



**THE IMPLEMENTATION AND ENFORCEMENT OF
COPYRIGHT LAW IN SIERRA LEONE: A CRITICAL
ANALYSIS OF TRIPS COMPLIANCE AND JUDICIAL
ENFORCEMENT MECHANISMS**

BY

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DECLARATION

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Vienna, 10th June 2025.

Aisha Bounanya BAH

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DEDICATION

This work is dedicated to the Almighty Allah, whose grace and guidance have made this research possible. I also dedicate it to my beloved husband, Chernor Mohamed Musa Bounanya Barrie, and our precious daughter, Rugiatu Bounanya Barrie, whose love and support have been a constant source of strength and inspiration

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ABSTRACT

This study was embarked on to critically examine the implementation and enforcement of copyright law in Sierra Leone, with a focus on the country's compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the protection of creators' rights under the Copyright Act 2011. Through a doctrinal and comparative legal analysis, the study evaluates how international copyright norms have been incorporated into national legislation and explores the institutional, legal, and socio-economic challenges that hinder effective enforcement.

Findings reveal that while Sierra Leone's copyright legislation aligns substantially with international obligations, enforcement mechanisms remain underdeveloped. Institutional weaknesses, such as the non-operational status of the Sierra Leone Copyright Society (SILECS), lack of judicial expertise, limited public awareness, and widespread piracy, undermine the practical effectiveness of the law. The judiciary and enforcement agencies lack technical capacity, and creators often lack the resources to pursue legal remedies. Furthermore, the absence of alternative dispute resolution mechanisms restricts access to justice for rightsholders.

Comparative insights from Kenya, Ghana, Nigeria, and South Africa demonstrate that meaningful copyright protection in Africa is possible with strong institutions, public engagement, and integrated enforcement strategies. The study however concludes that Sierra Leone must go beyond legislative compliance by investing in institutional reform, legal capacity-building, public education, and policy integration to realize copyright's full potential as a tool for economic growth, innovation, and cultural development.

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LIST OF ACRONYMS/ABBREVIATIONS

AfCFTA	African Continental Free Trade Area
ARIPO	African Regional Intellectual Property Organization
AU	African Union
CMO	Collective Management Organizations
FDI	Foreign Direct Investment
IP	Intellectual Properties
IPR	Intellectual Properties Rights
KECOBO	Kenya Copyright Board
NCC	Nigerian Copyright Commission
OARG	Office of the Administrator and Registrar General
SILECS	Sierra Leone Copyright Society
STISA	Science, Technology and Innovation Strategy for Africa
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

CHAPTER ONE

1.1 BACKGROUND OF THE STUDY

The intersection between intellectual property and socioeconomic advancement has become increasingly pivotal in contemporary jurisprudence, especially amongst developing nations including Sierra Leone. Within the broad spectrum of Intellectual Properties (IP), copyright holds notable importance owing to its direct pertinence to creators of literary, artistic, and cultural works. Whereas the global IP regime has witnessed substantial progression since the mid-twentieth century, numerous developing states continue struggling with the practical domestic implementation and enforcement of international IP standards within their legal systems.

Sierra Leone's involvement in the global IP framework is exemplified through its membership in the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). As a WTO member, Sierra Leone is bound by the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights, adopted in 1994 as part of the Uruguay Round of the General Agreement on Tariffs and Trade. The TRIPS Agreement provides minimal benchmarks for the protection and enforcement of IPs across member states and has become the cornerstone of modern international IP law.¹

Despite its formal commitments, the domestic implementation and enforcement of TRIPS-compliant copyright norms in Sierra Leone remain underdeveloped. Though copyright legislation exists (such as the Copyright Act 2011) actual judicial enforcement is sparse, and awareness of copyright protection mechanisms is limited both within the judiciary and among rightsholders. The limited body of case law involving copyright disputes reveals a weak institutional framework for IP enforcement, which calls into question Sierra Leone's compliance with TRIPS, particularly Article 41, which obliges members to ensure that enforcement procedures are available under their laws to permit effective action against infringement.²

This dissertation considers primarily the difficulties of applying copyright law in Sierra Leone by reviewing both legislative efforts and judicial systems regarding TRIPS conformity. The aim is not merely to pinpoint shortcomings in legislation, but to explore the broader

¹ Agreement on Trade-Related Aspects of Intellectual Property Rights (15 April 1994) 1869 UNTS 299, Annex 1C to the Marrakesh Agreement Establishing the World Trade Organization (1994) 1867 UNTS 3.

² Ibid, art 41.

enforcement environment (including judicial aptitude, administrative structures, and societal consciousness) within which copyright law operates.

Focusing on copyright, rather than other areas of intellectual property like patents or trademarks, is particularly pertinent for Sierra Leone. Unlike patents, which necessitate formal registration and specialized knowledge, copyright protection arises automatically upon the creation of original works, rendering it the most accessible form of intellectual property for local creators (musicians, writers, artists, and filmmakers) most of whom function in the informal sector.³ Consequently, copyright could serve as a crucial tool for empowering creators and encouraging cultural production. However, without effective enforcement mechanisms, its potential remains largely unrealized.

One of the key challenges facing Sierra Leone is the deficiency of judicial enforcement. Courts are central to the enforcement of intellectual property rights, yet there exists a dearth of judicial decisions on copyright infringement. This stems from multiple factors, such as the constrained capacity of courts, lack of specialized intellectual property judges, high expenses of litigation, and a generalized lack of societal awareness regarding intellectual property rights.⁴ Furthermore, many creators are reluctant or unable to pursue legal redress due to financial restrictions or fear of retaliation, particularly in close-knit creative communities.⁵

Effective enforcement extends beyond civil litigation; administrative bodies such as collecting societies, border control measures, and criminal penalties (all largely absent or inert in Sierra Leone) are also required. The lack of these enforcement structures frustrates achieving TRIPS-compliant protection and undermines incentives for creative works.⁶

In assessing enforcement, this thesis examines available and accessible judicial remedies for copyright holders in Sierra Leone. While TRIPS do not mandate specific arrangements, it does demand procedures to be fair and impartial, not needlessly complicated or costly, and free of unreasonable deadlines or undue delays.⁷ The small number of cases, lack of published rulings, and minimal public record of enforcement actions raise serious doubts

³ Ruth L Okediji, 'Copyright and the Public Interest in Developing Countries' (2000) 47 J Copyright Soc'y USA 1, 14–15.

⁴ Peter K Yu, 'The Middle Intellectual Property Powers' (2011) 2 WIPO J 1, 12–13.

⁵ Abiola Idowu, 'Access to Justice and IP Enforcement in West Africa' (2020) 13(2) African J Legal Stud 135, 142.

⁶ Sam Ricketson and Jane Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond* (2nd edn, OUP 2006) vol 2, 1310.

⁷ TRIPS Agreement (n 1) art 41(2)

about Sierra Leone's compliance with these obligations.

In addition to enforcement, the thesis explores copyright exceptions and limitations, a crucial yet underdeveloped area of Sierra Leone's legal landscape. Exceptions aim to balance exclusive author rights with other public interests in education, research, and cultural participation. Article 13 of the TRIPS Agreement allows limitations and exceptions to exclusive rights if they (1) are confined to specific situations, (2) do not conflict with normal exploitation of the work, and (3) do not unreasonably prejudice legitimate interests of the rights holder (the so-called "three-step test").⁸

In many countries, such as in sub-Saharan Africa, exclusions to IP rights have performed an essential function in endorsing general welfare goals. A striking illustration is employing obligatory licensing in the pharmaceutical area, which permits states to supersede patent protection for essential medications when it comes to community curiosity.⁹ Even though obligatory licensing has been more widespread in patent law, the broader idea of IP exceptions is similarly pertinent to copyright law. In Sierra Leone, where educational institutions, libraries, and cultural organizations work under asset restrictions, transparent and useful exceptions may enjoy a massive function in improving access to information and innovative content.¹⁰ However, it remains uncertain whether Sierra Leone's copyright law adequately provides such provisions and if they are implemented in practice.¹¹

The relevance of this study lies not only in the doctrinal analysis of laws and treaties but also in its focus on the practical realities of enforcement in a developing country such as Sierra Leone. While much academic work has been done on the legislative transposition of TRIPS in developing countries, fewer studies have addressed the judicial and institutional dimensions of enforcement, particularly in West African jurisdictions.¹² By narrowing its scope to the enforcement of copyright law in Sierra Leone and examining both infringement and exception regimes, this thesis seeks to fill a crucial gap in the literature and contribute to informed policymaking.

⁸ TRIPS Agreement (n 1) art 13.

⁹ Ellen F M 't Hoen, *The Global Politics of Pharmaceutical Monopoly Power* (AMB 2009) 35–38.

¹⁰ Caroline B Ncube, *Intellectual Property Policy, Law and Administration in Africa* (Routledge 2016) 97

¹¹ Copyright Act 2011 (Act No. 1 of 2011), Sierra Leone. ss 9–12.

¹² Rochelle Dreyfuss and Susy Frankel, *International Intellectual Property: A Handbook of Contemporary Research* (Edward Elgar 2015) 329–331.

1.2 PROBLEM STATEMENT

Although Sierra Leone has made commendable progress in aligning its domestic copyright framework with IP standards (particularly the TRIPS Agreement), yet the practical enforcement of these standards has not been met. The enactment of the Copyright Act 2011 signifies the country's legislative commitment to meeting TRIPS obligations. As a result, most creators or rights owners who should have been benefiting from copyright protections are in fact denied, thus reducing the value and contribution of their creative efforts to national income.

The TRIPS Agreement requires that WTO member states accord not only IP laws but also the mechanisms necessary to ensure their effective enforcement. According to Article 41(1) of that agreement, “*members shall ensure that enforcement procedures... permit effective action against any act of infringement of intellectual property rights... and remedies which constitute a deterrent to further infringements.*”¹³ Copyright piracy is widespread and scarcely ever challenged within the country of Sierra Leone. Pirated books, music, and films are sold openly on local markets. Pirated books, music, and films dominate local markets, while enforcement bodies and judicial authorities seldom intervene.

Sierra Leone's judicial system is one of the weakest links in copyright enforcement. Although the courts have constitutional authority to hear civil and criminal cases concerning intellectual properties, in fact they show little sign of interest in any copyright matters.¹⁴ There is virtually no reported case law on copyright infringement, and legal proceedings aimed at defending copyrights are almost never brought to a conclusion. Few lawyers possess training in the field of IP law combined with a broad understanding of how that can be applied in real-life situations. Yet the judiciary is required to handle copyright disputes for which in effect they are not qualified to give any judgement. Also, IP courts and specialized judicial officers are conspicuous by their absence.¹⁵ Without an infrastructure geared to providing such services, copyright jurisprudence cannot develop in a consistent way.

This problem is not just a legal one. A fundamental part of copyright law enforcement is the existence of efficient collective management institutions and effective administrative bodies. There are none in Sierra Leone. To be enforced effectively, copyright societies are needed to

¹³ TRIPS (n 1) art 41(1).

¹⁴ Abu Bakarr Bangura, *Enforcing Intellectual Property Rights in Sierra Leone: Challenges and Opportunities* (Freetown Law Review, 2020) 12.

¹⁵ World Intellectual Property Organization, *WIPO Needs Assessment Report for Sierra Leone* (WIPO 2018) 7.

manage rights for the licensing and royalty collection and resolving disputes.¹⁶ Unfortunately, Sierra Leone falls short in the second respect: it has no effective, well-resourced or functioning Collective Management Organizations. In the absence of these organizations, rightsholders have to rely on individual enforcement which for most local creators is both financial and practically impossible.

Public awareness and attitudes to copyright law aggravate the problem. Many citizens, including content creators and consumers, remain ignorant of their rights under the Copyright Act. This is a big factor in land-grab piracy received, especially on informal markets where pirated works are available and enforcement is rarer than the full moon.¹⁷ This culture of impunity is without exception an affront to the objectives of TRIPs and a serious harmful effect on the economic interests of both domestic and foreign rightsholders.

Also, enforcement agencies such as the police, customs officers, and regulatory bodies often do not have clear mandates or sufficient resources in order to proactively combat copyright piracy cost effectively and equitably.¹⁸ The result is a near-total absence of administrative or criminal enforcement actions, even in cases of flagrant piracy.

