

Copyright Training Materials

United Republic of Tanzania



Table of Contents

1. **Introduction**
 - 1.1. What is intellectual property?
 - 1.2. What are copyright and related rights?
 - 1.3. Sources of law
 - 1.3.1 International sources of law
 - 1.3.2. National sources of law
 - 1.4. Economic contribution of copyright-based industries
2. **Obtaining protection**
 - 2.1. No registration requirement
 - 2.2. Challenges to copyright ownership
3. **Requirements for valid copyright protection**
 - 3.1. Copyrightable subject matter
 - 3.1.1. Derivative Works
 - 3.1.2. Computer programs and software
 - 3.1.3. Databases
 - 3.1.4. Video games
 - 3.1.5. Exclusion from scope of copyright protection
 - 3.2. Originality
 - 3.3. Fixation
 - 3.4. The work is not excluded from protection on public policy and morality
4. **Rights conferred by copyright and related rights**
 - 4.1. Economic rights
 - 4.1.1. Right of reproduction and related rights
 - 4.1.2. Rights of public performance, broadcasting, communication to the public and making available to the public
 - 4.1.3. Right of adaptation
 - 4.1.4. Resale right
 - 4.2. Moral rights
 - 4.3. Related rights
 - 4.3.1. Rights of performers
 - 4.3.2. Rights of producers of producers of sound recordings
 - 4.3.3. Rights of broadcasting organizations
 - 4.4. Limitations and exceptions to copyright
 - 4.5. Term of protection
 - 4.6. Ownership and transfer of copyright
 - 4.6.1. Authorship
 - 4.6.2. Ownership
 - 4.6.3. Licensing
 - 4.6.4. Assignment
5. **Infringement**
 - 5.1. Subsistence of copyright and ownership
 - 5.2. Infringing act
 - 5.3. Copyright piracy
6. **Remedies**
 - 6.1. Provisional Measures
 - 6.2. Injunctions
 - 6.3. Damages
 - 6.4. Right of Information
 - 6.5. Disposal or destruction
 - 6.6. Publication of judgments in media
 - 6.7. Criminal remedies
7. **National case law**

1. Introduction

- 1.1. What is intellectual property?
- 1.2. What are copyright and related rights?
- 1.3. Sources of law
- 1.4. Economic contribution of copyright-based industries

1.1. What is intellectual property?

- **Intellectual property (IP)** refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.
- **IP law** refers to the law regulating rights and obligations in relation to these creations of the mind.
- **IP** can be divided into two main categories:
 - **Industrial property**, which includes patents, trademarks, industrial designs and geographical indications, and
 - **Copyright and related rights.**

1.1. What is intellectual property? – WIPO Convention

Convention Establishing the World Intellectual Property Organization (WIPO Convention), Article 2

(viii) **“intellectual property” shall include** the rights relating to:

- literary, artistic and scientific works,
- performances of performing artists, phonograms, and broadcasts,
- inventions in all fields of human endeavor,
- scientific discoveries,
- industrial designs,
- trademarks, service marks, and commercial names and designations,
- protection against unfair competition,

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields

1.1. What is intellectual property? – TRIPS Agreement

- TRIPS Agreement, Article 1(2):

“IP refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II”.
- Copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs of integrated circuits, undisclosed information.

1.1. What is intellectual property?

– Universal Declaration of Human Rights

- Adopted by the United Nations General Assembly in 1948; sets out the fundamental human rights to be universally protected.
- Article 27:
 1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

1.2. What are copyright and related rights?

- **Copyright**

- Rights granted to authors, composers, computer programmers, website designers and other creators for their literary, artistic, dramatic and other types of creations, which are usually referred to as “works”.
- Protects a wide variety of original works, such as books, magazines, newspapers, music, paintings, photographs, sculptures, architecture, films, computer programs, video games and original databases.

- **Related rights (neighboring rights)**

- Rights granted to certain people or businesses that play an important role in performing, communicating or disseminating content to the public, whether or not that content is protected by copyright.

1.2. What are copyright and related rights? – Berne Convention

Article 2 Protected Works

(1) The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

1.3. Sources of law

1.3.1. International sources of law

1.3.2. National sources of law

1.3.1. International sources of law

- Berne Convention for the Protection of Literary and Artistic Works (1886)
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) (1961)
- WIPO Copyright Treaty (WCT) (1996)
- WIPO Performances and Phonograms Treaty (WPPT) (1996)
- Marrakesh VIP Treaty (2013)
- Beijing Treaty on Audiovisual Performances (2012)
- Agreement on Trade-related Aspects of Intellectual Property Rights (WTO TRIPS) (Part II, Section 1, Arts 9, 10, 11, 12, 13, 14)

United Republic of Tanzania is a contracting party to Berne, TRIPS, and Marrakesh VIP Treaty.

1.3.1. International sources of law – Berne Convention

- Adopted in 1886; 181 contracting parties (as at May 2022); United Republic of Tanzania joined in 1994.
- Deals with the protection of works and the rights of their authors.
- Three broad principles:
 - Principle of national treatment;
 - Principle of “automatic” protection; and
 - Principle of “independence” of protection.
- Minimum standards of protection.
- Duration of protection.

1.3.1. International sources of law – Berne Convention

- Exclusive economic rights:
 - Translation of a work;
 - Reproduction of a work;
 - Public performance or recitation of a work and communication of such performance or recitation to the public;
 - Broadcasting, or other wireless communication, of a work to the public;
 - Adaptation and arrangement of a work;
 - Cinematographic adaptation and reproduction of a work and distribution, as well as public performance or communication to the public by wire thereof; and
 - Receipt of an interest in resale of certain works (in certain countries).
- Moral rights.
- Limitations and exceptions.

1.3.1. International sources of law – TRIPS Agreement

- Incorporates the protections under the Berne Convention for all Members of the World Trade Organization (WTO).
- Part II, Section 1 on Copyright and Related Rights (Arts. 9-14) clarifies and adds certain specific points:
 - Confirms that copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.
 - Provides that computer programs, whether in source or object code, shall be protected as literary works, and the form in which a program is, whether in source or object code, does not affect the protection.
 - Clarifies the protection due to databases and other compilations of data or other material.
 - Sets a minimum term of protection applicable whenever the term of protection of a work is calculated on a basis other than the life of a natural person.
 - Requires that limitations or exceptions to exclusive rights be confined to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right owner.

