

THE ROLE OF THE JUDICIARY IN COPYRIGHT ENFORCEMENT IN SIERRA
LEONE

BY

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ABSTRACT

The Judiciary in Sierra Leone was established to enforce laws including property right laws of which copyright law is part of. The objective of enforcing copyright laws in Sierra Leone is to protect the works of right holders thereby minimising or eliminating copyright infringement that is in the increase in this technological age. Thus the aim of this research project is to examine the role of the Judiciary towards the enforcement of copyright in Sierra Leone as provided by Part IX of the Copyright Act (No.8) 2011 and to investigate whether this role is adequately and effectively exercised. The research project examined the structures put in place to achieve a viable copyright enforcement system in Sierra Leone, enforcement measures and the impact created by the Judiciary in enforcing copyright. In this study, the target population included judicial officials (Judges and Magistrates) and right holders (authors, musicians, actors/actresses and artists in the creative industry) in Freetown, the capital city of Sierra Leone. The target population for judicial officials in the Freetown judicial district is about 30 and out of this number, 20 respondents were sampled and administered with questionnaires and 18 questionnaires were filled by the respondents and collected by the researcher. There are over 150 rights holders in Freetown and out of this number, 30 respondents were sampled and administered with questionnaires. 22 questionnaires were filled by the respondents and collected by the researcher. Questionnaires were used to elicit information and the responses from the questionnaires were interpreted through the use of SPSS software. The study revealed that no special court on copyright enforcement was established to try such cases; there is weak copyright enforcement; prosecution lapses; low copyright awareness and little impact had been created by the Judiciary in enforcing copyrights in Sierra Leone. The research was concluded that there is need for copyright training programme for judicial officials, establish special copyright or IP courts, expedite copyright cases in court and the prosecution to be vibrant for an effective copyright system in Sierra Leone.

DECLARATION

I, Ibrahim Samad Yillah, declare that this dissertation is my original work and has not been presented for a degree in any other University, and that all sources of materials used for the dissertation have been fully acknowledged.

Student:..... Date:.....

Signature

Supervisor:..... Date:.....

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DEDICATION

This research project is dedicated to the University of Sierra Leone.

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CHAPTER 1

INTRODUCTION

1.0 INTRODUCTION

The growth of industrialization and the subsequent technological development and emergence of multiple chains of distribution of copyrighted works created a platform for copyright infringement of copyright works on the one hand and sparked the need for the enactment of copyright laws to protect copyright works. The enactment of copyright laws alone cannot effectively protect the works of right holders without the appropriate legal framework supported by a strong and functional judicial system that would ensure the efficient and effective enforcement of these copy right laws.

The Judiciary in Sierra Leone is entrusted with the statutory role of enforcing the Copyright Act 2011 in order to protect the works of right holders in Sierra Leone. In order to ensure an effective enforcement of copyright in Sierra Leon therefore, the Judiciary adopted enforcement measures that are provided by the 2011 Act supra to achieve a protectable copyright regime. These measures include conservatory or provisional measures, civil remedies (award of damages, injunctive orders, and account of profit) and criminal sanction (imprisonment and or fine, destruction of infringing goods and implements and seizure orders). The research project will therefore investigate the primary role of the judiciary in enforcing copyright in Sierra Leone, structures established to support the enforcement drive(if any), the impact of enforcement created by the Judiciary in protecting copyright in Sierra Leone and eke

out challenges (if any) in the process of enforcing copyright in Sierra Leone by the Judiciary. In this regard, the research is divided into five chapters.

Chapter one of the research will discuss the proposal of the paper in general. Thus the background of the paper, statement of the problem, scope of the study, objectives, significance, research methodology and limitations of the study would be highlighted.

The second chapter of the research project is mainly designed to help the reader better understand the judicial enforcement measures contained in the Copyright Act 2011, the interface between the Judiciary of Sierra Leone and other statutory copyright enforcement agencies in Sierra Leone such as Customs, the Police and Public Prosecutors. Provisions of the Copyright Act 2011 will be cited to support the enforcement measures and relevant judicial precedents. Thus, under this chapter, a general over view would be made regarding copyright infringement and enforcement and the theoretical justifications of copyright enforcement. This chapter therefore aims at bringing out the role of the Judiciary towards copyright enforcement as provided by the 2011 Act *supra*.

Chapter three will deal with the research methods of this study. The target population includes judicial officials (Magistrates and Judges) and right holders in Sierra Leone. The method of data collection is the use of questionnaires. The sources of data collection will include primary (questionnaires with open and closed ended

questions) and secondary (desk review, binding judicial precedents, books, and journals) data. The method of analysing the data will be qualitative and quantitative.

Chapter four deals with the analysis of data obtained from the respondents (judicial officials and right holders in Sierra Leone) that have responded to the questionnaires administered on them respectively and stating the research results or findings of the research.

Finally, chapter five concludes and recommends the findings of this research project.

1.1 BACKGROUND OF THE STUDY

According to Gorman 2006, copyright is a form of intellectual property (IP) that protects literary and artistic works from being exploited without the authorisation of the right holder. Harms 2012, viewed copyright as the right that prevents the unauthorized use and productions of a copyright work. The Copyright Act 2011 of Sierra Leone defined copyright as an economic right or moral right that is protectable.

According to the World Intellectual Property Organization (WIPO 2008), copyright law is a branch of that part of the law which deals with the rights of intellectual creators. Copyright deals with the rights of intellectual creators in their creation. Most works, for example books, paintings or drawings, exist only once they are

embodied in a physical object. But some of them exist without embodiment in a physical object. For example music or poems are works even if they are not, or even before they are, written down by a musical notation or words.

Copyright is the legal protection given to the creator of an original work. It is the legal term used to describe the rights given to creators for their literary and artistic works. Copyright is the exclusive right granted by the law to the creator of an original work (or his or her assignee such as a publisher) to do, authorize, or prohibit certain acts in relation to such work, (Alhaji Tejan-Cole, retrieved 2013).

Subscribing to the respective definitions proffered above, it is true that copyright generally refers to that branch of law that protects and regulates cultural and artistic creativity through the grant of a bundle of exclusive rights of exploitation in favour of the creator. To further elucidate on the definition, it is correct to state that copyright grants the author of a work the exclusive right to authorise or prohibit the reproduction, distribution, public performance, public display, and the creation or production of derivative works, and the moral rights to be identified as the author of a work and to prohibit the use of a work in a manner that is adverse to the reputation of same. Examples of works protected by copyright are books, musical works, poems, drama, sculpture, computer software, dance and art. Therefore, any act of an unauthorised reproduction, distribution, public performance and display or a protected work amounts to copyright infringement.

Sierra Leone is a former British colony that was colonised from 1808-1961. The country was a former slave port and the only colony where all African ex-slaves in Britain were brought to settle and that was why the colony was first named the Province of Freedom. Sierra Leone is located in West Africa, sharing borders with the Republic of Guinea in the north-east and Liberia in the south-west. English is the official language and Creole as the lingua franca (Alie, 1990).

Looking at the strategic location of the country and its history, there is no doubt that the country is rich in artistic creativity because of the cultural mix which warrants protection. Being a former British colony therefore, the history and foundation of copyright law in present day Sierra Leone can be traced from the British copyright system.

The copyright system in Britain first started with the censorship laws of the sixteenth century when in 1556, the King granted to the Stationers' Company a monopoly over book publication to control the publication of seditious or heretical works. Publishers were given an exclusive and perpetual right of publication of works. However, there was no intention to protect or reward authors. After nearly a century and a half, licensing laws were left to expire and publishers sprang up independent of the Stationers' Company. The Company turned to Parliament for protective legislation and in 1710 the Statute of Anne was enacted which was the first statute in the world to give an author a right to own his property. Its purpose was for the encouragement of learning which was threatened by the damage done to authors and their families

by unauthorized copying of their books. Amendments were later made to the Statute of Anne which eventually led to the enactment of the Copyright Act, 1911 (Bentley and Sherman, 2009).

As one could see from the historical development of the British copyright system, it is with no doubt that the foundation of the judicial copyright enforcement mechanism in Sierra Leone was laid by the consolidated English Copyright Act of 1911 which was extended to the British crown colonies in African by an Order in Council in 1912. The objective of this Act (supra) was to enforce its provisions thereby deterring and preventing copyright piracy that had begun to flourish in Britain in 1694. When Sierra Leone obtained independence from Britain in 1961, it adopted The Copyright Act of 1911, but was later repealed by The Copyright Act (No. 20), 1965 and this legislation was also repealed by The Copyright Act (No. 8), 2011. (Sierra Leone Gazette Vol. CXLII, No. 64 dated 6th October, 2011).

It is worthy to note that the Statute of Anne and the Copyright Act 1911 not only laid the foundation and development of copyright protection in Britain, but also for the then British colonies and countries in the common wealth in which Sierra Leone is inclusive. In this vein, the historical development of copyright in Sierra Leone is traceable from Britain. However, the copyright systems were predominantly jurisdictional and conflicting among the Common Law, Civil Law, and the Roman Dutch *inter alia*, so this sparked the need for the international harmonisation of copyright systems.

In an effort to harmonise copyright systems internationally, the international community through the World Intellectual Property Organisation (WIPO) has developed and continues to develop treaties on the subject. Therefore there are a number of international treaties on copyright protection and these include the Berne Convention of 1886, The WIPO Copyright Treaty (WCT) (1996), the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961), The Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (1971), Brussels Convention Relating to the Distribution of Programme Carrying Signals Transmitted by Satellite (1974), The WIPO Performances and Phonograms Treaty (WPPT) (1996). These international instruments are administered by WIPO. Furthermore, there is the Universal Copyright Convention (1952) which is under United Nations Economic Social and Cultural Organisation (UNESCO), and the Trade-Related Aspect of Intellectual Property Rights (TRIPS Agreement) 1994 which is under the World Trade Organisation (WTO).

The Berne Convention is the foundation of an internationally harmonised copyright system. The Convention was concluded in 1886, revised in Paris in 1896 and in Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971, and was amended in 1979. The Convention is open to all states and to obtain membership, an instrument of ratification or accession must be deposited with the Director General of the World Intellectual Property Organisation, WIPO and all members of Berne belong to the Berne Union (WIPO, 2011). (Certainly it adds value)

The Berne Convention rests on three basic principles of copyright protection and these include the principle of National Treatment pursuant to Articles 3 (1) (2) and 5 (3) which state that works of nationals of any of the contracting states must be given the same protection in each of the other contracting states as the latter grants to the works of its own nationals. Another important principle is that of automatic protection which provides that such protection must not be conditional upon compliance with any formality subject to Article 5(2). There is also the principle of independence of protection which also provides that works protected in one country may or may not gain protection in another country on the basis that protection is determined by the domestic laws of a given state pursuant to Article 5(3) of Berne.

Currently, Sierra Leone is not a member of Berne, but as a member of the World Trade Organisation (WTO) therefore bound by the TRIPS Agreement which incorporates the aforementioned principles of Berne. By virtue of WTO membership, the provisions of the TRIPs Agreement indirectly make Sierra Leone to be bound to comply with the Berne Convention. In that regard, it is worthy to note that although Sierra Leone is in full compliance with the principles of the Berne Convention and these principles are contained in sections 4 and 5 (1) (b) of the Copyright Act 2011 where it is clearly stated that literal and artistic works that are first published in a country in which Sierra Leone is a signatory or party to a treaty or an international agreement such as the United Nations or any of its Specialised Agencies, the African Union or the Economic Community of West African States, with that country, Sierra Leone has an obligation to protect these works by virtue of its membership to that

treaty or international agreement. It is to be noted that the provisions of Berne that are incorporated into the TRIPS Agreement impose obligation on Sierra Leone by virtue of its membership to the WTO.

Sierra Leone is a dualist state and this means that international statutes and agreements in which Sierra Leone acceded do not have binding effect in its jurisdiction unless promulgated into local laws. This means that following accession or ratification of any international law Sierra Leone has to domesticate the law for any convention to be binding in its territory. This position therefore clearly shows that the source of judicial enforcement of the copyright system in Sierra Leone is obtained from the Copyright Act (No. 8 of) 2011.

The development of copyright laws including international agreements, indicate the importance of the system in the promotion of creativity and this was observed by Harms 2012 reporting the court's decision delivered by Justice Binie in *Theberge v. galerie D'Art Du Petit Champlain Inc. (2002) SCC 34* where his lordship stated that:

The purpose of copyright law was to balance the public interest in promoting the encouragement and dissemination of works of intellect and obtaining a just reward for the creator.

This important role played by the judiciary is echoed by a paper presented by honourable Smt. D. Purandeswari, Minister of State for Human Resource and

Development in India titled: *The Role of Judiciary in enforcement of the Copyright Law* in which the honourable minister stated that the Indian Judiciary, which is the defender of the law, had the onerous responsibility of interpreting the balance between private interests and public welfare. The speech was made at the National Judicial Seminar on the Role of the Judiciary in enforcement of the Copyright Law.

The aforementioned rationale for protecting copyright works underscores the importance of the judiciary in protecting and enforcing copyright law in Sierra Leone.

1.2 STATEMENT OF THE PROBLEM

Reports of copyright infringements are high in Sierra Leone despite the existence of the copyright legislation which is expected to protect such rights. The Judiciary is one of the institutions statutorily charged with the responsibility of copyright enforcement in Sierra Leone, however copyright infringement remains high. This research will therefore investigate whether the Judiciary is adequately and effectively exercising its role towards the enforcement of copyright in Sierra Leone.

1.3 PURPOSE OF STUDY

The purpose of this study is to conduct a research on the role of the Judiciary (the Courts) towards the enforcement of copyright in Sierra Leone subject to the

Copyright Act of 2011 and to investigate whether this role is adequately and effectively implemented.

1.4 OBJECTIVES OF THE STUDY

The objectives of the study are to:

1. identify the judicial role of copyright enforcement in Sierra Leone.
2. identify the structural support put in place to achieve copyright enforcement in Sierra Leone.
3. assess the judicial impact in preventing copyright infringement.
4. make recommendations on the challenges faced by the Sierra Leone Judiciary in enforcing copyright.

1.5 RESEARCH QUESTIONS

1. What is the role of the Sierra Leone Judiciary towards copyright enforcement?
2. What are the judicial support structures put in place to enforce copyright in Sierra Leone?
3. What impact has the Judiciary made in preventing and deterring copyright infringement in Sierra Leone?
4. What are the challenges faced by the Sierra Leone Judiciary in enforcing copyright?

1.6 SIGNIFICANCE OF THE STUDY

The research findings will be of immense importance to the Judiciary to measure the strength and successes in respect of the enforcement of the Copyright Act of Sierra Leone.

Furthermore, it will give insight regarding the critical role played by the judiciary in achieving the objectives of the copyright system in promoting creativity and ensuring that the right holders benefit economically from their creativity.

The research intends to provide source information to the public and for subsequent scholarly research activities regarding the role of the court towards copyright enforcement in Sierra Leone.

The research results and recommendations will also be of significance to other institutions which play a role in the copyright system of Sierra Leone so that they will assess their respective roles and how to interface with the Judiciary in order to achieve a viable and effective copyright system in the country. These institutions include the National Copyright Office, Customs under the National Revenue Authority, the Sierra Leone Police, Prosecutors, and Collecting Societies or Collective Management Organisations.