As a result there is almost complete impunity on the part of both administrative and criminal forces (even in cases of open piracy). This inaction reveals as much about institutional weakness as it does any particular political commitment to intellectual property law enforcement.¹⁹ In Sierra Leone, the present predicament of intellectual property rights enforcement is in great part due to the uncertainty and lack of clarity which surround copyright exemptions and restrictions. In other words, for Sierra Leone's Copyright Act 2011 to protect the interests of rightsholders such as authors, composers, publishers and performers, it still lacks sophisticated rules on this issue. At present there are no specific provisions concerning how works under films, radio broadcasts, translations of videos or other derivative works should be handled by Sierra Leonean copyright law.²⁰ By extension, educators, librarians, students and others who use copyrighted materials must all wonder whether they are restraining themselves unnecessarily or creeping along in violation of the

¹⁶ George Kamanda, *'The Legal Status of Copyright Collecting Societies in Sierra Leone'* (2021) 5 African JIP 22.

¹⁷ Mariama Conteh, *'The Social Normalisation of Piracy in Sierra Leone: A Field Study'* (2022) 14 J Legal Pol'y Afr 65.

¹⁸ African Regional Intellectual Property Organization, Report on IP Enforcement in West Africa (ARIPO 2019) 34.

¹⁹ TRIPS (n 1) art 13.

²⁰ Copyright Act (n 11), ss 23–25.

law.

A failure to establish and enforce balanced copyright norms that support creators while simultaneously enabling greater public benefit has consequences, not merely legal ones. It does damage to the nascent cultural and creative industries of Sierra Leone. According to the WIPO, IP laden industries are a major source of income and jobs for developing countries.²¹ However, without effective copyright protection implemented in Sierra Leone, sectors such as printing, music production industries as well software development can not achieve their potential growth levels.

Furthermore, the weak enforcement of copyright laws undermines the ability of the creative sector to attract foreign direct investment (FDI). If investors know that their intellectual property will not be protected, they will have little interest in operating within a particular country. Likewise, in states viewed as high-risk due to inadequacies in IP protection mechanisms, multinational corporations may prefer not to disseminate copyrighted materials. This results in a lack of cultural and technological products for local consumers. It also restrains the flow of knowledge and technical innovation.

Sierra Leone still faces some difficulties in academic and policy discussion of copyright enforcement. Scholars who work on intellectual property in Africa generally focus on patent legislation, in particular such issues as access to medicines and public health; copyright is usually ignored while TRIPS provisions are usually introduced only after developments in national patent law.²² Nearly all studies on implementation of TRIPS in African countries look at this issue from the standpoint of legislation only. This leaves a yawning research gap regarding actual operation of domestic enforcement systems, particularly in countries where incomes are low and peace has barely been restored such as Sierra Leone.

The study arises out of an urgent problem of law and policy: Sierra Leone seems to have legislated against TRIPS and other first world imperatives, yet copyright law is virtually unenforced in practice. It will explore how this regulatory discrepancy affects the rights of creators, distorts access to cultural goods and slows down the development of a balanced copyright system.

²¹ WIPO, Creative Industries and Development (WIPO 2017)

https://www.wipo.int/edocs/pubdocs/en/wipo_pub_creative_1.pdf accessed 13 February 2025.

²² Peter K Yu, *The Objectives and Principles of the TRIPS Agreement* (2009) 46 Houston L Rev 979.

Consequently, a fundamental question to which this study will address itself is the legislative reform which could let Sierra Leone slackly go along with its commitments under TRIPS but then does not make any operational—administrative or judicial-wise—to enforce copyright protection is completely ineffective and little more than symbolic. Such a state of affairs endangers equally the rights of domestic and foreign creators; also, it means that the national ambitions for cultural, economic and technical development are in real danger.

Through a critical analysis of legislative compliance, judicial capacity, institutional functionality, and stakeholder awareness, the thesis will provide a comprehensive assessment of copyright enforcement in Sierra Leone. It will also explore the role and potential of copyright exceptions in achieving a balanced and development-oriented IP system, aligned with the public interest and constitutional values such as access to education and freedom of expression.

1.3 RESEARCH QUESTIONS

The study aims to examine and answer one key question and four sub-pertinent questions.

Key Question:

“To what extent does Sierra Leone’s Copyright Act 2011 comply with the enforcement obligations under the TRIPS Agreement, and how effective are the judicial and administrative mechanisms in enforcing copyright law in practice?”

Sub Questions:

To further break down the primary question and provide a detailed exploration, the following secondary research questions will guide the analysis:

- I. What are the key enforcement obligations under the TRIPS Agreement, and how have they been incorporated into Sierra Leone’s domestic copyright framework?
- II. What institutional and legal mechanisms exist for the enforcement of copyright law in Sierra Leone, and how functional and accessible are they in practice?
- III. What role do the courts play in copyright enforcement in Sierra Leone, and what does available case law (if any) reveal about the judiciary’s approach to copyright disputes?

- IV. How well are copyright exceptions and limitations defined in the Copyright Act 2011, and do they strike an appropriate balance between protecting private rights and serving the public interest?

1.4 SCOPE AND LIMITATION

This study is about the copyright protection and implementation related to Copyright laws in Sierra Leone. It specifies that chapter three will consider how fully the Copyright Act 2011 puts into effect provisions in the TRIPS agreement, particularly for enforcement, infringement and compensation. It also looks at relevant international treaties, regional framework (like ARIPO instruments) and comparative law examples from some African countries to contextualize Sierra Leone's position within broader regional trends.

The study does not cover other topics in intellectual property law, such as patents, trademarks or industrial designs, except when doing so, is necessary for better clarity or comparison. Also, it does not do field surveys and quantitative analyses due to resource limitations and the difficulties of obtaining accurate, up-to-date information. There are also certain limits on the depth of doctrinal analysis concerning judicial enforcement within Sierra Leone because copyright case law is scarce. As a result, the research is to a large extent reliant on legislative texts, international norms and secondary sources. That may weaken the evidence base which supports some findings, but the study still maintains a high standard of legal analysis and is rich in its critique and prescriptions for reform.

1.5 METHODOLOGY

Although this thesis relies on qualitative doctrinal legal research, it also makes extensive use of context-specific and comparative analysis. The primary aim is to scrutinize how closely Sierra Leone's copyright regime accords with the enforcement standards endorsed by the Agreement on TRIPS, and to assess such enforcement mechanisms in practice--particularly at judicial level.

However, the main method is doctrinal legal research. It will involve reading and studying in close detail of primary legal sources including Sierra Leone's Copyright Act 2011, the TRIPS Agreement and other international treaties relevant to copyright protection of which countries

are parties such as Berne Convention and WIPO Copyright Treaty. In addition, the research analyses case law, both domestic (where available) and foreign, to determine judicial approaches to copyright enforcement and interpretative trends in the application of international IP norms. Due to the limited volume of reported cases concerning copyright in Sierra Leone, doctrinal analysis must occasionally be replaced with secondary sources. Academically oriented literature serves this purpose, as do legal commentaries, reports from organizations such as WIPO, WTO and ARIPO, etc.

Contextual legal analysis is another element which the study seeks to incorporate. It attempts in particular to establish the wider socio-economic, institutional and historical causes which are placing significant limits on Sierra Leone's enforcement of copyright. These factors are crucial: the country's development is still in a transitional period following its civil war, institutional capacity is weak and general public awareness of intellectual property rights remains low. By placing the law and legal reform in their living context, the study judges not only by what has been written down but also what kind of practice can be put into use from society 's existing state. To be of practical use, law needs both words on the page and an environment in which those ideas may flourish.

Lastly, a comparative perspective is adopted. Experience drawn from other African jurisdictions like Kenya, Ghana and South Africa offers useful points of reference. It offers some fresh perspective for the continental situation within similar socio-economic surroundings. The purpose behind this comparative analysis is therefore to identify best practices (tries which have been tested and are known to produce good results) and lessons that could inform Sierra Leone 's legal and institutional development.

1.6 LITERATURE REVIEW

Scholarly attention to the enforcement and domestication of copyright law in developing countries has grown significantly since the establishment of minimum standards in the Agreement on TRIPS. In Sierra Leone where copyright enforcement is still at a formative stage, academic discourse brings to the fore many struggles in bringing national law into line with international obligations and establishing mechanisms for effective gesture justice.

At the theoretical level, copyright law has been justified on both utilitarian and natural rights grounds. Landes and Posner argue that copyright protection is necessary to stimulate the

production of creative works by expiry yielding temporary monopolies to authors, thus producing social welfare through later access to knowledge.²³ In contrast, scholars such as Justin Hughes and Wendy Gordon place emphasis on the moral and labor-based justifications of copyright, asserting that creators deserve rights to their intellectual labor as a matter of justice or fairness.²⁴ These theoretical underpinnings are particularly pertinent in African settings, where indigenous forms of communal authorship and knowledge dissemination as well as institutions not based upon private property may be at odds with western notion of individual ownership.

The TRIPS Agreement, which is overseen by the WTO, lays down minimum standards of enforcement from Articles 41 to 61. These include civil and administrative procedures, border measures, and criminal penalties.²⁵ However, according to authors such as Carlos Correa, TRIPS enforcement standards were designed with rich countries in mind, placing undue burdens on poor countries with inadequate administrative capability.²⁶ Rochelle Dreyfuss and Peter Drahos add to this criticism the fact that the agreement takes a “*one-size-fits-all*” approach, which fails to take account of local economic realities and development priorities.²⁷ This criticism is especially valid on Sierra Leone’s behalf where weak state institutions and an ill-developed judiciary make it difficult both to domesticate TRIPS at home in Sierra Leonean law and realize TRIPS standards there.

In addition to solidifying copyright norms and disseminating new techniques for protecting local practices, people within the larger African continent are now looking into whether law meets these areas. Ruth Okediji has been influential advancing the viewpoint that transferring Western copyright models into African legal systems often fails to capture indigenous knowledge systems and informal economies.²⁸ Okediji also advocates an IP approach contextualized for varying cultural backgrounds because she believes that for the world to develop each nation's focus must still be on its particular characteristics and interests.

²³ William M Landes and Richard A Posner, *The Economic Structure of Intellectual Property Law* (Harvard University Press 2003).

²⁴ Justin Hughes, ‘*The Philosophy of Intellectual Property*’ (1988) 77 *Georgetown LJ* 287; Wendy J Gordon, ‘*A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property*’ (1993) 102 *Yale LJ* 1533.

²⁵ TRIPS (n 1) arts 41–61.

²⁶ Carlos M Correa, *Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement* (2nd edn, OUP 2020).

²⁷ Rochelle C Dreyfuss, ‘*TRIPS-Round II: Should Users Strike Back?*’ (2004) 71 *U Chi L Rev* 21; Peter Drahos, *Information Feudalism: Who Owns the Knowledge Economy?* (Earthscan 2002).

²⁸ Ruth Okediji, ‘*The International Copyright System: Limitations, Exceptions and Public Interest Considerations for Developing Countries*’ (UNCTAD Project on IPRs and Sustainable Development, 2006).

Caroline Ncube extends this argument with a human rights-based stance on implementation of IP law arguing, for instance, that copyright should not infringe constitutional rights like access to knowledge, education, freedom of expression etc.²⁹ These perspectives are critical for evaluating how copyright law is applied in Sierra Leone, particularly given the country's history of educational underdevelopment and limited technological infrastructure.

Turning specifically to Sierra Leone, scholarly literature on copyright law remains limited. However, legislative reforms, (most notably the 2011 Copyright Act) seem geared towards bringing domestic law in line with TRIPS and WIPO. ARIPO and the Ministry of Trade and Industry of Sierra Leone report that enforcement measures remain weak. This is due largely to deficiencies in institutional resources as well as public awareness, with only a few legal practitioners engaged in IP law.³⁰ WIPO has found other difficulties such as a lack of viable collective management entities and limited technical expertise within the judiciary are further obstacles to successful prosecution and these too must be admitted as part of the problem with enforcement.³¹ This suggests institutional deficiencies call into question the practical impact of TRIPS-aligned laws and raises questions about the effectiveness of statutory reforms in the absence of an efficient enforcement infrastructure.

