

UGANDA CHRISTIAN UNIVERSITY

FACULTY OF LAW

BACHELOR OF LAWS PROGRAMME

Course Title	Intellectual Property II [Copyright law]		
Course Code		Credit Hours	75 (Seventy five) <i>(Sixty teaching hours, fifteen hrs for research)</i>
Contact Hours	Twice a week (2 hours each)	Core / Elective	Elective course
Lecturers	Dr. Anthony C.K. Kakooza Mr. Herman Tuhairwe	Tutorial Asst.	Grace Nakabugo
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1. Course Description

The first part of I.P II constitutes Copyright & Neighbouring Rights law, Traditional Cultural Expressions (TCEs) and other emerging related issues.

Copyright law has acquired increased significance with the emergence of Information Technology and increased innovation, especially in the entertainment realm. This subject examines the fundamental characteristics of the law of Copyright and related rights in Uganda together with the development of international copyright agreements, particularly the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The focus on the law is through case studies with specific references to International developments in Copyright law vis-à-vis an exposure into the intersection with TCEs or Folklore.

2. Course objectives and learning outcomes:

By the end of this subject, students should be able to:

- Appreciate the nexus between copyright law and the economic environment;
- Discuss the elements of Copyright law, including rights, limitations and ownership;
- Identify the requirements for copyright registration;
- Identify focus areas of public interest in the appreciation of Copyright law;
- Recognize interconnections between copyright and folklore and appreciate sui generis avenues for the protection of folklore;
- Apply case law to the legal and regulatory problems associated with contemporary developments in Copyright and related rights as well as enforcement of intellectual property rights;
- Recognize the foreseeable challenges and oppositions associated with development of regulatory and policy frameworks in the protection of Copyright as well as recognition and protection of image rights.

3. Required readings

This course is organized around reading materials prepared specifically by the course facilitators. As such, there is no single recommended textbook for this course. However, the following materials, which are available in the UCU Library, provide some coverage of the main issues addressed in the module:

Texts:

- D. Bainbridge (2010), *Intellectual Property*, 8th Edition.
- D. Bainbridge (2008), *Introduction to Information Technology Law*, 6th Ed., Pearson, Longman
- W.R. Cornish (2006), *Cases and Materials on Intellectual Property*, 5th Edition, Sweet & Maxwell
- Jeremy de Beer, Chris Armstrong, Chidi Oguamanam & Tobias Schonwetter (Eds.) (2014), *Innovation & Intellectual Property: Collaborative Dynamics in Africa*, UCT Press.
- D. Bakibinga & Kakungulu Mayambala (2016), *Intellectual Property Law in East Africa*, Law Africa

Note: Students may also find it helpful to begin by studying the WIPO Intellectual Property Handbook: Policy Law and Use, WIPO Publication No. 489(E) (WIPO, Geneva), which is freely available online at the WIPO website: http://www.wipo.org/news/en/index.html?wipo_content_frame=/news/en/document_s.html.

Further case material can also be obtained from www.ulii.org, www.worldlii.org, www.saflii.org, www.bailii.org, and www.wipo.int

You may also find freely downloadable and useful articles from e-journals on the website for the Social Science Research Network www.ssrn.com

4. Course outline and Content Description

General Introduction:

A. Principles of Copyright law.

Justification for copyright protection.

- i. Moral Principles:
 - a. Sec. 10, Copyright and Neighboring Rights Act, (No. 19 of 2006).
 - b. Angella Katatumba v. The Anti-Corruption Coalition of Uganda (ACCU), High Court (Commercial Division), Civil Suit No. 307 of 2011
- ii. Natural law justification:
 - a. Sec. 46 & 48 (No. 19/2006)
 - b. Sikuku Agaitano v. Uganda Baati, HCCS. No. 0298 of 2012
- iii. Economic Principles:
 - a. Sec. 9, Act No. 19 of 2006
 - b. Classic Art Works Ltd v. Vincent Lukenge & Children of Grace, HCCS No. 207 of 2010
 - c. Angella Katatumba v. ACCU [supra]

