganda Textbook, Academic and Non-fiction Authors Association, and Uganda Journalists Association. URRO administers reproduction/reprographic rights in literary works.

(vi) Sierra Leone

Sierra Leone is in West Africa. It is surrounded by Liberia, Guinea and the Atlantic Ocean.

The country has a total area of 71 740 sq. km, a population of 5 743 725, GDP purchasing power parity of USD 9.156 Billion and literacy rates of 43.3

%. Agriculture and mining are the major contributors to the economy though there are other activities such as tourism and industrial processing. The currency used is the United States Dollars.



Sierra Leone has not undertaken the study on the contribution of creative industries to the national economy. The law governing copyright matters is the Copyright Act 2011 which provides for the establishment of a collecting society of Sierra Leone. It is a corporate body with perpetual succession and a common seal and is specifically tasked and charged with that responsibility of administering and enforcing provisions of the Act in consultation with the national enforcement agencies.

III. Benefits of International Instruments

International treaties and conventions set the international norms that the international regime has to work within and abide to as agreed in the treaties and conventions. The international instruments clearly show the commitment made by the signatories and they are expected to set systems within their jurisdictions to observe the international commitment.

There are various benefits that arise from being party to international instruments and these include:

- (a) Creation of common rules and regulations;
- (b) Essential to achieving a robust intellectual property protection that spurs global economic expansion;
- (c) Broadening protection for local creators;
- (d) Enabling cooperation in fighting infringement and promoting commercialisation;
- (e) Coordinating the efforts to track use of works to ensure creators benefit, in light of digitization and technological changes.
- (f) Creating grounds for dispute settlement.
- (g) Enable works of country's authors to be automatically protected in all countries party to the convention e.g. Berne, with the result that these authors may derive financial benefits from the expansion of markets for their works.
- (h) Enabling a signatory country to make use of the limitations provided for in that treaty to further the goals of its own citizens' development.

International instruments on Copyright & Related Rights

Berne Convention

The Berne Convention is the mother law to copyright and related rights. The need for a uniform system led to the formulation and adoption on September 9, 1886, of the Berne Convention for the Protection of Literary and Artistic Works.

The aim of the Berne Convention, as indicated in its preamble, is “to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works.”

The Berne Convention sets the minimum standard on what copyright and related rights legislation should incorporate in the different jurisdictions. Most of the ARIPO member states are party to the Berne convention and have included most of the Berne provisions in their national legislations on copyright and related rights. Some of the principles incorporated in the Berne Convention are the “national treatment principle” whereby a country is to treat the works of non-national authors in the same way as they treat the works of national authors. Therefore, there will be no discrimination as each country is required to treat works from other countries in the same way as they treat the works of their own nationals. Similarly non-national right holders cannot demand to have their works treated differently to that of national right holders in the different jurisdictions provided they abide to the national legislation requirements. Automatic protection by virtue of creation not subject to the formality of registration, deposit or the like though in some ARIPO Member States they provide for the voluntary registration and notification systems and territoriality aspect.

There is also the “Appendix to the Berne Convention” which is very instrumental for developing countries concerning translation for the purpose of teaching, scholarship or research and reproduction of works of foreign origin¹ to use the opportunity to implement non-voluntary licenses for translation and reproduction of works in certain cases, in connection with educational activities. In these cases, the described use is allowed without the authorization of the right holder, subject to the payment of remuneration to be fixed by the law and after compliance with certain procedural steps, by the competent authority of the developing country concerned.

¹Articles 2bis, 9(2), 10(2), 10bis and the ten-year rule (Article 30(2)(b))

III. Benefits of International Instruments

Rome Convention

The Rome Convention secures protection in performances for performers, in phonograms for producers of phonograms and in broadcasts for broadcasting organisations. The Rome Convention is based on the “national treatment” principle minimum protection guaranteed by the Convention to performers is provided by “the possibility of preventing certain acts”. The restricted acts comprise: broadcasting or communication to the public of a “live” performance; recording an unfixed performance; reproducing a fixation of the performance, provided that the original fixation was made without the consent of the performer or the reproduction is made for purposes not permitted by the Convention or the performer².

Producers of phonograms have the right to authorize or prohibit the direct or indirect reproduction of their phonograms³. The Rome Convention does not provide for any right to authorize performances of the phonogram and does not explicitly prohibit distribution or importation of unauthorized duplicates of phonograms.

Broadcasting organizations have the right to authorize or prohibit: the simultaneous rebroadcasting of their broadcasts, the fixation of their broadcasts, the reproduction of unauthorized fixations of their broadcasts or reproduction of lawful fixations for illicit purposes and the communication to the public of their television broadcasts by means of receivers in places accessible to the public against payment. The later right does not extend to communication to the public of merely sound broadcasts, and that it is a matter for domestic legislation to determine the conditions under which such a right may be exercised. The Rome Convention does not protect against distribution by cable of broadcasts. The Convention allows for limitations and exceptions to the protection and gives country discretion to interpret certain provisions according to its needs.

This treaty is of particular importance to African countries where there are various performers making a living out of both modern and traditional artistic performances and where fixation may be done involuntarily by tourists or other people who come into contact with such performers and their acts.

The Treaty is also very crucial in the modern era where involuntary recording of one’s performances and the subsequent sharing of such works on several media platforms such as social media is rampant and in an era where media is becoming big business and content is king, African performers, producers and broadcasters have to be adequately covered to enable them to compete effectively and benefit economically out of their works. Of the ARIPO member states, only Lesotho has acceded to the Rome Convention.

Phonograms Convention

The convention provides that contracting States shall protect producers of phonograms who are nationals of other Contracting States against the making of duplicates without the consent of the producer and against the importation of such duplicates, provided that any such making or importation is for the purpose of distribution to the public, and against the distribution of such duplicates to the public⁴. However, no compulsory licenses may be permitted unless all of the following conditions are met: the duplication is for use solely for the purpose of teaching or scientific research; the license shall be valid for duplication only within the territory of the Contracting State whose competent authority has granted the license and shall not extend to the export of duplicates; the duplication made under the license gives rise to an equitable remuneration fixed by the said authority taking into account, inter alia, the number of duplicates which will be made. Only Kenya, among the ARIPO member states, is a party to the convention.

Brussels Convention

This convention provides for the obligation of each Contracting State to take adequate measures to prevent the unauthorized distribution on or from its territory of any programme-carrying signal transmitted by satellite. This convention is very relevant because of the importance of satellite communications in the modern era.