Another major problem is the judicial enforcement aspect. While there have been few copyright cases reported in Sierra Leonean courts this give rise to a need for only anecdotal evidence and hearsay, commentators indicate that these cases are seldom heard at all, partly because of the technical nature of IP law, but also in some measure owing to general judicial unfamiliarity with such matters.³² In their recommendation for judicial reform, inter-national organizations such as UNCTAD and the IDLO have recommended that better training should be given to all judges including specialized IP courts established at local tribunals and law schools markedly upgraded so that they can prepare students to handle cases in this field.³³ These recommendations highlight the need for judicial reform if TRIPS compliant laws are to be meaningfully enforced.

²⁹ Caroline Ncube, *Intellectual Property Policy, Law and Administration in Africa: Exploring Continental and Sub-Regional Co-operation* (Routledge 2016).

³⁰ Ministry of Trade and Industry (Sierra Leone), 'National Intellectual Property Policy and Strategy' (2017); ARIPO, *Copyright and Related Rights in the African Region: A Report on Implementation* (2018).

³¹ World Intellectual Property Organization (WIPO), 'Sierra Leone: Needs Assessment Report' (2015).

³² Interview data and legal practitioner commentary cited in: Mohamed Bangura, 'Copyright Enforcement in Sierra Leone: Challenges and Prospects' (2020) unpublished LLB thesis, University of Makeni.

³³ UNCTAD, 'Building Productive Capacities in Sierra Leone' (2021); IDLO, 'Strengthening the Rule of Law in Fragile States' (2020).

Judicial enforcement has also emerged as a critical concern. However, according to legal academics such as Jerome Reichman and Keith Maskus, merely having the law does nobody any good if there isn't an adequate institutional infrastructure to enforce it.³⁴ The responsibility of copyright registration and enforcement in Sierra Leone lies with the Office of the Administrator and Registrar General (OARG), but its practical ability to carry these out is seriously limited by scanty funds, lack of manpower, and poor public relations. The World Bank has pointed out in its latest Sierra Leone Economic Update for 2020 that, intellectual property is far from being a central issue in national development planning, and this misplaced sense of priorities has placed it in the position of receiving only minimal attention by Government allocations.³⁵ These constraints at both the institutional administrative and policy elite levels are symptomatic of much wider governance problems which make implementation of international legal norms an uphill struggle.

Another aspect of the literature looks at the balance between copyright protection and the public interest. The TRIPS Agreement also shows a flexibility in Article 13 that permits exceptions and limitations to serve a broader socio-economic aim.³⁶ Legal scholars like Laurence Helfer and Susan Sell suggest that poorer developing nations use this flexibility strategically: to get at knowledge, help educational aims and promote technological development³⁷ There is scant evidence of the systematic incorporation or judicial application in Sierra Leone, however, of such exceptions. This gap represents a missed opportunity to design copyright law more in line with local development needs and human rights obligations.

1.7 OVERVIEW OF THE STUDY

This study is divided into five chapters respectively with each having its specific area to cover. Chapter one focused on introducing the Study by providing a background of the Study, problem statements, research questions, scope and limitations of the Study, methodology and literature review. Chapter two delved into the theoretical and legal framework of copyright law and other intellectual property law agreements; the third chapter shall discuss the

³⁴ Jerome H Reichman and Keith E Maskus, *'The Globalization of Private Knowledge Goods and the Privatization of Global Public Goods'* (2004) 7 *Journal of International Economic Law* 279.

³⁵ World Bank, *Sierra Leone Economic Update: Strengthening Government Effectiveness for Inclusive Growth* (2020).

³⁶ TRIPS (n 1) art 13.

³⁷ Laurence R Helfer, *'Human Rights and Intellectual Property: Conflict or Coexistence?'* (2003) 5 *Minnesota Intellectual Property Review* 47; Susan K Sell, *Private Power, Public Law: The Globalization of Intellectual Property Rights* (Cambridge University Press 2003).

domestication of copyright law and its enforcement mechanisms in Sierra Leone. Lastly, the Study shall summarize, conclude and recommend ways that will further improve international trade and the implementation of Intellectual Property Law especially Copyright in Sierra Leone.

CHAPTER TWO

THE THEORETICAL AND LEGAL FRAMEWORK OF COPYRIGHT LAW AND OTHER INTELLECTUAL PROPERTY LAW AGREEMENT

2.0 INTRODUCTION

This chapter provides the theoretical and legal foundation necessary for understanding copyright law within both international and regional contexts. It begins with a conceptual understanding of copyright, followed by an exploration of the rationale for its protection. The chapter then analyses the key international legal instruments governing copyright, including the TRIPS Agreement, the Berne Convention, and WIPO treaties. It further examines regional frameworks such as ARIPO and the African Union's intellectual property policies, laying the groundwork for evaluating Sierra Leone's domestic copyright regime in subsequent chapters.

2.1 CONCEPTUAL UNDERSTANDING OF COPYRIGHT LAW

Copyright law is a subdivision of intellectual property legislation meant to protect the rights of authors. In principle, its theoretical foundation lies in the author and artist getting an exclusive right over expression of their ideas, which are the fruits of their intellectual labor. Copyright does not protect ideas themselves, but only the manner in which they are set down for all to see. These works might include books, films, music, software, photographs, architectural designs, etc.

The rationale of copyright law has changed greatly over the years. Traditionally, three principal theoretical frameworks have been applied to justify it: the theory of natural rights, the theory of utility, and the theory of personality. The theory of natural rights, associated with the philosophers like John Locke, claims that people naturally own what they produce. This implies that authors ought to be able to control the use made by others of their works. Locke's labor theory of property holds that ownership originates when someone mixes their labor with resources. This has been extended to provide a rationale for protecting intellectual property.³⁸

The Utilitarian theory, on the other hand, stresses the benefits to society of copyright

³⁸ John Locke, *Two Treatises of Government* (1690), esp. Book II, ch. V, 'Of Property'.

laws. According to this approach, copyright is not in essence a tool for rewarding authors, but rather a means of promoting public good through encouraging innovation and original works. By giving authors monopolies over their work for a limited period, society therefore promotes *joie de vivre* for all cultural participants.³⁹ The Utilitarian approach is particularly strong in countries like the United States, where the constitutional basis for copyright explicitly lays to promote progress in science and the useful arts.⁴⁰

The personality theory advanced by Hegel (along with others), argued that creations are an extension of the author's personality, and that moral rights therefore deserve clear acknowledgement and protection. This theory underpins moral rights protections seen in civil law jurisdictions, notably in France and Germany.⁴¹

In the modern legal system, copyright involves a collection of various economic and moral rights. The economic rights allow authors to control their works financially in such ways as reproduction, distribution, public performance or broadcast (including retransmission by wire); and also to create new versions based on the original work itself.⁴² On the other hand, moral rights offer some protection for artists' sense of self: they establish connections that go further than saying, my profession is to create. These include the right to ask that an author be identified when his or her work is used (right of attribution); and the right to object if your work is distorted or mutilated (right of integrity).⁴³

The scope of copyright protection is measured against criteria of originality, fixation and (in some jurisdictions) creativity. Originality does not imply novelty or uniqueness. It does demand that the work in question have some minimal level of creativity and also be an expression from its author, or authors rather than a copy of verbatim by them over again.⁴⁴ Fixation means that the work must have been reduced to a tangible medium which can be perceived and recorded. This might be writing; more recently, recording or preserving in digital form on disk files or something similar. These standards mark off copyrightable subject matter from mere ideas or unexpressed thoughts, which remain in

³⁹ William M Landes and Richard A Posner, *The Economic Structure of Intellectual Property Law* (Harvard University Press 2003) 37.

⁴⁰ US Constitution art I, s 8, cl 8.

⁴¹ Hegel, *Philosophy of Right* (1821); see also Justin Hughes, 'The Philosophy of Intellectual Property' (1988) 77 *Georgetown Law Journal* 287.

⁴² Copyright Act 2011 (Sierra Leone), ss 6–9.

⁴³ *Ibid*, s 10.

⁴⁴ *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 601 (Ch).

everybody's mind and cannot (nowhere in the world) ever have exclusive rights attached to them owed by everyone else who would use such ideas.

Copyright protection comes in different forms around the world, but nearly all follow the minimum international standard set out by the Berne Convention. This provides protection for a term of life of the author plus fifty years, with many countries setting longer lengths in opting to adhere to each other's standards.⁴⁵ The Sierra Leonean Copyright Act 2011 follows this tenet, granting rights for the life of the author plus fifty years.⁴⁶ Such legislation is consistent with Article 7 of the Berne Convention for the Protection of Literary and Artistic Works (Sierra Leone acceded to it in 1997).⁴⁷

Copyright protection as of right arises automatically upon creation and fixation of a qualifying work, no formal registration is necessary under most international systems although some countries maintain voluntary registration systems. This automatic protection regime is enshrined in the Berne Convention and reflected in national law such as Sierra Leone's Copyright Act 2011.⁴⁸

At the international level, copyright law is governed by various treaties and agreements. The Berne Convention is the foundational treaty for copyright, establishing principles such as national treatment, automatic protection, minimum standards—all principles that were later enshrined in TRIPS.⁴⁹ The TRIPS Agreement which is binding on all WTO members, builds upon the Berne standards and introduces enforcement obligations and dispute resolution mechanisms.⁵⁰ TRIPS requires member states to provide effective legal remedies against copyright infringement and incorporate criminal and civil procedures for enforcement.⁵¹

Additionally, WIPO has adopted further instruments like the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), which address copyright in the digital environment. These treaties expand the scope of protection, particularly in the context of digital reproduction, internet broadcasting, and anti-

⁴⁵ Berne Convention for the Protection of Literary and Artistic Works (adopted 9 September 1886, last revised 24 July 1971, and amended 28 September 1979) 1161 UNTS 3 (Berne Convention). art 7.

⁴⁶ Copyright Act (n 11), s 12.

⁴⁷ WIPO, 'Contracting Parties: Sierra Leone'

https://www.wipo.int/treaties/en/ShowResults.jsp?country_id=162C accessed 12 February 2025.

⁴⁸ Berne Convention (n 45) art 5(2).

⁴⁹ Ibid arts 1–20.

⁵⁰ TRIPS Agreement (n 1)

⁵¹ Ibid arts 41–61.

circumvention of technological measures.⁵² While Sierra Leone is a member of WIPO, it has yet to domesticate several of these newer instruments into national law.

2.2 THE INTERNATIONAL LEGAL FRAMEWORK

The international legal framework for copyright law provides a comprehensive structure for the protection and enforcement of authors' rights across national borders. It is built on several core treaties and conventions, with the Berne Convention for the Protection of Literary and Artistic Works (1886) serving as the foundational instrument. The Berne Convention introduced critical principles such as national treatment, automatic protection, and minimum standards, ensuring that creative works are protected in member states without the need for formalities.⁵³ This framework was significantly expanded by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), adopted in 1994 under the auspices of the World Trade Organization (WTO), which integrated copyright into the global trade system and established detailed obligations on enforcement and dispute resolution.⁵⁴ In response to digital age challenges, the World Intellectual Property Organization (WIPO) introduced the WIPO Copyright Treaty (1996), addressing the protection of works and rights management in digital environments.⁵⁵ These instruments collectively promote consistency, legal certainty, and a balance between the rights of creators and public access. They also form the basis for national copyright legislation, including in developing countries such as Sierra Leone.

2.2.1 TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

The Agreement on TRIPS is widely recognized as a cornerstone of the modern international copyright regime. It was adopted in 1994 under the Marrakesh Agreement establishing the WTO, which marks a pivotal development in the global regulation of IP. TRIPS brought intellectual property, including copyright, into the fold of international trade law, thereby giving it unprecedented enforcement mechanisms and economic relevance.⁵⁶

⁵² WIPO Copyright Treaty (WCT) 1996; WIPO Performances and Phonograms Treaty (WPPT) 1996.

⁵³ Berne Convention (n 45)

⁵⁴ TRIPS (n 1).

⁵⁵ WIPO Copyright Treaty (adopted 20 December 1996, entered into force 6 March 2002).

⁵⁶ TRIPS (n 1).