It will also look into how to address challenges faced by the judiciary towards this enforcement drive and make recommendations on measures and structures that may need to be put in place to enable the judiciary to play its enforcement role effectively.

The study will be beneficial to right holders by raising their awareness about the enforcement role and operations of the Judiciary and whether their expectations as right holders have been met.

Finally, the study will be of immense importance to IP attorneys and copyright practitioners to broaden their horizon on the judicial enforcement of copyright law in Sierra Leone.

1.7 SCOPE OF THE STUDY

This study will be centred on the judicial role of copyright enforcement in Sierra Leone subject to the Copyright Act 2011 and the respondents will be officials of the Judiciary (Magistrates and Judges of the High Court, Court of Appeal and Supreme Court resident in the Freetown judicial district) and rights holders in Sierra Leone.

1.8 LIMITATIONS OF STUDY

In as much as the judiciary, the Sierra Leone Police, Customs, Public Prosecutors and Collecting Society are among the copyright enforcement institutions in Sierra Leone, the focus of the research will only be limited on the role of the Judiciary in enforcing copyright in Sierra Leone.

One of the challenges expected is the difficulty to get prompt responses from the respondents. However, concerted efforts will be made by the researcher by frequently checking on them in order to respond quickly to the questionnaires.

The other limitation likely to be experienced is that of financial constraints in printing and reproducing questionnaires and transportation to distribute and collect the questionnaires from the targeted respondents. However, this will be mitigated by reserving some personal resources for the research project.

Even though the target respondents of this study will be available and accessible, their tight schedules in presiding over court matters may affect their turnaround time. However, the researcher will crave their indulgence to respond to the questionnaires on weekends.

1.9 RESEARCH OUTLINE

Chapter One: Introduction: The sources of judicial enforcement and the evolution of judicial copyright enforcement in Sierra Leone.

Chapter Two: Literature Review on the views of judicial copyright enforcement, their comparative analysis and how have they aided my research.

Chapter Three: Research Methodology.

Chapter Four: This Chapter will discuss the Research Findings.

Chapter Five: Conclusion. It will include suggestions and recommendations on the challenges of judicial copyright enforcement in Sierra Leone.

10 CONCLUSION

In summary, Chapter One introduces this research and it gives the source of Judicial copyright enforcement and evolution of copyright law in Sierra Leone, the Statement of the Problem, the Purpose of the Study, the Objectives of the Study, the Significance of the study to Judiciary, the right holders, the researcher and the general populace in Sierra Leone, the Scope and Limitations of this research.

CHAPTER 2

LITERATURE REVIEW

2.0 INTRODUCTION

Copyright, like any other IP rights, is basically a right under civil law, something that applies regardless of whether the country concerned belongs to the civil or the common law system. As indicated above, copyright grants the author of a work the exclusive right to authorise or prohibit the reproduction, distribution, public performance, public display, and the creation or production of derivative works. Further, the right holder is granted a moral right to be identified as the author of a work and to prohibit the use of a work in a manner that is adverse to the reputation of same. Such rights exist on the basis of a national legislation that prescribes how the rights are born and what they contain. Copyright and neighbouring rights practically come into existence through the law itself which prescribes that the beneficiary in question shall have certain rights in his or her work, performance or other production; the law has a purely declaratory character. In this regard, any copyright system in a country must rest on three pillars and these include:

- Appropriate legislations which clearly sets out the rights in the specific field concerned,
- Infrastructures for the management of the rights, and an
- Efficient enforcement mechanisms.

The need for enforcement of copyright arises where a third part infringes copyright by carrying out any of the exclusive rights without authorisation from the rightholder. Enforcement simply means that the right-owner must have a possibility to take action against anyone who infringes his or her rights for example, if a third part reproduces a protected work without authorisation from the rightholder. An effective copyright system should ensure that enforcement mechanisms are in fact available in order to protect the existence and exercise of copyright and these include the Judiciary, Police, Public Prosecution and Customs. Among these enforcement institutions, the Judiciary plays a very unique and crucial role towards the effective and expeditious protection and enforcement of copyright and related rights in any state intending to safe guard and protect the IP rights of its holders and this would be done by granting civil remedies to the right holder by awarding damages to same; criminal remedies by conviction, that is, remanding and or levying fine on the infringer; ordering infringing goods not to circulate into the market; order the impounding of infringing goods already in circulation and grants Anton Piller and Mareva orders where necessary, and ancillary orders. Because of the strategic importance of the Judiciary regarding copyright protection, there have been scholarly, international, organisational debates and binding judicial precedents regarding the judicial role of copyright enforcement. This unique judicial role is echoed in the mandate of the Advisory Committee on Enforcement (ACE) of WIPO which seeks to provide legislative, specialized training and educational services and awareness raising

programmes that would assist member-states to develop effective and balanced IP enforcement systems (Harms, 2012).

In this respect, the study will therefore review the relevant literatures, international organisations' proposals and decisions, academic papers and judicial precedents relating to judicial enforcement of copyright basing the study in Sierra Leone.

2.1 ENFORCEMENT

Adequate institutional arrangements for the protection of rights are crucial in any intellectual property system. It is worthless to establish a detailed and comprehensive system for protecting intellectual property rights and disseminating information concerning same if adequate measures are not put in place for right-owners to effectively enforce their rights in a world where expanding technologies have facilitated infringement of protected rights to an unprecedented extent. Meaning, right-owners must be able to take action against infringers in order to prevent and deter further IP infringements and recover the losses incurred from any actual infringement and they must also be able to call on the state authorities to deal with any act of infringement. In this regard, the research is starting by investigating generally what amounts to copyright enforcement.

According to *The Black's Law Dictionary 2004*, “enforcement” is the act or process of compelling compliance with the law, mandate, command, decree or agreement. To enforce is to give effect to the law.

In the context of intellectual property rights (IPRs), “enforcement” means to prevent or obtain remedies for the infringement of conferred rights (UNCTAD-ICTSD, 2005). Considering the view of UNCTAD-ICTSD aforementioned, it cannot be disputed therefore that enforcement refers to actions taken to assert and protect intellectual property rights. In other words, enforcement of IP rights involves the adoption of mechanisms that enable the right holder to assert their exclusive rights in their product.

In subscribing to the above, “to enforce” means to execute a particular law, writ, judgment, or the collection of a debt or fine. It could be an act or process of compelling compliance with a law, mandate command, decree or agreement.

However, copyright enforcement, in particular, is also considered as the administrative (rules of evidence and courts' procedures) and judicial (civil and criminal remedies) actions exercised in tune with any copyright law to protect, award remedies and to deter infringement upon protected works. On that note, rights have no real value unless they are enforced and this is also true in the realm of intellectual property in general. For instance, a well-functioning copyright enforcement

mechanism limits the number of copyright infringements and ensures that right holders in any society benefit from that copyright system.

As a matter of principle, it is the duty of right holders to enforce their exclusive, economic and moral rights and the state is only obliged to create a conducive environment to enforce the aforementioned rights. In this respect, copyrights are enforced in an instance wherein someone violates the rights of a copyright owner and the owner is entitled to file a lawsuit against the infringer praying for the court to issue orders (restraining orders and injunctions) to prevent further violations, award monetary damages if appropriate and in some circumstances to awards costs. In this regard, the state is obliged to enforce those rights through state enforcement agencies such as the Judiciary, the Police, Public Prosecutors and Customs authorities.

2.2 COPYRIGHT INFRINGEMENT

According to UNCTAD-ICTSD, 2005 infringement occurs when acts under the exclusive control of the title holder are performed by third parties without the authorisation of the title holder or a competent authority.

Section 71(1) of paragraphs (a), (b), (c), (d), (e), (f), (g), (h) of the Copyright Act 2011 of Sierra Leone provides that copyright infringement occurs when a person who without the authorization of the right holder or his agent reproduces, duplicates, extracts, imitates, imports into or exports out of Sierra Leone, except for his private use, any work; causes any work to be reproduced, duplicated, extracted, imitated or

imported or exported into the country except for his private use; distributes or permits or causes any work to be distributed in the country by way of sale or otherwise; sells, offers for sale, exhibits or permits or causes any work to be exhibited in public; effects the public performance of any work; removes or alters any electronic rights management information; distributes, imports for distribution, broadcasts, communicates or makes available to the public, works, performances; copies of fixed performances or sound recordings knowing that electronic right management information has been removed or altered without authority; rents or lends to the public any work. In the same vein, section 79 of the Act *supra* also provides that any exploitation of a work in a manner prejudicial to the honour or reputation of the author is an infringement of the rights of the author. In *Inspector General (IG) v. Gibrilla Kamara & Others (2014)*, (*Case File, 2014*) the Sierra Leone Police charged the accused persons for alleged copyright infringement in January and the matter is currently in Court No. 2 for preliminary investigation. If there is *prima facie* evidence then the sitting magistrate will commit the matter for trial in the High court of Justice in compliance with the Copyright Act 2011 which provides that copyright cases are heard and determined by the High Court.

Subscribing to the above, copyright infringement occurs when an act is done which is inconsistent with the exclusive, economic and moral rights of a rights holder. The owner of copyright in a protected work has exclusive rights to use the work as he wishes, and to prevent others from using it without his authorization subject to the legally recognized rights and interests of others. Economic rights, allow the owner of

rights to derive financial reward from the use of his works by others, and moral rights, allow the author to take certain actions to preserve the personal link between him and the work. In my view, copyright infringement goes with the terms “piracy and contraband of goods.” Piracy, in relation to goods, refers to the manufacture, distribution and sale of copies of goods which have been made without the authority of the owner of the intellectual property. These pirated goods are as similar to the original which are intended to be passed off as genuine items.

According Blakeney 2002, “piracy” in the context of criminal law is defined as contraband activities which centres on the illegal production and sale of goods which are intended to pass for the real product. In this regard, “contraband” is goods whose importation, exportation or possession is forbidden. Dealings in contraband invariably involve smuggling, where the manufacturers and distributors of these products also seek to evade taxes on the production and wholesaling of these products.

Bankole, 1988 opined that piracy is the theft of copyright which occurs for reasons of want, scarcity and inaccessibility of books. He further submitted that piracy and plagiarism are other examples of copyright infringement. He defined plagiarism as the violation of copyright law to use all or any part of an author’s work verbatim or with trivial changes in an author’s work contrary to fair use.

In subscribing to the above views regarding piracy, it is worthy to state tacitly that piracy is the unauthorised or illegal reproduction of the work of an author for sale without payment of royalty or other compensation to the owner of the intellectual property so exploited.

According to Blakeney 2002, one of the reasons for the need of copyright enforcement is due to the alarming rate of piracy in copyright works. For instance, the European Community Green Paper titled *Combating Counterfeiting and Piracy in the Single Market (1998)* observed that in the early 1980s, counterfeiting and piracy have grown considerably to a point where they have now become a widespread phenomenon with a global impact. The reasons for this phenomenon, according to this Green Paper, include developments in reprographic technologies, where digitisation has facilitated the rapid and extensive production of copies at a minimal cost, the growth of international trade, the internationalisation of the economy, the expansion of means of communication and the opportunism of organised crime.

Blakeney, 2002 also observed that the principal cause of piracy is the incentive that the illegal trade provides for the unscrupulous traders, thriving where there are inadequate deterrent penalties by the judicial authorities and exacerbated by the failure of public authorities and commercial organisations to communicate to the consuming public of the dangers from the use of unauthorised products. He further

stated in his work that according to the World Customs Organization, the evolution of many contraband markets is typically a progression through one or more of the following stages: grey market, or parallel trading, smuggling and piracy.

In as much as the aforementioned are the causes of piracy of copyright works, arguably, the evolution and advancement of science and technology and the lucrative trade of piracy are among the cardinal causes setting the platform for piracy to thrive beyond expectation.

2.3 ENFORCEMENT IN WIPO CONVENTIONS AND THE TRIPS AGREEMENT

Under the principle of territoriality, copyrights like other IP rights are territorial in nature, that is, they are protected within a geographical territory where the owner is entitled to protection by virtue of being a qualified person under the national or applicable law in a given jurisdiction. Enforcement mechanisms for IP rights are therefore a matter for national or territorial legislation.

However, because of the disparity in national legal systems in general and that of copyright in particular, the need has arisen for the harmonisation of copyright systems internationally and provisions of copyright enforcement are also included. WIPO is the principal specialized agency of the United Nations which is concerned with the administration and protection of intellectual property and it administers a lot

of IP conventions laying the standards for the minimum enforcement and protection of copyright.

The Berne Convention contains very few provisions concerning the enforcement of copyrights, but the evolution of new national and international enforcement standards has been dramatic in recent years and this is acknowledged in the *WIPO Copyright Treaty* (WCT), which requires contracting parties to ensure that enforcement procedures are available under their law so as to permit effective action against any infringement of rights covered by the Treaty, including remedies to prevent or deter further infringements subject to Article 14 of the *WIPO Copyright Treaty*.

The TRIPS Agreement, which contains more detailed provisions on the enforcement of rights, is ample evidence of this new link between intellectual property and trade. The following paragraphs identify and summarize some of the enforcement provisions found in recent national legislation. They may be divided into the following categories for instance, conservatory or provisional measures is contained in Article 50 of TRIPS. Civil remedies are provided in Articles 44, 45 and 46 of TRIPS. Criminal sanctions are provided in Article 61. Measures to be taken at the border are provided in Articles 51 and 52 of TRIPS. In this regard, the enforcement provisions contained in these treaties require member states to include in their domestic laws enforcement provisions that would protect the rights of authors of works.

2.4 THE JUDICIARY INTERFACING WITH OTHER COPYRIGHT ENFORCEMENT INSTITUTIONS

The birth of copyright enforcement emanated from the global concern of piracy in literal and artistic works. The unauthorised use and reproduction of authors' protected works infringe on authors' rights that this has led to a loud hue and cry for the enactment of legislations that would protect authors' IP rights in general and copyrights laws in particular. However, the protection of these rights is inadequate without the firm establishment of enforcement institutions and mechanisms that would protect and effectively expedite the enforcement drive of copyright works. The most common copyright enforcement institutions could be seen below with their respective enforcement roles.

2.4.1 THE JUDICIAL ENFORCEMENT OF COPYRIGHT

Judicial enforcement is the mandate bestowed upon the court to compel compliance to any law. All societies need institutions to settle disputes and mechanisms to enforce property rights and contracts. Without these mechanisms, commercial transactions are limited to the simplistic and high risk constraints in many productive investments. Traditionally, copyright enforcement has been a matter for the courts. Copyright holders would take copyright infringers to civil court, where requests for injunctions or claims for damages would be granted by magistrates and judges applying the rules of due process laid down in the laws of civil procedure. In Sierra Leone, the judicial enforcement of copyright is expressly provided in Part IX of sections 71 to 79 of the Copyright Act 2011 wherein the Judiciary enforces copyright

works by way of granting civil and criminal remedies in order to deter and protect copyright works.

In rare cases of outright piracy, the prosecutors (the police or public prosecutors) would bring suspects before criminal courts and apply strict circumscribed rules of criminal procedure and this is the position in the piracy case in *IG v. Gibrilla Kamara & Others (2014)* in Sierra Leone which is yet under preliminary investigation in the Magistrate's Court No. 2.