² Article 7

³ Article 10

⁴ Article 2

⁵ Article 6

III. Benefits of International Instruments

The Convention shall not apply where the signals emitted by or on behalf of the originating organization are intended for direct reception from the satellite by the general public⁶. Safeguard clauses are provided for in this Convention that the Convention shall in no way be interpreted to limit or prejudice the protection secured to authors, performers, producers of phonograms, or broadcasting organizations, under any domestic law or international agreement⁷. And in no way will the Convention be interpreted as limiting the right of any Contracting State to apply its domestic law in order to prevent abuses of monopoly⁸.

Marrakesh Treaty

The World Health Organisation in 2010 estimated that the total number of people with blindness in Africa was 5.888 million; low vision was 20.407 million and 26.295 million with visual impairments. This represents a significant figure of people needing access to enhanced materials for both their educational and informational needs.

Some of key benefits that can be derived from ratification or accession to the Treaty are that:

- i. The Treaty addresses access to published works in compliance with the United Nations Human Rights Declaration on the Rights of Disabled Persons, which clearly links copyright and human rights;
- ii. It provides the minimum flexibilities in copyright laws needed to ensure full and equal access to information by persons who are blind, visually impaired and print disabled;
- iii. The Treaty offers an opportunity for works to be converted into accessible formats without need for authorization by the author or copyright owner of a published work. The elimination of the need for authorization gives an opportunity for works to be made available in accessible format copies as quickly as possible;
- iv. The Treaty, through its cross-border exchange provision, provides opportunities for cost saving. Authorised entities may pool resources together and convert published works into accessible formats and exchange such works for access by beneficiary persons;

- v. Entities such as libraries may be able to borrow from each other for purposes of serving beneficiary persons.

The Treaty leaves contracting parties enough room to implement its provisions taking into account its own legal systems and practices including determination of fair practices, dealings or uses provided they comply with the three step test obligations under the treaty. By ratifying the treaty, African states will ensure access of knowledge to this group of their citizens. While a number of African countries have signed this treaty, only Botswana, Liberia, Mali and Tunisia have ratified and acceded to the treaty.

WIPO Copyright Treaty (WCT)

This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention. This Treaty shall not have any connection with treaties other than the Berne Convention, nor shall it prejudice any rights and obligations under any other treaties. Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the Berne Convention for the Protection of Literary and Artistic Works⁹. Article 20 of the Berne Convention provides: “The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention.”

The Treaty clearly provides for limitations and exceptions in observance of the three step test. “Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

⁶ Article 3

⁷ Article 6

⁸ Article 7

⁹ Article 1 also known as safe guard clause

III. Benefits of International Instruments

Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.¹⁰

WCT mentions two subject matters to be protected by copyright that is computer programs, whatever the mode or form of their expression; and compilations of data or other material (“databases”), in any form, which, by reason of the selection or arrangement of their contents, constitute intellectual creations. Where a database does not constitute such a creation, it is outside the scope of protection under the Treaty. The treaty also extends to owners of works the rights to distribution, rental and communication to the public.

WIPO Performances and Phonogram Treaty (WPPT)

This is an important Treaty for the performers and producers of phonogram. It provides for a safeguard provision — “Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the “Rome Convention”). Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection. This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties”¹¹.

The Treaty is of special importance in the digital environment where making economic gains is increased due to the growth of the world into a connected digital market, but where normally creators do not benefit because of increased incidents of infringement through illegal copying and downloads. The Treaty grants performers and producers moral rights and economic rights in their performances fixed in phonograms, sound recording: the right of reproduction;

the right of distribution; the right of rental; the right of making available; the right of broadcasting (except in the case of rebroadcasting); the right of communication to the public (except where the performance is a broadcast performance); and the right of fixation. The Treaty also addresses technological protection measures (TPM) that “adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law against circumvention of TPMs, which is rampant in the digital sphere”¹².

Beijing Treaty

The Beijing Treaty is an instrument for the Protection of Audio-visual Performances, granting performers moral rights and four kinds of economic rights for their performances fixed in audio-visual fixations, such as motion pictures: the right of reproduction; the right of distribution; the right of rental; and the right of making available. As for unfixed (live) performances, the Treaty grants performers three kinds of economic rights: the right of broadcasting (except in the case of rebroadcasting); the right of communication to the public (except where the performance is a broadcast performance); and the right of fixation.

Limitations and exceptions with regard to the protection of performers can be provided in national legislation, in connection with the protection of copyright in literary and artistic works observing the three step test: to certain special cases which do not conflict with a normal exploitation of the performance and do not unreasonably prejudice the legitimate interests of the performer¹³.