One of TRIPS' main contributions to international copyright law is its establishment of minimum protection standards which member countries of the WTO have to incorporate into their own laws. In particular, Article 9(1) provides that members must meet the substantive requirements of the Berne Convention for the Protection of Literary and Artistic Works (1971), except for Article 6bis on moral rights.⁵⁷ Moreover, TRIPS strengthens the protection which the Berne Convention provides by making it enforceable as law under WTO laws and subject to the WTO's dispute settlement mechanism.

TRIPS also brings some provisions regarding the enforcement of rights which were largely absent under earlier conventions. Articles 41 to 61 of the Agreement require member states to provide effective legal remedies and procedures for IP rights holders, including civil, criminal, and border enforcement mechanisms.⁵⁸ These provisions significantly improve the justiciability of copyright protection, ensuring that authors and rights holders can not only claim protection but also enforce their rights in meaningful ways.

Importantly, TRIPS strikes a balance between a pro-rights-holder stand and flexibility clauses seeking to accommodate the public interest as well as developmental goals. Article 7 sets out the aims of IP protection as promoting technological innovation (i.e., more inventions), the transfer and dissemination of technology to mutual advantage among producers and users in a way that boosts social and economic welfare.⁵⁹ Article 8 empowers member states to take appropriate measures necessary for public health and nutrition and to promote the public interest in vital aspects of their socio-economic development.⁶⁰ Such provisions are particularly important for developing countries like Sierra Leone and give authorship rights a more local grounding.

Additionally, in Article 66.1 least-developed countries (LDCs) are given longer periods within which to comply with the obligations imposed upon them by TRIPS.⁶¹ This provision recognizes the infrastructural and institutional limitations faced by LDCs and affords them the necessary space to gradually build their legal systems in line with international standards.

⁵⁷ Ibid, art 9(1).

⁵⁸ Ibid, arts 41–61.

⁵⁹ Ibid, art 7.

⁶⁰ Ibid, art 8(1).

⁶¹ Ibid, art 66(1).

2.2.2 BERNE CONVENTION

The Berne Convention for the Protection of Literary and Artistic Works, initially adopted in 1886 and revised on various occasions, most notably in Paris in 1971, is the cornerstone of international copyright protection. Under the administration of WIPO, this convention creates minimum standards for protection and provides cross-border recognition of rights among its contracting parties.⁶²

One of the most significant principles introduced is its principle of reciprocity. Essentially, “*national treatment*” means that each member State should grant foreign authors the same level of protection as it does its own nationals.⁶³ This principle of reciprocity facilitates protection across multiple jurisdictions. In an era of globalization and instant digital transmission, it occupies an intermediary role that cannot be omitted.

The Convention sets minimum standards for the types of creative works protected, as well as the rights authors generally enjoy. Article 2 of the Convention prescribes the objects of protection. Essentially, any literary, scientific or artistic work is protected, in whatever form or medium it is expressed.⁶⁴ Moreover, authors are endowed with a bundle of exclusive rights by the Convention including the right to make translations or adaptations of their works, to reproduce them in any manner whether directly or indirectly (whether by speaking etc.), and in particular the right to perform their works publicly.⁶⁵ These provisions ensure that authors retain control over the exploitation of their creative output.

Moral rights come under the purview of the Berne Convention as well, with Article 6bis affirming an author’s right to claim authorship and to refuse any alteration, addition, deletion or adaptation to his work that might be harmful to his honour or reputation.⁶⁶ Although moral rights are not universally implemented with equal strength, their recognition in Berne outlines the Convention’s commitment to protecting the personal as well as economic interests of authors.

Unlike earlier conventions, the Berne Convention does not require any formalities such as registration to enjoy copyright protection. Under Article 5(2), protection is granted

⁶² Berne Convention (n 45)

⁶³ Ibid, art 5(1).

⁶⁴ Ibid, art 2.

⁶⁵ Ibid, arts 8–14.

⁶⁶ Ibid, art 6bis.

automatically upon creation of the work.⁶⁷ This provision is especially significant in developing countries like Sierra Leone, where formal registration systems may be weak or inaccessible.

Most importantly, the Berne Convention has been very influential in other significant copyright treaties, such as the TRIPS Agreement. The TRIPS Agreement adopted virtually all of the Berne Convention's substantive provisions but did not include moral rights under Article 9(1).⁶⁸ As such, the Convention forms the bedrock of international copyright norms and continues to shape domestic and regional copyright legislation globally.

2.2.3 WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

WIPO, a specialized agency of the United Nations established in 1967, plays a central role in the development and administration of the international copyright framework. WIPO also, in cooperation with other international organizations and between governments, plays a leading role in the development and implementation of this global IP framework.⁶⁹ WIPO provides a multilateral forum for IP policy worldwide, supports member states in the negotiation of treaties, and monitors international standards implementation. It also offers technical cooperation to assist developing economies throughout all stages of law reform and implementation process.

WIPO's contributions to copyright law have included the administration of multilateral treaties such as the Berne Convention for the Protection of Literary and Artistic Works and the WIPO Copyright Treaty (WCT).⁷⁰ The WCT, adopted in 1996, was designed to address challenges posed by digital technologies and to supplement the Berne Convention by extending protection to computer programs and databases, as well as by granting authors additional rights such as the right of distribution and the right of communication to the public.⁷¹

⁶⁷ Ibid, art 5(2).

⁶⁸ TRIPS (n 1), art 9(1).

⁶⁹ Convention Establishing the World Intellectual Property Organization (signed 14 July 1967, entered into force 26 April 1970) 828 UNTS 3, art 3.

⁷⁰ WIPO, '*Berne Convention for the Protection of Literary and Artistic Works*' (WIPO, 1971) <https://www.wipo.int/treaties/en/ip/berne/> accessed 19 February 2025.

⁷¹ WIPO Copyright Treaty (adopted 20 December 1996, entered into force 6 March 2002) S. Treaty Doc No 105-17 (1997), arts 4, 6, 8.

WIPO also plays a crucial role in strengthening the copyright infrastructure of developing countries through initiatives to build capacity, provide legislative help and institutional support.⁷² In countries such as Sierra Leone where copyright systems are still taking shape, WIPO's assistance is vital to bringing national legislation into line with international standards. WIPO's Development Agenda provides a balanced and inclusive approach to protecting IP that takes account of the needs for development among member states.⁷³

Furthermore, WIPO provides a platform for dispute resolution and fosters public awareness through research and education. The WIPO Arbitration and Mediation Center offers alternative dispute resolution mechanisms for copyright and other IP-related conflicts, thereby supporting efficient enforcement beyond the court systems.⁷⁴ In addition, WIPO maintains global databases and organizes conferences to disseminate knowledge on copyright law, helping to foster a shared understanding among stakeholders.

The significance of WIPO as an international legal framework lies in its double role as a source of norms and technical body. On the one hand, WIPO participates in forming norms through treaty-making and policy formulation. On the other hand, it helps states turn those norms into practical and enforceable domestic laws. This double role has rendered WIPO indispensable to the international governance of Copyright law.

2.3 REGIONAL FRAMEWORKS

Regional cooperation in the realm of intellectual property rights (IPRs) has emerged as a critical strategy for African countries seeking to harmonize their laws, build institutional capacity, and facilitate compliance with international obligations. Two key frameworks in this context are the African Regional Intellectual Property Organization (ARIPO) and the African Union's Intellectual Property Policy initiatives. These frameworks aim to bolster collective strategies to strengthen IP regimes and ensure that copyright laws are tailored to the socio-economic realities of African states.

⁷² WIPO, *'Building Respect for IP: Capacity Building'* (WIPO, 2023) <https://www.wipo.int> accessed 14 February 2025.

⁷³ WIPO, *'The 45 Adopted Recommendations under the WIPO Development Agenda'* <https://www.wipo.int> accessed 23 February 2025.

⁷⁴ WIPO Arbitration and Mediation Center, *'About Us'* <https://www.wipo.int/amc/en/> accessed 23 February 2025.

2.3.1 AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO)'S LEGAL FRAMEWORK AND MANDATE

Established by the Lusaka Agreement of 1976, ARIPO serves as a regional platform for cooperation among Anglophone African countries in the administration and harmonization of intellectual property laws. Its objectives include pooling resources to achieve a common approach to IP protection and developing systems that are accessible to member states with limited institutional infrastructure for IP enforcement.⁷⁵ ARIPO administers several protocols, including the Harare Protocol (patents and industrial designs) and the Swakopmund Protocol (traditional knowledge and expressions of folklore), though it has no separate protocol specifically for copyright. However, ARIPO has become involved in copyright-related activities through capacity-building and legislative harmonization efforts.

The Swakopmund Protocol, adopted In 2010, is particularly relevant to copyright because it seeks to recognize and protect traditional knowledge and traditional cultural expressions (elements often overlooked in classical copyright regimes).⁷⁶ Although not all ARIPO member states have ratified this protocol, it lays a foundation for integrating African cultural heritage within the broader framework of IP protection.

ARIPO's copyright initiatives also include training programs, model laws, and regional consultations. Through these mechanisms, ARIPO supports national copyright offices and encourages legislative coherence in line with international standards such as the Berne Convention and the TRIPS Agreement.⁷⁷

2.3.2 AFRICAN UNION INTELLECTUAL PROPERTY POLICY INITIATIVES

The African Union (AU) has increasingly acknowledged the importance of intellectual property in its development agenda. The AU's Science, Technology and Innovation Strategy for Africa 2024 (STISA-2024) outlines IP protection as essential for fostering innovation and creativity on the continent.⁷⁸ Furthermore, the African Continental Free Trade Area (AfCFTA), established under the AU, includes commitments to harmonize

⁷⁵ African Regional Intellectual Property Organization (ARIPO), Lusaka Agreement (1976).

⁷⁶ ARIPO, Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore (2010).

⁷⁷ WIPO and ARIPO, '*Capacity Building Activities in Africa*', <https://www.aripo.org/capacity-building> accessed 24 February 2025.

⁷⁸ African Union Commission, Science, Technology and Innovation Strategy for Africa 2024 (STISA-2024) (2014).

trade-related aspects of intellectual property rights across member states, drawing inspiration from TRIPS while aiming to tailor obligations to African contexts.⁷⁹

Another critical initiative is the AU's Intellectual Property Rights Policy Framework for Africa, which proposes a comprehensive continental approach to IP governance. It emphasizes balancing rights holders' interests with public access, cultural preservation, and developmental needs. The Framework also stresses the importance of fair remuneration for African artists and creators, calling for stronger collective management organizations (CMOs) and regional licensing schemes.⁸⁰

These AU efforts aim not only to align member states with global standards but also to assert an African voice in international negotiations. The AU advocates for the recognition of indigenous knowledge systems and traditional cultural expressions as valuable intellectual assets deserving robust legal protection under copyright and related rights frameworks.⁸¹

2.3.3 SYNERGY BETWEEN ARIPO AND AU EFFORTS

The convergence of AU and ARIPO strategies demonstrates a shared commitment to enhancing copyright law within Africa. Both institutions have pushed for harmonized policies that reflect Africa's socio-economic and cultural realities. For instance, ARIPO has worked closely with the AU to promote the Swakopmund Protocol and integrate it within national laws. The emphasis on traditional knowledge, fair use, and collective rights management reflects an Afro-centric approach to copyright enforcement that resonates with local values and developmental aspirations.

ARIPO's regional training programs are frequently aligned with the AU's IP policies, helping national offices to develop copyright registration systems, judicial interpretation capacity, and dispute resolution mechanisms. Furthermore, both institutions contribute to Africa's coordinated position in international IP for a such as WIPO and WTO, advocating for flexibilities under TRIPS and fairer treatment of developing countries.⁸²

⁷⁹ African Union, *Agreement Establishing the African Continental Free Trade Area (AfCFTA)* (2018), art 4(g).

⁸⁰ African Union Commission, *Intellectual Property Rights Policy Framework for Africa* (2016).

⁸¹ Ibid

⁸² WIPO, *'African Group Statement on IP and Development'*, WIPO General Assembly (2020).

2.3.4 CHALLENGES AND CRITICISMS

Despite their positive contributions, both ARIPO and AU frameworks face several challenges. First, ratification and implementation of protocols remain inconsistent across member states. For instance, although the Swakopmund Protocol offers a powerful tool for protecting traditional knowledge, its uptake has been limited, undermining its practical relevance.⁸³ Second, enforcement mechanisms remain weak in many countries, with under-resourced copyright offices and insufficient judicial expertise to handle complex IP disputes.

