

COPYRIGHT IN GHANA**

INTRODUCTION

Long before the new Copyright Act 2005 was passed there were articles in the newspapers discussing the Act. There were even workshops, meetings, etc to iron out differences. It is indeed accurate to state that work started on the new bill as far back as 1996 when it was realized that the PNDC Law 110 which is the 1985 Copyright Law, had become obsolete. Despite the preparatory activities, controversy persistently prevailed before the inception of the new law until its passage in Parliament and thereafter.

EVENTS LEADING TO THE NEW COPYRIGHT LAW

The Copyright Act 85 of 1961 was repealed on March 21 1985 and replaced by PNDC Law 110. This was because Act 85 of 1961 had become ineffective enabling private initiatives to spring up in the 1970s to attempt to collect and distribute royalties to publishers and composers. Beset by problems of manipulation, abuse and misunderstanding of what it was all about, it was discontinued.

PNDC Law 110 was expanded to cover literary, artistic, musical works, etc and it established the Copyright Office of Ghana to oversee the Copyright Industry. A Legislative Instrument (LI) established COSGA (Copyright Owners Society of Ghana) which had monopoly to oversee collection of royalties and cater for all rights holders.

However, the Musicians Union of Ghana (MUSIGA) came into conflict with Authors etc who were also members of COSGA. The bone of contention was who Owned COSGA. Consequently, COSGA was hijacked by the music industry and all other rights owners were thrown out.

What this situation portrayed was that the law which mentioned 'a collecting and distributing society' to be responsible for copyright matters had become ineffective.

Copyright had become associated with musicians only. What escalated the

Situation was that PNDC Law 110 was toothless as it was not promulgated to give copyright the necessary legal backing. Piracy was perpetuated with little check and it was not unusual that rights owners resigned helplessly to fate, so PNDC Law 110 failed.

An incident was once recounted of one author who discovered that a book he had authored was being printed by a private printer and sold on the market without his permission or being paid a cedi. The author told a gut wrenching story about how he tried in vain to seek redress. His pleas turned into threats when the printer went on printing and selling despite his threat to go to court. When he eventually sought legal redress, the fine the printer paid was so small that he was discouraged.

In the music industry it is even worse with pirates making more money at the expense of the Artiste/composer /musician/singer etc.

In 1998 therefore, the oversight committee of COSGA, whose membership was now solely musicians, took over responsibility for the bill and the first draft was signed by the Attorney General and Minister for Justice in 2000. In the same year, all stakeholders were invited to Parliament to submit their comments on the draft. WIPO, International Publishers Association (IPA) International Phonogram Industry (IFPI) also submitted comments on the bill. Librarians were not invited.

In 2001, the Attorney General organized a meeting in Accra where all comments on the bill including the other six intellectual property bills were synthesized. This meeting included librarians. The purpose for inviting Librarians was to seek their assistance in getting users to pay fees for making photocopies of published works. A statement to that effect was made. The idea of a levy on all devices capable of copying was also mooted.

Thereafter, one writer, in the **Daily Graphic**¹ advocated for the involvement of users and the need for education of the public. The title of the article was however revealing. **“Copyright Law is to protect owners of literary, artistic and musical works”**

Later the other intellectual property bills were passed except for Copyright Bill because of the intervention of one Group, previously known as Ghanaian Society of Composers, authors and Publishers (GHASCAP) and now known as the Coalition of Concerned Copyright Advocates (COCCA) who requested the President to withhold his assent to the bill. In 2004, COCCA launched a booklet entitled ‘**Copyright Inadequate**’ and the event was beamed live on metro TV, a TV station in Ghana. Some sections of the new Copyright Law was a matter of concern to them.

Another article “**Resolve controversy over copyright bill**”² urged steps to be taken for the law to be passed.

After the drafting of the Bill, two more retreats were organized in July 2003 and February 2004. Parliament then deemed it fit to organize a final forum of stakeholders on 16th December 2004.

ISSUES TO NOTE

Before the Bill

1. Channels of redress by complainants (authors) were beset with a lot of problems
2. Punishment for infringement was so small that the cost of enforcing it did not merit the trouble
3. Underdevelopment of payment system for royalties made most authors to forget about going after it.

THE NEW COPYRIGHT LAW

The preamble of the law states it as “**THE SIX HUNDRED AND NINETIETH ACT OF THE PARLIAMENT OF THE REPUBLIC OF GHANA ENTITLED THE COPYRIGHT ACT, 2005.**

AN ACT to replace the copyright Law, 1985 (P.N.D.C.L. 110); and bring the provisions on Copyright and the Copyright Office in conformity with the Constitution and to provide for related purposes.