¹⁰ Article 10

¹¹ Article 1

¹² Article 18

¹³ Article 13

IV. Status of Aripo Member States On International Instruments for Copyright & Related Rights

Country Comparisons Treaties, Conventions and Agreement¹⁴

		GHANA	KENYA	BOTSWANA	UGANDA	RWANDA	SIERRA LEONE
Last updated on		28/04/2016	28/04/2016	28/04/2016	28/04/2016	28/04/2016	28/04/2016
Treaty's international status							
Beijing Treaty	Not yet in force	Signed June 26, 2012 Not ratified	Signed June 26, 2012 Not ratified	Signed Oct 4, 2012 Ratified Nov 20, 2013 Not yet in force	Signed October 2012 Not ratified	Not a party/member to the Treaty	Signed June 26, 2012 Not ratified
Berne Convention (169 Parties)	In Force	Accession July, 11 1991 In Force Oct 11, 1991	Accession March 11, 1993 In Force June 11, 1993	Accession Jan 15, 1998 Ratification April 15, 1998	Not a party/member to the Treaty	Accession Nov 3, 1983 In Force March 1, 1984	Not a party/member to the Treaty
Brussels Convention (37 Parties)	In Force	Not a party/member to the Treaty	Signed May 21, 1974 Ratified Jan 6, 1976 In Force August 25, 1979	Not a party/member to the Treaty	Not a party/member to the Treaty	Accession April 25, 2001 In Force July 25, 2001	Not a party/member to the Treaty
Phonograms Convention (78 Parties)	In Force	Not a party/member to the Treaty	Signed April 4, 1997 Ratified Jan 6, 1976 In Force April 21, 1976	Not a party/member to the Treaty	Not a party/member to the Treaty	Not a party/member to the Treaty	Not a party/member to the Treaty
Rome Convention (92 parties)	In Force	Not a party/member to the Treaty	Not a party/member to the Treaty	Not a party/member to the Treaty	Not a party/member to the Treaty	Not a party/member to the Treaty	Not a party/member to the Treaty
Marrakesh Treaty	Not yet in force	Signed June 28, 2013 Not yet ratified	Signed June 28, 2013 Not yet ratified	Not a party/member to the Treaty	Signed June 2013 Not yet ratified	Not a party/member to the Treaty	Signed June 28, 2013 Not yet ratified
WIPO Copyright Treaty (94 Parties)	In Force	Signed May 23, 1997 Ratified August 18, 2006 In Force Nov 18, 2006	Signed Dec 20, 1996 Not yet Ratified Not yet in Force	Yes Accession Oct 27, 2004 In Force Jan 27, 2005	Not a party/member to the Treaty	Not a party/member to the Treaty	Not a party/member to the Treaty
WPPT	In Force	Signed May 23, 1997 Ratified Nov 16, 2012 In Force Feb 16, 2013	Signed Dec 20, 1996 Not yet ratified Not yet in force	Accession Oct 27, 2004 In Force Jan 27, 2005	Not a party/member to the Treaty	Not a party/member to the Treaty	Not a party/member to the Treaty
TRIPS (162 Parties)	In Force	Yes / In Force Jan 1, 1995	Yes/In Force Jan 1, 1995	Yes/In force May 31, 1995	Yes/ In Force Jan 1, 1995	Yes/ Inforce May 22, 1996	Yes/ In force June 23, 1995

¹⁴ Source: WIPO website

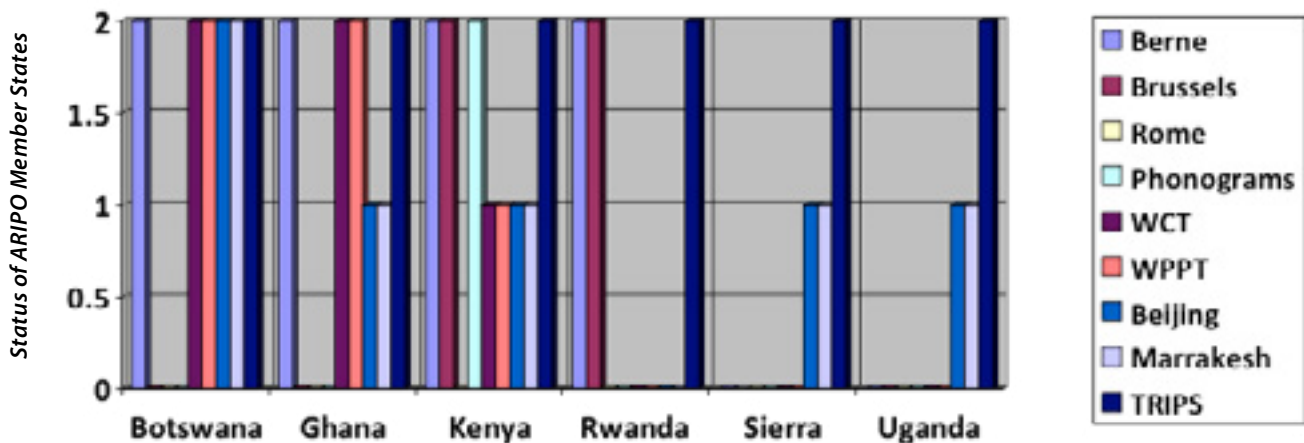
IV. Status of Aripo Member States On International Instruments for Copyright & Related Rights

Table 1: Status of ARIPO Member States to International Instruments on Copyright & Related Rights

Countries	Berne Convention	Brussels Convention	Rome Convention	Phonogram Convention	WIPO Copyright Treaty	WIPO Performances & Phonogram Treaty	Beijing Treaty	Marrakesh Treaty	TRIPS
Botswana	2	0	0	0	2	2	2	2	2
Ghana	2	0	0	0	2	2	1	1	2
Kenya	2	2	0	2	1	1	1	1	2
Rwanda	2	2	0	0	0	0	0	0	2
Sierre Leone	0	0	0	0	0	0	1	1	2
Uganda	0	0	0	0	0	0	1	1	2

Key: 2= Ratified or Acceded; 1= Signed; 0= Not signed/ratified/acceded

Figure 1: Status of ARIPO Member States to International Instruments on Copyright & Related Rights



Unratified or Un-acceded Treaties as at October 2016

Ghana

Phonograms Convention Benefits: The country has a growing film industry and its producers need protection in foreign countries.

Marrakesh Treaty Benefits: The country has an estimated 200 000 blind and 600 000 visually impaired persons (Ghana Eye Foundation .org), representing a combined 3.11 percent of the total population. Ghana has a fairly large enough population of people who need access to reading materials provided for under the Marrakesh Treaty.

The country can also import materials for VIPs under certain conditions as provided in the treaty, as well as export to other contracting countries.

Kenya

Marrakesh Treaty Benefits: The country has an estimated 328 000 blind and 750 000 visually impaired persons (The Fred Hollows Foundation), representing a combined 2.40 percent of the total population. This percentage represents a large enough proportion of people in need of educational materials enhanced for their conditions.

IV. Status of Aripo Member States On International Instruments for Copyright & Related Rights

By ratifying the Treaty, the country will move a step towards ensuring access to this section of the country's population. The country can also import materials for VIPs under certain conditions as provided in the treaty, as well as export to other contracting countries.

WCT Benefits: The country has a growing ICT sector with various innovative solutions in software coming out of the country. There is also a lot of FDI flowing into the ICT sector. While the country's Copyright Laws provide for the protection of computer programs, by becoming a contracting party to the WCT, the country will broaden the protection of the works and securing of rights of its creators beyond its own borders. Data is currently big business and compilations of data or other material (databases) are increasingly important, meaning that Kenya must consider how to protect the creators of databases in Kenya beyond the borders.

WPPT Benefits: The country has a growing online population, which will result in more local works being available online. By acceding to and ratifying this treaty, the country will join other countries collaborating to ensure that performers and producers of phonograms are secured and make economic benefits out of their works in an increasingly digital world.

Beijing Treaty Benefits: The country has growing audio-visual performances platform which needs to be nourished and protected. The performers are improving day in day out to come up with creative performances which are liked in and out of the country. This calls for the country to ratify or accede to the treaty so as to offer the right holders more protection and recognition nationally and internationally.