Critics also argue that some of ARIPO's activities mirror global norms without sufficiently contextualizing them within African realities. There is a tension between adopting international standards (e.g., TRIPS-plus provisions) and safeguarding developmental policy space for African countries.⁸⁴ Moreover, limited awareness of copyright law among creators, the informal nature of creative industries, and piracy undermine the effectiveness of regional frameworks.

2.4 CONCLUSION

This chapter has laid the groundwork for understanding the legal and theoretical underpinnings of copyright law, both globally and regionally. It explored the conceptual meaning of copyright, the rationale behind its protection, and the significance of international instruments such as the TRIPS Agreement, the Berne Convention, and WIPO treaties. Additionally, it examined regional frameworks like ARIPO and AU intellectual property policies. Together, these elements provide a solid framework for evaluating Sierra Leone's efforts in domesticating and enforcing copyright law, which will be critically analyzed in the subsequent chapters of this thesis.

⁸³ Ruth L. Okediji, 'Copyright and the African Development Agenda' (2014) 9(1) WIPO Journal 22.

⁸⁴ Peter Yu, 'TRIPS and Its Discontents' (2011) 10(2) Marquette Intellectual Property Law Review 369.

CHAPTER THREE

THE IMPLEMENTATION OF COPYRIGHT LAW AND ITS ENFORCEMENT MECHANISMS IN SIERRA LEONE

3.0 INTRODUCTION

This chapter discusses how copyright laws and the ways they are enforced were introduced in Sierra Leone. It has a particular focus on the Copyright Act of 2011, so we shall be examining how well this works together with the TRIPS agreement. The chapter also looks at the historical development of intellectual property law, how it has been incorporated into domestic legislation according to international standards and effectiveness in its practice. The chapter also reviews copyright-related case law to discover what kind of judicial recognition copyright protection has received. Finally, through a comparative lens, it highlights key challenges facing Sierra Leone's copyright regime and proposes recommendations for strengthening compliance, institutional capacity, and legal reforms to promote innovation and creativity.

3.1 HISTORICAL DEVELOPMENT OF INTELLECTUAL PROPERTY LAW IN SIERRA LEONE

Sierra Leone 's historical intellectual property rights and laws are deeply rooted in its colonial past and subsequent development. Sierra Leone, a former British colony, first developed a legal system based on English common law statutes. The first types of IP protection in this society were directly taken from the UK's laws on trademarks and patents. These laws were enforced through colonial ordinances governing such points as company names and directors' responsibilities.

One of the earliest formal recognitions of intellectual property rights in Sierra Leone came through the application of the English Copyright Act 1911 and subsequent laws, which were extended to the colonies. These laws, however, concerned themselves mainly with protecting foreign (mainly British) authors, publishers and investors having little concern for indigenous innovation or cultural expression at all. This trend was found throughout colonial Africa with its IP regimes; whereby local knowledge systems and creative works were either marginalized or wholly left out of the official protection

mechanisms.⁸⁵

After achieving independence in 1961, Sierra Leone inherited this complex of laws. But for several decades, the country's laws governing IP remained fragmented and outdated. There were no individual Acts of Parliament to regulate copyright, patents and industrial designs. Progress began in the early 2000s when Sierra Leone sought to bring its laws into line with obligations under various international covenants such as those laid out by WTO and TRIPS.⁸⁶

The Copyright Act of 2011 was a significant milestone in Sierra Leone Intellectual Property law. This legislation repealed the outdated Copyright Ordinance of 1965. The new law is a comprehensive effort to bring Sierra Leone's copyright protection up to date, with provisions consistent with international norms such as those of the Berne Convention and TRIPS.⁸⁷ The Act recognizes protectable kinds of works (including literary and artistic works), performers' rights and "moral rights ". It also established the Sierra Leone Copyright Society (SILECS) as the national collecting society for copyright-related matters.⁸⁸

In addition to national reforms, Sierra Leone has been an active participant in regional and international IPR efforts. The country is a member of ARIPO. This organization facilitates co-operation among African states on IPR matters which includes training and transferring technology skills and in issuing advice to Governments on policy development in fields like patent protection and copyright law.⁸⁹

Despite this, challenges persist in the implementation and enforcement of IPR laws in Sierra Leone. Weak institutional capacity, low public awareness of these issues, and a poor level of expertise among judges at courts continue to hamper effective preservation of intellectual property rights there. However, the historical trajectory of IP law in Sierra Leone reflects a gradual yet meaningful shift towards establishing a legal regime that can support creativity, innovation, and economic development.

⁸⁵ Peter Drahos, *Intellectual Property, Indigenous People and Their Knowledge* (Cambridge University Press 2014) 42.

⁸⁶ World Trade Organization, 'Overview: the TRIPS Agreement' https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm accessed 4 March 2025.

⁸⁷ Copyright Act (n 11).

⁸⁸ Sierra Leone Copyright Society, 'About Us' <http://www.silecs.gov.sl/about-us> accessed 4 April 2025

⁸⁹ African Regional Intellectual Property Organization, 'Member States' <https://www.aripo.org/member-states/> accessed 14 March 2025.

3.2 THE COPYRIGHT ACT 2011: OVERVIEW AND ANALYSIS

The Sierra Leone Copyright Act 2011 represents a significant turning point in a country whose legal groundwork for protecting literary and other cultural creations was nonexistent. Enacted to replace the outdated Copyright Ordinance of 1965, the Act aimed at bringing Sierra Leone's copyright regime, in line with international standards especially those laid down by the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on TRIPS.⁹⁰

The Act provides a comprehensive legal framework for the protection of original works of authorship, including books, musical compositions, audiovisual works, paintings, software, and other creative outputs.⁹¹ It defines "*works*" broadly, encompassing both traditional and modern forms of creativity, and it recognizes the rights of authors, performers and broadcasting organizations. The legislation also establishes moral and economic rights and details the duration of copyright protection, the scope of permitted uses, and the procedures for enforcement.

One of the most significant features of the Copyright Act lies in its adherence to international norms concerning originality and fixation. According to Section 3, copyright is to subsist in a work which is original and fixed in a tangible medium of expression.⁹² This is in accordance with both the Berne Convention's requirement of originality, which has since become general practice among common law traditions.⁹³ The Act also provides automatic protection without requirement of registration, as mandated by Article 5(2) in the Berne Convention.⁹⁴

Under this Act, copyrights expire at various times, depending on what form of work they secure. For literary, artistic, and musical works the copyright term is the life of the author plus fifty years after he or she dies.⁹⁵ This is in conformity with the minimum standards set out in international instruments. The act also provides for protecting the rights in audiovisual works, anonymously or pseudonymously authored texts and works of joint authorship, each with specific terms of protection.⁹⁶

⁹⁰ Berne Convention (n 45)

⁹¹ Copyright Act (n 11), s 1.

⁹² Ibid, s 3.

⁹³ Berne Convention (n 45) art 2.

⁹⁴ Ibid art 5(2).

⁹⁵ Copyright Act (n 11), s 9.

⁹⁶ Ibid, ss 9–11.

The 2011 Copyright Act affords authors both moral and pecuniary rights. The economic rights set out in Section 5 include reproduction rights (right to reproduce), distribution right (right to distribute), the right publicly to perform or communicate publicly through any medium, and rights or adaptations from same work.⁹⁷ Moral rights, enshrined in Section 7, provide the author with the right to claim authorship and to object to any distortion of their work that would prejudice their reputation.⁹⁸ These provisions are crucial in safeguarding the personal and reputational interests of creators, aligning the Act with global norms on copyright protection.

In terms of enforcement, the Act establishes a legal mechanism for civil and criminal remedies against copyright infringement. Section 34 authorizes the owner of a copyright to bring civil proceedings for damages, injunctions, or accounts.⁹⁹ Section 36 introduces criminal sanctions, including fines and imprisonment for willful infringement.¹⁰⁰ However, even though all provisions are there in theory, bringing them into practice still presents major difficulties, mainly due to institutional weaknesses and lack of awareness among creators and consumers.

To facilitate the administration and management of copyright, the Act established the Sierra Leone Copyright Society (SILECS) as the national collecting society.¹⁰¹ Copyrights are managed by SILECS, which collects royalties for creators from all sources and assists them to understand their rights. Although its inception was a step in the right direction, weak funding, limited training and little communication with productive forces have all hindered SILECS from playing its due role.¹⁰²

The Act also provides exceptions and limitations which is often referred to as the “*fair dealing*” provisions. They are intended to strike a balance between the rights of creators and the public interest. Section 10 provides for uses such as private study, research, criticism, and review, which do not constitute infringement.¹⁰³ While these provisions are in tandem with other common law jurisdictions, their scope in practice remains vague and open to misuse in the absence of judicial interpretation or public guidance.

⁹⁷ Ibid, s 5.

⁹⁸ Ibid, s 7.

⁹⁹ Ibid, s 34.

¹⁰⁰ Ibid, s 36.

¹⁰¹ Ibid, s 28.

¹⁰² SILECS (88).

¹⁰³ Copyright Act (n 11) s 10.

An important critique of the Act is the fact that it does not give traditional knowledge and folklore enough respect. This has a great bearing on protecting the historical and cultural heritage of Sierra Leone. Although the Act includes a few references to '*folklore*' in a few provisions,¹⁰⁴ there are insufficient measures to protect traditional cultural expressions and knowledge base of its people. This is particularly important in the African context because protection of collective rights is a major issue.¹⁰⁵

Despite these challenges, the Copyright Act 2011 represents a major advance in Sierra Leone's intellectual property landscape. It creates the legal framework for protecting and developing creative work, cultural identity and economic power. But also depends on how effectively it is implemented, together with institutional support and popular awareness.

3.3 INCORPORATION OF TRIPS OBLIGATIONS INTO NATIONAL LAW

Since 1994, the Agreement on TRIPS has been seen as a landmark in internationalizing IP standards under its framework within WTO. This Agreement requires members to observe minimum standards for the protection and enforcement of IP rights, including copyrights, patents, trademarks, and trade secrets.¹⁰⁶ For WTO members such as Sierra Leone, the incorporation of TRIPS obligations into domestic legislation is not optional but a binding legal commitment.

Sierra Leone acceded to the WTO in 1995 and thus became bound by TRIPS obligations.¹⁰⁷ So, to meet these new obligations, Sierra Leone has re-examined its intellectual property legislation to bring it into line with TRIPS standards. The Copyright Act 2011, which superseded the old Copyright Ordinance of 1965, is perhaps the most noteworthy reform. This law incorporates several TRIPS-mandated provisions and hence makes it far easier for copyright to be protected and enforced in Sierra Leone.

TRIPS requires member states to provide copyright protection for original works of

¹⁰⁴ Ibid, s 22.

¹⁰⁵ Peter Drahos, *Intellectual Property, Indigenous People and Their Knowledge* (Cambridge University Press 2014) 73.

¹⁰⁶ TRIPS (n 1).

¹⁰⁷ WTO, 'Understanding the WTO: The Organization – Members and Observers' <https://www.wto.org> accessed 24 March 2025.

authorship fixed in a tangible medium, irrespective of the form of expression.¹⁰⁸ In the Copyright Act of 2011, Section 3 meets this requirement by saying "*copyright shall subsist in original works fixed in any medium*"¹⁰⁹ Moreover, there is a minimum term for protection of life plus fifty years such as TRIPS demands, which appears in Section 9 of the Act.¹¹⁰

TRIPS also obliges member states to guarantee authors both economic and moral rights.¹¹¹ These are addressed in Sierra Leone's Copyright Act where Sections 5 and 7 respectively affirm the rights of reproduction, communication to the public, distribution and moral right to object to derogatory treatment of ones' work.¹¹²

In terms of enforcement, TRIPS stipulates that national legal systems must provide effective measures and remedies (including both civil and criminal) in order to prevent infringements.¹¹³ The Copyright Act 2011 incorporates such enforcement mechanisms in Sections 34 and 36, which provide for civil damages, injunctions, and criminal penalties.¹¹⁴ Despite this, the actual enforcement of these regulations is weak in practice due to a combination of factors including limited judicial capacity, lack of technical expertise and financial constraints.¹¹⁵

Despite significant steps toward compliance, gaps remain in fully realizing the objectives of TRIPS. One such gap is the limited protection of traditional knowledge and folklore, which TRIPS does not address explicitly but which remains critical in the African context.¹¹⁶ Moreover, institutional deficiencies, such as the under-resourced Copyright Office and the ineffective functioning of SILECS, undermine the Act's implementation.¹¹⁷

¹⁰⁸ TRIPS (n 1) art 9.