1.3.1. International sources of law

– WIPO Copyright Treaty (WCT) and WIPO Performance and Phonograms Treaty (WPPT)

- WIPO Internet Treaties.
- Provide international norms aimed at preventing unauthorized access to and use of creative works on the internet or other digital networks.
- Update and supplement the major existing WIPO treaties on copyright and related rights, primarily in order to respond to developments in technology and in the marketplace.
- The WCT deals with protection for authors of literary and artistic works, including computer programs and original databases.
- In WCT, the right of communication to the public is enshrined as the equivalent in the digital era of the right of reproduction.
- WPPT deals with the rights of performers (actors, singers, musicians, etc.) and producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds).

1.3.1 International sources of law

– Rome Convention and WIPO Beijing Treaty on Audiovisual Performances (2012)

- The Rome Convention:
 - Extends protection to related rights.
 - Performing artists enjoy rights over their performances, producers of phonograms over their sound recordings, and radio and television organizations over their broadcast programs.
- The Beijing Treaty:
 - Addresses the rights of audio-visual performers in the international copyright framework.
 - Extends the economic and moral rights of actors and performers in audio-visual performances including films, videos and television programs.

1.3.2. National sources of law

- Copyright & Neighbouring Rights Act Cap 218
- Copyright and Neighbouring Rights (Compounding of Offences) Regulations (2020)
- Copyright, Copyrighted Works, Communications to the Public Regulations (2015)
- Copyright Licensing of Public Performances and Broadcasting Regulations (2003)
- Copyright and Neighbouring Rights (Registration of Members and Their Works) Regulations (2005)
- Copyright and Neighbouring Rights (Protection and Distribution of Sound and Audio-visual Recordings) Regulations (2006)

<https://wipolex.wipo.int/en/members/profile/TZ>

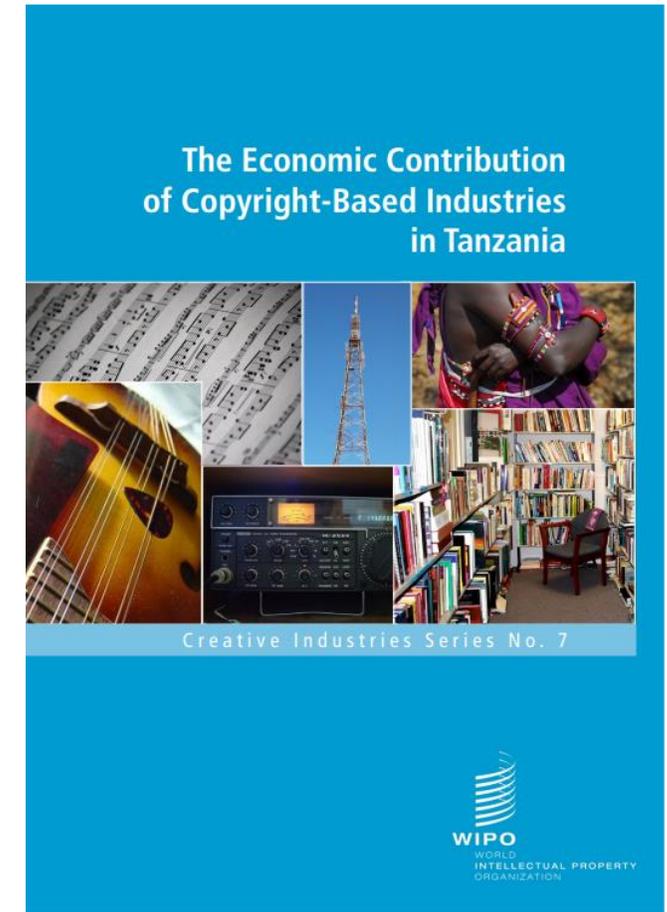
The screenshot shows the WIPO Lex interface for the United Republic of Tanzania. The main heading is "UNITED REPUBLIC OF TANZANIA" followed by "THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT, 1999 [ACT NO. 7 OF 1999]". Below this, there is a section for "Latest Version in WIPO Lex" with a "Year of Version 1999". A "Dates" section lists: "Entry into force: December 31, 1999", "Published: June 4, 1999", "Enacted: June 2, 1999", and "Assented: June 2, 1999". The "Type of Text" is identified as "Main IP Laws" with the subject matter being "Copyright and Related Rights (Neighboring Rights)". A note states: "Notes: The Copyright and Neighbouring Rights Act, 1999 (Act No. 7 of 1999), contained in Chapter 218 of the Laws of Tanzania entered into force on December 31, 1999, as the Minister appointed by notice in the Gazette (see section (2) under Article 1, Part I of the Act)." Under "Available Texts", there is a dropdown menu for "Main text(s)" showing "English The Copyright and Neighbouring Rights Act, 1999 (Act No. 7 of 1999) PDF". The "Related Legislation" section shows "is implemented by (1 text(s))". At the bottom, the WIPO Lex No. is listed as "TZ2002".

1.3.2. National sources of law

- United Kingdom: Copyright, Designs and Patents Act, 1988 (Chapter 48, updated on June 14, 2021) (CDPA)
- United States of America: Copyright Act of 1976, 17 U.S.C. §§ 101 et seq.
- Kenya: Copyright Act, 2001
- Uganda: The Copyright and Neighbouring Rights Act, 2006

1.4. Economic Contribution of Copyright-Based Industries

- Contribution of copyright-based industries in the United Rep of Tanzania:
 - 3-4.6% of the gross domestic product (GDP).
 - 2.8-5.2% of total national economic value.
 - 4.5-5.7% of the total national workforce.



https://www.wipo.int/export/sites/www/copyright/en/performance/pdf/econ_contribution_cr_tz.pdf

2. Obtaining protection

2.1. No registration requirement.

- Subsistence of copyright does not depend on formalities, such as registration.
 - Ref. Cap 218, Section 5(1).
- Voluntary registration of works.
 - Evidentiary value and may serve as proof of copyright ownership in enforcement proceedings.
 - Ref. Cap 218, Sections 46 and 47.

2.2. Challenges to copyright ownership and subsistence.

3. Requirements for valid copyright protection

3.1. Copyrightable subject matter

3.2. Originality

3.3. Fixation - only in countries that expressly provide for it

3.4. The work is not excluded from protection on public policy and morality

3.1. Copyrightable subject matter

- “Literary and artistic works” include every production in the literary, scientific, and artistic domain, whatever may be the mode or form of its expression – Berne Convention, Article 2.
- Types of works protected:
 - Literary works (e.g., books, magazines, newspapers, technical papers, instruction manuals, catalogs, tables and compilations of literary works);
 - Musical works or compositions, including compilations;
 - Dramatic works (e.g. plays for theatre, cinema, television or radio, but also other works such as a sales training program captured on video);
 - Artistic or visual art works (e.g. drawings, paintings, sculptures, architectural designs, cartoons and computer artwork);
 - Photographic works (both on paper and in digital form);
 - Choreographic works (works of dance);
 - Computer programs and software;
 - Some types of databases;
 - Maps, globes, charts, diagrams, plans and technical drawings;
 - Advertisements and commercial prints;
 - Audiovisual works, including films, television shows, and webcasts; and
 - Video games.