B. The role of Copyright in economic, social and cultural development.

- a) Copyright and Human Rights
 - i. Universal Declaration of Human Rights: Articles 17, 19, 26, 27(1) & (2) and 29
 - ii. Chapter 4 of the Ugandan Constitution, particularly Article 26.
 - iii. Angella Katatumba v. ACCU [supra]
 - iv. The Trustees of Kenya Budget Hotel Association et al v. The Music Copyright Society of Kenya Ltd, High Court at Nakuru, Civil Suit 4 of 2011 and 9 of 2010

- b) Legal Sources of Copyright and related rights: International Treaties, Regional rules and National laws.

International Treaties:

 - i. The Berne Convention and the Rome Convention.
http://www.wipo.int/treaties/en/text.jsp?file_id=283698
<http://global.oup.com/booksites/content/9780198259466/15550004>
 - ii. The TRIPS Agreement
http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm
 Special reference to articles 9 – 14, 41-61, Part III on enforcement of IPRS.
 Readings:
 1. *Copyright enforcement under the TRIPS Agreement*; A paper prepared by the International Intellectual Property Alliance see http://www.iipa.com/rbi/2004_Oct19_TRIPS.pdf
 2. Tuhairwe, H.: *Copyright protection before and after the TRIPS Agreement: impact of the new regime on developing countries* (May 3, 2015), Makerere Law Journal, 2015. Available at SSRN: <https://ssrn.com/abstract=2774051>
 - iii. The WIPO “Internet Treaties”:
 - WIPO Copyright Treaty 1996
http://www.wipo.int/treaties/en/ip/wct/summary_wct.html
 - WIPO Performances and Phonograms Treaty 1996
http://www.wipo.int/treaties/en/text.jsp?file_id=295578
 - iv. Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled 2013
http://www.wipo.int/treaties/en/text.jsp?file_id=301016
 Readings:
 Analysis of WIPO Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled here: <http://www.ifro.org/content/analysis-wipo-marrakesh-treaty-facilitate-access-published-works-persons-who-are-blind-visua>

Regional rules:

 - v. The ARIPO Swakopmund Protocol on the Protection of Traditional Knowledge and the Expressions of Folklore.
http://www.wipo.int/edocs/lexdocs/treaties/en/ap010/trt_ap010.pdf

National:

 - vi. The Copyright and Neighboring Rights Act, No. 13 of 2006
 - vii. Copyright Regulations, S.I. No. 1 of 2010

- c) Copyright and trade: the TRIPS Agreement.

- i. Agreement on Trade-Related Aspects of I.P.Rs adopted as Annex 1C of the Marrakesh Agreement establishing the World Trade Organization.
 - ii. Relationship between the Berne Convention and the Rome Convention; and with the TRIPS Agreement.
- d) Substantive elements of copyright protection.

Basic Principles:

- i. National treatment: Types of works eligible for copyright:
 - Sec. 5, Act. 19/2006
 - Faulu Kenya Deposit taking Microfinance Limited v. Safaricom Limited Civil Case 756 of 2012; [2012] eKLR
 - MacMillan Kenya (Publishers) Ltd v. Mount Kenya Sundries Ltd [2008] eKLR
 - Is a manuscript of unpublished literary work copyrightable? In Re Dickens. Dickens v. Hawksley, C.A. 1934
 - Are exam papers copyrightable? University of London Press Ltd v. University Tutorial Press Ltd, [1916]2 Ch 601
 - Does copyright ownership extend to animals? PETA et al v. David Slater et al, Case No. 15-cv-4324-WHO, Northern District of California See: When a monkey takes a selfie <http://www.cnn.com/2014/08/08/opinion/cevallos-monkey-selfie-copyright/>
- ii. Independence of Protection/Formality-free protection:
 - Sec. 4(2), Sec. 43, Part II of S.I. 1/2010
 - Application procedure: Regns. 3-6, S.I. 1 of 2010
 - No registration procedures as per Berne Convention (Art. 5(2))
 - Objection to registration: Reg. 6, S.I 1 of 2010
 - Prof. Mwambusya v. Y.K. Museveni Application No. 25 of 2010. Objection to Copyright registration.