¹⁰⁹ Copyright Act (n 11), s 3.

¹¹⁰ Ibid s 9; TRIPS (n 1) art 12.

¹¹¹ TRIPS (n 1) art 9(1).

¹¹² Copyright Act (n 11), ss 5, 7.

¹¹³ TRIPS (n 1) arts 41–61.

¹¹⁴ Copyright Act (n 11), ss 34, 36.

¹¹⁵ Abdulai O Conteh, 'Challenges of Copyright Enforcement in Sierra Leone' (2015) 17(3) Sierra Leone Law Journal 42.

¹¹⁶ Daniel J Gervais, *The TRIPS Agreement: Drafting History and Analysis* (4th edn, Sweet & Maxwell 2012) 435.

¹¹⁷ SILECS (n 88).

3.4 COMPARATIVE ANALYSIS WITH SOME SELECTED AFRICAN JURISDICTIONS: KENYA, GHANA, NIGERIA, AND SOUTH AFRICA.

Copyright law across Africa is developing rapidly, driven by the rise of the digital economy, international legal obligations, and the need to foster creative industries. While most African countries base their legal frameworks on colonial-era legislation, many have made significant reforms in recent decades. Although Sierra Leone and countries like Kenya, Ghana, Nigeria, and South Africa share many of the same international obligations when it comes to intellectual property, the way they handle copyright in practice is quite different. A closer comparison highlights important differences in their laws, enforcement systems, court decisions, and how they have responded to the digital age. These differences help shed light on where Sierra Leone's copyright system is falling short and its potential pathways for reform.

Kenya's copyright system is based on the Copyright Act No. 12 of 2001, which replaced older statutes and has been subsequently amended to meet international standards. The Act protects literary, musical, artistic and audio-visual works, computer programs as well as related rights such as those of performers and broadcasters. One characteristic of Kenyan copyright is its recognition of '*moral rights*', which include a right to be identified and the right not to have one's work treated in a derogatory way. The Kenya Copyright Board (KECOBO) is the main state regulatory body, responsible for administration, public education and licensing of umbrella organizations composed by multiple rights holders. Kenya is also a member of the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on TRIPS.¹¹⁸

Ghana's copyright system is governed by the Copyright Act of 2005, which replaced the earlier Copyright Law of 1985. The Act grants copyright protection to a wide array of works including musical, literary, artistic, and choreographic creations, and extends rights to broadcasting organizations and performers. It confers both economic and moral rights on creators and also limits exceptions to fair use in clear language. The management and enforcement of copyright laws are overseen by Ghana's Copyright Office, which operates under the Ministry of Justice. Ghana has signed onto important international conventions like the Berne Convention and TRIPS, bringing it in line with international standards as it

¹¹⁸ Copyright Act No 12 of 2001 (Kenya); Kenya Copyright Board (KECOBO), '*About Us*' <https://copyright.go.ke/> accessed 3rd April 2025.

forges domestic legal norms.¹¹⁹

Nigeria's copyright law is based on the Copyright Act, Cap C28, Laws of the Federation of Nigeria 2004. This law is currently undergoing reform to address digital-era challenges. The Act protects traditional works such as books, music, films, and artistic expressions, as well as broadcasts and sound recordings. Moral rights are recognized, and the law provides for compulsory licensing and fair dealing exceptions. The Nigerian Copyright Commission (NCC) is pivotal in enforcement, with powers to conduct investigations, prosecute offenders, and engage in public education. Nigeria is also a signatory of the Berne Convention, TRIPS and WIPO Copyright Treaty. Its adherence to these international standards helps to resolve the question of uniform application where it has different laws within its domestic system. Legislative reform goes on with the Copyright Bill 2022 which, among other things, aims to strengthen protection, introduce clearer provisions on digital rights management, and bring domestic law into closer conformity with the law in that sector globally.¹²⁰

Lastly, South Africa has the Copyright Act 98 of 1978 as its main piece of legislation which is supplemented by the Performers' Protection Act 11 of 1967. South African copyright law covers works of literary, artistic, or musical nature; sound recordings and films; and broadcasts. There are provisions both for economic rights such as royalties et al., as well as moral ones as a member of the Berne Convention and TRIPS, South Africa has made significant contributions to the development of copyright law. Current reform efforts, notably the Copyright Amendment Bill, aim to modernize the law by incorporating protections for digital works, introducing limitations and exceptions for educational use, and enhancing the rights of authors and performers.¹²¹

From a comparative point of view, Sierra Leone's main copyright law is the Copyright Act of 2011. While this law provides a basic framework, it lacks the clarity, detail, and broad coverage found in the copyright laws of the other countries. For example, Ghana's 2005 Copyright Act is much more comprehensive. It clearly outlines both economic and moral rights, and it even protects unique forms of expression like folklore and dance

¹¹⁹ Copyright Act 2005 (Act 690) (Ghana); Ghana Copyright Office, 'What We Do' <https://copyright.gov.gh> accessed 23rd March 2025.

¹²⁰ Copyright Act, Cap C28 Laws of the Federation of Nigeria 2004; WIPO, 'Nigeria Copyright Bill 2022' <https://wipolex.wipo.int/en/text/613010> accessed 3rd April 2025

¹²¹ Department of Trade, Industry and Competition (South Africa), 'Copyright Amendment Bill' <https://www.gov.za/documents/copyright-amendment-bill> accessed 3 April 2025.

choreography.¹²² South Africa, despite having an older law passed in 1978, has made significant updates and its courts have played a big role in shaping how that law is interpreted (particularly to address modern issues like digital content).¹²³ In Sierra Leone, on the other hand, copyright law is rarely used in court, and enforcement is weak, especially when it comes to online piracy and other digital challenges.

Institutionally, each of the four countries has a functioning copyright body with copyright administration and enforcement. Kenya has the Kenya Copyright Board (KECOBO), which oversees registration, licensing of collective management organizations (CMOs), and public enforcement.¹²⁴ Ghana operates a Copyright Office under its Ministry of Justice, which liaises with CMOs and the police to enforce rights.¹²⁵ In Nigeria, the Nigerian Copyright Commission (NCC) enjoys statutory powers to investigate infringements, conduct raids, and prosecute offenders.¹²⁶ South Africa similarly boasts a functional system involving the Companies and Intellectual Property Commission (CIPC), alongside dedicated CMOs like SAMRO.¹²⁷

By contrast, Sierra Leone has no operational copyright agency. While the Copyright Act 2011 anticipates institutional structures for enforcement and rights administration, no such entity currently exists in practice.¹²⁸ The Sierra Leone Copyright Society (SILECS), which was intended to act as a CMO, is non-functional, lacking both state support and operational infrastructure.¹²⁹ This institutional vacuum severely hampers both the public's understanding of copyright and the ability of creators to enforce their rights. Without a licensing body, no royalties are collected on behalf of authors, musicians, or filmmakers. Because there's no functional organization to collect and distribute royalties, artists, musicians, and filmmakers in Sierra Leone miss out on income that their peers in Nigeria or South Africa regularly receive.¹³⁰

Judicial engagement with copyright is another area of divergence. South African courts, led by a rights-based constitutional framework, have delivered landmark rulings

¹²² Copyright Act 2005 (Act 690) (Ghana), s 1–6.

¹²³ Copyright Act 98 of 1978 (South Africa), ss 1–8.

¹²⁴ Kenya Copyright Board (n 118).

¹²⁵ Ghana Copyright Office (n 119).

¹²⁶ Nigerian Copyright Commission, 'Strategic Action Against Piracy' <https://copyright.gov.ng> accessed 23 March 2025.

¹²⁷ South African Music Rights Organisation (SAMRO), 'What We Do' <https://www.samro.org.za> accessed 3 June 2025.

¹²⁸ Copyright Act (n 11).

¹²⁹ George Kamanda (n 16).

¹³⁰ Caroline Ncube (n 10).

interpreting copyright in light of freedom of expression and public interest. The case of *Laugh It Off Promotions CC v South African Breweries International (Finance) BV* exemplifies this, where parody and trademark concerns were weighed against constitutional rights, resulting in a decision that broadened the scope of lawful expression.¹³¹ Nigeria has seen its courts adjudicate copyright disputes involving musical works, CMOs, and online infringement. In *Adeokin Records v Sony Music Entertainment*, a Nigerian court upheld the copyright of a local label against unauthorized commercial exploitation.¹³² Ghana and Kenya, while producing fewer landmark rulings, have nonetheless made notable contributions to local jurisprudence on copyright.

Sierra Leone, by contrast, has an almost non-existent body of copyright case law. This lack of judicial engagement has created a legal vacuum. Because the courts have not had the chance to interpret the Copyright Act in practice, lawyers and rights holders are unsure how it would be applied. This discourages people from bringing claims and means the law remains static (essentially a set of rules on paper rather than a tool people can use in the real world).

Another serious issue is Sierra Leone's limited participation in key international copyright treaties. Kenya, Ghana, Nigeria, and South Africa are parties to the Berne Convention, the TRIPS Agreement, and the WIPO Copyright Treaty. These instruments impose obligations on countries to maintain minimum standards for protection, ensure national treatment of foreign works, and provide remedies for infringement.¹³³ Sierra Leone, while a member of the World Trade Organization (WTO) and thus bound by TRIPS, has not ratified the Berne Convention or the WIPO Copyright Treaty. Its Copyright Act does not clearly reflect the minimum standards laid out in these instruments. For instance, Sierra Leone's provisions on the length of protection, exceptions and limitations, and moral rights fall short of Berne's expectations.¹³⁴

Furthermore, enforcement capacity is significantly more developed in the other four countries. In Nigeria, the NCC regularly carries out raids and takes pirates to court. Kenya's KECOBO has also been involved in enforcement, sometimes working directly with the police and the judiciary to secure court orders against infringers. In Ghana,

¹³¹ *Laugh It Off Promotions CC v South African Breweries International (Finance) BV* 2006 (1) SA 144 (CC).

¹³² *Adeokin Records v Sony Music Entertainment* [2012] FHC/L/CS/789/2011.

¹³³ TRIPS (n 1)

¹³⁴ Peter K Yu (n 84).

though hampered by funding, the Copyright Office has made progress by running public campaigns and training law enforcement officers. In Sierra Leone, however, enforcement is virtually nonexistent. There have been no major public actions or prosecutions under the Copyright Act, and piracy remains widespread and socially accepted (especially in music and film).

Perhaps the most obvious area of neglect is the digital space. Countries like South Africa and Nigeria have begun to adapt their laws to deal with issues like streaming, digital piracy, and platform liability. South Africa, for example, has included rules on technological protection measures (TPMs) and digital rights management (DRM) in its legal reforms.¹³⁵ Nigeria's 2022 Copyright Bill also addresses online infringement and makes provisions for regulating digital platforms.¹³⁶ Kenya and Ghana are working on reforms too. But Sierra Leone's 2011 Act doesn't mention digital enforcement at all. It was passed before streaming became mainstream, and it offers no tools for addressing online copyright violations. As a result, creators in Sierra Leone face serious challenges monetizing their work in today's global digital economy.

Public understanding of copyright is also far better in the other four countries. In South Africa and Nigeria, public and industry engagement with copyright is supported by regular educational campaigns, government-industry partnerships, and university-level IP courses. In Ghana and Kenya, the copyright offices have run programs in schools, marketplaces, and creative hubs to inform users and rightsholders about copyright responsibilities and entitlements. In Sierra Leone, however, copyright remains a marginal and often misunderstood area of law. Few creative professionals understand their rights, and no structured public education campaign has been run by government institutions or professional organizations in recent years.

Lastly, one of the most important differences lies in how each country views the role of copyright in national development. In places like Nigeria and South Africa, copyright is not just a legal issue but part of a broader strategy for promoting cultural industries, creating jobs, and growing the digital economy. These countries see copyright as a development tool. Sierra Leone has yet to make that connection. While the government talks about supporting creative industries, copyright policy isn't integrated into national planning, education, or trade negotiations. This oversight risks leaving local creators

¹³⁵ Department of Trade, Industry and Competition (n 121).