Islam, 2003 noted that the validity of intellectual property protection depends heavily on judicial system performance. For intellectual property rights to serve their purpose, effective judicial enforcement support is needed, but when that judicial enforcement support for these specialized rights is feeble, mobilization of that natural resource falters, with considerable losses to the country.

The World Bank, 2003 reported that a well-functioning judicial system provides a complement to other law enforcement institutions. Together when these systems work well, they keep the costs of enforcement low for both small and large participants in markets and for small and large transactions.

In this respect, the Judiciary regarding copyright enforcement in particular, plays an economically important role not only for the protection of rights, but for the economic benefit of a given country especially for least developed countries like Sierra Leone, Liberia and many more.

2.4.2 JUDICIAL ENFORCEMENT MEASURES

The judicial enforcement of copyright is both substantive and procedural, meaning, the law is interpreted to the fullest and judicial procedures are applied to enforce copyrights laws. Bentley and Sherman (2009) subscribed to the view stated above that IP rights are only as good as the procedures and remedies by which they are enforced.

A survey conducted by WIPO in 2002 indicated that counterfeit and piracy are eliminated by way of judicial enforcement through the existence of a substantive copyright law, the remedies and penalties available to stop and deter counterfeit and piracy.

Arguably, a copyright statute is the guideline that determines remedies and penalties for any copyright infringement so the issue of the substantive law should not be omitted in dealing with judicial copyright enforcement, meaning the two complement each other for the effective and expeditious enforcement of a copyright system. Subscribing to the view that the substantive law and procedural aspects of copyright enforcement complement each other, the Judiciary plays significant roles towards the enforcement drive of copyrights. These roles differ according to the available copyright legislations from one country to another. However, the TRIPS Agreement, by way of harmonising these differences in copyright statutes, lays the legal template for member-states to follow the requirements of a viable and effective copyright enforcement for member states to infuse into their respective domestic copyright laws. The most common enforcement measures or remedies applied by judicial

systems to enforce copyrights infringements include conservatory or provisional measures, civil remedies, criminal sanctions, measures to be taken at the border, and measures, remedies and sanctions against abuses in respect of technical devices and rights management information.

Blakeney, 2002 gave a comprehensive exposition regarding the measures of judicial enforcement granted in lieu of copyright infringement and these measures are explained thus:

2.4.2.1 CONSERVATORY OR PROVISIONAL MEASURES

Conservatory or Provisional Measures have two purposes: first, to prevent infringements from occurring, particularly to prevent the entry of infringing goods into the channels of commerce, including entry of imported goods after clearance by customs; and second, to preserve relevant evidence relating to an alleged infringement. Thus judicial authorities have the authority to order that provisional measures be carried out without advance notice to the alleged infringer. In this way, the alleged infringer is prevented from relocating the suspected infringing materials to avoid detection. The most common provisional measure is the searching of the premises of an alleged copyright infringer and the seizure of suspected infringing goods, equipment used to manufacture the goods, and all relevant documents and other records of the alleged infringing business activities to preserve evidence and to prevent copyright infringements by granting Anton Piller Orders and Mareva Injunctions subject to section 71(2) of paragraphs (a) and (b) and section 75(3) of the Copyright Act 2011. The procedure for this judicial enforcement measure is that

right holders can apply *ex parte* for the court to grant an order to enter the premises of the alleged infringer in order to attach and preserve evidence. This can be done on short notice, but right holders have to substantiate their claims and may have to provide security. The applications for *ex parte* orders should be acted upon and executed within a short time period and security requirements should not unreasonably deter recourse to these procedures.

It is noteworthy that procedurally, the court will grant the order in lieu of an *ex parte* application without the defendant's being given notice and without his being heard. For the same reason, the application is invariably heard in private and the defendant will become aware of the order's existence only when it is served on him with a view to immediate execution.

2.4.2.2 ANTON PILLER ORDER

Similarly, judicial authorities should have the power to order the seizure of suspected infringing goods and other relevant evidence as soon as there is reason to suspect that rights are being or are about to be infringed and such order is referred to as an Anton Piller Order obtained from the case: *Anton Piller Order KG v. Manufacturing Processes Ltd* [1976] 1 All ER 779. The ability to seize or preserve should cover not only the infringing articles themselves, but also the equipment and other materials used in the infringing operation, including the production and distribution aspects. Section 71(2) of paragraphs (a) and (b) and section 75(3) of the Copyright Act 2011 provides that the court may in addition to the fine or imprisonment order that copies

of pirated works and implements used to manufacture these pirated works and the documents, accounts or business papers referring to such copies be impounded by way of an Anton Piller Order.

2.4.2.3 SEIZURE ORDER: MAREVA INJUNCTION

There is also Mareva injunction which is a temporal injunction and the name is derived from the judgment in *The Mareva Compania Naviera S.A. v International Bulkcarriers S.A.*, [1975] 2 Lloyd's LR 509 (CA). Its object is to prevent the dissipation of assets pending the disposition of the claimant's claim for damages by providing the only just and convenient way of ensuring that the defendant would not deal with his assets so as to deprive the plaintiff of the fruits of any future judgment.

The seizure orders explained above are also provided in Article 61 of the TRIPS Agreement and the Article 7 of the European Directives where in the Judiciaries of the respective member states are expected to grant them in order to enforce copyrights and related rights. If there is a danger that infringing acts of piracy may be continued, the court may also issue injunctions against such acts, failure to comply with which would subject the infringer to the payment of a fine.

In some jurisdictions like the United States of America and the United Kingdom the freezing of the defendant's bank account(s) and other assets may be ordered by the courts in order to assure funds to satisfy compensation awards and judgments may be ordered, pending the court's consideration of the merits of the case. The test for an

injunction is stated in *Louis Vuitton Malletier SA v. Knierum* [2004] FCA 1584 [Canada] where the court ruled that the basis for granting of an injunction in an IP case is, in every respect, the same as in any other case. The plaintiff must show that there is a risk that the defendant will engage in infringing conduct in the future. If the plaintiff is unable to make good for that proposition, he will not obtain an injunction.

2.4.2.4 DAMAGES

Damages are civil remedies awarded by the courts to compensate the rights owner for any economic injury suffered because of the copyright infringement. This is usually granted in the form of pecuniary damages. It is important to note that courts are empowered to award damages to compensate the right holders and deter potential infringers from engaging in illegal activities. In this respect, national copyright laws should therefore contain rules on the calculation of damages that allow courts to award such damages as to create a deterrent, and adequately compensate right holders (Stamatoudi, 2010). In Sierra Leone, section 72 (1) of paragraphs (a) and (b) and section 77 (a) of the Copyright Act 2011 provide that a copyright holder whose right has been infringed is liable as an alternative conviction to the payment of a fine not exceeding Le: 60.000.000.00 by the defendant for damages suffered as a consequence of the act of infringement and expenses caused by the infringement including legal costs to be determined by the court.

2.4.2.5 ACCOUNT OF PROFITS

In common law countries like South Africa, Sierra Leone, Nigeria, Ghana, Britain, etc., right holders are entitled to an account of profits, that is, the right to receive all profits from the defendant attributable to the copyright infringement subject to section 72 (2) (b) and section 73 (2) of the Copyright Act 2011. In this respect, exemplary damages may be used as a deterrent in cases of flagrant piracy.

2.4.2.6 ANCILLARY ORDERS

Ancillary orders mean that the courts can order the destruction of infringing goods and or implements used in the manufacturing thereof, particularly where the defendant has acted in bad faith. Judicial procedures may also be adopted whereby offending goods that have been placed on the market are recalled at the infringer's expense, as long as they were not sold to consumers. According to the Copyright Act 2011, section 72 (3) and (4) respectively provides that where infringing copies exist, the court may order the destruction or disposal of those copies and their packaging outside the channels of commerce to avoid harm to the right holder, unless the owner of the right requests otherwise, and where there is a danger that implements may be used to commit or continue to commit an act of infringement, the Court shall, whenever and to the extent that it is reasonable, order their destruction or disposal outside the channels of commerce in such a manner as to minimize the risks of further infringements, including surrender to the owner of the right.

2.4.2.7 CRIMINAL SANCTIONS

Criminal sanctions are intended to punish those who wilfully commit acts of piracy on a commercial scale and, as in the case of civil remedies, to deter further infringement. In the second limb of paragraph (h) of section 71(1) of the Copyright Act 2011, the law court in Sierra Leone will convict a copyright infringer to imprisonment for a term not exceeding three years or a fine not exceeding Le: 60.000.000.00 or both the fine and imprisonment aforementioned. Subsection 3 of section 73 provides that the court may double the penalties specified above where the defendant has been convicted for a new act of infringement within five years of a previous conviction.

In addition to any punishment imposed by the court in respect of an offence under this Act supra, the court pursuant to section 77 (b) may order that infringing materials and implements or devices used in the infringement be forfeited and disposed of. Regarding the expression of folklore, any infringement contrary to section 75 (2) (a) (b) will attract criminal sanction to a fine not exceeding Le: 20.000.000.00 or imprisonment for a term not exceeding twelve months or to both the fine and imprisonment for an individual and a fine of Le60.000.000.00 for a body corporate. The court may order that the infringing or offending article be confiscated subject to section 75 (3).

The purpose of criminal sanction to deter further copyright infringements and that of civil remedies is to award remedies to right holders for infringement injuries

suffered. In some states like Britain, The United States of America (USA), evidential rules of civil procedure have been amended to include a rebuttable presumption that the judicial authorities shall presume that a person who has infringed an intellectual property right had reasonable grounds to know he was infringing such right. The presumption is rebuttable, where the defendant is able to provide concrete proof to the contrary (jipitec, 2012).

Additionally, proceedings are facilitated by the presumption of ownership of an industrial property right, evidenced on the relevant registration certificate. In copyright matters the person or legal entity whose name was indicated as the author, producer, performer or publisher of the work, in the usual manner is, in the absence of proof to the contrary, presumed to be the lawful right holder of the work. A person claiming to have a copyright licence carries the burden of producing a true copy of the license agreement

2.4.2.8 MEASURES TO BE TAKEN AT THE BORDER

Measures to be taken at the border are different from the enforcement measures described so far, in that they involve action by the customs authorities rather than by the judicial authorities. Border measures allow the rights owner to request that customs authorities suspend the release into circulation of goods that are suspected of infringing copyright. This is intended to give the rights owner a reasonable time to commence judicial proceedings against the suspected infringer, without the risk that the alleged pirated goods will disappear into circulation after customs clearance. The

rights owner must satisfy the customs authorities that there is *prima facie* evidence of infringement, provide a detailed description of the goods so that they can be recognized and provide a security to indemnify the importer, the owner of the goods, and the customs authorities in case the goods turn out to be non-infringing.

2.4.2.9 MEASURES, REMEDIES AND SANCTIONS AGAINST ABUSES OF TECHNICAL MEANS

The final category of enforcement provisions that has achieved greater importance in the advent of digital technology, but which is not a judicial enforcement measure like measures taken at the border, is the measures, remedies and sanctions against abuses in respect of technical means. In certain cases, the only practical means of preventing piracy is through copy protection or copy-management systems, which contain technical devices that either prevents entirely the making of copies or making the quality of copies so poor that they become unusable. Technical devices are also used to prevent the reception of encrypted commercial television programs except with use of decoders. However, it is technically possible to manufacture devices by means of which copy-protection and copy-management systems, as well as encryption systems, may be circumvented. The objective behind the provisions against the abuse of such devices is that their manufacture, importation and distribution should be considered as infringements of copyright and to be sanctioned in ways similar to other violations.

2.4.3 CUSTOMS

Customs play a very important role towards copyright enforcement and these role interfaces with other statutory enforcement departments in Sierra Leone such as the Judiciary, the Police and Public Prosecutors towards the protection and enforcement of copyright works. Looking at some of the duties of customs, custom officers are essentially responsible for regulating the flow of copyright products into a country. They can be located on the physical borders between countries or in transportation hubs like ports, airports and railroad stations. Custom officers therefore enforce copyright laws and regulations of a given country regarding incoming copyright protected goods, personal effects and animals, as well as exports.

Regarding the incoming of personal effects, customs officers are expected to monitor the inflow of personal effects entering the country and checking all personal effects, such as bags, briefcases and packages, of individuals entering a given country. All or certain incoming items are subject to duties and it is the responsibility of customs officers to collect these duties subject to section 12 (1) of the National Revenue Authority Act, 2002 of Sierra Leone which deals with the law relating to customs and excise duty.

Commercial items entering the country are also inspected to ensure they do not contain contraband materials. Contraband materials are any items outlawed by the territory in question and are typically things like pirated copyright works, counterfeit

products and any other infringing goods. As many of these outlawed products which are concealed upon arrival, it is the mandate of customs officers to thoroughly, examine any imports and exports and where necessary seize these contraband products. The fact that custom officers are located in the physical borders between countries or in transportation hubs, they carry out border measures deterring the inflow of pirated works into the channels of trade in a given country.

There is interplay between customs and the Judiciary in respect of copyright enforcement in that through border measures, rights owner do request to customs authorities to suspend the release into circulation of pirated goods that are suspected of infringing copyright. This gives the rights owner a reasonable time to commence judicial proceedings against the suspected infringer, without the risk that the alleged infringing goods will disappear into circulation after customs clearance. The Judiciary will consequently grant injunctive orders upon the application of the right owner so that such pirated goods will be suspended from circulation and if there is *prima facie* evidence that they are they are infringing goods, both civil and criminal remedies will be granted by the court subject to sections 71,72,73,75 and 77 of the Sierra Leone Copyright Act 201. In order for this application to be entertained by the court, the rights owner must satisfy the customs authorities that there is *prima facie* evidence of infringement by providing detailed description of the goods so that they can be recognized. Furthermore, the right owner must provide security to indemnify the importer, the owner of the goods, and the customs authorities in case the pirated copyright goods turn out to be non-infringing (Article 51, TRIPS Agreement).

2.4.4 THE POLICE

There is firm interplay between the Police and the Judiciary regarding copyright enforcement in Sierra Leone and this interplay is mirrored in the area of prosecution and adjudication of copyright cases in court. Among the general duties of the Sierra Leone Police, section 3 of the Police Act 1964, mandates the Police in Sierra Leone to protect property and enforce all laws and regulations. Property here includes intellectual property and the duty to protect IP rights is the mandate of Sierra Leone's enforcement agencies including the Police. Section 24 of the Act *supra* further mandates any Police officer to prosecute crimes before any court of summary jurisdiction and grants them the power to arrest criminals subject to section 25. In this regard, the Sierra Leone Police is mandated to enforcement the Copyright Act 2011 by way of arresting copyright infringers and prosecute them in order to protect the intellectual property of right holders as seen in the current case *IG v. Gibrilla Kamara & Others (2014)* in which the Police is currently prosecuting the matter in the Magistrate's Court No. 2 under preliminary investigation.

In Kenyan for instance, the Kenyan Police and the Judiciary interface towards the enforcement of copyright. Section 17(2) Chapter 130 of the Kenyan Copyright Act 2001 provides that a Kenyan Police officer may perform the work of a copyright inspector including receiving complaints, investigating, and prosecuting copyright infringement matters in law courts. When there is sufficient evidence that the products are infringing, the court will order the destruction of such infringing copies and that order is executed by the Police. (Cap. 130).