DATE OF ASSENT: *17th May, 2005*

ENACTED by the President and Parliament”

It is contained in 9 Sections as follows:

1. Copyright
2. Duration of Copyright
3. Permitted uses of Copyright
4. Copies of sound Recordings, Mechanical Reproduction Rights of Composers
5. Enforcement Provisions
6. Protection of Performers and Broadcasting Organisations
7. General Provisions
8. National Folklore Board
9. Administration, the Copyright Office and Miscellaneous Matters

The Library is mentioned under the 3rd Section, *Permitted uses of Copyright*

Sub-section 21 *Permitted uses of Copyright work by library and archive* as follows:

- 1) A library and archive with activities that are not for gain may, without the authorization of the author of copyright, make a single copy of the work by reprographic reproduction.
- 2) A reprographic reproduction under subsection (1) may be made when the work reproduced is a published article, other short work or short extract of a work and where the purpose of the reproduction is to satisfy the request of an individual.
- 3) The library or archive shall under subsection (1) ascertain that the copy is to be used solely for the purpose of study, scholarship or private research.
- 4) The act of reproduction under subsection (1) shall be an isolated case which shall occur on separate and unrelated occasions and shall occur where
 - (a) there is no collective licence available under which copies can be made, or
 - (b) the copy is made in order to preserve or replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of similar library or archive if it is impossible to obtain the copy under reasonable conditions.
- 5) Where a library or, archive requires more than a single copy of a work by

reprographic reproduction, the permission for this shall be obtained from the author, other owner of copyright or from an appropriate collective administration society authorized by the publisher.

6) The provisions of this section are subject to the interest of the publisher, author or the relevant collective administration society.

REACTIONS TO THE BILL

1. To date there has not been any reaction from librarians.

2. COCCA objected to the following:

a. The Section under **Enforcement Provisions** with the explanation that individuals cannot protect their rights. The section states

“ A manufacturer importer or publisher of sound or audio-visual recording shall on the approval of the Minister purchase a security device from the Internal Revenue service as may be required to cover the number of copyright works the manufacturer, importer or publisher intends to sell or distribute.”

This device was fixed to the cassettes produced by musicians and it was mandatory for each cassette to have the device fixed. Any cassette without the device was considered pirated. In the past, this had yielded results in the form of increased dividend to the musicians. COSGA therefore accused COCCA of having a different agenda.

b. **Folklore being under the state.** Subsection 4 of Section 1 *Copyright* stated the following: An expression of folklore is protected under this Act against

- i) Reproduction
- ii) Communication to the public by performance, broadcasting, distribution by cable or other means
- iii) By adaptation and other transformation

The rights of folklore are vested in the President on behalf of and in trust for the people of the Republic.

The law provides for the establishment of the National Folklore Board and any person, Ghanaian or foreigner, who intends to use folklore for any purpose other than

as permitted under section 19, (Permitted use of work protected by copyright) shall apply to the Board for permission and pay the appropriate fee.

The questions are

- i) How can a democratic state own folklore and ancestral traditions and alienate these from its own people?
- ii) Why must taxes be imposed for the use of folkloric expressions, by both Ghanaians and foreigners? Why should Ghanaians pay for the use of what is their heritage and birthright?

c. **The powers of the Copyright Office.** The law states that “The Copyright Office is responsible for the administration of Copyright”.

3. In reaction to COCCA’s call to the President to withhold assent, nine Associations representing the major copyright stakeholders in Ghana sent a petition to the President in support of the bill. They are:

1. MUSIGA
2. Association of Phonogram Industry
3. Ghana Association of Record Manufacturers
4. Ghana Actors Guide
5. Film Video Producers Association of Ghana
6. Ghana Association of Writers
7. Ghana Book Publishers Association
8. Film Video Distributors Association of Ghana
9. Reprographic Rights Association of Ghana.

The headline **Copyright Owners support bill for Presidential assent 2005.** in the Daily Graphic said it all.

THE AFTERMATH

1. In this air of controversy the law was passed with very little input from librarians.
2. The Law provided for the establishment of Collective Administration Societies and hence, **Copy Ghana**, a group representing the interest of Ghanaian writers was formed. One of its tasks was to ask students to pay “copyright fees” on textbooks they

photocopy for their academic work. The response is a headline in the Accra Daily Mail 12th October 2005 “**Yentuah, NUGS is in no mood to pay copyright fees**”³

Copy Ghana wants the fees to be incorporated in the fee structure of the educational institutions of the students, then Copy Ghana can collect on behalf of authors. Students claimed the books they photocopied were not written by Ghanaian authors. They argued that lecturers who reproduce other authors’ books and sell to students should be made to pay as well.

In an interview with the President of Copy Ghana, Mr. Segbawu, he mentioned that lecturers would be made to pay as well. He reiterated the view that librarians were welcome to join the Association to help in collecting revenue for writers!

3. News reports did not talk about any increase in the period for the rights of the author to be protected in the Bill , neither was it a subject of any of the discussions. However, under section 2 of the Bill, the following is stated:

- 1) The rights of the author are protected during the life of the author and seventy years after the death of the author...
- 2) Where a work is co authored, the rights of the author referred to are protected during the life of the last surviving author and seventy years after the death of that author.

The Copyright Administrator, Nana Busumpra and the President of Copy Ghana were both unanimous in their response when questioned about the extension that “it is the international standard.”

CONCLUSION

In Ghana the rewarding system is not as developed and therefore authors, musicians etc do not normally make much money out of their creative efforts. One hears of huge sums being made to rights holders in the developed world. This does not happen in Ghana and it is clear that the intention of the law is to right this wrong.

The issue is that users already have access to these works for almost nothing. If authors, composers ... are not protected, they will not be motivated to create more works. Users are pirating their works and they need to pay for the use of these works.

Librarians are seen as a medium for collecting money. Librarians have been invited in that capacity at only one meeting. It is unfortunate that we did not have the knowledge to contribute effectively to the on going debate for all this time.

The Copyright Administrator has agreed to meet us after the Uganda Workshop. We hope to have more information to counter his arguments.

Thank you

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