The Copyright & Neighbouring Rights Act Cap 218, Section 5 – Works in which copyright may subsist

- (1) Authors of original literary and artistic works shall be entitled to copyright protection for their works under this Act, **by the sole fact of the creation of such works.**
- (2) In this section literary and artistic works shall include in particular-
 - (a) books, pamphlets and other writings, including computer programs;
 - (b) lectures, addresses, sermons and other works of the same nature;
 - (c) Dramatic and dramatic-musical works;
 - (d) musical works (vocal and instruments), whether or not they include accompanying words;
 - (e) choreographic works and pantomimes;
 - (f) cinematographer works, and other audio-visual works;
 - (g) works of drawing, painting, architecture, sculpture, engraving, lithography and tapestry;
 - (h) photographic works including works expressed by processes analogous to photography;
 - (i) works of applied art, whether handicraft or produced on an industrial scale;
 - (j) illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science.

Works shall be **protected irrespective of their form or expression, their quality and the purpose** for which they were created.

United Kingdom - Copyright, Designs and Patents Act 1988

Section 3

(1) In this Part—

“**literary work**” means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes—

- (a) a table or compilation other than a database,. . .
- (b) a computer program;. . .
- (c) preparatory design material for a computer program, and
- (d) a database

“**dramatic work**” includes a work of dance or mime; and

“**musical work**” means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

United Kingdom - Copyright, Designs and Patents Act 1988 Section 4

(1) In this Part “**artistic work**” means—

- (a) a graphic work, photograph, sculpture or collage, irrespective of artistic quality,
- (b) a work of architecture being a building or a model for a building, or
- (c) a work of artistic craftsmanship.

(2) In this Part—

“building” includes any fixed structure, and a part of a building or fixed structure;

“graphic work” includes—

- (a) any painting, drawing, diagram, map, chart or plan, and
- (b) any engraving, etching, lithograph, woodcut or similar work;

“photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;

“sculpture” includes a cast or model made for purposes of sculpture.

United Kingdom - Copyright, Designs and Patents Act 1988

Section 5A

(1) In this Part “**sound recording**” means—

(a) a recording of sounds, from which the sounds may be reproduced, or

(b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced, regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

(2) Copyright does not subsist in a sound recording which is, or to the extent that it is, a copy taken from a previous sound recording.

United Kingdom - Copyright, Designs and Patents Act 1988

Section 5B

- (1) In this Part “**film**” means a recording on any medium from which a moving image may by any means be produced.
- (2) The sound track accompanying a film shall be treated as part of the film for the purposes of this Part.
- (3) Without prejudice to the generality of subsection (2), where that subsection applies—
 - (a) references in this Part to showing a film include playing the film sound track to accompany the film,
 - (b) references in this Part to playing a sound recording, or to communicating a sound recording to the public, do not include playing or communicating the film sound track to accompany the film,
 - (c) references in this Part to copying a work, so far as they apply to a sound recording, do not include copying the film sound track to accompany the film, and
 - (d) references in this Part to the issuing, rental or lending of copies of a work, so far as they apply to a sound recording, do not include the issuing, rental or lending of copies of the sound track to accompany the film.
- (4) Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film.
- (5) Nothing in this section affects any copyright subsisting in a film sound track as a sound recording.

3.1.1. Derivative works

- Copyright protection of derivative works does not prejudice protection under copyright law of the works from which the derivative works are derived.

The Copyright & Neighbouring Rights Act Cap 218, Section 6 – Derivative works

6.-(1) The following shall be protected as original works-

- (a) translation, adaptations, arrangements and other transformation of literary, and artistic works; and
- (b) collection of literary and artistic works, such as encyclopaedia and anthologies; or collection of expressions of folklore and compilation of data or data bases which, by reason of selection and arrangement of their contents constitute intellectual creation; and
- (c) works inspired by expression of folklore.

(2) The protection of any work referred to in subsection (1) of this section shall be without prejudice to any protection of a pre-existing work or expression of folklore utilized for making of such work.

3.1.2. Computer programs and software

- Copyright protects an author's original expression in a computer program as a "literary work".
- **Source code** can be viewed as a human-readable literary work, which expresses the ideas of the software engineers who authored it.
- **Binary machine-readable instructions (object code)** are also considered to be literary works or "written expressions," and, therefore, are protected by copyright.
- **However**, some elements of software, like **ideas, procedures or mathematical concepts, cannot be copyrighted.**
- **Methods of operation** (e.g., menu commands) or **functional aspects of a Graphical User Interface (GUI)** are generally not copyrightable, unless they contain some truly expressive elements.
- Computer programs qualify for copyright protection in the United Republic of Tanzania (Cap 218, Section 5(2)(a)).

3.1.3. Databases

- A database is a collection of information that has been systematically organized for easy access and analysis.
- In some countries (e.g., the United States of America) copyright only protects a database if it is selected, coordinated, or arranged in such a way that it is sufficiently original.
- Exhaustive databases and databases in which the data is arranged according to basic rules (e.g., alphabetically, as in a phone directory) are usually not protected under copyright law in such countries.
- In other countries, mostly in Europe, non-original databases are protected by a *sui generis* right called the database right.
- When a database is protected by copyright, this protection is likely to extend only to the manner of selection and presentation of the database and not to its contents.
- Cap 218 does not contain provision guaranteeing copyright protection in a database as such; it explicitly excludes copyright protection in respect of mere data.

3.1.4. Video games

- Video games generally combine several types of works, such as software, text, a story and characters, animation and other artwork, graphics, video and music.
- Each of these elements may be entitled to copyright protection in its own right, if the conditions for such protection are met.
- The result is what can be described as “**distributive**” **copyright protection**: separate protection for each of the different elements comprising a video game. In almost all jurisdictions, the software underlying a video game will be protected as a literary work.

3.1.5. Exclusion from scope of copyright protection

- Copyright does not protect:
 - Ideas or concepts;
 - Facts or information;
 - TRIPS Agreement, Article 9.2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

- Copyright might not protect...
 - Names, titles, slogans and other short phrases;
 - Official government works.

The Copyright & Neighbouring Rights Act Cap 218, Section 7 – Subject matter not protected

7. [...] protection shall not extend to-

- (a) **laws and decisions of courts** and administrative bodies as well as to official translations thereof;
- (b) **news** of the day published, broadcast or publicly communicated by any other means; and
- (c) **any idea, procedure, method of operation, concept, principle, discovery or mere data**, even if expressed, described, explained, illustrated or embodied in a work.