The interplay between the Police and the Judiciary regarding copyright enforcement is also mirrored in the Ugandan Copyright and Related Rights 2006 wherein it is clearly expressed in section 54 that in cases of outright piracy the inspector (meaning the police) will investigate, arrest, arraign, seize and prosecute cases of copyright infringement in the court of law.

However, it is worthy to note that some copyright statutes do not expressly state or use the words “Police”, or “Inspectors,” with respect to copyright enforcement and an example is the Copyright Act 2011 of Sierra Leone. Notwithstanding, sections 4,5,6,7 and 11, the Criminal Procedure Act, 1965 provide that the police can arrest any person with or without a warrant that is committing an offence, that has committed or suspected to commit a criminal offence, so this provision could be imported to any copyright infringement that attracts criminal litigation under the 1965 Act supra. In this respect, the Copyright Act 2011 and the Criminal Procedure Act 1965 act in consonance.

Subscribing to aforementioned, the Police and the Judiciary play a complimentary role towards the enforcement of copyright in Sierra Leone. It is undoubted that the role of the Police is to receive reports on copyright infringement, conduct proper investigations, seize and detain any infringing copies, arrest and arraign the infringers before the court of law. The court will acquit and discharge or convict if there is sufficient evidence of copyright infringement. The Police and the Judiciary therefore interface towards the enforcement of copyright in Sierra Leone.

2.4.5 PUBLIC PROSECUTORS

Bankole, 1998 stated that the Judiciary and Public Prosecution interfaced by playing a unified and complementary role towards the enforcement and protection of authors' rights. He further stated that for cases of outright piracy, the prosecutors would bring criminal suspects of copyright infringements or copyright infringers before the law courts applying even more strict circumscribed rules of criminal procedure. After sufficient evidence has been adduced against the copyright infringers, the courts will eventually convict and sentence them for copyright infringement.

In most countries, cases of outright copyright piracy are prosecuted only by the state through the Department of Public Prosecution, whereas in some states, the Police will investigate and arrest criminals and suspects and the department of Public Prosecution will draft indictments and prosecute copyright infringement cases. A typical example is in Sierra Leone wherein the public prosecution is done by state counsels in the Law Officers department as provided by the Criminal Procedure Act, 1965. This example also typifies the Kenyan situation wherein state counsels attached at the Kenyan Copyright Board prosecute criminal copyright matters (Ephriam Ndiritu, 2012).

By prosecuting criminal matters of copyright infringement in a court of law and the eventual conviction of infringers of copyright works, there is a firm interface between the Judiciary and the Prosecution towards the enforcement of copyright legislations from being violated.

Subscribing to the above, it is correct to state that the effective enforcement of a copyright system is not the responsibility of one enforcement authority. Rather it is the concerted effort of all the enforcement authorities in a society in order to achieve a viable and protectable copyright system. Even though each of the aforementioned copyright enforcement institutions plays different roles towards the enforcement drive, they complement one another to achieve a well protectable copyright system. For instance, in Sierra Leone, the Sierra Leone Police investigate alleged copyright infringement cases and charge them to court and prosecute them if the jurisdiction is summary or during preliminary investigation in court as in *IG v. Gibrilla Kamara & Others (2014)*. The Public Prosecution prosecutes copyright cases that attract criminal actions in the High Court and the Judiciary hears and determines these criminal cases of piracy by way of interpreting copyright statutes and punish infringers and or award damages in order to deter continuous or future infringements. Customs authorities police the borders by restricting the inflow of pirated products getting into a country and the law courts grant orders regarding the suspension of infringing goods. Such complementary roles can effectively enforce and expedite the protection of copyright works in Sierra Leone. Articles 41 and 51 of TRIPS emphasise on the nexus between the Judiciary and customs regarding the enforcement of copyright. This argument cannot be challenged because the role of customs is to prevent pirated works from entering into a country through its borders. Where these pirated goods are about to pass through the borders, the right holder shall make an application to the court so that the pirated goods in question are seized. In this respect, the Police, customs, the law Officers department and the Judiciary

interface in enforcing the copyright law in Sierra Leone in order to achieve a protectable copyright system in Sierra Leone.

2.5 THE RATIONALE FOR COPYRIGHT ENFORCEMENT

Copyright holders have exclusive right to sell, reproduce and dispose of their protected work as they wish as long as their bundles of copyrights do not traverse their limit. They also have economic and moral rights to protect their works and the right to bring an action against the unauthorised use of their protected works. As previously indicated the value of an IP right depends on its ability to enforce it. More widely, the IP system's incentive to create and innovate will be undermined if IP rights cannot be defended. In the extreme, a system with high costs and no valid protection would arguably lead to less innovation and creativity and to a slower diffusion of new ideas.

However, the advancement of science and technology makes it possible for copyright works to be pirated at a commercial scale, rendering authors and creators of copyright works and their governments to suffer huge loss. A right without protection and enforcement is a farce. Therefore every society needs a robust judicial system that can protect and settle copyright disputes and enforce complex copyright laws on the basis that it is just and proper to protect the labour, idea and resources expended by the holder of a literary and artistic work and enforce those rights. The following views are justifications put forward by writers, jurists and organisations stating the rationale regarding the essence of the judicial enforcement of copyright

law in any given society wishing to have a firm copyright system that would benefit rights holders and the state as a whole.

2.6.1 COPYRIGHT AS A HUMAN RIGHT

According to a study by Bentley and Sherman, 2009, copyright is a natural right. Copyright protection is granted not because of public benefit, but because it is right, just and proper to do so. Copyright is a natural property right worthy to be protected because it emanates from the mind of the author's or creator's intellectual effort and inspiration, so it is the private property of the author of that literary and artistic work. Any unauthorised reproduction of such work is equivalent to theft.

Harms, J (2012) held this view by referencing the verdict of Markey, J. in *Panduit Corp V. Stahl Bros* 575 F.2d 1152 [USA] that:

The right to exclude others is the essence of the human right called 'property'. This human property right may be challenged by trespass, theft, or by infringement, but that does not affect the fundamental indicium of all 'property:' the right to exclude others. Property rights are human rights: 'the attributes of personal property.

Lord Woolf C.J., in *A v. B* [2003] QB 195, 205 para. II, has an opposing view in that the decision to grant property rights in intangibles impinges on traders, education, the press and media, and the public, Bentley and Sherman, 2009. This negative view of copyright protection was reaffirmed in the decision of *Theberge v. Galerie d'Art du*

Petit Champlain [2002] SCC 34 [Canada] where it was clearly stated that the excessive control by holders of copyright and other forms of intellectual property may unduly limit the ability of the public domain to incorporate and embellish creative innovation in the long-term interests of society as a whole, or create practical obstacles to proper utilization. In *SABAM v. Scarlet* ECJ-C 70/10[8], the European Court of Justice rejected an injunction ordering an Internet Service Provider to filter user traffic so as to identify and block transmissions of songs in SABAM's catalogue on the basis that it is inconsistent with users' fundamental rights and this position was upheld in *SABAM v. Netlog* ECJ C-360/10 [9]. (Cases Wrestle with the Role of Online Intermediaries in Fighting Copyright Infringement, 2012)

Arguably, the latter views in the case law see copyright protection and enforcement as negative rights affecting the public interest. It is a common knowledge that educational materials that are protected by copyright are not always affordable such as books, audio visual teaching materials among others. As a result high prices are levied against educational materials that are beyond the reach of consumers in developing countries. Therefore, this constitutes a barrier to access to knowledge, hence a denial of right to education.

However, it is morally and ethically justifiable to protect and enforce copyright on the basis of human right because of the time, money labour, expertise and other resources utilized by the right holder to create that literary and artistic work. It is therefore the right holder's natural right as provided in Article 27(2) of the Universal

Declaration of Human Rights 1948. Section 21 of the Constitution of Sierra Leone, (Act No. 6 of) 1991 upholds this notion. The researcher therefore firmly supports the view that copyright is an author's or a creator's natural right in which the courts are justified to enforce the protection and deterrence infringements.

2.6.2 REWARD JUSTIFICATION FOR COPYRIGHT ENFORCEMENT

According to the WIPO Handbook, 2008, the rights under copyright law are to protect and enforce authors', performers' and phonogram and videogram producers', publishers' and broadcasters' economic interests. In the matter *Designers Guild v. Williams* [2001] FSR 11, para. 2 (HL), Lord Bingham held the view and firmly stated the law on the reward rationale for copyright protection that:

The law of copyright rests on the very clear principle: that anyone who by his or her skill and labour creates an original work of whatever character shall, for a limited period, enjoy an exclusive right to copy that work. No one else may for a reason reap what the copyright owner has sown (Bentley and Sherman, 2009).

Commenting on the aforementioned rationale for copyright protection and enforcement, the reward theory is justifiable in that it would be a travesty of justice if the law permits an infringer to make profit and appropriate to himself the labour, skill and capital of a right holder. In this respect, it is therefore fair to reward an author for the effort expended in creating a work and bringing it to the public: it is a legal expression of gratitude to the author for his artistic and creative effort.

In sum, the reward theory of copyright protection and enforcement is justifiable as supported by the aforementioned view and case law.

2.6.3 INCENTIVE-BASED JUSTIFICATION FOR COPYRIGHT ENFORCEMENT

Copyright protection ensures creativity and sharing of information by granting creators of literary and artistic works exclusive rights over their works for a specified period for them to enjoy the benefit of their labour. In this regard, copyrights are essential to human creativity thereby providing incentives to creators in the form of recognition and fair economic rewards. Where the rights of holder are protected, creators are fully assured that their works can be disseminated without fear of unauthorised exploitation or piracy and such protection would increase access to information, knowledge and culture thereby encouraging creativity.

Gorman, 2006 stated that copyright grants exclusive rights in the exploitation of a work as an incentive to those who create it and that the basic purpose of copyright is to enrich society's wealth of culture and information. Copyright as a body of law therefore deals with the ownership and use of works of literature, music and art.

Bankole, 1988 reported that the harnessing of creativity has a potential of wealth creation, generation of creative capital, increases the economy and competitiveness in the global economy and the cultivation incentives for copyright holders.

Indeed the economic benefits that right holders stand to gain will serve as incentive for creativity. In that light, the incentive theory of copyright protection is imperative in that it will serve as incentive for others to create more literary and artistic works. In fact, without copyright protection the truth is that fewer learning materials would exist and those that would exist would be of poor quality. In this way, copyright protection stimulates the author to produce new creative works as they will secure more economic benefits that will serve as incentive for further creativity. In this respect, the incentive rationale for copyright protection and enforcement is justifiable based on the aforementioned views supported herein.

2.6.4 COMPLIANCE WITH INTERNATIONAL COPYRIGHT CONVENTION

The underlying assumption of this work is that countries have laws in place that comply with international treaties or conventions as obligations whether imposed by the Berne Convention or the TRIPS Agreement. There are differences between the laws relating to copyright in common-law countries and those in civil-law countries. These differences are due to different theoretical approaches to the matter. Because copyright is based on local statute it is therefore territorial. This means that local courts cannot decide claims for infringement occurring beyond their jurisdictions or

territories. The rule is that local courts have no jurisdiction to determine a claim for the infringement of copyright which has not been registered in a given state unless the protection of copyright is obligated by a convention warranting a member state to protect the aforementioned type of copyright works. In this vein, claims to copyright infringements and defences thereto must be sought in terms of the applicable legislation. This position is elucidated in *Frank & Hirsch (Pty) Ltd v. A Roopanand Brothers (Pty) Ltd* 1993 (4) SA 279 (A) [South Africa], where the court decided that the owner of copyright in a certain subject-matter holds a bundle of incorporeal rights created and regulated by statute. The statute determines when and how these rights come into existence, how they may be transferred and when and how they terminate.

However, in order to minimise the vast differences in respect of copyright protection and enforcement measures, international conventions such as the Berne Convention, TRIPS Agreement, and other international statutes on copyright impose on member states to adhere and comply with the minimum standards of these conventions and for member states to domesticate the guiding principles into their local laws in the form of international compliance. For instance monist states in Africa include Namibia and Kenya. South Africa operates on both monist and dualism. To further elucidate on monism, international law does not need to be translated into national law, the act of ratifying the international law immediately incorporates the law into national law. In this respect, international law can be directly applied by a national judge or citizens as if it were a national law. A judge can declare a national rule invalid if it contradicts with international rules because in some states, the latter has

priority over the former. In essence, treaties have the same effect as legislations, and by the principle of *lex posterior*, only take precedence over national legislation enacted prior to their ratification.

Dualism requires the translation of the international treaties or conventions (international laws) into domestic laws before they could be effective. Without this translation, international conventions or treaties will not have binding effect on a state. In this regard, international law has to be a national law as well, or it is no law at all. If a state accepts a treaty but does not adapt its national laws in order to conform to the treaty or does not create a national law explicitly incorporating the treaty, then it violates international law.

In order to harmonise the differences in copyright protection globally, states that have acceded to copyright treaties and conventions have obligations to adhere to the provisions of these treaties and one of these is the enforcement of copyright works, and this is perceived as compliance to copyright conventions. These conventions and treaties provide a benchmark for legislations and useful background material in interpreting IP statutes in general. In this regard, compliance to international treaties on copyright is a justification for copyright enforcement and this view is firmly held by Harms, 2012 wherein Justice Cao Jianming, the then Vice President of the Supreme Court of China, stated extra-judicially that protecting IP rights in general is necessary for China to honour and comply with its international obligations and to create favourable international trade and investment.

By way of summing up on this view, complying with international statutes by contracting parties in respect of a particular treaty or convention indicates that those states are in firm compliance with that statute or convention in question. In this regard, enforcing copyright by member states of the Berne Convention or the TRIPS Agreement is another justification in the bid to comply with international copyright conventions.

2.7 CHALLENGES

The Judiciary in Sierra Leone faces a lot of challenges regarding interfacing with the other copyright institutions aforementioned and one of these challenges is that there is no specific law consolidating the operations of the Judiciary with other copyright institutions in Sierra Leone in the bid to enforce and protect copyright. The reason is, most laws guiding the operations of the Police, Public Prosecutors and the National Revenue Authority were enacted in the 1960s and in 2002 while the Copyright Act was enacted in 2011. The consequence of this challenge is that copyright infringement cases are not frequently prosecuted in the court of law (Judiciary) because there is no specific law giving a coherent link among these institutions.

Furthermore, the Copyright Act 2011 is new for most officials in some of the aforementioned departments to easily understand and interpret. In this respect, this lack of copyright awareness will slow down or hinder the enforcement of the copyright law and the protection of copyright in Sierra Leone.

2.8 CONCLUSION

Copyright infringement undermines the economic sustainability of many fields of commerce and the economic benefits of rights holders. It is true that companies heavily rely on IP as a key component, or value-added, to their products, but copyright infringement is undermining this effort and this has become a major concern for all business sectors in all countries. For instance, piracy stalls local industries, reduce employment, create links to organized crime, discourage international trade and foreign direct investment, and place a heavy burden on enforcement authorities.