The Coverage of Protection:

- iii. The Idea-expression and information-presentation dichotomies
 - Sec. 6
 - Byte legion Technologies v. MTN (Uganda) LTD, HCT – 00 – CC- CS - 395 – 2009
 - Meaning of “work”: Ladbroke (Football) Ltd v. William Hill (Football) Ltd [1964]1 WLR 273 at 291/[1964]1 All E.R. 465, HL
- iv. Originality
 - Sec. 4(1)
 - Sikuku Agaitano v. Uganda Baati HCCS No. 0298 of 2012
 - Digital Solutions Ltd v. MTN Uganda Ltd C.S. No. 570 of 2004
 - Rhoda Ondeng Wilhelmsen v. Dr. Sarah A. Chuchu [2013] Eklr, C.C. No. 258 of 2012
 - Sylvia Katende v Bank of Uganda H.C.C.S. No. 443 of 2010
- v. The question of fixation/material form
 - Sec. 4(1)
 - Byte legion Technologies v. MTN (Uganda) LTD, HCCS No. 395 of 2009

- Al Hajji Nasser Ntege Sebagala v. MTN (U) Ltd & Anor. H.C.C.S. No. 283 of 2012
- vi. Authorship vs. Ownership
- Sec. 2, 8, & 11 of Act 19/2006 and Part II of S.I No. 1/2010
 - Prof. George W Kakoma Vs Attorney General HCCS No 127 of 2008
 - Angella Katatumba V. The Anti-Corruption Coalition of Uganda (ACCU), HCCS No. 307 of 2011
 - Faulu Kenya Deposit Taking Microfinance Limited v. Safaricom Limited [2012] eKLR, C.C. No. 756 of 2012
 - Rhoda Ondeng Wilhelmsen v. Dr. Sarah A. Chuchu [2013] Eklr (Supra)
- vii. Categories of works
- Literary work:
- University of London Press Ltd v. University Tutorial Press Ltd [1916]2 Ch 601 at 608
 - Exxon Corporation v. Exxon Insurance Consultants International Ltd [1981]3 All ER 241
- Dramatic work:
- Wood v. Boosey [1868] L.R. 3 Q.B. 223, Exchequer Chamber
- Musical work:
- Angella Katatumba V. The ACCU
 - Obsessions Co. Ltd v. Warid Telecom (Uganda) Ltd & Anor H.C.CS No. 373 of 2010
- viii. Works that may be excluded from protection
- Sec. 6-8
 - Prof. George W Kakoma Vs Attorney General
 - Gould Estate v. Stoddart Publishing Co. Ltd [1996]O.J. No. 3288, 30 O.R. (3d) 520
- ix. Rights of Publishers
- Sec. 36
 - James Park v. East African Educational Publishers Ltd, HCCS 155 of 2011.
- Moral and Economic Rights:
- Sec. 9 and 10
 - Angella Katatumba V. The ACCU
 - James Park v East African Educational Publishers Ltd
 - Classic Art Works Ltd v. Vincent Lukenge & Children of Grace, HCCS No. 207 of 2010
- e) Main substantive elements of Related (Neighboring) Rights.
- Part IV of the Act and Part IV of the S.I.
 - New Vision Printing & Publishing Co. Ltd vs. Wanainchi Group Ltd. Misc. Appln No. 30 of 2013 [Arising from Civil Appeal No. 154 of 2012]