3.2. Originality

- Only 'original' works will result in copyright protection.
- An original work is one that “originates” in its expression from the author.
- Originality relates to the form of expression and not to the underlying idea.
- The exact meaning of originality under copyright law differs from one country to another.
- Work should not be copied but should originate from the author and its creation should involve minimum amount of skill labor. The author must have expended 'skill, judgement and labor' or 'selection, judgement and experience' or 'labor, skill and capital' in creating the work

3.3. Fixation

- Fixation is a requirement for protection only in those countries that expressly provide for it.
- Berne Convention Article 2(2); “It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.
- In the United Republic of Tanzania, fixation is not a mandatory requirement of copyright protection.
- **Cap 218, Section 2** defines fixation as “the embodiment of sounds or images or both or representations of sounds or images in a material sufficiently permanent or stable to permit them to, be perceived, reproduced or otherwise communicated during a period of more than transitory duration”.

4. Rights conferred by copyright and related rights

4.1. Economic rights

4.2. Moral rights

4.3. Related rights

4.4. Limitations and exceptions to copyright

4.5. Term of protection

4.6. Ownership and transfer of copyright

The Copyright & Neighbouring Rights Act Cap 218, Section 8

– Substance of copyright

8. Copyright in a literary and artistic work comprises the exclusive economic and moral rights of the author as provided for under sections 9 to 11.

4.1. Economic rights

- Economic rights give the owner of copyright the exclusive right to authorize or prohibit certain uses of a work.
- “Exclusive” means no one may exercise these rights without a copyright owner’s prior permission.

4.1.1 Right of reproduction and related rights

4.1.2 Rights of public performance, broadcasting, communication to the public and making available to the public

4.1.3 Right of adaptation

4.1.4 Resale right

4.1.1. Right of reproduction and related rights

- **Right to reproduce**

- Allows the owner of a work to prohibit others from copying or duplicating the work in any manner or form.
 - Examples include: copying a CD; photocopying a book; downloading a computer program; digitizing a photo and storing it on a hard disk; scanning a text; printing a cartoon character on a T-shirt; incorporating a portion of a song into a new song; or 3D printing a copy of a sculpture.
 - Whether the reproduction of a work is in material form or not is irrelevant.
- **Cap 218, Section 4:** ““reproduction” means the making of one or more copies of a work or of a phonogram in any manner of form, including any sound or visual recording or any permanent or temporary storage of the work or phonogram in electronic form”.

4.1.1. Right of reproduction and related rights

- **Right to distribute copies of a work to the public**
 - Allows the owner of a work to prohibit others from selling, leasing or licensing unauthorized copies of the work.
 - In some countries, the right of distribution is subject to exhaustion after the “first sale” or other transfer of ownership of a particular copy.
 - **Cap 218, Section 10.-(1)** “The right to authorize distribution provided for in section 9(1) (b), shall cease to exist in respect of the original or a copy of the work which has been sold by the author or other owner of copyright, or with his authorization, on the territory of the United Republic of Tanzania”.

- **Right to rent copies of a work**
 - “Renting” generally means making copies of a work available to the public for use, for a limited period of time, in exchange for a fee or other economic advantage.
 - Generally applies only to:
 - Certain types of works, such as cinematographic works, musical works or computer programs, and
 - Physical, not electronic copies.

4.1.2. Rights of public performance, broadcasting, communication to the public and making available to the public

- Right of public performance
- Right of communication to the public
- Right to make the work available to the public
- **Cap 218, Section 4:** ““broadcasting” means the communication of a work, a performance or a sound recording to the public by wireless transmission, including transmission by satellite”.

4.1.3. Right of adaptation

- A copyright owner has the exclusive right to **make adaptations of a work**, e.g. translation, a dramatization of a novel, the porting of a computer program into a new computer language, a new arrangement of a piece of music, etc.
- In some countries, the adaptation right is a general right to control all **derivative works**. In others, it is restrictively defined to only apply to certain types of works (literary, dramatic and musical works) and cover only certain kinds of transformative uses (e.g., translations or dramatizations).
- Derivative works can also acquire copyright protection themselves on their own merit, separately from the copyright protection of the original work.

4.1.4. Resale right

- The resale right (*droit de suite*) is the author's right to a share in the proceeds of subsequent sales of their original work.
- It is available in some countries only and is usually limited to certain types of visual art works (e.g., paintings, drawings, prints, collages, sculptures, engravings, tapestries, ceramics, glassware, original manuscripts, etc.).
- The resale right covers all subsequent sales after the first sale, irrespective of whether they are public or private sales, or whether there is an increase or decrease in value of the original work at issue.
- Cap 218 does not contain a provision on the resale right.

The Copyright & Neighbouring Rights Act Cap 218, Section 9 – Economic rights

9.-(1) Subject to the provisions of sections 12 to 21 the author shall have the exclusive right to carry out or to authorize the following acts in relation to the work-

- (a) reproduction of the work;
- (b) distribution of the work;
- (c) the rental of the original or a copy of an audio-visual work, a work embodied in a sound recording, a computer program, a database, or a musical work in the form of notation, irrespective of the ownership of the ownership of the original or copy concerned;
- (d) public exhibition of the work;
- (e) translation of the work;
- (f) adaptation of the work;
- (g) public performance of the work;
- (h) broadcasting of the work;
- (i) other communication to the public of the work;
- (j) importation of copies of the work.

(2) The right of rental under paragraph (c) of subsection (1) of this section does not apply to the rental of computer programs where the program itself is not the essential object of the rental.

The Copyright & Neighbouring Rights Act Cap 218, Section 10

– Right of distribution

10.-(1) The right to authorize distribution provided for in section 9(1) (b), shall cease to exist in respect of the original or a copy of the work which has been sold by the author or other owner of copyright, or with his authorization, on the territory of the United Republic of Tanzania.

(2) Notwithstanding the provisions included in subsection (2) of section 9, the author or any owner of copyright preserves the exclusive rights to authorize the rental of copies of such works after the sale of the copies.

4.2. Moral rights

- Right to be named as the author of the work (attribution right).
- Right to protect the integrity of the work.
- Other moral rights: the right of having access to the work even after it is disposed of, the right of divulgation of the unpublished work; the right of withdrawal of the work in case of change of beliefs.
- In most jurisdictions moral rights cannot be transferred to someone else, as they are personal to the creator. However, in many countries, moral rights may be waived by a written agreement.