The negative effects of copyright infringement are therefore felt in all levels of society that there is need for effective enforcement mechanisms to protect copyrights is reflected nationally and internationally. Internationally, the Advisory Committee on Enforcement (ACE), WIPO provides its 184 Member States with a forum for international review and discussion of IP enforcement issues. WIPO also provides countries, at their request, with legal advice on the protection and enforcement of IP rights; as well as tools and training programs for judges, customs officers, police, prosecutors, administrative authorities and attorneys.

The protection of property rights is one of the keystones for a free and flourishing society. Protecting intellectual property (IP) from unauthorized use ensures that creators, rights holders and governments reap the full benefits offered by the copyrights based industries. It is a widely held view that IP rights are only valuable if they can be protected, and enforced so a right without a remedy is not a right.

The enforcement of copyrights is a collective duty in which rights holders also have a key role to play in cooperating with enforcement authorities to uphold the rule of law and to institute criminal proceedings against infringers. This can be done by effectively implementing the existing legislative frameworks, and by giving real meaning and sufficient support to the enforcement mechanisms instituted.

However not much will be achieved without raising awareness among members of the judiciary for the negative effects of IP crimes, and the need to mete out effective and deterrent penalties under national laws. Similarly, the police, public prosecutors and customs authorities should be aware of the scale and character of the problem of copyright infringement and should therefore interface with the Judiciary in order to effectively address this problem. This problem can be solved if the Judiciary interfaces with other enforcement institutions in order to ensure a viable and protected copyright system in Sierra Leone.

The rationale for the judicial enforcement of copyright is for economic and moral benefits. Academics and jurists consider the rationale for copyright protection for human right reasons because creators of works employ skill, labour, judgement and resources to create a literal and artistic work and if the intellectual property is worthy to be protected on human rights ground.

Other writers argued that copyright laws are enforced to deter further infringement, whereas others consider it on the basis of international compliance, incentive and for

rewarding the author of works. Indeed all the aforesaid reasons for enforcing copyright legislation are justifiable for such protection and enforcement.

Chapter Three, which is next, is the research methodology of this study. It highlights the target population of this study, sampling method, the instrument to be used in data collection and the method to analyse and present the data.

CHAPTER 3

RESEARCH METHODOLOGY

3.0 INTRODUCTION

Chapter Three will outline the research approach of this study. The following research instruments such as study population, sampling methods, data collection method and the procedure for data analysis will be employed in the research process in order to obtain the relevant data to achieve the objective of the study. Neville, 2007 subscribed to the above-mentioned view that a suitable research methodology will aid a researcher not only to collect valuable data, but also to analyse and present them accordingly.

3.1 RESEARCH DESIGN

The Research Design is the structure in which the research is conducted and utilised to save the chances of obtaining wrong inferences from the data. Neville, 2007 stated that the design is a logical task undertaken to ensure that the facts collected enable the researcher to answer the research questions stated. In preparing a research design, it should be borne in mind that a piece of evidence has to answer the research questions and be identified in a convincing manner. In this regards, the research design will mainly focus on primary and secondary data, sampling methods, both

closed and open ended questionnaire questions and qualitative and quantitative data analysis.

3.2 SOURCES OF DATA COLLECTION

These are methods employed by a researcher to collect data and these methods can be primary data collection and secondary data collection (Neville, 2007).

3.2.1 PRIMARY DATA

These are data collected for the first time by the researcher and can be obtained either through questionnaires or interview guides. The research will make use of the questionnaire type of data collection wherein two sets of questionnaires will be administered to judicial officers and right holders to give their responses on the role of the Judiciary in enforcing copyright in Sierra Leone.

3.2.2 SECONDARY DATA

The research will utilise secondary data that are relevant to the area of study and this includes desk review of secondary data from binding judicial precedents, books, and journals relevant to the topic. The research will focus on the Judiciary of the Republic of Sierra Leone and its role in enforcing copyright in Sierra Leone.

3.3 STUDY POPULATION

A study population is the number aggregation of human elements from which the sample is drawn. The study population of this research will be drawn mainly from Magistrates and Judges in the Judiciary and authors/writers and artists (musicians and movie actors and actresses) will be considered to get feed backs on the role of judicial officers in enforcing copyright in Sierra Leone.

3.4 SAMPLING METHOD

Sampling is the selection of a few (a sample) from a bigger group (sampling population) as a basis of establishing a fact about the situation or phenomena concerning the bigger group. Tumasi, 1986 posited that the first step will be the selection of a sampling design and secondly, the characteristics of the population under enquiry must be clearly indicated. Regarding the information required for the study and nature of the population, convenience sampling and purposive sampling techniques will be applied.

3.4.1 CONVENIENCE SAMPLING

According to Neville 2007, Convenience sampling is a method used by a researcher to sample respondents that are immediately available and those whom the researcher believes he can conveniently administer and collect any research instrument. This

sampling method therefore suits officials in the Judiciary and right holders comprising authors, artists and actors/actresses.

3.4.2 PURPOSIVE SAMPLING

Purposive sampling is the selection of respondents that fit into the study. With this sampling method, units are intentionally selected for the study based on the fact that they have certain characteristics that are relevant for the study. The respondents will therefore be selected based on the fact that they are directly engaged in copyright enforcement in Sierra Leone or they can give an accurate feedback on the judicial role of copyright enforcement in Sierra Leone.

3.5 INSTRUMENTS FOR DATA COLLECTION

The tools to be used for collecting primary data include questionnaires and these will be used to obtain the views of the respondents on the research topic: The Role of the Judiciary in Copyright Enforcement in Sierra Leone.

3.5.1 QUESTIONNAIRES

Questionnaires will be administered by the researcher to the respondents to fill and they will comprise closed and open ended questions. The closed ended questions will deal with information concerning bio data such as sex, age, etc; whereas open ended

questions require the views of the respondents about the role of the Judiciary in copyright enforcement in Sierra Leone and feedbacks regarding the judicial role of enforcing copyrights in Sierra Leone.

3.6 METHOD OF DATA ANALYSIS AND PRESENTATION

The data will be analysed using qualitative and quantitative techniques. Qualitative data analysis will be employed wherein the data is descriptive. This will be done by the responses given by the respondents. Quantitative data analysis will be employed wherein the data is statistical and tables will be used in the form of frequency distribution.

3.7 CONCLUSION

Chapter three will deal with the research methods which the researcher will utilise in this study. The target population includes judicial officials (Magistrates and Judges) and right holders in Sierra Leone. The method of data collection is the use of questionnaires. The sources of data collection will include primary (questionnaires with open and closed ended questions) and secondary (desk review, binding judicial precedents, books, and journals) data. The method of analysing and presenting the data will be qualitative and quantitative.

Chapter Four is next and it deals with the analysis and presentation of data collected with the use of the two sets of questionnaires administered on Judges and Magistrates on the one hand and right holders on the other side. The analysis will be qualitative and quantitative with the use of tables, graphs and charts.

CHAPTER 4

DATA ANALYSIS AND INTERPRETATION

4.0 INTRODUCTION

The objective of Chapter Four is to present and interpret the data collected from the two categories respondents to whom the questionnaires were administered. In this study, the researcher administered 20 questionnaires to judicial officials (Judges and Magistrates) and 30 to right holders giving a total number of 50 questionnaires to the research population. Out of the 20 questionnaires administered to respondents in the Judiciary, 18 were filled and collected and out of the 30 questionnaires administered to right holders, 22 were filled and collected giving a total numbers of 40 questionnaires collected from the two categories of respondents in this research, and the responses from these 40 questionnaires form the basis of this analysis

4.1 Questionnaire 1 Responses from Judicial Officials (Judges and Magistrates)

Table 4.1.1: Distribution of Respondent's length of service in the Judiciary

Length of Service	Number of Respondents	Percentage
0-5 years	1	5.6%
5-10 years	2	11.1%
10-15 years	3	16.7%
15-20 years	1	5.6%
20-25 years	2	11.1%
25-30 years	4	22.2%
30-35 years and above	5	27.8%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire.

Table 4.1.1 shows that 1 respondent representing 5.6% has served the Judiciary from 0-5 years, while 2 respondents representing 11.1% have served the Judiciary for 5-10 years. The length of service of 10-15 years has 3 respondents which represent 16.7%. 1 respondent representing 5.6% has served the Judiciary for 15-20 years. 2 respondents have served the Judiciary for 20-25 years which represent 11.1%. 4 respondents have served the Judiciary for 25-30 years which represent 22.2%. 5 respondents have served the Judiciary for 30-35 years and above which representing 27.8%. Through the analysis in this table, it is evident that majority of the respondents have served the Judiciary for 30-35 years which is represented by 27.8% of the total respondent.

Table 4.1.2: Distribution of Respondent's gender category

Variable	Respondents	Percentage
Male	14	77.7%
Female	4	22.2%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.2 shows that 14 respondents are male which represent 77.7%, whilst 4 respondents are female representing 22.2%. This analysis shows that majority of respondents in the business of enforcing copyrights in the law courts (Judiciary) of Sierra Leone are males representing 77.7% of the sample population.

Table 4.1.3: Distribution of Respondent's Age Group

Age	Number of Respondents	Percentage
21-30 years	0	0%
31-40 years	6	37.5%
41-50 years	4	25.0%
51-60 years	6	37.5%
Total	16	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.3 shows that 0 respondent which represents 0 % falls within the age group of 21-30 years, while 6 respondents which represent 37.5% are of the age group 31-40 years. The age group of 41-50 years has 4 respondents which represent 25.0% of the total percentage. The age group 51-60 years has 6 respondents and this represents 37.5%. This analysis shows that majority of the respondents are between the age group of 31-60 years which is represented by 37.5% of the total respondents. From the table, it can be deduced that majority of judicial officers are within the age group of 31-60 years.

Table 4.1.4: Distribution of the Understanding of Copyright

Rank	Number of Respondent	Percentage
High	0	0%
Medium	1	5.6%
Basic	17	94.4%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.4 shows that there is no respondent with high understanding about copyright and this represents 0%. 1 respondent which represents 5.6% has medium understanding on copyright whilst 17 respondents which constitutes 94.4% of the total respondents have basic understanding on copyright.

This analysis therefore shows that majority of the respondents have basic understanding about copyright and this indicates that the effective enforcement of copyright in Sierra Leone is a challenge on the grounds of low understanding of the subject matter on the part of adjudicators in the Judiciary making the first objective of this study which investigated the judicial role of enforcing copyright in Sierra Leone very difficult to identify.

Table 4.1.5: Distribution of the Awareness of Sierra Leone Copyright Act 2011

Copyright Law Awareness	Number of Respondent	Percentage
Yes	18	100%
No	0	0%
Total	18	100

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.5 shows that 18 respondents which represent 100% are aware of the Copyright Act in Sierra Leone, whilst none of the respondents have any understanding on the awareness of the aforementioned legislation.

This low level of understanding the concepts relating to copyright as exhibited in this result therefore shows that first objective of this study which states that the research intends to identify the judicial role of copyright enforcement in Sierra Leone cannot be identified and in practice, the role of the court in enforcing copyright is not felt in Sierra Leone.

Table 4.1.6: Distribution of the Respondents' Understanding of Piracy

Term “Piracy”	Number of Respondent	Percentage
Making others’ works	2	11.1%
To hijack or take over	2	11.1%
To copy works	8	44.5%
Unlawful reproduction of protected works	2	11.1%
Fake copies	4	22.2%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.6 shows that 2 respondents representing 11.1% understand the term “Piracy” to mean the unlawful reproduction of protected works while, 2 respondent representing 11.1% understands it to mean to hijack or take over. 8 respondents representing 44.5% understand it to mean to copy works, while 2 respondents which represent 11.1% understand it to mean to violate protected works and 4 respondents which represent 22.2% understand it to mean fake copies.

From table 4.1.6 above, it can be concluded that majority of the respondents in the Judiciary understand piracy to mean the copying of works. Looking at all other responses apart from the “unlawful reproduction of protected works,” it shows that the understanding of piracy is low making it a challenge for the role of the Judiciary in copyright enforcement in Sierra Leone and objective three which seeks to

investigate the impact created by the Judiciary in enforcing and protecting copyright in Sierra Leone.

Table 4.1.7: Respondents' Awareness of the Judiciary as copyright enforcer

Judiciary as copyright enforcer	Number of respondent	Percentage
Yes	18	100%
No	0	0%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.7 shows that 18 respondents which represent 100% of the total number responded that they are aware of the Judiciary as one of the enforcers of copyrights in Sierra. This implies that all of the respondents in the Judiciary have a clear understanding that the Judiciary is an enforcer of the Copyright Act 2011 pursuant to Part IX of the said Act.

Objective one of this study which investigated the role of the Judiciary in copyright enforcement in Sierra Leone revealed that the Judiciary is aware of its role as an enforcer of the copyright law in Sierra Leone.

Table 4.1.8: What is the critical role of the Judiciary in enforcing the Copyright Act 2011?

Critical Role	Number of respondent	Percentage
Copyright protection	1	5.6%
Deterring piracy	1	5.6%
Expediting copyright cases	16	88.8%
Any other:	0	0.0%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.8 shows that 1 respondent which represents 5.6% stated that the critical role of the Judiciary towards copyright enforcement is copyright protection, whilst 1 respondent representing 5.6% responded that it deterred piracy. 16 respondents which represent 88.8% stated that it expedited copyright cases.

This analysis shows that the critical role of the Judiciary is to expedite copyright cases. In tune with the first objective of this study, expediting copyright cases in court, *inter alia*, is seen as another role being played by the Judiciary towards the enforcement of copyright in Sierra Leone.

Table 4.1.9: Judicial Enforcement Measures

Enforcement measures:	Number of respondent	Percentage
Provisional measures	18	100%
Seizure Orders/Injunctions	18	100%
Award of Damages	18	100%
Destruction of pirated goods and implements	18	100%
Criminal sanction	18	100%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.9 shows that all of the 18 respondents constituting 100% responded to the above mentioned measures for the enforcement of copyright.

Table 4.1.10: Support Structures to enforce copyright in Sierra Leone

Support structures	Number of respondent	Percentage
fast-track-IP court	1	5.6%
The need for funds.	2	11.1%
No Special court on IP.	15	83.3%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.10 shows that 1 respondent which represents 5.6% stated that a fast-track-IP court system is a support structure needed by the Judiciary to enforce copyright, while 2 respondents representing 11.1% stated the need for funds. 15 respondents representing 83.3% recommended the establishment of a special court of IP.

Majority of the respondents which represent 83.3% recommended that the establishment of a special court would ensure an effective copyright enforcement in Sierra Leone. However, the research revealed that no support structures have been put in place in the Judiciary to enforce copyright in Sierra Leone which is the second objective of this study.

As indicated above, there is no special tribunal on copyright or IP, nor are there specific funds being allocated to the Judiciary to put structures in place to effectively enforce the Copyright Act 2011. In conclusion, the issue of protecting and enforcing copyright in Sierra Leone by the Judiciary is an uphill task to achieve.

Table 4.1.11: Have you dealt with cases of piracy?

Copyright Cases	Number of Respondent	Percentage
Yes	5	27.8%
No	13	72.2%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.11 shows that 5 respondents which represent 27.8 % had presided on copyright cases. 13 respondents which represent 72.2% had not dealt with copyright cases.

This analysis shows that majority of cases of copyright infringement rarely come to court. According to the third objective of the study, it is revealed that there is little impact made by the Judiciary regarding the enforcement and protection of copyright infringement in Sierra Leone.