- Wanainchi Group (U) Ltd v. The New Vision, Court of Appeal, Civil Appln. No. 132 of 2014
 - Attorney General v. Sanyu Television. H.C.C.S No. 614 of 1998
- f) Balancing of interests: Exceptions and limitations.
- Exceptions: Sec. 15-19 – Fair use and Parody
 - Limitations: Duration of Copyright Sec. 13
 - Angella Katatumba V. The ACCU
 - The “Three step test”, Article 9(2) of the Berne Convention
 - Article 13 of the TRIPS Agreement
 - Article 10 of the WCT
 - Article 16 of the WPPT

Readings:

1. Limitations and exceptions under the “three-step-test” and in national legislation—differences between the analogue and digital environments by Mr. Roger Knights also
here: http://www.wipo.int/edocs/mdocs/copyright/en/wipo_cr_mow_01/wipo_cr_mow_01_2.pdf
 2. The Three Step Test –EFF publication
here: https://www.eff.org/files/filenode/Three-Step%20Test_FNL.pdf
 3. What does the Three Step Test NOT apply to, under the Berne Convention and the TRIPS Agreement? Marrakesh Note 6 – Knowledge Ecology International Opinion
here: <http://keionline.org/sites/default/files/Provisionsnotsubjecttothreestepstest.pdf>
- g) Copyright in the digital, networked environment; the WIPO “internet treaties”.
- i. The application of the right of reproduction in the digital environment.
 - ii. The right of making available to the public;
 - iii. The application of exceptions and limitation in the new environment; and
 - iv. The rules concerning technological measures and rights management information.

Readings:

1. *Copyright in the Digital Era: Building Evidence for Policy* Stephen A. Merrill and William J. Raduchel, Editors; *Committee on the Impact of Copyright Policy on Innovation in the Digital Era*; Board on Science, Technology, and Economic Policy; Policy and Global Affairs; National Research Council also accessible here <http://www.ip-watch.org/weblog/wp-content/uploads/2013/05/NRC-Copyright-in-the-Digital-Era-FINAL-Apr-2013.pdf>
2. *What's the Deal with Copyright & 3D Printing* by Michael Winberg, 2013 also here <https://www.publicknowledge.org/files/What's%20the%20Deal%20with%20Copyright%20Final%20version2.pdf>
3. *Digital Technology and Copyright* by Christopher D. Beland here <http://dspace.mit.edu/bitstream/handle/1721.1/16818/50699080.pdf>
4. The Computer Misuse Act, 2011

5. G. D'Agostino: *'Should freelancers be allowed to keep their Copyrights in the Digital Era?'* Oxford Intellectual property Research Centre, St. Peter's College.
 6. Ownership of material posted on the Internet: Fred Muwema v. Face Book [2016] 4637P
- h) Copyright and developing countries: Preferential treatment, protection of folklore.
- Sec. 5(1)(j) of the Act
 - Mwabusya v. Y.K. Museveni
 - See: WIPO-UNESCO Model Provisions adopted in 1982 on a sui generis system for the protection of "expressions of folklore". These provisions are discussed in the readings below.

Readings:

- Kakooza, Anthony, *The Cultural Divide: Traditional Cultural Expressions and the Entertainment Industry in Developing Economies*, J.S.D. diss., University of Illinois at Urbana-Champaign, 2014. <http://hdl.handle.net/2142/49425>
- Kawooya, Dick, *Traditional Musician-Centered Perspectives on Ownership of Creative Expressions*. Ph.D. diss., University of Tennessee, 2010. http://trace.tennessee.edu/utk_draddiss/711
- WIPO Development Agenda. See summarized discussion here: <http://www.bibalex.org/a2k/attachments/speakers/WIPO%20development%20agenda.pdf>

- i) Individual exercise and collective management of rights.
- Part V and VII of the Act 19/2006
 - Part III of S.I. No. 1/2010
 - Compulsory licensing not provided for in National legislation. But see: Article 27 of the TRIPS Agreement.
 - Access to knowledge: Open Source or Access/Open Educational Resources/Open Data.