Rwanda

Marrakesh Benefits: The country has an estimated 11 384 blind people (Fred Hollows Foundation) and an unquantified number of visually impaired persons. This represents not less than 0.09 percent of the total population and this represents a large proportion of people in need of educational and informational materials enhanced for their conditions.

The Rwanda copyright law has provisions on visually impaired persons. By ratifying the Treaty, the country will move a step towards ensuring access to this critical section of the country's population. The country can also import materials for VIPs under certain conditions as provided in the treaty, as well as export to other contracting countries.

The country is a member only to TRIPS and Berne Convention. This means that it cannot take advantage of the significant international benefits that come with the international collaborations. In an increasingly global village, this presents challenges for its citizens as well as reducing potential contribution of copyright related industries to exports on the GDP as most countries are not obliged to protect works of countries which are not members of specific treaties and agreements.

Uganda

The country is not party to Berne Convention though it has some provisions in its legislation that reflect the Berne Convention and its Appendix. Uganda is party to TRIPS and has signed the Marrakesh Treaty yet to ratify. This means that it cannot take advantage of the significant international benefits that come with the international collaborations. In an increasingly global village, this presents challenges for its citizens as well as reducing potential contribution of copyright related industries to exports on the GDP as most countries may be reluctant to reciprocate on national treatment principle with countries which are not party to specific treaties and agreements.

Sierra Leone

The country is a member of TRIPS. As for Marrakesh and Beijing treaties, Sierra Leone has not ratified the treaties. This means that it cannot take advantage of the significant international benefits that come with the international collaborations. In an increasingly global village, this presents challenges for its citizens as well as reducing potential contribution of copyright related industries to exports on the GDP as most countries are not obliged to protect works of countries which are not members of specific treaties and agreements.

V. Country Copyright & Related Rights Laws Comparison

Countries/ Parameter	Ghana	Kenya	Botswana	Uganda	Sierra Leone	Rwanda
Title	Copyright Act, 2005 (Act 690)	The Copyright Act, 2001. (Chapter 130) The Copyright Regulations 2014	Copyright and Neighbouring Rights, Chapter 68.02 (1 October 2006)	Copyright and Neighbouring Rights Act, 2006	The Copyright Act, 2011	Law no. 31/2009 of 26/10/2009 On The Protection of Intellectual Property -Part III: Protection of Copyrights and Related Rights
Administration	Copyright Office (S. 65) Ghana Folklore Board- Folklore (S. 59)	Kenya Copyright Board (S. 3)	Copyright Office (S. 22)	National Copyright Information Centre- Uganda Registration Services Bureau (S. 42)	Copyright Office	Ministry in Charge of Copyright and Cultural matters Intellectual Property organ (Art. 10; 12; 13)
Protected Works	General: The act goes into detail on the works included under each category of works protected under interpretation. (S. 76) Literary work, Musical work, Sound recording, Audio-visual work, Choreographic work, Derivative work, Computer software or programmes. (S. 1)	General: The Act clearly outlines the works included under each category of works protected as well as definitions of specific items. (S. 2) Literary works, Musical works, Artistic works, Audio-visual works, Sound recordings, Broadcasts. (S. 22)	General: The Act clearly outlines the works included under each category as well as definitions of specific items. (S. 2) Literary and Artistic works (All eligible works fall under this broad category) Derivative works including databases, collections of works, translations. (S. 3)	General: The Act clearly outlines the works under each category as well as the definitions of specific terms. (S. 2) Literary, scientific and artistic works and Derivative works. (S. 5)	General: The act clearly outlines the works included under each category of works as well as the specific definitions of terms as they apply to the act. (S.1) Literary, Artistic, Musical work, Sound recordings, Audi-visual work, Choreographic work, Derivative work, Programme Carrying Signals and Computer software and programmes. Derivative works also protected (S. 4-9)	General: Literary and artistic works that are original intellectual creations in the literary and artistic domain. (Art. 195) Works expressed by writing, musical works audio-visual works, works of architecture, photographic works, works of applied art, works deriving from Rwanda national folklore, dramatic and dramatico-musical works, other works Derivative works provided for. (Art. 195- 196)
	Folklore is protected	Folklore is recognised as falling under either Literary, musical or artistic works. (S. 2)	Folklore is recognised and protected as a derivative work. (S. 4)	Traditional Folklore and knowledge mentioned under any other work (S. 5)	Expressions of folklore recognised and protected (S. 9)	Expressions of folklore recognised and protected (Art. 195)
		Computer programmes and charts tables are included under literary works. (S. 2)	Computer programmes included among category for books, pamphlets and other writings (S. 3)	Computer programmes included in category with electronic data banks (S. 5)	Computer programmes included under protected works. (S. 1)	Computer programs included under works expressed by writing. (Art. 195)

V. Country Copyright & Related Rights Laws Comparison

Countries/ Parameter	Ghana	Kenya	Botswana	Uganda	Sierra Leone	Rwanda
Protected Works (...continued)	Act defines “artistic works” (S.76)	The act clearly defines what is included under artistic works (S. 2)	Act provides for protection of neighbouring rights for works which do not ordinarily qualify for copyright (S. 23-28)	Act provides for protection of neighbouring rights for works which do not ordinarily qualify for copyright (S. 21-34)	Act does not mention neighbouring rights	Act provides for works not protected including any official texts of a judicial or administrative nature, published daily news; any idea, procedure, system, methods of operation, principles, discovery, or mere data even if expressed, described, explained, illustrated or embodied in a work. (Art. 198)
Formality requirements	While providing for registration, Act cites that protection shall not be dependent on the registration of the work. (S.39)	Optional	No (S. 6)	Voluntary for both copyright and neighbouring rights. (S. 43)	Provides for registration of works (S. 49)	Optional Registration, but protection exists without need for legal formalities (Art. 197)
Rights Afforded	Economic Rights (S.5) Moral Rights (S.6)	Economic Rights (S. 26) Moral Rights (S. 32)	Economic Rights (S. 7) Moral Rights (S. 8)	Economic Rights. (S. 9) Moral Rights (S. 10)	Economic Rights. (S. 10) Moral Rights (S. 11)	Economic Rights (Art. 200-202) Moral Rights (Art. 199)
First Ownership	Copyright vests in author except in cases of: commissioned work, works produced in the course of one’s employment, or created under commission by the Government or an international body. (S.5- 8)	Copyright vests in author except in cases of: commissioned work, works produced in the course of one’s employment, or created under commission by the Government or an international body. (S. 31)	Subject to other provisions in the Act, the original owner of economic rights is the author who has created the work. (S. 9)	Copyright vests in author except in cases of employed authors (in absence of contract stating otherwise) and works for Government or international bodies. (Implied in S. 4-12)	The original owner of the economic rights is the author who created work. (S. 15)	The original owner of the moral and economic rights is the author who created work. (Art. 222)
Duration of Copyright	Moral rights					
	Moral rights continue to vest in author even after transfer of economic rights (S.9) and they exist in perpetuity (S.18)	Moral rights continue to vest in author and successors (based on testamentary disposition) even after transfer of economic rights (S. 32)	Life of author and fifty years after his death (S. 10)	Moral rights remain with author regardless of status of economic rights. They exist in perpetuity even after death of original owner (S. 13:8)	Moral right of an author exist in perpetuity regardless of status of the economic rights. The rights are enforceable during the lifetime of the author and after the author’s death, by the successors. (S. 21)	Moral rights have no limitation in time. (Art. 216)