Table 4.1.12: Main challenges in presiding over copyright cases

Main Challenges	Number of respondent	Percentage
Poor and slow investigations	2	11.1%
Many adjournments due to prosecution lapses	6	33.4%
Judiciary is frustrated due to out-of-court settlements	2	11.1%
Prosecution witnesses hardly turn up for court hearing	4	22.2%
Low level awareness of copyright.	4	22.2%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.12 shows that 2 respondents which represent 11.1% stated that poor and slow investigations are major challenges in presiding over copyright cases in court. 6 respondents which represent 33.4% stated that series of adjournments due to

prosecution lapses posed a major challenge for the Judiciary. 2 respondents which represented 11.1% stated that out of court settlements of copyright cases posed a major challenge for the Judiciary in the enforcement of copyright. 4 respondents which represented 22.2% stated that the nonappearance of prosecution witnesses posed a challenge for judicial copyright enforcement in Sierra Leone. 4 respondents which represent 22.2% stated that low level awareness of copyright is another main challenge of faced by the Judiciary in enforcing copyright.

This analysis shows that the Judiciary is faced with the aforementioned challenges in the enforcement of copyright in Sierra Leone. These challenges make the Judiciary to have little impact on the protection of copyright and this warrants the need for recommendations to mitigate future challenges in line with the fourth objective of this study.

Table 4.1.13: Recommendations to mitigate future challenges

Recommendations	Number of Respondent	Percentage
Training of judicial officials in IP Rights.	10	55.6%
Heavy fines for prosecution witnesses/complainants failing to come and testify in court.	4	22.2%
Severe penalties for rights offenders	2	11.1%
Awareness-raising of IP Rights.	2	11.1%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.13, shows that 10 respondent which represent 55.6% suggested that there is need for training of judicial officials in IP rights. 4 respondents which represent 22.2% suggested that heavy fines be levied on prosecution witnesses/complainants failing to testify in court. 2 respondents which represent 11.1% suggested the need for severe punishment for right offenders while 2 respondents which constituted 11.1% suggested the need for awareness-raising of IP rights.

It could be inferred from this analysis that an effective enforcement of copyright law in Sierra Leone will be achieved if copyright or IP training programmes are conducted for Magistrates and Judges to enable them to hear and determine copyright matters adequately so that their judicial role in enforcing copyright can be practically experienced in satisfaction to the first objective, and that enforcement role to have the impact of protecting copyright in Sierra Leone which is the third objectives of this study.

Table 4.1.14: Impact made by the Judiciary in enforcing copyright in Sierra Leone

Judicial enforcement impact	Number of Respondent	Percentage
Very insignificant impact.	14	77.8%
Piracy is abound	4	22.2%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.14 shows that 14 respondents which represent 77.8% believed that the impact regarding the judicial role of copyright is very insignificant whilst 4 respondents which represent 22.2% stated that piracy is abound in the country.

It can also be inferred from this analysis that up to the time of this research, the Judiciary in Sierra Leone has made little or no impact in preventing copyright infringement in Sierra Leone which is the third objecting that the research investigated.

Table 4.1.15: How common is piracy in Sierra Leone?

Variable	Number of respondent	Percentage
Very common	14	77.8%
common	4	22.2%
Not so common	0	0.0%
Very rare	0	0.0%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.15 shows that 14 respondents which constitute 77.8% responded that piracy is very common in Sierra Leone, while 4 respondents which represent 22.2% responded that piracy is common in Sierra Leone. No respondent which represented 0% stated that piracy is not so common or very rare in Sierra Leone.

According to this analysis, majority of the respondents stated that piracy is very common in Sierra Leone. Based on the findings of the third objective of this study, it was revealed that little or no impact has been made by the Judiciary in preventing copyright infringement in Sierra Leone which corroborates to the analysis of Table 4.1.16. of this research project.

Table 4.1.17: Distribution of the causes of copyright piracy in Sierra Leone

Causes	Number of respondent	Percentage
Weak law enforcement	7	38.9%
Lack of knowledge of the subject	5	27.8%
Profitability	4	22.2%
Scarcity of originals	1	5.6%
High cost of originals	1	5.6%
Total	18	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.1.16 shows that 7 respondents which represented 38.9% stated that the causes of piracy in Sierra Leone is weak law enforcement. 5 respondents representing 27.8% stated that lack of the subject matter is another cause. 4 respondents representing 22.2% stated that piracy in Sierra Leone is caused by profitability, while 1 respondent representing 5.6% stated that scarcity of originals is the cause for piracy in Sierra Leone. 1 respondent representing 5.6% responded that piracy is caused by high costs of originals.

This analysis shows that majority of the respondents responded that weak law enforcement and lack of copyright knowledge on the part of judicial officials are other causes for piracy to thrive in Sierra Leone, making the enforcement responsibilities of the Judiciary in objective one difficult to be identified in practice and little impact on copyright protection in objective three of this study.

4.2 Questionnaire 2 Responses of Right Holders

Table 4.2.1: Distribution of Category of Right holders

Category	Number of Respondents	Percentage
Musicians	6	27.3%
Actors/Actresses	7	31.8%
Artists (creative)	4	18.2%
Author	5	22.7%
Other	0	0.0%
Total	22	100%

Source: Yillah (MIP 2014) Primary Data via Questionnaire

Table 4.2.1 shows that 6 respondents which represent 27.3% were musicians while 7 respondents representing 31.8% were film actors and actresses. 4 respondents which

represent 18.2% were artists in the creative industry while 5 respondents representing 22.7% were authors.

Table 4.2.2: Age Distribution of Right Holders Respondents

Age	Number of Respondents	Percentage
21-30 years	13	72.2%
31-40 years	5	27.8%
41-50 years	0	0.0%
51-60 years	0	0.0%
Total	18	100%

Source: Yillah (2014) Primary Data via Questionnaire

Table 4.2.2 shows that 13 respondent which represent 72.2% were of the age group of 21-30 years, while 5 respondents which represent 27.8% were of the age group 31-40 years. The age group of 41-50 years had no respondent which represents 0% of the total percentage. No respondent which represents 0% fell between the age group 51-60 years. This analysis shows that majority of the respondents are of the age group of 21-30 years which is represented by 72.2% of the total respondent. It can be deduced that majority of the copyright holders are within the age group of 21-40 years showing that right holders are young and vibrant in Sierra Leone.

Table 4.2.3: Distribution of understanding about Copyright

Rank	Number of Respondent	Percentage
High	0	0%
Medium	0	0%
Basic	22	100%
Total	22	100%

Source: Yillah (2014) Primary Data via Questionnaire

Table 4.2.3 shows that none of the respondents has high understanding about copyright and this represented by 0%. There is no respondent with medium understanding in copyright and this is represented by 0%. 22 respondents which constitute 100% of the total respondents have basic understanding about copyright.

This analysis implies that the respondents in the right holders' category have dim understanding in copyright and this will be difficult for them to appreciate in practice the functions of the court in copyright enforcement which is objective one herein.

Table 4.2.4: Distribution of the Awareness of the Sierra Leone Copyright Law

Copyright Law Awareness	Number of Respondent	Percentage
Yes	22	100%
No	0	0%
Total	22	100%

Source: Yillah (2014) Primary Data via Questionnaire

Table 4.2.4 shows that 22 respondents which represent 100% were aware of the copyright law in Sierra Leone, while none of the respondents constituting 0% were unaware of the copyright law in Sierra Leone.

From the feedback of the respondents, this analysis shows that right holders are aware of the existence of the Copyright Act 2011 in Sierra Leone which was enacted to protect their IP rights.

Table 4.2.5: Distribution of the Respondents' Understanding of Piracy

Do you understand Piracy to mean the unlawful reproduction of protected works?	Number of Respondent	Percentage
Yes	22	100%
No	0	0%
Total	22	100%

Source: Yillah (2014) Primary Data via Questionnaire

Table 4.2.5 shows that all the 22 respondents which represent 100% knew piracy to mean the unlawful reproduction of protected works.

From the analysis above, it can be deduced that all the respondents knew about piracy and this is the challenge that resulted from objective one which investigated the role of the Judiciary in enforcing copyright in Sierra Leone.

Table 4.2.6: Respondents' Awareness of the Judiciary as an enforcer of Copyright

Variable	Number of respondent	Percentage
Yes	21	95.5%
No	1	0.5%
Total	22	100%

Source: Yillah (2014) Primary Data via Questionnaire

Table 4.2.6 shows that 21 respondents which represent 95.5% had the awareness that the Judiciary enforces the copyrights in Sierra Leone, while 1 respondent which represent 0.5%, did not have the awareness that the Judiciary enforces copyright in Sierra Leone.

This implies that majority of the respondents have the awareness that the Judiciary enforces copyright in Sierra Leone. Based upon the findings of objective one, majority of the respondents are aware that the Judiciary enforces copyright in Sierra Leone.

Table 4.2.7: What is the critical role of the Judiciary in enforcing the Copyright Act 2011?

Critical Role	Number of respondent	Percentage
Copyright protection	22	100%
Deterring piracy	0	0%
Expediting copyright cases	0	0%
Any other:	0	0%
Total	22	100%

Source: Yillah (2014) Primary Data via Questionnaire

Table 4.2.7 shows that 22 respondents which represent 100%, stated that the critical role of the Judiciary in enforcing copyright is copyright protection. No respondent which represent 0% responded on whether the critical role of the Judiciary is to deter piracy or expedite copyright cases.

The implication of the above is that rights holders have a better understanding about the protection of copyright as a critical role of the Judiciary in the enforcement of copyright in Sierra Leone. As revealed by objective one, the implication of the above is that rights holders have a better understanding about the protection of copyright as a critical role played by the Judiciary in the enforcement of copyright in Sierra Leone.

Table 4.2.8: Judicial Enforcement Measures

Enforcement measures	Number of respondent	Percentage
Provisional measures	0	0%
Seizure Orders/Injunctions	4	18.2%
Award of Damages	3	13.6%
Destruction of pirated goods and implements	8	36.4%
Criminal sanction	4	18.2%
Any other: I do not know	3	13.6%
Total	22	100%

Source: Yillah (2014) Primary Data via Questionnaire

Table 4.2.8 shows that no respondent representing 0% responded that provisional measures are judicial measures of copyright enforcement. 4 respondents which represented 18.2% stated that seizure order/injunctions are judicial measures adopted by the Judiciary to enforce copyright in Sierra Leone. 3 respondents which represent 13.6% stated that the award of damages is a judicial measure used to enforce copyright. 8 respondents representing 36.4% stated that the destruction of pirated goods and implements is another judicial copyright enforcement measure. 4 respondents representing 18.2% responded that criminal sanction is another judicial

copyright enforcement measure, while 3 respondents representing 13.6% stated that they did not know.

Table 4.2.9: Support Structures to enforce copyright in Sierra Leone

Support structures	Number of respondent	Percentage
Fast-track- court system	1	4.5%
Special court on IP.	21	95.5%
Total	22	100%

Source: Yillah (2014) Primary Data via Questionnaire

Table 4.2.9 shows that 1 respondent which represent 4.5% held the view that a fast-track-court should be the support structure for the Judiciary to enforce copyright in Sierra Leone. 21 respondents which represented 95.5% stated that a special court on IP should be the support structure for the Judiciary to enforce copyright in Sierra Leone and this view is in the majority.

Based upon the findings investigated in respect of the third objective, the need expressed by the respondents showed that no support structures had been put in place to enforce the 2011 Act and protect copyright in Sierra Leone.

Table 4.2.10: Have you sued for infringing your rights

Variable	Number of Respondent	Percentage
Yes	1	4.5%
No	21	95.5%
Total	22	100%

Source: Yillah (2014) Primary Data via Questionnaire

Table 4.2.10 shows that 1 respondent which represent 4.5% had sued for infringing his rights, while 21 respondents which represented 95.5% had not brought actions against infringers. This implies that majority of the respondents had not brought any criminal or civil litigation against copyright infringers in the court of law.

This implies that majority of the respondents had not brought any criminal or civil litigation against copyright infringers in the court of law. It could be inferred that right holders have not litigated against copyright infringers because of the inadequate or no support structures put in place to enforce copyright.

Table 4.2.11: What is your feedback regarding impact made by the Judiciary in enforcing copyright in Sierra Leone?

Judicial enforcement impact	Number of Respondent	Percentage
No positive impact	9	40.9%
Little	4	18.2%
I don't know	9	40.9%
Total	22	100%

Source: Yillah (2014) Primary Data via Questionnaire.

Table 4.2.11 shows that 9 respondents which represent 40.9% believed that the Judiciary had not made any impact towards the enforcement and protection of copyright in Sierra Leone, while 4 respondents representing 18.2% responded that little impact had been made by the Judiciary in enforcing copyright. 9 respondents which represent 40.9% stated that they did not know whether the Judiciary had made impact towards the enforcement of copyright in Sierra Leone.

Based on the investigation of objective three, it is revealed by majority of the respondents that the Judiciary has made little impact to enforce copyright in Sierra Leone.

Table 4.2.12: How common is piracy in Sierra Leone?

Variable	Number of respondent	Percentage
Very common	20	90.9%
common	2	9.1%
Not so common	0	0.0%
Very rare	0	0.0%
Total	22	100%

Source: Yillah (2014) Primary Data via Questionnaire

Table 4.2.12 shows that 20 respondents which represent 90.9% stated that piracy is very common in Sierra Leone. 2 respondents representing 9.1% stated that piracy is common in Sierra Leone. No respondent stated that piracy is not common or rare in Sierra Leone.

This implies that majority of the respondents held the view that piracy is common in Sierra Leone in that the rights of copyright holders in Sierra Leone are not effectively protected nor enforced. Objective three in this respect revealed that the Judiciary has made little or no impact to enforce and protect copyright in Sierra Leone.

Table 4.2.13: Distribution of the causes of copyright piracy in Sierra Leone

Causes	Number of respondent	Percentage
Weak law enforcement	22	100%
Lack of knowledge of the subject	0	0%
Profitability	0	0%
Scarcity of originals	0	0%
High cost of originals	0	0%
Total	22	100%

Source: Yillah (2014) Primary Data via Questionnaire

From Table 4.2.13: 22 respondents which represent 100% stated that the causes of piracy in Sierra Leone is weak law enforcement, while none of the respondents stated that piracy is caused by lack of knowledge of the subject, profitability, scarcity of originals and high cost of originals.

The impact of the Judiciary when assessed by right holders in this research under objective three revealed that piracy thrives in Sierra Leone because the law enforcement mechanism (of which the Judiciary is part of) is weak to enforce the

Copyright Act 2011 and this implies that the Judiciary has made little or no impact to enforce copyright in Sierra Leone.