¹³⁶ WIPO, '*Nigeria Copyright Bill 2022*' (n 120).

behind in an increasingly globalized and digitized market.

3.5 JUDICIAL INTERPRETATION AND CASE LAW REVIEW IN SELECTED AFRICAN JURISDICTIONS

Across Africa, courts are playing an increasingly important role in shaping how copyright law is understood, applied, and enforced. In countries like South Africa, Nigeria, Ghana, and Kenya, judicial decisions have clarified the meaning of copyright protection, defined the boundaries of enforcement, and provided much-needed guidance to both creators and users. For Sierra Leone, where copyright-related case law remains almost non-existent, these decisions offer valuable lessons and potential pathways for reform.

South Africa is widely regarded as having one of the most advanced intellectual property systems on the continent, and its courts have developed a rich body of jurisprudence on copyright. South Africa shows how important it is to strike a fair balance between protecting intellectual property and upholding rights like *freedom of expression* so that copyright laws do not end up limiting creativity. One of the most notable cases is *Laugh It Off Promotions CC v South African Breweries International (Finance) BV*, where the Constitutional Court ruled on whether a parody of the famous “*Black Label*” beer brand infringed on trademark rights. The parody, which altered the brand to read “*Black Labour*,” was meant as social commentary. The Court ruled that freedom of expression (guaranteed by Section 16 of the South African Constitution) must be balanced against trademark protection. Since the parody was not likely to cause significant commercial harm, it was allowed to stand.¹³⁷

In another important case, *Moneyweb (Pty) Ltd v Media 24 Ltd*, the court looked at whether original news articles could be protected under copyright law. The court clarified that while news itself isn’t copyrightable, the way it’s written (the skill and effort involved) can be. This decision helped solidify the idea that originality is not about being new, but about the author’s intellectual input.¹³⁸

Moving to Nigeria, the courts have made several impactful rulings that strengthen copyright enforcement and highlight how crucial it is to have strong regulations and to

¹³⁷ *Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International and Another* [2005] ZACC 7; 2006 (1) SA 144 (CC).

¹³⁸ *Moneyweb (Pty) Ltd v Media 24 Ltd and Another* [2016] ZAGPJHC 81; 2016 (3) SA 598 (GJ).

make sure licensing rules are properly followed. In *Adeokin Records v Sony Music Entertainment*, a local recording company successfully sued Sony Music for unauthorized use of its music. The court awarded damages and issued an injunction, reinforcing the value of contracts and the enforceability of copyright in the commercial music space.¹³⁹

Regulatory authority also came into focus in the *Nigerian Copyright Commission v Musical Copyright Society Nigeria (MCSN)*. Here, the Federal High Court held that MCSN was acting illegally by operating without the necessary license. The ruling reaffirmed the Nigerian Copyright Commission's role in regulating collective management organizations (CMOs) and ensuring that they act within the law.¹⁴⁰

Another noteworthy decision is *Gbadamosi v Biodun*, where a playwright sued for the unauthorized use of his script. The Lagos High Court not only awarded compensation for economic loss but also acknowledged the infringement of the playwright's moral rights, such as the right to be credited and to protect the integrity of one's work.¹⁴¹ This case is significant because moral rights are often under-discussed in African copyright law.

In Ghana, courts have tackled questions about what qualifies as copyright infringement and how far copyright protection extends. The courts have helped clarify what copyright necessarily protects (reminding us that while ideas are free for all, the way those ideas are expressed can and should be protected, including in digital formats). In *Pearson Education Ltd v Adzei*, the issue was whether summarizing a novel for a textbook amounted to copyright infringement. The Supreme Court ruled in favour of the author, affirming that while ideas themselves aren't protected, the way those ideas are expressed is.¹⁴²

Another case, *Paul Oliver v Samuel K. Boateng*, involved software created for banking services. The defendant had used and distributed the software without the creator's permission. The court found in favour of the developer, confirming that software qualifies as a protectable literary work under Ghanaian law.¹⁴³ This decision was a positive step toward extending copyright protection to digital works.

¹³⁹ Adeokin (n 132)

¹⁴⁰ *Nigerian Copyright Commission v Musical Copyright Society Nigeria (MCSN)* [2010] FHC/L/CS/1234/2009.

¹⁴¹ *Gbadamosi v Biodun* [2014] Suit No. LD/999/2012 (Lagos State High Court).

¹⁴² *Pearson Education Ltd v Adzei* [2011] GHASC 47.

¹⁴³ *Paul Oliver v Samuel K. Boateng* (High Court of Ghana, Suit No. RPC/208/11).

Ghanaian courts have also supported filmmakers. In *Akuffo v Ceejay Multimedia*, the court ruled in favour of a documentary filmmaker whose work had been screened and sold without permission. The judge stressed that proper licensing and registration are essential in protecting creative content.¹⁴⁴

Kenya, too, has developed strong case law in recent years, especially around the management of copyright and collective rights by demonstrating the importance of holding collective management organizations accountable and ensuring they operate transparently and fairly. In *Music Copyright Society of Kenya v Kenya Copyright Board*, the court backed the decision to suspend MCSK's license due to issues of mismanagement. The case highlighted the importance of regulatory oversight and financial transparency in the operations of CMOs.¹⁴⁵

A related decision, *David Kasika & 4 Others v Music Copyright Society of Kenya*, involved musicians challenging the collection of royalties on their behalf without consent. The court ruled that MCSK could not collect royalties without formal authorization, reinforcing the principle that rightsholders must have control over their works.¹⁴⁶

Kenya has also addressed issues of what counts as an original work. In *Safe Pharmaceuticals Ltd v Nairobi Women's Hospital*, the court considered whether a product's packaging design qualified for copyright. While it was accepted that packaging could be protected, the plaintiff had not met the originality threshold.¹⁴⁷ This ruling demonstrated how courts apply copyright law carefully, particularly in the commercial context.

Altogether, these cases show that courts across Africa are not only enforcing copyright law but also shaping it. They address critical issues such as the balance between copyright and freedom of expression, what counts as originality, how software and digital products are treated, and how regulatory authorities and CMOs should operate.

For Sierra Leone, these rulings are highly instructive as these cases highlight that building an effective copyright system means more than just having laws on paper. It requires a capable judiciary that understands how to apply those laws, as well as public education so

¹⁴⁴ *Akuffo v Ceejay Multimedia* [2015] Civil Suit No. CM/175/2013 (Accra Circuit Court).

¹⁴⁵ *Music Copyright Society of Kenya v Kenya Copyright Board* [2011] eKLR.

¹⁴⁶ *David Kasika & 4 Others v Music Copyright Society of Kenya* [2016] eKLR.

¹⁴⁷ *Safe Pharmaceuticals Ltd v Nairobi Women's Hospital* [2021] eKLR.

that creators know their rights and how to defend them. Sierra Leone can draw from these decisions to develop a robust legal environment that supports creators, strengthens institutions, and meets international obligations like those under the TRIPS Agreement.

3.6 CHALLENGES IN COPYRIGHT ENFORCEMENT MECHANISMS AND PROTECTION OF CREATORS' RIGHTS

A central issue is the underdevelopment of institutional structures tasked with the administration and enforcement of copyright. The Copyright Act 2011 provides for the establishment of the SILECS, envisioned as the national collecting society responsible for the administration of rights, collection of royalties, and facilitation of licensing agreements.¹⁴⁸ However, over a decade since the Act's enactment, SILECS remains largely non-functional. Its limited operational capacity stems from inadequate funding, lack of skilled personnel, and poor institutional coordination.¹⁴⁹ As a result, there exists no functional mechanism through which creators can enforce their rights, monitor the use of their works, or benefit from remuneration for public use.

Equally problematic is the limited capacity of enforcement agencies, including the police, customs officials, and judiciary. Enforcement authorities generally lack coaching in mental property matters and are poorly outfitted to spot, look into, or prosecute instances of copyright encroachment.¹⁵⁰ In the judiciary, there is a marked absence of case law relating to copyright, a situation that can be attributed to both a dearth of specialized knowledge among judges and the reluctance of rightsholders to pursue litigation in an underdeveloped and inaccessible system.¹⁵¹ The absence of judicial interpretation and precedent further weakens legal certainty and deprives creators of effective remedies when their rights are violated.

Piracy remains a pervasive and deeply entrenched problem in Sierra Leone. The unauthorized reproduction and distribution of books, music, films, and software are common, especially in urban markets across Freetown, Bo, and Kenema.¹⁵² Pirated

¹⁴⁸ Copyright Act (n 11), ss 28–30.

¹⁴⁹ SILECS (n 88).

¹⁵⁰ Generis Online, 'An Overview of Copyright Protection Laws in Sierra Leone' <https://generisonline.com/an-overview-of-copyright-protection-laws-in-sierra-leone> accessed 2 March 2025.

¹⁵¹ Abdulai O Conteh, (n 115).

¹⁵² Music In Africa, 'Copyright, Royalties and Piracy in Sierra Leone' <https://www.musicinafrica.net/magazine/copyright-royalties-and-piracy-sierra-leone> accessed 21 March 2025.

materials are frequently imported or reproduced using low-cost digital technologies, with minimal risk of prosecution. The unchecked proliferation of such content not only deprives creators of income but also disincentivizes innovation and investment in the country's creative industries.

Another significant challenge lies in the general lack of public awareness regarding copyright law. Most creators (authors, musicians, filmmakers, and visual artists) are unaware of their legal rights under the Copyright Act 2011.¹⁵³ They are therefore unlikely to register their works, monitor infringement, or pursue enforcement. The general public also lacks understanding of the illegality and ethical implications of using pirated content. This widespread ignorance cultivates a permissive culture in which copyright violations are seen as trivial, further diminishing the perceived legitimacy of copyright law.

While socioeconomic factors exacerbate these issues, constraints on creators extend beyond finances. Most operate without formal protection or recognition, their works distributed informally if at all. Theoretical options offer little hope when weighed against prohibitive legal fees and lack of aid.¹⁵⁴ Subsidies could expand access to justice, but without intervention the Sierra Leone's creative community will keep falling silent, as enforcement remains constrained to those who can afford defending rights others enjoy by default.

Further complicating the enforcement landscape is the lack of formalized alternative dispute resolution (ADR) mechanisms within Sierra Leone's copyright system. In jurisdictions where access to courts is limited, ADR (such as mediation or arbitration) serves as a cost-effective means of resolving copyright disputes.¹⁵⁵ The absence of such mechanisms in Sierra Leone further restricts creators' ability to seek timely and affordable remedies.

In contrast, other African jurisdictions have made significant strides in improving enforcement frameworks. Nigeria, for instance, has empowered the Nigerian Copyright Commission (NCC) to lead anti-piracy enforcement campaigns, conduct raids, and prosecute offenders.¹⁵⁶ Kenya's Copyright Board (KECOBO) has similarly developed

¹⁵³ Generis Online (n 150).

¹⁵⁴ Ibid

¹⁵⁵ Generis Online, '*Dispute Resolution Mechanisms for IP Issues in Sierra Leone*' <https://generisonline.com/an-overview-of-dispute-resolution-mechanisms-for-intellectual-property-issues-in-sierra-leone> accessed 4 April 2025.

¹⁵⁶ Nigerian Copyright Commission (n 120).

robust public education and licensing initiatives, supported by regular collaboration with the judiciary and police.¹⁵⁷ These examples highlight the potential for transformative reform, even within resource-constrained environments, through strategic investment in institutional strengthening and stakeholder engagement.

Sierra Leone's continued inability to enforce copyright law effectively is also symptomatic of a broader lack of political will. Copyright issues remain peripheral in national development planning and are rarely prioritized in education, cultural policy, or economic growth strategies.¹⁵⁸ The Ministry of Tourism and Cultural Affairs, which has responsibility for implementing copyright policy, suffers from budgetary constraints and limited technical expertise. This institutional marginalization of copyright enforcement contributes to a general atmosphere of apathy and underinvestment in the sector.