V. Country Copyright & Related Rights Laws Comparison

Countries/ Parameter	Ghana	Kenya	Botswana	Uganda	Sierra Leone	Rwanda
Duration of Copyright (...continued)	Economic rights					
	Literary works Life of the author and seventy (70) years after the death of the author or Life of last surviving author and seventy years after death of that author in works of joint authorship. (S. 12)	Literary works Life of author and fifty years after end of year in which author dies or author who dies last in works of joint authorship (S. 23:2)	Literary and artistic works Life of author and for fifty years after his death. Or for author who dies last in works of joint authorship. (S. 10)	Literary, scientific and Artistic works Life of author plus fifty years after the death of the author. (S. 13)	Literary, Life of the author plus fifty years. In works of joint authorship life of last surviving author and fifty years. In collective works, other than works of applied arts, fifty years from the date on which the work was first made available to the public or first published whichever date is the latest. (S. 21-26)	All Economic Rights Duration of protection of economic rights shall be during the life of the author and for fifty years (50) after his/her death. Duration runs up to the end of the calendar year in which it would otherwise expire. In works of joint authorship, during life of last surviving author and 50 years after his or her death (Art. 217-221)
	Bodies corporate Seventy (70) years from date of publication or making, whichever date is later. (S.13)	Bodies corporate Fifty (50) years from the end of the year in which it was published (S. 23)	Collective works For certain collective works, economic and moral rights exist for fifty years from date of fixation, making available to the public or publication, whichever date is latest. (S. 10)	Bodies Corporate Fifty years from date of first publication of the work. (S. 13)	Bodies Corporate Fifty years from the date on which the work was first made public. (S. 22)	No express mention of duration of copyright for works created by bodies corporate.
Anonymous works Seventy years from date on which work was either made, published or made available to the public, whichever is later. If identity of author is later known or revealed beyond doubt, the duration reverts to end of year of death of author and seventy years thereafter. (S. 14)	Anonymous Works Fifty years from date on which work was either made, published or made available to the public, whichever is later. If identity of author is later known or revealed beyond doubt, the duration reverts to end of year of death of author and fifty years thereafter. (S. 23:3)	Anonymous/ pseudonymous works Moral and economic rights protected for fifty years from date on which work was made, made available to the public or published, whichever date is the latest. If author's identity is revealed or no-longer in doubt before expiration, then provisions for authors apply. (S. 10)	Anonymous Works Fifty years from date of first publication. If identity of author is revealed before expiration of fifty years, then provisions available for known authors apply. (S. 13)	Anonymous/ Pseudonymous Works Fifty years from the date on which the work was made, first available to the public or first published, whichever date is the latest. Where the author's identity is revealed or is no longer in doubt before the expiration of that period, the terms for known authors shall apply. (S. 21)	Anonymous/ Pseudonymous Works Fifty years from date of lawful publication, date on which work was made, or latest date of making available to the public. If author's identity is revealed or is no longer in doubt before expiration of the said period, the provisions for standard moral and economic rights apply. (Art. 219)	

V. Country Copyright & Related Rights Laws Comparison

Countries/ Parameter	Ghana	Kenya	Botswana	Uganda	Sierra Leone	Rwanda
Duration of Copyright (...continued)	Audio-visual works Seventy years from date of (with consent from the author) publication or making available to the public, whichever date is latest. (S. 15)	Audio-visual works Fifty years from the end of the year in which the work was either made, first made to the public or published, whichever date is the latest. (S. 23:2)	Audio-visual works Fifty years from date of fixation, making available to the public or publication, whichever date is latest (S. 10)	Audi-visual/ Sound recordings/ Broadcasts/ Computer programs / Photographic work. Fifty years from date of making or making available to the public with consent of the author. (S. 13)	Audio-visual works Fifty years from the date of the making of the work, or where the work is made available to the public during that period with the consent of the author until expiration of fifty years from the date of its communication to the public. (S. 21)	Collective work/ Audio-visual work and works published after death of author. For a period of fifty years from date of first making available to the public, date on which work was first made, or first lawful publication. (Art. 220)
			Work of Applied Art Both moral and economic rights exist for twenty five years from the making of the work. (S. 10)		Work of Applied Art Protected for 25 years from the making of the work. (S. 21d)	Work of Applied Art Work shall be protected for a period of 25 years from end of the year in which the work was first made. (Art. 221)
	Folklore Rights vest in president on behalf of citizens and exist in perpetuity. (S. 17)	Folklore No mention of duration of protection of folklore.	Folklore No mention on duration of protection of folklore.	Folklore No mention of duration of protection of folklore.	Folklore Rights vest in president on behalf of and in trust for the people of Sierra Leone and exist in perpetuity (S. 26)	Folklore No mention of duration of protection of folklore
	Sound recordings Seventy years after the year publication or if not published, seventy years after the year of fixation. (S. 16)	Sound recordings Fifty years after the end of the year in which recording was first made (S. 23:2)	Sound recordings Until the end of the fiftieth calendar year following the year of publication or if not published, from fixation until end of fiftieth year following the fixation. (S. 25:2)	Sound recordings Fifty years from date of making or making available to the public with consent of the author. (S. 13)	Programme carrying signals Fifty years from making the date of making the signal. (S. 24)	Performances and Phonograms Fifty years from end of year in which the performance or phonogram was fixed, made available to the public or published. (Art. 250-251)
	Broadcasts The rights of broadcasting organisations are protected until expiration of forty years from date of making broadcast or signal. (S. 36)	Broadcasts Fifty years after the end of the year in which the broadcast took place. (S. 23:2)	Broadcasts From moment of broadcasting until the end of fiftieth calendar year following the year in which the broadcast takes place. (S. 27:2)	Broadcasts Fifty years from date of making or making available to the public with consent of the author. (S. 13)	Photographic Work. Fifty years from the date of making the work. (S. 25)	Broadcasts Twenty five (25) years from the first month of the year that follows the year in which broadcast took place. (Art. 252)