Table 4.2.14: Recommendation for the Judiciary to further strengthen copyright enforcement

Recommendations	Number of respondent	Percentage
Vibrant in copyright law enforcement	6	27.3%
Establish courts dealing with copyright cases	8	36.4%
Harsh punishment and heavy fines levied on offenders	4	18.2%
Curtail series of adjournments in copyright cases in court	4	18.2%
Total	22	100%

Source: Yillah (2014) Primary Data via Questionnaire

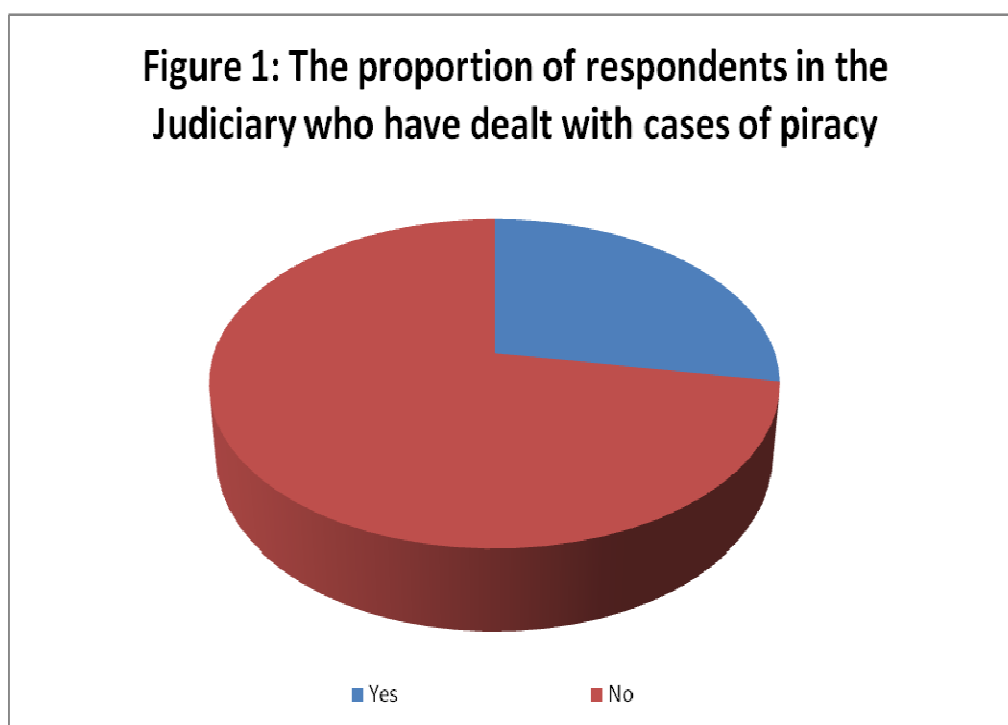
Table 4.2.14 shows that 6 respondents which represent 27.3% recommended that the Judiciary should be vibrant in enforcing the copyright law in Sierra Leone. 8 respondents representing 36.4% recommended that there is need to establish [special] courts dealing with copyright cases, while 4 respondents which represent 18.2% recommended that harsh punishment and heavy fines be levied on offenders of

copyrights in Sierra Leone. 4 respondents which represent 18.2% recommended that the Judiciary should curtail the series of adjournments in copyright cases in courts, meaning to expedite copyright infringement matter in courts.

These recommendations were proffered in respect of the unsatisfactory impact made by the Judiciary as revealed by objective three of this research towards the enforcement of copyright in Sierra Leone.

GRAPHICAL REPRESENTATION OF THE RESULTS OBTAINED FROM THE RESEARCH

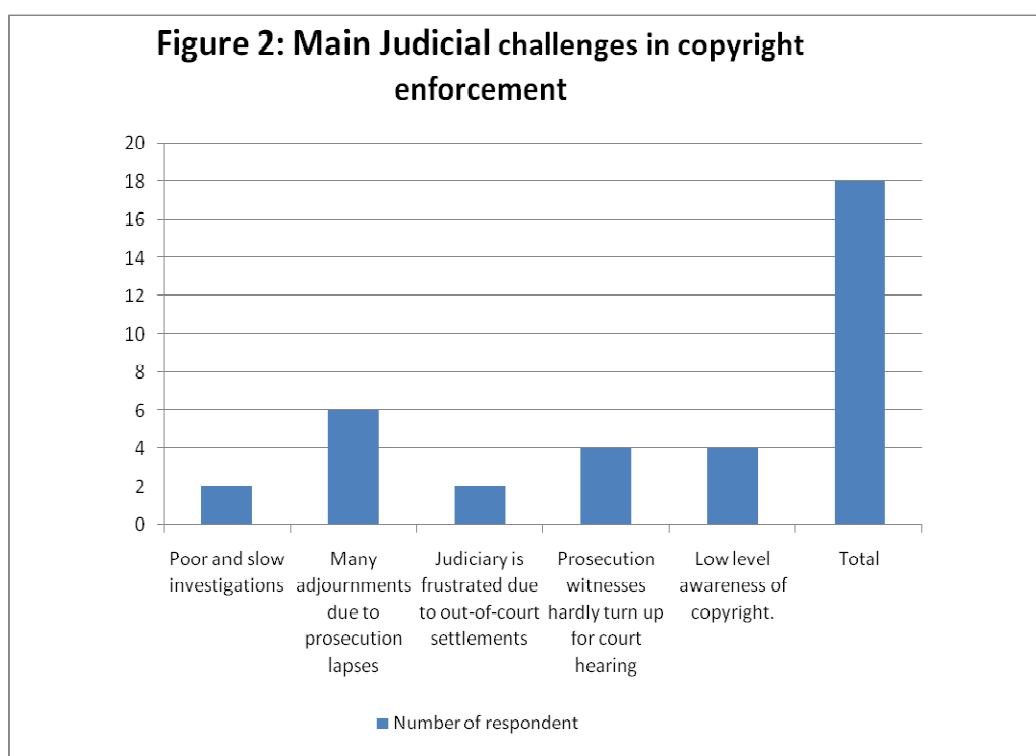
Figure 1: The proportion of respondents in the judiciary who have dealt with cases of piracy



Bases on the findings of Table 4.11, 27.8 % of the respondents had presided on copyright cases whereas 72.2% had not dealt with copyright cases. This analysis shows that majority of cases of copyright infringement rarely come to court as shown by the 72.2% which is higher than 27.8%.

The low percent in respect of the few copyright cases that filed to court and prosecuted indicated that the enforcement status of copyright in Sierra Leone is in low ebb and a challenge to the protection of right holders in Sierra Leone.

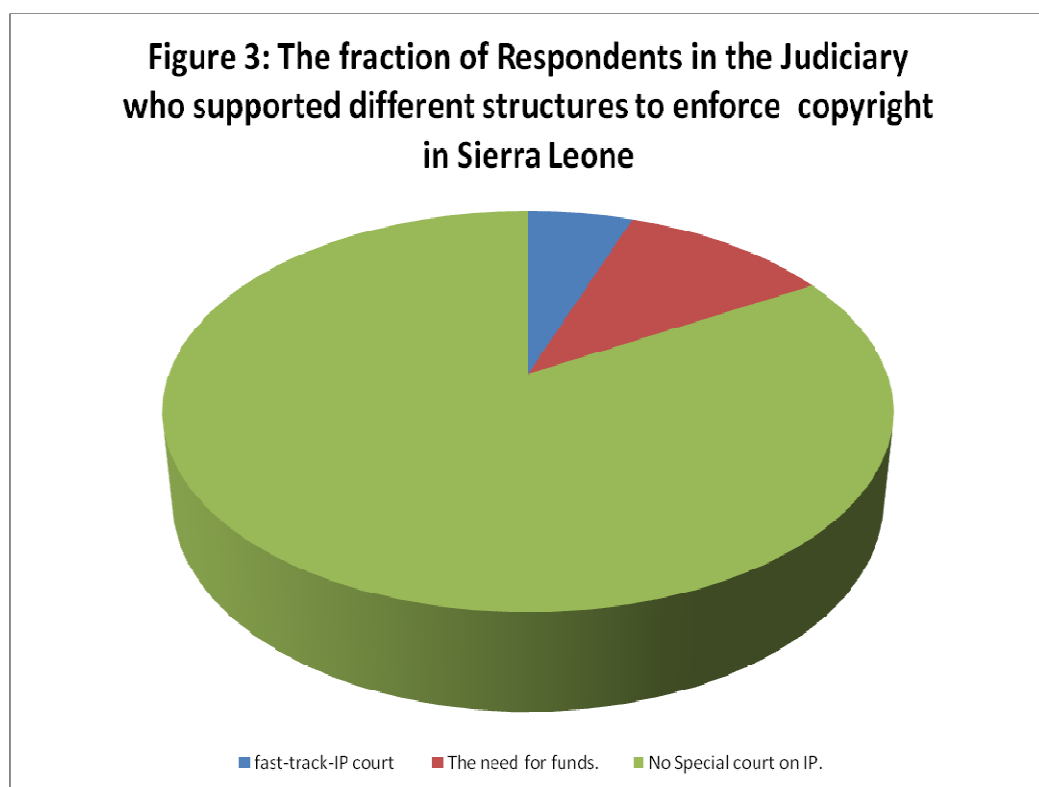
Figure 2: Main Judicial challenges in Copyright enforcement



Based on the findings of table 4.12, 11.1% stated that poor and slow investigations are major challenges in presiding over copyright cases in court whereas 11.1% stated that out of court settlements of copyright cases posed a major challenge for the

Judiciary in the enforcement of copyright whereas 22.2% stated that the nonappearance of prosecution witnesses posed a challenge for judicial copyright enforcement in Sierra Leone. 22.2% stated that low level awareness of copyright is another main challenge of faced by the Judiciary in enforcing copyright whereas 33.3%, which is the highest, stated that series of adjournments due to prosecution lapses posed a major challenge for the Judiciary in enforcing copyright in Sierra Leone.

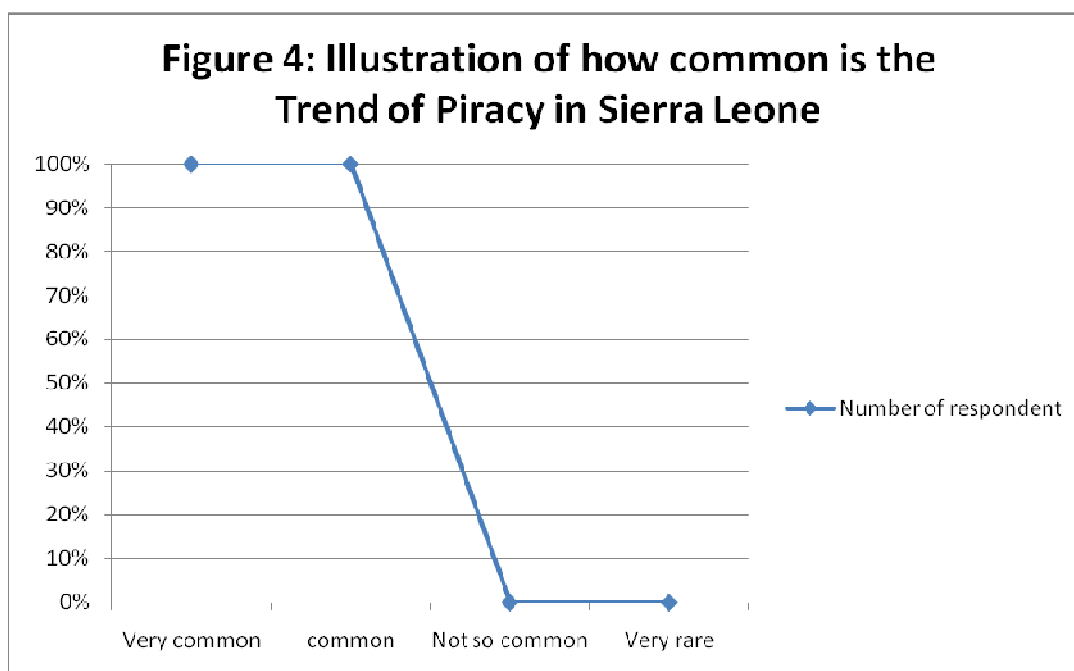
Figure 3: The fraction of Respondents in the judiciary who supported different structures to enforce copyright in Sierra Leone



Based on the findings showed in table 4.10, 5.6% of the respondents in the Judiciary recommended the need of a fast-track-IP court system in Sierra Leone whereas

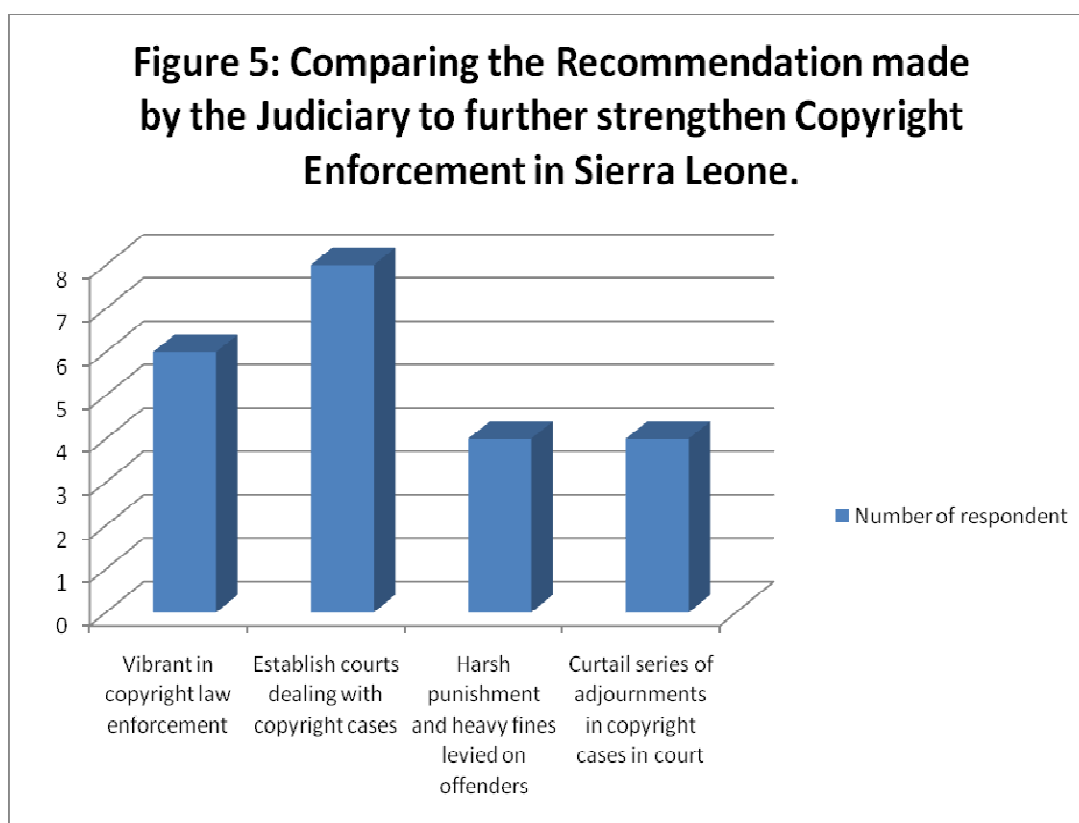
11.1% recommended the need for more funds. 83.3% recommended for the establishment of a special court of IP. Majority of the respondents which represent 83.3% recommended that the establishment of a special court would ensure an effective copyright enforcement in Sierra Leone.

Figure 4: Illustration of how common is the trend of piracy in Sierra Leone



Based on table 4.15, 77.8% of the responses of the respondents in the Judiciary show that piracy is very common in Sierra Leone, whereas 22.2% shows that piracy is a common problem in Sierra Leone. 0% stated that piracy is not so common or very rare in Sierra Leone. The 77.8% which shows a greater trend in support of the responses of the Judiciary that piracy is common in Sierra Leone. According to this analysis therefore, majority of the respondents stated that piracy is very common in Sierra Leone.