The Copyright & Neighbouring Rights Act Cap 218, Section 11 – Moral rights

11. The author of a protected work shall have the right-

(a) to claim authorship of his work, in particular that his authorship be indicated in connection with any of the acts referred to in section 9, except when the work is included by means of photography, sound or visual recording, broadcasting or distribution by cable;

(b) to object to and to seek relief connection with, any distribution, mutilation of other modification of, and any other derogatory action in relation to, his work, where such action would be or is prejudicial to his honor or reputation.

4.3. Related rights

4.3.1. Rights of performers

4.3.2. Rights of producers of producers of sound recordings

4.3.3. Rights of broadcasting organizations

4.3.1. Rights of performers

- Performers: actors, singers, musicians, dancers, etc.
- Right to authorize reproduction of a fixation of a performance, distribution or rental of the original and copies, and the making available of fixed performances to the public.
- Right to authorize the broadcasting and communication to the public of their fixed performances - varies across countries.
- Includes live performances of pre-existing artistic, dramatic or musical works and live recitations and readings of pre-existing literary works.
- Protection against “bootlegging”, i.e. the fixation (recording) in any medium of their “unfixed” (live) performances, as well as the communication to the public and broadcasting of such unauthorized performances.

4.3.2. Rights of producers of sound recordings

- Right to authorize the reproduction, distribution and rental of their sound recordings.
- Right to authorize the making available of those sound recordings to the public by wire or wireless means.
- Right over the broadcasting or communication to the public of their sound recordings – varies across countries.
- Right to an equitable remuneration for the use of their sound recordings in broadcasting or communication to the public – varies across countries.

4.3.3. Rights of broadcasting organizations

- Right to authorize the rebroadcasting of their wireless broadcasts, the fixation of their wireless broadcasts and the reproduction of such fixations.
- Right to authorize the communication to the public of their wireless broadcasts, if such communication is made in places accessible to the public against the payment of an entrance fee.
- Right to authorize the producing and streaming of content online - a rapidly evolving area of law, with important differences among countries.

4.4. Limitations and exceptions to copyright

- Berne “**three-step-test**” (Art. 9(2)).
- Member States may provide for **free reproduction** – extended to apply to other rights in subsequent treaties:
 - a) In “certain special cases”, where the acts
 - b) do not conflict with a normal exploitation of the work and
 - c) do not unreasonably prejudice the legitimate interests of the author.
- TRIPS Agreement, Art. 13(2).
- WCT, Art. 10.

4.4. Limitations and exceptions to copyright

- Specific free uses permitted under Berne Convention:
 - Quotations (Art. 10);
 - Illustrations for teaching (Art. 10);
 - Reproduction of newspaper or similar articles and use of works for the purpose of reporting current events (Art. 10*bis*);
 - Ephemeral recordings for broadcasting purposes (Art. 11*bis*(3)).

4.4. Limitations and exceptions to copyright

– Examples of uses that qualify under the Berne three-step-test

- Copying for private use by individuals (though, in the context of digital copying, some countries have introduced systems that incorporate a mechanism for payment to right owners, sometimes referred to as private copy levies);
- Judicial and administrative use;
- Use for educational, research and scientific purposes;
- Use for teaching purposes;
- Use by libraries and archives;
- Use for certain humanitarian purposes (e.g., for disabled or blind readers);
- Use of works for cultural purposes (social and religious functions).

The Copyright & Neighbouring Rights Act Cap 218, Section 12 – Free use

Section 12.-(2):

- (a) Personal and private use, provided that such reproduction does not conflict with normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the author
- (b) Quotations, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose
- (c) Use for teaching purposes, provided that such use is compatible with fair practice

Section 12.-(4): Article published in newspaper or periodicals on current economic, political or religious topics

Section 12.-(6): Works of art and architecture

Section 12.-(7): The reproduction by public libraries, non-commercial documentation centers, [...] of works which have already been lawfully made available to the public

Section 12.-(9): Recording by broadcasting organizations

The Copyright & Neighbouring Rights Act Cap 218, Section 13 – Temporary reproduction

13. Notwithstanding the provisions of section 9, the temporary reproduction of a work shall be permitted if all of the following conditions are met-

- (i) the reproduction is made in the process of a transmission of the work or an act of making a stored work perceptible;
- (ii) it is caused by a person or entity that, by way of authorization by the owner of copyright or of operation of law, is entitled to make that transmission or making perceptible of the work; and
- (iii) it is an accessory to the transmission of making perceptible that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work of any other purpose than those referred to in paragraphs (i) and (ii) above.

4.4. Limitations and exceptions to copyright

– Non-voluntary (compulsory) licenses

The Berne Convention recognizes **non-voluntary (compulsory) licenses**, which permit use of works in certain circumstances without the right owner's permission, but only against the payment of a remuneration or fee. The Berne Convention allows the provision of non-voluntary licenses in relation to broadcasting and the recording of musical works.

4.4. Limitations and exceptions to copyright

– Marrakesh Treaty

- First multilateral copyright instrument centered on limitations and exceptions.
- Limitations and exceptions in order to:
 - Permit reproduction, distribution and making available of certain published works in formats designed to be accessible to persons who are blind, visually impaired, or otherwise print disabled.
 - Permit exchange of these works across borders by organizations that serve those persons.

4.5. Term of Protection

- Minimum term: lifetime of the author as well as an additional period of at least 50 years (Berne Convention, Art. 7(1)).
- National laws may establish longer term of protection. For example, in the United Kingdom, it is the life of the author plus 70 years.
- Special provisions for certain categories of works:
 - Cinematographic works;
 - Anonymous, pseudonymous or posthumous works;
 - Photographic works, or works of joint authorship.
- Term of moral rights: at least until the expiry of economic rights.
- Term of related rights: usually shorter than for works of copyright.

The Copyright & Neighbouring Rights Act Cap 218, Section 14

– Duration of authors right

14.-(1) Subject to the provisions of subsections (2) to (5), of this section, the economic and moral rights shall be protected during the life of the author and for fifty years after his death.

(2) In the case of a work of joint authorship, the economic and moral rights shall be protected during the life of the last surviving author and fifty years after his death.

4.6 Ownership and transfer of copyright

4.6.1. Authorship

4.6.2. Ownership

4.6.3. Licensing

4.6.4. Assignment

4.6.1. Authorship

- The **author** of a work is the person who created the work.
 - **Cap 218, Section 4:** ““author” means the **natural person** who creates the work”.
 - The issue of authorship is especially relevant in connection with moral rights (which always belong to the author) and in order to determine the date on which protection expires.
 - Authorship is presumed if the author’s name (or pseudonym, if the pseudonym leaves no doubt as to the author’s identity) appears on the work in the usual manner.
 - The person or body corporate whose name appears on a cinematographic work in the usual manner must, in the absence of proof to the contrary, be presumed to be the maker of the work; and
 - In the case of anonymous and pseudonymous works, the publisher whose name appears on the work must, in the absence of proof to the contrary, be deemed to represent the author unless the author reveals their identity and establishes their claim to authorship of the work.
 - There can be multiple authors or joint authors.