Readings:

Copyright and Open Educational Resources by Achal Prabhala. Also accessible here [http://www.col.org/SiteCollectionDocuments/Copyright and Open Educational Resources.pdf](http://www.col.org/SiteCollectionDocuments/Copyright%20and%20Open%20Educational%20Resources.pdf)

- Creative Commons Licenses. See: <http://creativecommons.org/weblog/entry/39639>

Readings:

NaglaRizk: *From De Facto Commons to Digital Commons? The Case of Egypt's Independent Music Industry*, in Jeremy de Beer et al, *Innovation and Intellectual Property: Collaborative Dynamics in Africa*, 2014, UCT Press, at pp. 171-202

Ben Sihanya: *Reflections on Open Scholarship Modalities and the Copyright Environment in Kenya*, in Jeremy de Beer (supra), at pp. 203-233

Role of Collecting Societies:

- Sec. 57 – 58 of the Act, Reg. 26-28 of S.I 1/2010
 - Uganda Performing Rights Society (UPRS) v. MTN Uganda Ltd *CIVIL SUIT No. 287 of 2010*
 - Performing Right Society Limited v. Harlequin Record Shops Limited [1979]2 All E.R. 828
 - Cellulant Kenya Ltd v. Music Copyright Society of Kenya Ltd [2009]Eklr HCCC No. 154 of 2009
- j) Civil and Criminal Enforcement of rights: Offences and Penalties
- Sec. 45-50 of the Act, Reg. 33 of S.I. 1/2010
 - John Murray (Publishers) Ltd & Ors v. George William Senkindu & Anor. Misc. Appl. No. 818 of 2003 (Arising from H.C.C.S No. 842 of 2003)
 - Digital Solutions Ltd v. MTN Uganda Ltd (Misc. Appl. No. 546 of 2004)
 - Macmillan Kenya (Publishers) Ltd vs. Mount Kenya Sundries Ltd [2008] eKLR
 - John Boniface Maina v. Safaricom Limited, Civil Suit 808 of 2010, Nairobi Law Courts [2013]eKLR
 - Alphonsius Nyasetia T/A Studio Kenya v. Ida Odinga & 2 Others [2013] Eklr HCCS 15 of 2013
- Injunctions: American Cyanamid Co. v. Ethicon Ltd [1975] AC 396
- Anton Piller Orders:
- (a) Uganda Performing Rights Society Ltd v. Fred Mukubira, Misc. App. No. 818 of 2003 (Arising from HCCS No. 842 of 2003)
 - (b) Uganda Performing rights Society v. Mega Standard Supermarket Misc. Appln. No.1042 of 2015 arising from HCCS No. 855 of 2015
 - (c) Anton Pillar K-G v Manufacturing Processes Ltd & Ors [1976] ALL ER 779
- Delivery up:
Stella Atal v. Ann Abels Kiruta H.C.C.S No. 967 of 2004
- Part III of the TRIPS Agreement
 - Liability of Internet Service Providers:
 - Sec. 29, Part V of the Electronic Transactions Act No. 8 of 2011
- Readings:
- A&M Records, Inc. v Napster, Inc. United States Court of Appeals, Ninth Circuit, 2001. 239 F.3d 1004 (access point: <http://guide.ip.findlaw.com/cascode/courts/9th.html>)
 - Roadshow Films Pty Ltd & Ors v iiNet Ltd [2010] FCA 24 (access point: <http://www.austlii.edu.au/au/cases/cth/FCA/2010/24.html>)
 - Fred Muwema v. Facebook (supra)
- Copyright and Image/Personality Rights:
- Asege Winnie v Opportunity Bank (U) Ltd & MAAD Ltd, HCCS No. 756 of 2013

7. Assignment explanations/Methodology

Teaching methods:

You are required to read ahead of every class meeting following the schedule in the course content for texts, Statutes and cases. Lessons will be conducted using the Socratic Method. During the tutorials of class discussions, Students will be called upon at random to explain judicial decisions and principles from cases on any topic that will be under discussion. Students are also advised to be up to date with the day to day events surrounding the law and policy on Copyright law as covered in the media, as class discussions will also rely on media reports.