Figure 5: Comparing the Recommendation made by the Judiciary to further strengthen Copyright Enforcement in Sierra Leone



Based on the findings analysed in table 4.13, 55.6% recommended the need for training judicial officials in IP rights to preside on copyright matters whereas 22.2% recommended that heavy fines be levied on prosecution witnesses/complainants failing to testify in court in respect of alleged copyright infringement cases. 11.1% recommended the need for severe criminal punishment for right offenders whereas 11.1% suggested the need for awareness-raising of IP rights. Comparatively, the recommendation for the establishment of special courts to hear and determine copyright cases ranks higher in the graph indicating that there is need for the

establishment of these courts for the effective protection of copyright in Sierra Leone.

4.3 CONCLUSION

Chapter Four of this research interpreted and analysed the data collected from the two sets of the questionnaires administered on judicial officials (Judges and Magistrates) and right holders. The sample sizes of the two set respondents in this research are 20 and 30 respectively, giving a total number of 50 questionnaires to the research population. Out of the 20 questionnaires administered to respondents in the Judiciary, 18 were filled and collected and out of the 30 questionnaires administered to right holders, 22 were filled and collected giving a total numbers of 40 questionnaires collected from the two categories of respondents in this research, and the responses from these 40 questionnaires form the basis of this analysis.

Based on the findings of this research, it is evident that even though the statutory role of the Judiciary is to enforce copyrights in Sierra Leone as mandated by the Copyright Act 2011, the views and responses of the respondents showed that the Judiciary is weak in enforcing copyright in Sierra Leone because there is no copyright tribunal (special copyright court) set up to hear and determine such cases.

Furthermore, other challenges such as prosecution lapses, out of court settlements, low level of copyright awareness on the part of adjudicators, theft botes, series of court adjournments and few cases of copyright infringement brought to court weaken the judicial enforcement of copyright in Sierra Leone and making little or no impact felt in protecting copyright in Sierra Leone.

From the research result therefore, copyright infringement is rife and a common problem in Sierra Leone due to the views of the respondents analysed above.

Chapter Five is next which summarises, recommends the gaps of judicial enforcement of copyright in Sierra Leone and concludes the research project

CHAPTER 5

SUMMARY, RECOMMENDATION AND CONCLUSION

5.0 INTRODUCTION

Chapter Five shows a summary of the results of the data, conclusion and recommendations in respect of the gaps revealed by the responses of the respondents as shown by the data analysed, interpreted and presented.

5.1 SUMMARY

Based on the findings of this research, it was discovered that majority of judicial official have served the Judiciary as adjudicators and administrators of justice for over 30. The researcher also found out that that majority of the Judges and Magistrates have basic understanding on copyright as indicated in Table 4.4.

Based on the findings of this research, it is evident that the role of the Judiciary towards copyright is to enforce copyright in Sierra Leone as contained in the Copyright Act 2011.

Furthermore, the results of the research revealed that in the bid to enforce these rights, there are series of challenges faced by the Judiciary which make the

enforcement and protection of copyright in Sierra Leone a problem and these include prosecution lapses, out of court settlements, low level of copyright awareness on the part of adjudicators, theft botes, series of court adjournments, few cases of copyright infringement being brought to court, weak law enforcement of copyright in Sierra Leone, lack of funds and other essential structural support measures that would effectively facilitate the protection of copyright in Sierra Leone. In this regard, the research eventually revealed that there is little or no impact created by the Judiciary in protecting copyright in Sierra Leone through its enforcement role.

From the research result therefore, copyright infringement is rife and a common problem in Sierra Leone due to the views of the respondents analysed above.

5.2 RECOMMENDATIONS

Based on the findings, the following recommendations are made for the effective judicial enforcement of copyright and protection in Sierra Leone. According to Table 4.1.4 and 4.2.3, it was revealed that copyright understanding among adjudicators in the judiciary and right holders is basic making it difficult for the Judiciary to enforce copyright. It is hereby recommended that intellectual property training in general and copyright in particular be conducted for Judges and Magistrates to help them understand copyright issues in their copyright adjudication.

It was also revealed that there was no copyright tribunal to hear and determine copyright cases. It is therefore recommended that copyright tribunal be established to hear such cases and expedite the copyright cases.

Another recommendation should include public sensitisation and enlightenment on copyright infringement and its negative consequences to the economy, culture and property right of rights holders. The recommendation also includes that anti-piracy laws, protect copyrights and establish public awareness campaigns.

Law enforcement agencies (the Police, Judiciary, Customs and Public Prosecutors) should be equipped and strengthened to enforce the Copyright Act 2011 so that there will be public confidence showing that literary and artistic works are well protected.

There should be collaboration among copyright law enforcers in the fight against copyright infringement and should be pursued with vigour. This will suitably occur with the help of a consolidating law on copyright whereby the enforcement operations of Police, Judiciary, Customs and Public Prosecutors are interconnected and interfaced.

Concrete steps should be taken by right owners, to ensure that original works are made available to the consuming public and are affordable to the consuming public.

Rights owners' associations, producers, marketers and distributors should be profoundly involved in advocacy programmes and embark in more pro-active campaigns against copyright infringement.

5.3 CONCLUSION

The conclusion to draw is that despite the Judiciary in Sierra Leone is empowered to enforce copyright among its statutory role and there is a statute in that regard, the role is not effective in the mist of the common spate of copyright infringement. The impact of judicial enforcement of copyright is not felt by right holders whose feedback expressly brought this out.

The research is hereby concluded that based on the findings, the role of the Judiciary in Sierra Leone faces a lot of challenges making its enforcement role ineffective. The research therefore recommended that to mitigate future inefficiency and ineffectiveness of the Judiciary regarding the enforcement of copyrights, a copyright tribunal should be established to specifically hear and determine such matters in court.

Furthermore, there should be a consolidating law coordinating the enforcement activities of the aforementioned copyright agencies for a protectable copyright system in Sierra Leone.

Next, there should be IP or copyright training programmes for Judges and Magistrates to strengthen and upgrade their level of understanding on copyright so that they can hear and determine copyright litigations with ease.

Finally, there should be public sensitisation and awareness on copyright in general and the enforcement role of the Judiciary regarding copyright infringement in Sierra Leone.

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The Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms (1971).

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The Constitution of Sierra Leone, (Act No. 6 of), 1991

The Criminal Procedure Act (No.32), 1965

The English (British) Copyright Act, 1911

The Kenyan Copyright Act, 2001 Chapter 130

The Sierra Leone Copyright Act (No. 20), 1965

The Sierra Leone National Revenue Authority Act, 2002

The Sierra Leone Police Act, 1964

APPENDICES

Appendix A: Introduction Letter (Africa University)



INSTITUTE OF PEACE LEADERSHIP AND GOVERNANCE

P.O. BOX 1320, MUTARE, ZIMBABWE - TEL.: (263-20) 66788/60075/60026/61611 - FAX: (263-20) 66788/61785 - E-MAIL: iplgsec@afriau.ac.zw

7 December 2014

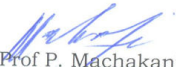
TO WHOM IT MAY CONCERN

Re: Request for permission to undertake a research

YILLAH Ibrahim Samed is a student (**130100**) at Africa University, in the Institute of Peace Leadership and Governance (IPLG), studying for a Masters degree in Intellectual Property. In partial fulfillment of the requirements of the degree, students are required to write a research project in the area of Intellectual Property. YILLAH Ibrahim Samed's research topic is **"The Role of the Judiciary in Copyright Enforcement in Sierra Leone."** I kindly request your esteemed organization to assist the student. I assure the organization that the data will be used strictly for academic purposes.

Your cooperation is appreciated.

Yours faithfully


Prof. P. Machakanja
IPLG DIRECTOR

APPENDIX B: QUESTIONNAIRE 1

FOR JUDICIAL OFFICIALS (JUDGES AND MAGISTRATES)

SECTION A: THE RESPONDENT'S BACKGROUND INFORMATION

1.Category:	Please tick where appropriate: Judicial Officer: 1.Magistrate 2. Judge
City/Town	
2.Sex of Respondent	Male Female
3.Length of service	21 – 30 31 – 40 41 – 50 51 and above

SECTION B: KNOWLEDGE ABOUT COPYRIGHT	
4	Please rank your understanding about the subject of copyright and related rights High..... Medium..... Basic.....
5	Do you understand copyright to mean the protectable work of an author? Yes No If No , what is your understanding about Copyright?

6	<p>Are you aware of the existence of the Sierra Leone's Copyright law?</p> <p>Yes..... No.....</p> <p>Please name it:.....</p>
<p>SECTION C:THE ROLE OF THE JUDICIARY IN COPYRIGHT ENFORCEMENT</p>	
7.	<p>Is the Judiciary an enforcer of the Copyright Act 2011 in Sierra Leone? (tick one option below)</p> <p>Yes..... No.....</p>
8	<p>What do you consider to be the Judiciary's critical role in enforcing the copyright Act?</p> <p>1. Protection copyright works</p> <p>2. Deterring piracy.</p> <p>3. Expedite copyright cases.</p> <p>4. Any other.....</p>
<p>SECTION D: EXPERIENCES ON ENFORCEMENT ENCOUNTERS WITH THE JUDICIARY</p>	
9	<p>How does the Judiciary enforce copyright in Sierra Leone by way of judicial enforcement measures? (Tick multiple answers)</p> <p>1. Conservatory or Provisional Measures.</p> <p>2. Seizure of pirated or suspected pirated goods.</p> <p>3. Awarded remedies by way of compensatory damages.</p> <p>4. Destruction of pirated goods and or manufacturing implements.</p> <p>5. Criminal sanctions.</p> <p>6. Any other?</p> <p>.....</p> <p>.....</p>
10	<p>Are these some of the support structures put in place to achieve copyright enforcement in Sierra Leone?</p>

	<p>1. Establishment of commercial court dealing with IP matters.</p> <p>2. Speedy court's hearings including IP cases (fast-track-court)</p> <p>Yes..... No.....</p> <p>Please name others:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
11	<p>Have you officially dealt with cases of piracy or copyright infringement?</p> <p>Yes..... No.....</p> <p>If "Yes", how many cases of copyright piracy have you dealt with in court?</p> <p>Please provide brief details of each case</p> <p>.....</p> <p>What were your main challenges when presiding over these cases?.....</p> <p>.....</p> <p>Any suggestions to address those challenges in future?.....</p> <p>.....</p> <p>.....</p>
	<p>SECTION E: THE IMPACT OF JUDICIAL ENFORCEMENT OF COPYRIGHT IN SIERRA LEONE</p>
12	<p>What impact has the Judiciary made in preventing infringement and protecting copyrights in Sierra Leone?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
13	<p>How easy or difficult has it been to deal with cases of copyright piracy?</p> <p>Very easy..... 1</p> <p>Easy 2</p>

	Difficult 3 Very difficult.....4 Provide brief difficulties or causes thereof.....
14	How common would you say the problem of copyright piracy is in Sierra Leone? Very common..... 1 Common..... 2 Not so common 3 Very rare.....4
	SECTION F: CHALLENGES ENCOUNTERED BY THE JUDICIARY IN ENFORCING COPYRIGHT IN SIERRA LEONE.
15	On the overall, what are the challenges faced by the Judiciary in enforcing copyright in Sierra Leone?
16	What do you think causes the current level of copyright piracy in Sierra Leone? (Multiple choice possible) Weak law enforcement.....1 Lack of knowledge of the subject matter.....2 Profitability 3 Scarcity of originals 4 High cost of originals 5 Other reasons(specify).....
SECTION G: RECOMMENDATIONS	

.....
.....
.....

APPENDIX C: QUESTIONNAIRE 2

FOR COPYRIGHT HOLDERS

SECTION A: THE RESPONDENT'S BACKGROUND INFORMATION

Category:	Please tick where appropriate: Right Holders: 1. Authors/Writers. 2. Artists (Creative). 3. Musicians 4. Actors/Actresses. 5. Other.....
City/Town	
1.Sex of Respondent	Male Female
2.Age of Respondent	21 – 30 31 – 40 41 – 50 51 and above

SECTION B: KNOWLEDGE ABOUT COPYRIGHT	
3	Do you understand copyright to be a form of intellectual property (IP) that protects the literary and artistic works of authors and creators from being exploited without their authorisation? (tick one option below) Yes..... No..... If No , what is your understanding about Copyright?

4	<p>Do you understand “Piracy” of copyright works to mean the unlawful manufacturing, distribution and sale of copies which have been made without the authority of the owner of the intellectual property?</p> <p>Yes.... No....</p> <p>If No, what is your understanding?.....</p>
SECTION C:THE ROLE OF THE JUDICIARY IN COPYRIGHT ENFORCEMENT	
5	<p>Is the Judiciary an enforcer of the Copyright Act (No.8 of) 2011 in Sierra Leone? (tick one option below)</p> <p>Yes..... No.....</p>
6	<p>Are the roles of the Judiciary in enforcing copyright include the following:</p> <p>1. Protection of copyright works 2. Deterring piracy. 3. Expedite copyright cases. 4. Any other.....</p>
SECTION D: EXPERIENCES ON ENFORCEMENT ENCOUNTERS WITH THE JUDICIARY	
7	<p>How does the Judiciary enforce copyright in Sierra Leone by way of judicial enforcement measures?</p> <p>(Tick multiple answers)</p> <p>7. Conservatory or Provisional Measures. 8. Seizure of pirated or suspected pirated goods. 9. Awarded remedies by way of compensatory damages.</p>

	<p>10. Destruction of pirated goods and or manufacturing implements.</p> <p>11. Criminal sanctions.</p> <p>12. Any other?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
8	<p>Have you sued for piracy or copyright infringement?</p> <p>Yes..... No.....</p> <p>.....</p>
9	<p>If “Yes”, how many cases of copyright piracy have you brought to court?</p> <p>.....</p> <p>.....</p>
	<p>SECTION E: THE IMPACT OF JUDICIAL ENFORCEMENT OF COPYRIGHT IN SIERRA LEONE</p>
10	<p>What impact has the Judiciary made in preventing infringement and protecting copyrights in Sierra Leone?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
	<p>SECTION F: CHALLENGES ENCOUNTERED BY THE JUDICIARY IN ENFORCING COPYRIGHT IN SIERRA LEONE.</p>
11	<p>What are the challenges you think the Judiciary encounters in enforcing copyright in Sierra Leone?</p> <p>.....</p> <p>.....</p> <p>.....</p>
12	<p>How easy or difficult has it been to sue for copyright infringement in Sierra Leone?</p> <p>Very easy..... 1</p> <p>Easy 2</p>

	Difficult 3 Very difficult.....4
13	How common would you say the problem of copyright piracy is in Sierra Leone? Very common..... 1 Common..... 2 Not so common 3 Very rare..... 4
14	What do you think causes the current level of copyright piracy in Sierra Leone? (Multiple choice possible) Weak law enforcement.....1 Ignorance.....2 Greed/Profitability..... 3 Scarcity of originals 4 High cost of originals 5 Other reasons (specify).....6
SECTION G: RECOMMENDATIONS 	