4.6.1. Authorship

- For sound recordings and computer-generated works, the author is the person who makes the arrangements necessary for the making or creation of the work.
- In works produced by or with the help of a computer e.g. computer programs, authorship can reside in the person who enters information into the computer to produce the output or in the programmer who writes the program used or a combination of both.

4.6.2. Ownership

- The **owner** of the copyright in a work is the person who enjoys the exclusive economic rights granted by copyright law.
 - While in many countries the author has to be a human being, the owner may be a natural or a legal person.
- The general principle of ownership is that the author (the creator) is the copyright owner: the person who creates the work, the person whose skill, labor, effort and judgment brings the work into existence.
- Exception: when the work is made by an employee in the course of his employment, in which case his employer will be the first owner, unless otherwise agreed.
- **Cap 218, Section 15.-(1):** “The right in a work protected under this Act shall be owned in the first instance by the author or authors who created the work. The authors of a work of joint authorship shall be co-owners of the said rights”.

The Copyright & Neighbouring Rights Act Cap 218, Section 15

– Works in the course of employment

15. - (4) In the case of a work created by an author for any person or body corporate in the course of fulfillment of his or her duties under a contract of service or employment, the rights of the work referred to in section 9 shall, **in the absence of contractual provisions to the contrary, be deemed to be assigned to the employer of the author to such extent as may be necessary to its customary activities** at the time of the conclusion of the relevant contract of service or employment.

4.6.3. Licensing

- Temporary transfer of copyright.
- License: a permission that is granted to others to exercise one or more of the exclusive economic rights over a work that are restricted by copyright
- The rights owner retains ownership of copyright and related rights while allowing others to, i.e., make copies, distribute, download, broadcast, webcast, or make derivative works in exchange for payment.
- The rights owner may license some rights and not others.
- Types of licenses:
 - Exclusive v non—exclusive license;
 - Licensing through agent of agency;
 - Joining a Collective Management Organization (CMO);
 - Open-source or public copyright licenses.

The Copyright & Neighbouring Rights Act Cap 218, Section 17 – Licenses

17. - (1) The author or other owner of copyright may grant nonexclusive or exclusive licences to others to carry out, or to authorize the carrying out of certain specified acts covered by his or its economic rights.
- (2) A non- exclusive licence shall entitle the licensee to carry out the act concerned concurrently with the author or other owner of copyright and concurrently with any other possible non-exclusive licensees.
- (3) An exclusive licence shall entitle the licensee to carry out the act concerned to exclusion of all others, including the author or other owner of copyright.
- (4) A license shall be considered to be exclusive only if the licensing contract contains words to that effect, or the obvious intention of the if contracting parties to that effect clearly result from the circumstances. The licensee shall have locus standi to sue in his own name for an infringement of any exclusive right conferred on him.
- (5) Failure to mention the scope or ways and means of carrying out the acts for which a licence is granted shall be deemed to limit the licensee to such ways and means that are necessary for the purpose that may be reasonable presumed to be envisaged by the contracting parties when concluding the licensing contract.
- (6) Only the economic right explicitly mentioned in the contract shall be considered part of the license.
- (7) Unless the licensing contract provides for a shorter period, the validity of the license expires fifteen years after conclusion of the contract or, if this period is shorter, on the expiring of the contract an assignment on the basis of which the assignee has granted the license.
- (8) Any grant of exclusive - license, shall be valid only if It is the subject of written contract signed by the contracting parties.

4.6.3. Licensing

- In situations where individual licensing is impossible or impracticable, rights owners may consider joining a **Collective Management Organization** (CMO), which monitor uses of works on behalf of rights owners and are in charge of negotiating licenses and collecting payments.
- Rights owners may join a relevant CMO in their own country, if one exists, and/or in other countries. In some cases, management by a CMO may be mandated by law.
- In Tanzania there is the The Copyright Society of Tanzania Ministry of Industry and Trade (COSOTA).

4.6.4. Assignment

- Permanent transfer of copyright.
- When copyright is assigned to a third party, the third party becomes the new rights owner.
- Whereas a license only grants a right to do something which in the absence of the license would be unlawful, an assignment transfers the total interest in the rights.
- It is possible to either transfer the entire bundle of rights or just part of it.
- In most countries, an assignment must be in writing and signed by the rights owner to be valid. In a few countries, copyright cannot be assigned at all. Importantly, only the economic rights may be assigned, as moral rights always remain with the author or performer or their heirs (although in some countries they may be waived).

The Copyright & Neighbouring Rights Act Cap 218, Section 16 – Assignment of author's rights

16.-(1) The rights referred to in section 9 shall be assignable in the whole or in part.

(2) Any assignment of a right referred to in section 9 shall be in writing signed by the assignee.

(3) An assignment, in whole or in part, of any right referred to in section 9 shall not include or be deemed to include the assignment of any other rights referred to therein.

(4) Notwithstanding the provisions of section 21 the assignment of right in future work shall be void.

(5) The transfer of ownership of the original or of one or several copies of a work shall not imply the assignment of right in the work.

5. Infringement

5.1. Subsistence of copyright and ownership

5.2. Infringing act

5.3. Copyright piracy

5. Infringement

- Establishing copyright infringement requires proof of:
 - 1) the existence (subsistence) of the right of the claimant; and
 - 2) the infringing act.

5.1. Subsistence of copyright

- The work in question:
 - Must be copyrightable subject matter;
 - Must meet the requirements for protection under the national legislation; and
 - Must also be shown that the claimant is the owner of the copyright-protected work.

5.2. Infringing Act

- Copyright is infringed by any person who, without the authorization of the copyright owner, does or causes any other person to do any act that the owner has the exclusive rights to do or to authorize, unless a limitation or exception applies.
- Proof of copyright infringement requires proof of lack of authorization or consent.
- An infringing act need not relate to the entirety of a work, but can also concern a part of the work.
- Examples of infringement include, importing, selling, distributing and processing infringing copies.

5.3. Copyright Piracy

- Piracy: the unauthorized copying of copyright materials for commercial purposes and the unauthorized commercial dealing in copied materials.
- Elements of copyright piracy depend on national law.
- Criminal procedures and penalties must be provided at least in cases of wilful copyright piracy on a commercial scale (TRIPS, Art. 61).