Use of guest speakers: Guest Speakers may be invited to share experiences in day to day handling of Copyright issues.

6. Assessment criteria

The assessment for the course will follow the following criteria:

- Coursework which will consist of one take-home essay carrying 30% of the total exam mark.
- Class participation and attendance.
- Advanced Reading of cases and reference materials.
- The completed essay assignment should include a title page, an Introduction, a Conclusion and a List of References or Bibliography indicating the author, title of book or Publication, the publisher and the year it was published. References in the main body of the essay should be presented in accepted English academic style (*for guidance, see **Glanville Williams: Learning the Law***).
- Plagiarism or any form of cheating will be heavily penalized.
- The final exam at the end of the semester will be open book and will consist of **six** questions out of which candidates will be required to answer **three** to be marked out of 70%.

8. Faith in teaching

Intellectual Property Rights are fully integrated in Biblical teaching. Various scriptures give an indication of God's gift of Intellectual property as evidenced below:

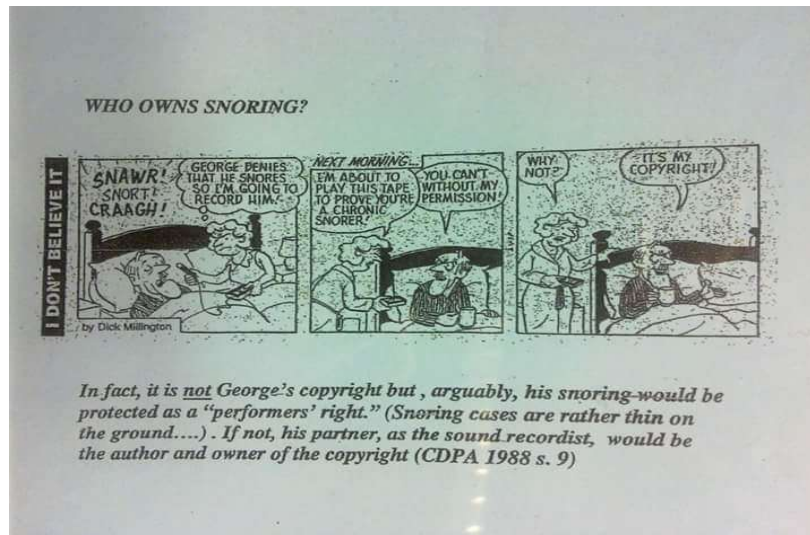
- Genesis, Chpt. 1 illustrates God's fine artistry
- The Song of Moses, Exodus 15
- The Song for the Children of Israel, Deuteronomy 31:19
- The Songs of David, 2 Sam. 22 and parts of the Book of Psalms
- Song of Songs, etc

9. Selected Bibliography

There is substantial literature dealing with intellectual property law and policy within the realm of Copyright law. Besides the aforementioned text material, the following is a selection of some of the relevant works:

- F. Abbott, T. Cottier and F. Gurry (1999) *The International Intellectual Property System: Commentary and Materials* (Kluwer, London)
- M. Blakeney (1996) *Trade Related Aspects of Intellectual Property Rights: A concise guide to the TRIPS Agreement* (Sweet & Maxwell)
- W.R. Cornish (1999) *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, 4th Ed. (Sweet & Maxwell, London)
- P. Drahos (1996) *A Philosophy of Intellectual Property* (Dartmouth, Aldershot)

- P. Drahos (ed)(1999) *Intellectual Property* (Dartmouth, Aldershot)



Copyright infringement or Parody?

