



## SCHOOL OF LAW

### NPIP511: COPYRIGHT AND RELATED RIGHTS

### END OF SEMESTER EXAMINATIONS

August/December 2024

LECTURERS: (Dr M. Ouma, Ms D. Makwinja & Mrs M. Jandwa)

DURATION: (3 HRS)

#### INSTRUCTIONS

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The paper contains 9 questions.

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Answer **one** question from **Section A**, **one** (1) question from **Section B** and **two** (2) questions from **Section C**. Answer questions for Section A, B and C in separate answer booklets given to you.

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Write your answer clearly. Use numbered headings or subheadings to show which part of your answer refers to which question. Example: Question 2 (a).

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## **SECTION A**

### **QUESTION 1**

Peter invited his friend Cyril, from Ethiopia, for a vacation in 2017. Peter planned to take his friend on a safari trip to show him the Victoria Falls, in Zimbabwe. Cyril agreed with Peter's plan and they spent their vacation at the Victoria Falls. Cyril got so influenced by the expedition, as to how fascinating the Victoria Falls is, how friendly the people were, and the scenery. He wrote a story about the Victoria Falls. The story was full of beautiful pictures taken by Cyril during the visit to Victoria Falls, and also included some pictures taken by Peter with his consent. Cyril did not register his written story with the Copyright office of either Ethiopia or Zimbabwe.

Cyril shared his written story with friends in Zimbabwe and went back to Ethiopia in January 2018. He continued to share the written story with friends and family in Ethiopia and Malawi. Soon, the story went viral. Peter learnt that Cyril's written story was influencing people to visit the Victoria Falls. He thought that, he could reach more people and earn some money if he creates a short film about it. Peter proceeded to write a script and make a short film based substantially on Cyril's story, without consent from Cyril. Whoever reads Cyril's story would definitely know that the short film is based on it. Peter registered the film in Zimbabwe and distributed it in Zimbabwe, and internationally. He earned about USD20,000 in just one week. Cyril learnt about this and has come to you for advice.

#### **Answer the following:**

- a) Identify the protected works
- b) Explain how the works are protected
- c) Are there any infringing acts? If yes, identify and explain whose rights are infringed by whom. **(30marks)**

### **QUESTION 2**

Cathy and Rose always had a preference for late 20<sup>th</sup> century poetry. They plan to publish a collection of such poems from various authors later this year, first in hard copy and later online. They have a contract with Africa University Publishing Ltd, based in Country A which provides a term of protection of life plus 70 years. Cathy and Rose are nationals of and live in Country B which provides for a term of life plus 50 years.

They want to include poems from the following authors:

- i) Anthony, who is a national of Country C whose country provides for a term of life plus 90 years and lives and publishes in Country D.
- ii) Imran, who is a national of Country E, which provides for a term of life plus 50 years.
- iii) Gloria, who is a national of Country F, which provides for a term of life plus 70 years.

Countries A, C, D, and E have signed and ratified the Berne Convention. Countries B and F have not signed and ratified the Berne Convention. Discuss the copyright implications of these facts **(30marks)**.

## **SECTION B**

### **QUESTION 3**

YOTE restaurant is a very famous joint where most people like to go and have their meals and enjoy the performances, which are usually held three times a week. YOTE has entered into a contractual agreement with a group of musicians to allow them to use the venue for their performances. Usually, during the three days of performances, YOTE makes extremely high profits by selling food and drinks. The group of musicians charge a fee for people to enjoy the entertainment. The contract clearly stipulated that no recording, broadcasting or live streaming of the performances was allowed without the permission of the musicians. This notice was also kept in the area where the performances are done. One day, Mina, the new waiter, invited his friends to YOTE restaurant, Sisu, Lele and Gigo to come and enjoy the food and drinks. That evening was superb. Sisu, Lele and Gigo met with Akili and narrated how magnificent their evening was. Akili, a business-minded person, saw this as an excellent opportunity to do business. So he went to YOTE and started recording the performances. As he has an unofficial Estate TV channel in the estate where he lives, he began broadcasting what he had recorded. The estate people loved the shows. He decided to make compilations of all the performances he had recorded and sold to people both online and physically branded ZANGU ORIGINAL. Akili informed Sisu, Lele and Gigo that his business is thriving thanks to them. Upon inquiring on the matter, the friends were divided; Sisu offered his shop, KIKO, to sell ZANGU ORIGINAL. Lele and Gigo were not for it. Sisu made profits from ZANGU ORIGINAL and shared the proceeds with Akili.

One of the musicians lived in the same estate as Akili, and on his off day, he went to the estate shops and saw the broadcasting of their performances. Upon inquiring, he was directed to Akili. Confronting Akili did not yield any fruits. He informed his fellow performers, and they went to the Manager of YOTE restaurant to raise a complaint. The manager was shocked. Upon investigations, the KIKO shop was cited.

- (a) Is there a cause of action by the performers? If yes, explain. If no, explain. (4 marks)

- (b) Is there a cause of action by Yote restaurant? If yes, explain. If no, explain. (4 marks)
- (c) What are your views on Sisu's actions? (2 marks)
- (d) What are your views on Akili's actions? (2 marks)
- (e) Which treaties/conventions are relevant and cite the applicable provisions? (3 marks)
- (f) What are the available remedies? (5 marks)

#### QUESTION 4

You are working at the Ministry responsible for Intellectual Property (IP) in your country as the IP adviser. The Permanent Secretary has instructed you to come up with a paper demonstrating the importance of copyright and related rights to the country, why the country should ratify/ accede to the international and regional Treaties/ Protocols on Copyright and Related Rights, the strategies to be undertaken for successful implementation of the Treaties/Protocol. **(20 marks)**

#### QUESTION 5

The Republic of Stars has ratified the Berne Convention and established institutional structures mandated on copyright and related rights. Tim, a prominent publisher of primary school books under the TIMSHER Publishing House based in the Republic of Stars, supplies books not only in the Republic of Stars but also in neighbouring countries. TIMSHER Publishing House is a registered entity in the Republic of Stars owned by Tim and his wife Dee, and it holds the copyright of their published books. Tim's business faced economic challenges, and he could no longer publish the books for some years, so he closed his business. Tim experienced health complications and died, leaving behind Dee, his wife, and a child.