6. Remedies

6.1. Provisional Measures

6.2. Injunctions

6.3. Damages

6.4. Right of Information

6.5. Disposal or destruction

6.6. Publication of judgments in media

6.7. Criminal remedies

6. Remedies

- Provisional Measures
- Civil Remedies:
 - Copyright infringement is generally a civil matter, which the copyright owner must pursue before the court.
 - Injunctions, information, damages, disposal or destruction, delivery up, publication of judgments in media.
- Criminal Remedies:
 - Under certain circumstances, the infringement may also constitute a criminal misdemeanor or felony, which would be prosecuted by the Office of the Director of Public Prosecution under the copyright law and criminal law.
- Administrative Remedies
- Inspection Orders

The Copyright & Neighbouring Rights Act Cap 218

Part V. Sanctions

36.- Civil remedies

37.- Action for injunction and damages

38.- Right of destruction and similar measures

39.- Right of delivery

40.- Responsibility of the proprietor of an enterprise

41.- Exception

42.- Offences and legal sanctions

43.- Conservatory and provisional measures

6.1. Provisional measures

- Provisional measures are temporary remedies that are granted pending the full ventilation of a dispute at trial. They can be sought and granted prior to the commencement of an action on the merits, and can extend until a final decision on the merits has been rendered.
- **Article 50.1 of TRIPS:** The judicial authorities shall have the authority to order prompt and effective provisional measures:
 - (a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;
 - (b) to preserve relevant evidence in regard to the alleged infringement.
- They serve the two primary purposes: i) the prevention of infringement and entry of infringing goods into the market, and, ii) the collection and preservation of relevant evidence with regard to the alleged infringement.

6.1. Provisional measures

- In addition to preventing or stopping the alleged infringing act and preserving the status quo, they can also be valuable in providing parties with a preview of the case, which may result in the dispute being concluded without trial (and without the additional costs of a trial).
- The grant of provisional measures generally involves three elements, which are assessed using different approaches across jurisdictions.
 1. Establishment of the intellectual property right of the applicant to a sufficient standard to warrant the grant of a provisional measure, such as an interim injunction. This will often be at the standard of a *prima facie* or arguable case in favour of the existence of the intellectual property right.
 2. Whether it is sufficiently certain that the respondent is infringing, or threatening to infringe, that right.
 3. Whether an order would be reasonable in the circumstances of the case, which may include consideration of proportionality issues such as irreparable harm and the balance of convenience, and which must be determined according to law and established facts. In some jurisdictions, an additional element that may be considered is the impact of the injunction on the public interest.

6.1. Provisional measures

- Provisional measures may be adopted *inaudita altera parte* (without prior hearing from the other side), in particular where any delay is likely to cause irreparable harm to the right owner, or where there is a demonstrable risk of evidence being destroyed.
- When considering applications for provisional measures, courts may order the applicant **to provide a security or equivalent assurance** sufficient to protect the defendant and to prevent abuse.
- Where the provisional measures have been adopted in the absence of the other side, the defendant must be notified without delay after the execution of the measures (at the latest).
- Despite the focus on preserving the status quo between the parties, a court may sometimes order that an earlier position be restored, or that the parties arrange their affairs in some other way that is more in accordance with the requirements of justice.

The Copyright & Neighbouring Rights Act Cap 218, Section 43 – Provisional measures

43.-(1) The court having jurisdiction of a civil action arising under this Act, or Criminal Procedure Act shall have the authority, subject to (the relevant provisions of the Act and the Civil Procedure Code) and on such terms as it may deem reasonable-

(a) to grant injunctions to prohibit the committing, or continuation of committing, of infringement of any right protected under this Act

6.2. Injunctions

- Definitive or final injunctions are awarded at the end of an infringement proceeding and order the defendant to desist from infringement, including to prevent the commercialization of the infringing goods (entry or movement of infringing goods into the channels of commerce in the jurisdiction).
- They may also order the seizure or delivery up of the goods suspected of infringement.
- They are usually accompanied by other remedies.

6.2. Injunctions

- **TRIPS Agreement, Art. 44**, establishes that:

“1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right”.

The Copyright & Neighbouring Rights Act Cap 218, Section 36 – Civil Remedies

36.-(1) Any person whose rights under this Act are in imminent danger of being infringed or have been infringed, may institute proceedings in the United Republic of Tanzania for-

- (a) an **injunction** to prevent the infringement or to prohibit the continuation of the infringement;
- (b) **payment of any damages** suffered in consequence of the infringement, including any profits enjoyed by the infringing person that are attributable to the infringement. If the infringement is found to have been prejudicial to the reputation of the person whose rights were infringed, the court may, at its discretion, award exemplary damages.

(2) Any object which was made in violation of this Act and any receipts of the person violating it and resulting from such violations, shall be subject to **seizure**.

The Copyright & Neighbouring Rights Act Cap 218, Section 37 – Action for injunction and damages

37.-(1) As against any person who infringes a copyright or any other right protected by this Act, the injured party may bring an action in court for **injunctive relief** requiring the wrongdoer to cease and desist if there is a danger of repetition of the acts of infringement was intentional or the result of negligence. In lieu of damages, the injured party may recover **the profits** derived by the infringer from the acts of infringement together with a detailed **accounting reflecting such profits**.

(2) Authors, persons having rights in scientific editions, photographers and performers may, if the infringement was intentional or the result of negligence, recover, as justice may require, **a monetary indemnity** for the injury caused to them even if no pecuniary loss has occurred. This right is not assignable unless it has been acknowledged by contract or unless legal action asserting the right has previously been commenced.

(3) Rights arising from other legal provisions shall not be affected.

6.3. Damages

- Quantification of damages:
 - Courts may call upon expert evidence or conduct separate proceedings in order to determine the quantum of damages.

- Bases of quantification of damages:
 - Right owner's loss of profits - the profits (e.g. sales of protected goods) that the right owner would have been expected to enjoy, were it not for the infringing conduct;
 - Statutory damages (pre-established sum);
 - Notional royalty - payment of a sum that the right owner would have obtained if the infringer had taken a license;
 - Restitutions of the profits of the infringer (account of profits);
 - Punitive damages; and
 - Attorney's fees.

The Copyright & Neighbouring Rights Act Cap 218, Section 41 – Damages

41.-(1) If, in the event of infringement of a right protected under this Act, the demands of the injured party for any injunction (section 37), for destruction or rendering the work unusable (section 38) or for delivery (section 39) are asserted against a person whose **acts of infringement were neither intentional nor negligent**, such person may simply indemnify in money to the injured party if execution of the aforesaid demands would produce for him a serious and disproportionate injury and if it may be assumed that the injured party could accept redress in cash. **The damages payable as aforesaid shall be such an amount as would have constituted an equitable remuneration had the right been granted by contract.** Payment of such damages shall constitute the injured party's consent to a utilization within customary limits.