V. Country Copyright & Related Rights Laws Comparison

Countries/ Parameter	Ghana	Kenya	Botswana	Uganda	Sierra Leone	Rwanda
Copyright	<p>All copyright works The reproduction of the work in any manner or from; the translation, adaptation, arrangement or any other transformation of the work; the public performance, broadcasting and communication of the work to the public; the distribution to the public of originals or copies of the work by way of first sales or other first transfer of ownership; and the commercial rental to the public of originals or copies of the work. (S. 5)</p>	<p>Literary, Musical or artistic work or audio-visual work Reproduction in any material form of the original work or its translation or adaptation; the distribution to the public of the work by way of sale, rental, lease, hire, loan, importation, or similar arrangement; and the communication to the public and the broadcasting of the whole or a substantial part thereof, either in its original form or in any form recognisably derived from the original. (S. 26:1)</p>	<p>Selected copyright works Author/Owner of copyright shall have exclusive right to reproduce, translate, adapt, arrange or other transformation, first public distribution, rental, public performance, importation, broadcasting or other communication to the public of the work. Rights to rental and lending do not apply to computer programs where the program itself is not the essential object of the rental or lending. (S. 7) Specific conditions for related rights mentioned (S. 23-28)</p>	<p>All Copyright Works. The owner of a protected work shall have in relation to that work the exclusive right to do or authorise other persons to do various actions as outlined in the Act. (S. 9) Specific conditions for related rights mentioned. (S. 21- 40)</p>	<p>All copyright works The reproduction; translation, adaptation, arrangement or any other transformation of the work; the communication to the public by performance or broadcast, or any other means; the distribution to the public, by way of sale, rental, public lending of the original or copy that has not been subject to sale or transfer as authorised by the owner of copyright; rental or public lending of the original or copy of an audio-visual work, sound-recording, computer programme, database or musical work; importation; public display; public performance; broadcasting and any other communication to the public. (S. 9; 38-46)</p>	<p>Moral rights and economic rights. Economic rights include having exclusive right to reproduction, translation, adaptation, arrangement, rental, communication to the public, public performance distribution. Moral rights to claim authorship, to object to use that prejudices his or her reputation and not have his or her name indicated or the right to use a pseudonym. (Art. 199-202)</p>
Permitted Uses of Copyrights	<p>Various exceptions permitted to the copyright Specific exceptions for Computer Programs highlighted. (S. 19)</p>	<p>Various exceptions permitted to the copyright Specific exceptions for Computer programs highlighted. (S. 26(1))</p>	<p>Various exceptions permitted to the copyright with specific exceptions applying to Computer programs. (S. 12-21)</p>	<p>Fair use of copyrighted works is permitted. The Act cites what is considered as fair use. (S. 15)</p>	<p>Various exceptions permitted to the use of copyright including private reproduction for personal purposes, temporary reproduction, reproduction in the form of quotation, reproduction for teaching, reprographic reproduction by libraries and archives. (S. 27-36; 42)</p>	<p>Various limitations to economic rights provided for including private reproduction for private purposes, temporary reproduction, free reproduction for teaching, for archives and libraries, etc. (Art. 203-215; 247-249) Various limitations to economic rights provided for including private reproduction for private purposes, temporary reproduction, free reproduction for teaching, for archives and libraries, etc. (Art. 203-215; 247-249)</p>

V. Country Copyright & Related Rights Laws Comparison

Countries/ Parameter	Ghana	Kenya	Botswana	Uganda	Sierra Leone	Rwanda
Permitted Uses of Copyrights (...continued)	Notable lacunas and inclusions on permitted uses					
	No express exceptions for works targeting the Blind and other Visually Impaired Persons.	No express exceptions for works targeting the Blind and other Visually Impaired Persons	No express exceptions for works targeting the blind and other VIPs.	Fair use includes transcribing work into braille or sign language for educational purposes of persons with disabilities (S. 15(1)(k))	No mention of exceptions to use for works with purpose of targeting the blind and other VIPs	Provides for free use of work for visually impaired persons. No need for authorisation of the author to reproduce and distribute work for visually impaired persons (Art. 215)
Public domain	Works with expired terms of protection; works by authors who have renounced their right; foreign works that do not enjoy protection in the republic (S. 38)	Works whose term of protection has expired; Works in respect of which authors have renounced their rights; Foreign works which do not enjoy protection in Kenya (S. 45)	No express mention of public domain works.	No express mention of treatment of works in the public domain	Works with expired terms of protection, by authors who have renounced their rights; and foreign works that do not enjoy protection in Sierra Leone belong to the public domain. (S. 48)	All works in the public domain are treated as Rwanda's heritage and culture. (Art. 202)
	Use of works in public domain					
	Subject to payment of such fees as may be determined by minister in relation thereto, a work which has fallen into the public domain may be used without restriction (S. 38(3))	Subject to payment of such fees as may be determined by minister in relation thereto, a work which has fallen into the public domain may be used without restriction (S. 45(3))	No mention of use of works in the public domain	No express mention of use of works in the public domain	Subject to payment of a fee to be pre-scribed by the Registrar a work that has fallen into the public domain may be used without restriction. The fees will be used for the promotion of institutions which operate for the advancement of authors, performers, producers of sound recording, translators and arts in general (S.48)	Any use for commercial purposes is made in return for payment of royalties in the conditions determined by the empowered authority. (Art. 202)
Infringement	Any doing of the act reserved for the author, performer, and broadcasting organisations without the license of the owner. (S.41)	Any doing of the act reserved for the author, performer, and broadcasting organisations without the license of the owner. (S. 38)	Any act contravening the provisions of the Act shall be guilty of an offence. (S. 31)	Dealing with any work or performance without a valid transfer, licence, assignment or other authorisation an act contrary to permitted free use and in manner prejudicial to the honour or reputation of author. (S. 46- 49)	Doing of any acts that are contrary to the provisions of the Act. (S. 71- 79)	Any infringement of copyright or related rights protected under the law, committed wilfully or by gross negligence, by any third person for profit-making purposes and without owner's consent shall constitute an act of forgery. (Art. 261)