Bemore, a resident of the Republic of Stars and an upcoming entrepreneur, after assessing the market in the neighbouring countries that are party to the Berne Convention, decided to supply the very same primary school books of TIMSHER Publishing House rebranded to include on the cover of the primary school books BEMORESHER Publishing House, and he translated all the books to the local languages of the neighbouring countries and supplied to them. The business was booming as he reached the niche market in all the neighbouring countries. Fifteen (15) years after Tim's demise, Bemore visited the Copyright Office of the Republic of Stars, applying to translate and reproduce the TIMSHER Publishing House primary school books in the Republic of Stars. The Copyright Office, having followed due process, realised that it had been over ten (10) years since those books were supplied in the country. They granted a license to Bemore to translate and reproduce the TIMSHER Publishing House primary school books with conditions that the author's name be indicated on all copies, the original title to appear and no export. Bemore, being excited, immediately

translated, reproduced and published the TIMSHER books and distributed them in the Republic of Stars.

Later on, Bemore brought the BEMORESHER Publishing House books that he had translated and reproduced and was selling in the neighbouring countries and put everything on the market. Bemore also uploaded all the TIMSHER and BEMORESHER books on the internet, selling digital copies and doing deliveries of all the books. Dee, in her shopping spree, noticed the BEMORESHER and TIMSHER books. It puzzled her as TIMSHER Publishing House had stopped reproducing its books seventeen (17) years ago. After shopping, she met with her friend Mimi at the ZI restaurant. Mimi was with her daughter Zena, who just graduated from the Masters in Intellectual Property at Africa University, Zimbabwe. Dee narrated the happenings, and Zena advised her to go to the Copyright Office (CO) for assistance.

On the other hand, the COs noticed the TIMSHER and BEMORESHER books during their operations in the Republic of Stars and seized them for further investigation. Dee, Tim's wife, heeded Zena's advice and visited the CO. You are tasked to help Dee.

- (a) From the scenario, write all the issues present. (5 marks)
- (b) Address each issue that you raised. (7 marks)
- (c) What advice will you give Dee? (2 marks)
- (d) Can you illustrate how the Berne convention principles are applicable in our scenario? (5 marks)
- (e) What action will you take? (1 marks)

## **SECTION C**

### **QUESTION 6**

Hydraone is an online platform that allows users to upload content as long content is legitimately acquired or owned. Prior to uploading any content, one is required to agree to the terms and conditions which provide that Hydraone has the right to take down any content that is flagged as having infringed on copyright and related rights. Juma, a content creator, uploads a ten-minute feature film that contains music from several artists from across the continent. Africa Vibes, a music publisher who owns the rights to some of the music in the feature film, gets to see the film through a post on his friend's social media page. Africa Vibes did not authorise the use of his music in the feature film and immediately contacts Hydraone who takes down the film after ascertaining that it indeed belongs to Africa Vibes. Based on the above, discuss:

- (a) Whether Hydraone is or is not liable for copyright infringement (15 marks)

- (b) Can Africa Vibes take any other legal action against Juma (5 marks)
- (c) What remedies are available for copyright infringement (5 marks?)

### **QUESTION 7**

The Africa Times, is media house that has an online newspaper with a footprint in most African countries and provides news, business, and other current affairs. It also provides news and other content on its Television Channel which is available online. Both are subscription services. Cleverly Inc. is a company that specialises in Chatbots developed Metafiles, which is now used for purposes of collecting, analysing, and creating content as well as provide updates on current affairs.

In the last six months, Africa Times has noticed a significant dip in subscriptions for both the online newspaper and the television channel. On further investigation, they discovered that most people have switched to accessing the news and current affairs by Metafiles as well as entertainment content which is very similar to their own content. This is due to the fact that Metafiles is collecting most of its data to create the content which is available for free online.

When Africa Times approached Cleverly, the latter claimed that the works were generated by Metafiles and were copyright protected.

Discuss the legal issues that arise from the above case (25 marks).

### **QUESTION 8**

Copyright law has over the years responded to various developments and challenges. In the digital environment, copyright faces unprecedented challenges. The ever-changing technologies are always ahead of copyright law. Discuss the recent developments in digital copyright and how copyright law has responded to the same. (25 marks)

### **QUESTION 9**

Wings, a Zambian software development company wishes to enter into a five-year licensing agreement with Onwards Technologies, based in Ghana to distribute their software in Ghana (their headquarters) and other West African Countries only. This was an exclusive agreement. Onwards Technologies in willing to enter into the agreement on condition that the contract includes a WIPO Expedited Arbitration clause that provides that the national law of Ghana would apply in case of any dispute. Wings, has hired you as their lawyer and are seeking you counsel on the following

- (a) Dispute resolution mechanism available at the WIPO Arbitration and Mediation Centre (8 marks)
- (b) Advantages of WIPO Arbitration over court determination of a dispute? (12 marks)
- (c) Role of WIPO Arbitration and Mediation Centre in Arbitration proceedings (5 marks)

**End of Paper**