The Copyright & Neighbouring Rights Act Cap 218, Section 36 – Damages

36.-(1) Any person whose rights under this Act are in imminent danger of being infringed or have been infringed, may institute proceedings in the United Republic of Tanzania for-

(b) **payment of any damages** suffered in consequence of the infringement, **including any profits** enjoyed by the infringing person that are attributable to the infringement. If the infringement is found to have been prejudicial to the reputation of the person whose rights were infringed, the court may, at its discretion, award exemplary damages.

6.4. Right of information

- **TRIPS Agreement, Art. 47**, provides that:
“Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution”.

6.5. Disposal or destruction

- An order for disposal or destruction may be available as a remedy for a judicial finding of infringement, upon application by the right owner. It can cover not only the goods found to be infringing, but also materials and implements predominantly used in the creation of the infringing goods.
- It **must be proportionate** to the seriousness of the infringement and the interests of third parties.
- The aim is to create an effective deterrent to minimize the risks of further infringement, and avoiding harm to the right owner by removing the prospect that infringing items will remain in circulation.
- When ordering disposal or destruction, judicial authorities should consider the need to manage the environmental impact of infringing goods.
- TRIPS Agreement, Art. 46

The Copyright & Neighbouring Rights Act Cap 218, Section 38 – Right of destruction and similar measures

38.-(1) The injured party may require the destruction of all copies that have been unlawfully manufactured or unlawfully distributed or which are intended for unlawful distribution.

(2) The injured party may further require that the equipment such as moulds, plates, engraving stones, blocks, stencils and negatives which were destined exclusively for the unlawful production of copies be rendered unusable, or if this is not practicable, destroyed.

(3) If the appearance of the copies or the equipment causing the infringement can be modified in some other fashion that the work no longer constitutes an infringement of the rights of the injured party, in such case such injured party may only require that such measures be undertaken as to achieve this effect.

(4) The measures proposed in subsections (1) to (3) of this section shall apply only to copies and equipment which are the unlawful making or distribution of the copies, or their heirs, these measures may be executed only after ownership has been legally confirmed.

6.6. Publication of judgments in media

- Another civil remedy that exists in many jurisdictions is the publication of judgments in media to alert the public to the contravention, with the costs borne by the infringer.
- See, e.g., The European Union Enforcement Directive, Art. 15, available at:

[https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0048R\(01\)&from=EN#d1e842-16-1](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0048R(01)&from=EN#d1e842-16-1)

6.7. Criminal remedies

- Criminal sanctions are intended to punish those who carry out infringements of particular gravity, and also to deter further infringement.
- **Article 61 of TRIPS:**

“Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale”.

The Copyright & Neighbouring Rights Act Cap 218, Section 42 – Offences and legal sanctions

(1) Without prejudice to the remedies available under section 36, any person who knowingly violates, or causes to be violated, the rights protected under this Act shall be liable to-

(a) a fine of not exceeding more than five million shillings or to imprisonment for a term not exceeding three years or to both, for the first offence if the infringement was on a commercial basis; and

(b) a fine of not exceeding ten million shillings or to imprisonment for a term not exceeding five years or both, for each subsequent offence if the infringement was on a commercial basis.

[...]

The Copyright & Neighbouring Rights Act Cap 218, Section 42 – Conservatory and provisional measures

43.-(1) The court having jurisdiction of a civil action arising under this Act, or Criminal Procedure Act shall have the authority, [...

(a) **to grant injunctions to prohibit the committing, or continuation of committing, of infringement** of any right protected under this Act;

(b) **to order the impounding of copies of works or sound recordings suspected of** being made or imported without the authorization of the owner of any right protected under this Act where the making or importation of copies is subject to such an authorization, **as well as the impounding of the packaging of, the implements that could be used for** the making of, and the documents, accounts or business papers referring to, such copies.

(2) The provisions of the Civil Procedure Code, 1966 and the Criminal Procedure Act, 1987 dealing **with search and seizure** shall apply to infringements of rights under this Act.

(3) The provisions of Tanzania Revenue Authority Act, 1995 dealing **with suspension of the release of suspected illegal goods** shall apply to articles and implements protected under this Act.

[...]

7. National case law

- Hamisi Mwinyijuma and Ambwene Yesaya v TIGO Company Ltd., Civil Case No. 38 of 2011, High Court of Tanzania at Dar es Salaam available at <https://wipolex.wipo.int/en/judgments/details/1349>.
- Multichoice Tanzania Limited v Maimuka K. Kiganza, Civil Appeal No. 166 of 2020, High Court of Tanzania at Dar es Salaam, available at <https://wipolex.wipo.int/en/judgments/details/1359>.
- MIC Tanzania Limited v Hamis Mwinyijuma and Ambwene Yesaya, Civil Appeal No.112 of 2019, High Court of Tanzania at Dar es Salaam, available at <https://wipolex.wipo.int/en/judgments/details/1360>.
- RSA Limited v HansPaul Automechs Limited and another, Commercial Case No. 160 of 2014, High Court of Tanzania, Commercial Division at Dar es Salaam, available at <https://wipolex.wipo.int/en/judgments/details/1365>.
- Macmillan Aidan (T) Limited v Nyambari Nyangwine, J.A. Masebo and Nyambari Nyangwine Publishers, Commercial Case No. 81 of 2010, High Court of Tanzania, Commercial Division at Dar es Salaam, available at <https://wipolex.wipo.int/en/judgments/details/1357>.
- Heritage Motel v Copyright Society of Tanzania and Honorable Attorney General, Commercial Case No. 04 of 2009, High Court of Tanzania, Commercial Division at Dar es Salaam, available at <https://wipolex.wipo.int/en/judgments/details/1350>.
- Patrick Balisidya v The Executive Director Audio Master and others, Civil Case No. 37 of 1989, High Court of Tanzania at Dar es Salaam, available at <https://wipolex.wipo.int/en/judgments/details/1361>.

Hamisi Mwinyijuma and Ambwene Yesaya v TIGO Company Ltd., Civil Case No. 38 of 2011, High Court of Tanzania at Dar es Salaam

<https://wipolex.wipo.int/en/judgments/details/1349>

The plaintiff filed a lawsuit for infringement of a musical work, and requested the following remedies:

- Declaration of infringement;
 - An injunction to restrain the defendants, from infringing the plaintiffs copyrighted work;
 - Interest at 20% of the commercial rate;
 - Cost of the suit.
-
- The High Court, based on Section 37 (1) and Section 4 of Cap 218, determined that it lacked jurisdiction to hear the case and ruled that the District Court was the competent court.