V. Country Copyright & Related Rights Laws Comparison

Countries/ Parameter	Ghana	Kenya	Botswana	Uganda	Sierra Leone	Rwanda
Anton Pillar Orders	No express mention of Anton Pillar Orders but similar provisions exist (S. 47(2))	Provides for Anton Pillar Orders (S. 37)	No express mention of Anton Pillar Orders	No express mention of Anton Pillar but similar provisions exist in the Act. (S. 53-54)	No mention of Anton Pillar Orders Or similar provisions	No mention of Anton Pillar orders but similar provisions exist
Penalties	Payment of fine not exceeding or under stipulated units or a term of imprisonment or both. Under the act, maximum imprisonment term is not more than three years. (S. 43)	Payment of fine not exceeding specific amount set in shillings or set number of years of imprisonment or both. Under the act, maximum imprisonment term is ten years. (S. 38)	First time offenders liable to a fine of P20,000 or prison term of maximum 10 years or both. Second or subsequent offenders shall be fined a minimum of P30,000 and Maximum of P5,000,000 or imprisoned for a term not exceeding 10 years or both. (S. 29-33)	Payment of fine not exceeding one hundred currency points or imprisonment not exceeding four years or both. For infringing rights of producers, sound recordings, etc, fine not exceeding 25 currency points or imprisonment not exceeding one year or both. (S. 47- 50)	A person who infringes a right under the Act wilfully, or by gross negligence and for profit-making purposes commits an offence and is liable on conviction to a fine not exceeding le60,000,000 or no more than imprisonment term of three years or to both the fine and imprisonment. The court shall also fix the amount of profits, taking into account the defendant's profits attributable to the infringement. In repeat offenders within 5 years of a previous conviction, upper limits of the penalties may be doubled. In offences related to folklore, individuals are liable on conviction to payment of a fine not exceeding Le20,000,000 or imprisonment for a term not exceeding twelve months or both fine and imprisonment; and Corporate bodies to a fine of Le60,000,000 (S. 71- 77)	Act provides a detailed list of criminal penalties for each specific offence related to copyright and related rights. (Art. 264)

V. Country Copyright & Related Rights Laws Comparison

Countries/ Parameter	Ghana	Kenya	Botswana	Uganda	Sierra Leone	Rwanda
Civil Remedies	Regardless of outcome of criminal proceedings, rights owner may initiate civil proceedings with the High Court (S. 47)	There is no express mention of civil remedies in the Act except in one section where the act mentions that infringing articles may be destroyed or surrendered to owner of copyright. (S. 38.8)	The Act provides for the granting of civil remedies including destruction or other reasonable disposal of infringing copies. There is a fine of a fixed amount or jail term for failure to adhere to court orders regarding civil remedies. (S. 30)	The Act provides for civil remedies including destruction or reasonable disposal of infringing copies and equipment. (S. 50)	The Act provides for civil remedies. Owner of infringed rights is entitled to payment for damages suffered and expenses caused by infringement including legal costs. (S. 72, 77)	Competent authority may: Provide for Cease and Desist orders; and grant damages and any other compensation to an alleged infringement provided for by Rwandan civil and commercial legislation. (Art. 265)
Restitution and forfeiture	Court may order payment of sum arising out of the offence to the person entitled under the act to those sums (S. 46(a))	There is no mention of financial restitution to the person entitled under the act	Court May order payment of any damages suffered, including any profits enjoyed by the infringing party, that are attributable to the infringement. (S. 30)	In addition to punishment imposed by the court, the offender may be ordered to pay to the person entitled all sums of money arising out of the offence and received by the offender. (S. 50)	In addition to punishment by the court, the court may order that the sums of money arising out of the offence be paid to the person entitled to the sums under the act; (S. 77)	Upon request of owner, competent tribunal may order disposal of the implements, instruments or materials outside the channel of commerce that are used to commit or continue to commit acts of infringement, to the right owner (Art. 259)
	The implement or device used in infringement and the copies thereof be forfeited and disposed of as the court may direct, having regard of to the circumstances relating to the infringement. ((S. 46(b))	Any article which is an infringing copy or an article used or intended for use in making infringement copies in the possession of the charged person to be destroyed, delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit. (S. 38:8)	In addition to civil remedies, the court shall have authority to order the destruction or the other reasonable disposition of infringing copies and their packaging outside the channels of commerce. Where there is suspicion that implements may be used for further offences, the court shall order their destruction or disposition outside the channels of commerce. (S. 30)	All reproductions, duplication, translation, extracts, imitations and all other materials involved in the infringement to be forfeited and disposed of as the court may see fit. (S. 50)	That the reproductions, duplications, extracts, imitations and other materials involved in the infringement, and implements or devices used in the infringement be forfeited and disposed of as the court may direct having regard to the circumstances relating to infringement. (S. 77)	Upon request of owner, competent tribunal may order the detention, impoundment and destruction of copies of infringing works. (Art. 259)