To address these challenges, a comprehensive strategy is required. First, the operationalization of SILECS must be prioritized, including the appointment of a competent Registrar, adequate financial resourcing, and stakeholder engagement. Second, capacity-building initiatives targeting the judiciary, law enforcement, and border officials are essential to improving technical knowledge and enforcement capabilities. Third, legal aid mechanisms should be established to provide affordable legal support to rightsholders, while ADR processes should be introduced to facilitate efficient resolution of disputes. Fourth, sustained public awareness campaigns must be undertaken to educate creators and consumers about copyright law and the importance of protecting creative output. Finally, national development strategies should explicitly integrate copyright as a tool for cultural preservation, economic empowerment, and creative industry development.

3.7 CONCLUSION

This chapter has examined the domestication of copyright law and its enforcement mechanisms in Sierra Leone, highlighting both legislative progress and persistent challenges. While the Copyright Act 2011 reflects compliance with international standards, enforcement remains hindered by limited institutional resources and public awareness. Effective implementation requires a coordinated approach involving legal reforms, capacity building, and greater stakeholder engagement. Strengthening these

¹⁵⁷ Kenya Copyright Board (n 118).

¹⁵⁸ Music In Africa (n 152).

areas will enhance the protection of copyright holders and contribute to the development of a vibrant creative industry in Sierra Leone, in line with both national interests and international obligations.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 SUMMARY OF THE FINDINGS

This study explores how copyright law is implemented and enforced in Sierra Leone, focusing in particular on how well the country complies with the TRIPS Agreement and the extent to which creators' rights are protected through legal processes. Using both doctrinal and comparative methods, it examines the Copyright Act of 2011, its alignment with international standards, and the real-world challenges that make effective enforcement difficult. While the law itself marks a step forward, the research finds that its actual enforcement and practical application remain weak.

A key discovery is that Sierra Leone has largely complied formally with TRIPS by enacting the Copyright Act of 2011. To better understand why enforcement efforts often fall short, it draws on theories of deterrence, legitimacy, and regulatory compliance. It also reviews key international legal instruments, including the Berne Convention, the TRIPS Agreement, and the WIPO Copyright Treaty, all of which set minimum standards for protection and enforcement that Sierra Leone is expected to meet.

On paper, Sierra Leone has done much to meet these international obligations. The Copyright Act of 2011 provides broad protections for creative works, grants authors economic and moral rights, and includes civil and criminal penalties for infringement. It even establishes a national collection society known as the Sierra Leone Copyright Society (SILECS), to help manage royalties. But in practice, most of these legal provisions remain unimplemented, largely due to institutional weaknesses, lack of infrastructure, and limited financial resources.

A major issue is the severe lack of institutional capacity. Despite being mandated to oversee licensing and royalty distribution, SILECS has remained inactive. Without a functioning administrative body to enforce copyright, the law is effectively toothless. Similarly, the Ministry of Tourism and Cultural Affairs, which is tasked with shaping copyright policy, is hampered by funding shortages and a lack of technical expertise.

The judiciary and law enforcement face their own limitations. There is little to no training in intellectual property law for judges, police, or customs officers. As a result, they are ill-equipped to handle copyright cases (and the lack of case law is a testament to this). This silence reflects both the inaccessibility of the legal system for rights holders and the broader institutional reluctance to engage with this relatively new area of law.

Piracy is another deeply entrenched problem. In cities across Sierra Leone, pirated books, music, and films are sold openly. With weak enforcement and little fear of consequences, infringement is rampant. This discourages investment in the creative sector and denies artists and performers a fair income. The lack of visible penalties and enforcement efforts only deepens the sense that copyright law has no real bite.

Public awareness is also a major barrier. Many creators (musicians, writers, filmmakers) are unaware of their rights under the Copyright Act or how to use the law to protect their work. Most have never registered their works or applied for licenses, often because they simply don't know they should. Efforts to educate the public about copyright remain limited and ineffective.

Moreover, economic barriers make it difficult for many creators to seek justice. Legal action is costly and slow, often putting it out of reach for those in the informal sector. Although the law provides for alternative dispute resolution mechanisms, these are rarely accessible or operational in practice.

When comparing Sierra Leone's situation to other African countries like Kenya, Ghana, Nigeria, and South Africa, a common set of challenges emerges. However, these countries have also shown that progress is possible. Nigeria's Copyright Commission actively pursues pirates and prosecutes offenders. Kenya's Copyright Board runs public awareness campaigns and makes registration accessible. South Africa, with its growing body of case law, is investing in digital copyright protections. These examples show that strong institutions, consistent enforcement, and active stakeholder involvement are essential to building an effective copyright system.

In a nutshell, while Sierra Leone has the legal framework in place, the lack of enforcement reflects a deeper problem. The creative sector seems to be a non-priority in the country's national development strategy. Cultural industries are sidelined, leaving the country to miss out on opportunities to foster economic growth, engage young people,

and preserve national identity. This neglect at the policy level trickles down, weakening protections for creators and stripping value from their work. With stronger support, the creative sector could become a powerful driver of jobs, income, and pride. However, that potential remains unrealized.

4.2 CONCLUSIONS

This study has extensively examined the implementation and enforcement of copyright legislation in Sierra Leone, focusing especially on adherence to its international obligations under the TRIPS Agreement and Berne Convention. It looked at the legal structure created by the 2011 Copyright Act, assessed how well this framework aligns with international standards, and explored the real-world challenges that come with enforcing copyright in the country's legal, institutional, and socio-economic context.

The findings show that Sierra Leone has made notable strides in building a legal system that meets key international intellectual property commitments. The 2011 Act includes essential TRIPS requirements such as protecting both economic and moral rights, providing civil and criminal remedies for infringement, and establishing a national copyright society. However, despite these legal provisions, their effectiveness remains severely limited by institutional weaknesses and a lack of enforcement capacity.

A key finding of this study is the disconnect between law on paper and law in action. Though the statutory framework appears thorough on its face, there's no functioning copyright office, key ministries lack the resources to do their jobs effectively, and the judiciary is not equipped to handle IP cases. Judges and legal staff often have no training in IP law, and there's virtually no case law to guide decisions. Law enforcement is also poorly equipped to identify or respond to copyright violations, and as a result, most creators have little confidence in the system's ability to protect their work.

The study also found that public awareness around copyright is extremely low. Many artists, musicians, and writers don't know their rights, and the general public often doesn't understand that using pirated content is illegal or unethical. This lack of awareness fuels widespread infringement, especially in the form of unauthorized copying and selling of books, music, films, and software.

Socioeconomic barriers further complicate enforcement. Most creators work in the informal sector and simply don't have the money to take legal action or pursue long legal processes. There are also no practical alternative dispute resolution mechanisms that could help resolve copyright disputes more affordably and efficiently.

A comparative analysis with Kenya, Ghana, Nigeria and South Africa demonstrated that progress in copyright enforcement is possible when national laws are buttressed by robust institutions, judicial involvement, public education and access to affordable enforcement mechanisms. These jurisdictions provide useful models for how Sierra Leone might reform its copyright enforcement system.

This study concludes that while Sierra Leone has fulfilled many of its international obligations under TRIPS and Berne Convention, copyright protection remains largely theoretical. Without significant investment in institutional overhaul, public education, judicial capacity building and stakeholder engagement, copyright law will continue to exist as an empty promise rather than an effective tool for empowering creators and supporting national development. Future reforms must prioritize not only legal alignment but also establishing a sustainable enforcement setting ensuring copyright protection is meaningful, accessible and responsive to realities of Sierra Leone's creative sector.

4.3 RECOMMENDATIONS

1. The government must bring the Sierra Leone Copyright Society into full operation by ensuring it becomes a capable and independent organization able to carry out its mandate under the Copyright Act of 2011, like KECOBO in Kenya or the NCC in Nigeria. This demands the prompt appointment of a qualified Registrar, recruitment of competent staff, and allocation of sustainable funding. SILECS also should be empowered to enter into licensing agreements, collect royalties on behalf of copyright holders, and act when infringement arises. Its operationalization is fundamental to allowing authors, artists, and other creators to monetize their works and enforce their rights effectively.

2. Sierra Leone should urgently ratify the Berne Convention for the Protection of Literary and Artistic Works and the WIPO Copyright Treaty. Doing so would elevate its international credibility and ensure that local creators enjoy reciprocal protection abroad. Domestication of these treaties through legislative amendments will help align Sierra

Leone's Copyright Act with international minimum standards, particularly in relation to the scope of protectable works, duration of rights, and the treatment of foreign authors.

3. The existing legislation must be revised to incorporate express provisions on digital rights management (DRM), technological protection measures (TPMs), and intermediary liability, which are crucial in the digital economy. These reforms should also introduce clear exceptions and limitations, including fair dealing for educational, research, and archival purposes, in line with comparative models such as Nigeria's Copyright Bill 2022 and South Africa's Copyright Amendment Bill

4. Training programs ought to be developed for law enforcement agencies and customs officials to boost their understanding and ability to address copyright infringement. These agencies are the front line of defence in combating piracy and counterfeit imports. Capacity-building efforts should comprise regular workshops, manuals on copyright law, and practical guidelines for recognizing infringement. Without such training, even the best legal frameworks will remain ineffective. Improved collaboration between law enforcement and copyright authorities also would ensure more timely and effective enforcement actions.

5. Judicial capacity in intellectual property should be enhanced through targeted training and institutional support. The judiciary plays a critical role in interpreting and applying copyright law, but many judges in Sierra Leone lack specialized training in intellectual property rights. Training programs, continuing legal education, and the inclusion of IP modules in judicial training institutions would significantly improve enforcement outcomes. Establishing dedicated IP courts or specialized chambers within existing courts could help streamline copyright adjudication and build a body of jurisprudence that offers guidance to creators, users, and policymakers.

6. Public awareness campaigns should be introduced to promote copyright literacy among creators and consumers. The complexity of copyright laws often eludes many authors, musicians, filmmakers, and artists who remain unaware of their rights under legislation. Consumers frequently purchase pirated materials without comprehending the implications of their actions. Edifying campaigns leveraging mass media outlets such as radio, television, and social networking platforms in addition to community-based outreach initiatives could help reform public perspectives. This is consistent with efforts in Kenya and Ghana, where public education has helped reduce copyright violations.

7. The Copyright Act 2011 should be amended to stipulate mediation and arbitration as recognized approaches for resolving copyright disputes. Due to limited financial reserves and minimal time, numerous creators in Sierra Leone find pursuing protracted litigation an implausible choice. Introducing alternative dispute resolution mechanisms could offer creators more expedient, cost-effective, and less confrontational pathways for redress. This would also help reduce congestion in the formal court system while ensuring rights are enforced judiciously.

8. Legal aid services and pro bono legal counsel should be made accessible to creators seeking to uphold their rights. Access to justice constitutes a cornerstone of effective copyright enforcement, yet costs of legal representation and court proceedings prove prohibitive for most Sierra Leonean artists. Partnerships between government bodies and law firms, legal aid clinics, and academic institutions could aid in providing affordable or free legal support to rightsholders, allowing them to assert their rights absent economic hardship.

9. A coordinated enforcement strategy involving the police, customs authorities, and the newly established copyright office is essential. Lessons can be drawn from Nigeria's NCC, which has successfully collaborated with law enforcement to conduct raids and prosecute piracy cases. Enforcement guidelines should be developed to ensure due process while protecting the interests of rightsholders.

10. Copyright protection should be incorporated into domestic development strategies, notably in cultural, educational, youth empowerment, and technology policies. Acknowledging copyright as an instrument for economic progress can help reposition the creative industries as generators of employment, innovation, and cultural heritage preservation. Government programs ought to prioritize the creative sector through funding, tax incentives, training, and assistance for content creators. Drawing inspiration from South Africa's integration of copyright policy into its cultural and innovation agendas can guide this process.

11. Regional and international collaboration should be strengthened substantially to support strict copyright enforcement in Sierra Leone. The government will actively engage with organizations for example, ARIPO, WIPO, and neighbouring countries to share resources, preferred practices, and professional knowledge. Partnerships can facilitate powerful regional enforcement mechanisms, extensive capacity-building

campaigns, and standardized legal changes that considerably improve conformity and advance cross-border protection of intellectual holdings. Despite constraints, hope remains that cooperating globally can foster the local creative spirit for the benefit of all.

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