V. Country Copyright & Related Rights Laws Comparison

Countries/ Parameter	Ghana	Kenya	Botswana	Uganda	Sierra Leone	Rwanda
Special Enforcement	Copyright Monitoring Team composed of Police Officers, Representatives of copyright owners, and officers of the Copyright Office (S. 50)	Inspectors appointed by the Board for enforcing act. (S. 39)	No mention of a special team for copyright enforcement outside the normal law enforcement procedures	Copyright inspectors in the URSB. Or any authorised staff of a collecting society. (S. 52)	No mention of a special team for enforcement of rights afforded by Act.	There is mention throughout the Act of a competent tribunal
Dispute Settlement	Provides for dispute settlement through Copyright Administrator or Court of competent jurisdiction (S. 48)	Appointment of competent authority by Minister to handle disputes. (S. 49)	Appointment by Minister of Copyright Arbitration Panel for the settlement of disputes under the Act. (S. 33A)	Settlement of Disputes referred to an arbitrator or arbitrators under the Arbitration and Conciliation Act. (S. 79)	Three step dispute settlement procedure which begins with negotiation between parties followed by mediation through Registrar and then judicial settlement. Matter may be resolved at any one of the three stages, but follows through steps. (S. 78)	Any appeals against the competent tribunal shall be subject to an appeal in accordance with Rwandan legislation (Art. 272)
Collective Administration	Copyright owners may form Collective Administrative societies and the minister may by Legislative instrument make regulations for the formation, operation and administration of societies. (S. 49)	Board approves organisations seeking to operate as Collecting Societies upon application and meeting conditions. (S. 46)	There shall be established, for the various categories of works protected under the Act, a collective administration body to be known as Copyright Society of Botswana. (S. 36A)	The Registrar of companies registers Collecting Societies which have applied for registration, meet requirements and do not duplicate the work of an existing society. (S. 57- 78)	The Act establishes the Collecting Society of Sierra Leone which will exist into perpetuity and acts on behalf of all categories of works covered by the copyright. The Act also establishes a board for the society. (S. 54-70)	Use and management to be entrusted to one or more independent companies of collective management of copyrights and related rights. (Art. 253)

V. Country Copyright & Related Rights Laws Comparison

Observations

From the comparative study it goes without saying that the International Regime has recognized the importance of copyright and related rights hence coming up with the conventions, treaties and agreements to set an international system for the implementation of copyright and related rights. Through the World Intellectual Property Organisation economic studies on the contribution of creative industries to the national economy have been undertaken in Kenya, Tanzania and Malawi among the ARIPO member states as at May 2016.

However, only Ghana did a study on the contribution of music to its national economy with the support of the Government of Ghana and the World Bank. The six member states Kenya, Uganda, Sierra Leone, Ghana and Botswana have recognized the importance of copyright and related rights and have put in place copyright laws to regulate the system in their respective countries.

Some of the observations made include:

- i. Uganda and Sierra Leone are not party to the Berne Convention. Ghana has ratified the internet treaties (WCT & WPPT) while Botswana has acceded, Kenya has signed WCT & WPPT while Uganda, Rwanda and Sierra Leone are not party to the treaties.
- ii. Ghana, Kenya, Uganda and Sierra Leone have signed the Marrakesh Treaty yet to ratify while Rwanda have provisions in its national law for visually impaired persons on free reproduction of the work for visually impaired persons though they did not sign, ratify or accede to the treaty. Uganda has a provision in its copyright law on fair use that includes the transcribing work into braille or sign language for educational purposes for persons with disabilities.
- iii. Beijing Treaty has been signed by Ghana, Kenya, Uganda and Sierra Leone and ratified by Botswana. Rwanda is not a party to the treaty.
- iv. All the six countries are party to TRIPs and national laws recognize economic and moral rights.
- v. Sierra Leone has an anomaly on duration of moral and economic rights in its law. In S.21(2) it is stated that subject to subsection (2) moral and economic rights of an author shall exist for 50 years after his death. Subsection (2) states that moral rights shall last in perpetuity. There may be a need to undertake an in-depth review of Sierra Leone's copyright law to assess possible contradictions in provisions for duration of moral right and economic rights.
- vi. Ghana's duration of protection is life of the author plus seventy (70) years after the author's death the rest of the countries is life of the author plus fifty (50) years after the author's death.
- vii. Registration procedures of copyrighted works are provided in all the six countries.
- viii. Exceptions and limitations provisions are provided in the national laws but they need to be improved to accommodate new developments for example the exception of anti-circumventing Technological Protection Measure (TPM) for digital use in the case of Beijing Treaty for the protection of audio-visual performances and the Marrakesh Treaty.
- ix. Kenya has Anton pillar order while Ghana, Uganda and Rwanda have provisions that direct towards the Anton pillar order the rest of the countries need to include such a provision in their laws.
- x. Civil and criminal remedies are provided in all the laws. Ghana, Kenya and Uganda penalty provisions use the words "not exceeding" a certain amount. This may be detrimental with time due to the economic situation in each country.
- xi. All the six countries have a dispute settlement mechanism and provision on the collective administration of copyright.
- xii. Uganda has resale rights provision while the rest do not have. The resale right is important to be included in the laws so as to benefit the visual artist in a subsequent sale of their products. All the six countries do not have the public lending rights and this too needs to be incorporated to benefit authors and publishers.
- xiii. Private copying levy (Blank tape levy) is provided in Ghana copyright legislations, Botswana has technical device levy. The other four countries do not have the private copying provision.
- xiv. There is no resale right provision in the current reviewed laws of Kenya, Ghana, Botswana, Sierra Leone and Rwanda while Uganda has an inalienable right in proceeds of sale for fine art works. The inclusion of the resale rights provision in the national legislation will enable visual artists earn from subsequent sales of their art works.
- xv. All the laws recognize the protection of folklore Sierra Leone and Ghana provide that the rights vest in the President on behalf of the citizens and exist in perpetuity.

V. Country Copyright & Related Rights Laws Comparison

Challenges

The study was limited to copyright laws of the six countries and international instruments on copyright and related rights. There are constraints which ARIPO faced in obtaining information as not all six countries responded to the request to proof read the draft comparative study.

Recommendations

The following recommendations are therefore made:

1. Member States to ratify or accede and domesticate the international instruments in their domestic laws for better and effective way of operation in the nation and the international arena.
2. Member States to be proactive by incorporating relevant provisions in the national legislations for the benefit of the right holders in observance of the international principles and norms on copyright and related rights.
3. Member States to review their laws to be in-line with the new developments on copyright and related rights.
4. Undertaking creative industries studies in member countries in order to quantify the value of copyright and related rights contribution to the economy
5. Need to undertake an in-depth review of the reasons for the low uptake of international treaties by African countries.

Conclusion

The study reveals recognition of the international instruments on copyright and related rights by the six member states despite that not all of the instruments are signed, ratified or acceded and domesticated in their national laws. There is low uptake of international treaties though all countries reviewed have copyright and related rights laws. Little disparity was found in the provisions of the laws in the six countries. There is a need for economic contribution studies to be undertaken in the five countries that is Botswana, Uganda, Ghana, Sierra Leone and Rwanda to leverage on what creative industries contribute to the GDP and employment of the habitants of the respective countries and the national economy and to explore the potential of value transference of the copyrighted works for the benefit of the right holders by having good laws, administration, management, transparency and good governance.

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Copyright and Neighbouring/ Related Rights Laws of the Six countries

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