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COPYRIGHT PERMISSIONS GRANTED LIBRARIES IN GHANA: AN EXPOSITION OF SECTION 21 OF THE COPYRIGHT ACT 2005 (ACT 690)

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COPYRIGHT PERMISSIONS GRANTED LIBRARIES IN GHANA: AN EXPOSITION OF SECTION 21 OF THE COPYRIGHT ACT 2005 (ACT 690)

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ABSTRACT

Libraries are of utmost importance in our society. Its impact causes a ripple effect across generations and therefore a needed resource in our communities. However, in light of benefitting from the resources of the library, there is the need to consider the interests of the authors who helped contribute to the resources of the library. This paper is an exposition into the extent libraries are permitted to slightly offend the interests of authors in Ghana.

Key words: Copyright, libraries, intellectual property.



1.0 INTRODUCTION

George Washington, the first President of the United States of America said “*Knowledge is, in every country, the surest basis of public happiness*”¹. Libraries are a sure way to benefit from this saying, since they provide a fountain of wisdom; whether into the past, present or future. Clearly, a country that reads is an innovative one, as knowledge is shared, ideas implemented and citizens are the better for it. But in a bid to share all that information, to what extent can protected copyrighted work be reproduced or used by libraries? This paper delves into the permissions that have been granted libraries pursuant to Section 21 of the Copyright Act, 2005 (Act 690), to make copies of protected work.

2.0 INTELLECTUAL PROPERTY LAW AND COPYRIGHT

Copyright constitutes an aspect of a wider area of law called Intellectual Property (IP). Intellectual Property simply refers to creative work developed by a person's innovation. The existence of IP creates Intellectual Property rights, the protection of which precipitated the enactment of the Paris Convention for the Protection of Industrial Property in 1883 and the Berne Convention for the Protection of Literary Works in 1886.²

Intellectual Property rights are rights that accrue to a person as result of their creations and for which the law provides protection from unlawful use or exploitation. By granting protection to creators, they are able to get economic benefits from their works against the balanced interest of the public. Also, with statutory protection, creatives are able to tap again from their creative juices and innovate in their creative ventures, which enhances economic stability and societal development in the long run. Intellectual Property is usually divided into two branches, namely, industrial property and copyright.³ Previously, a number of intellectual property rights were identifiably lumped as “Industrial Property”. Those intellectual property rights are patents, trademarks and designs, law of confidence and passing off. The focus of this article is solely on copyright.⁴ According to Lior Zemer, copyright declares ownership over authorial and artistic resources and confers exclusive entitlement and control to a

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¹ First Annual Address to Congress on January 8, 1790

² WIPO. Understanding Copyright and Related Rights. 2016

³ Supra.

⁴ Bainbridge David I. Intellectual Property, Pearson Education Limited 2007.



definitive category of creators, engaged in genuine activity vested in original works.⁵ According to him, copyright is a system that sanctifies and preserves the right to ownership.

Copyright seems to be the primary legal means of Intellectual protection in Ghana⁶. Unfortunately, Ghana's Copyright Act, 2005⁷, the substantive statute on copyright and its related issues in Ghana, does not define Copyright, a situation which the writer suggests should be amended.

The writer of this article will therefore resort to WIPO's definition of the subject that defines it as "*authors' rights*" - *the act of copying an original work, which, in respect of literary and artistic creations, may be done only by the author or with the author's permission.*⁸ This definition limits the reach of copyright to a work or art that is original, being fixed in a definite medium of expression and with a quality beyond mere ideas, concepts and procedures.⁹ The significance of copyright law is to prevent others from taking unfair advantage of a person's creative efforts¹⁰. In the case of **University of London Press Ltd v University Tutorial Press Ltd**, the learned Peterson J expresses this succinctly as follows: "...*there remains the rough practical test that what is worth copying is prima facie worth protecting*"¹¹.

3.0 LIBRARIES AND THE RIGHT TO INFORMATION

The 1992 Constitution guarantees the right to information, subject to such qualifications and laws as are necessary in a democratic society¹². This constitutional right is further reinforced by Section 1(1) of the Right to Information Act, 2019¹³. Even though this right is not absolute, it is guaranteed regardless. Typical instances of channels which enable access to this right of information is the library and archives.

Libraries hold the wisdom of ages, and as such, contribute massively to the overall economic, social and cultural growth of people in a society. In fact, a society which reads is easily progressive in terms of education, innovation, and technology. The library has many duties, notable is the public access to knowledge and information, storage, collection and preservation of literary works for future generations.

⁵ Lior Zemer. The Idea of Authorship in Copyright, Taylor & Francis Group 2007. ProQuest Ebook Central

⁶ Boateng, B. (2011). The Copyright thing doesn't work here: Adinkra and Kente Cloth and intellectual property in Ghana. U of Minnesota Press

⁷ Act 690

⁸ Ibid.

⁹ Pearson Education Limited v. Morgan Adzei (2011) JELR 106945 (SC)

¹⁰ Supra.

¹¹ [1916] 2 Ch 601 at 610

¹² Article 21(1)(f) of the 1992 Constitution

¹³ (Act 989).



Library and information services in Ghana may be classified into four broad categories; namely: public library services, academic libraries, special libraries and school libraries.¹⁴

Public libraries are provided by the Ghana Library Authority which is supported by the Government to provide library services in order to meet local needs.¹⁵ The history of Public Library Services in Ghana can be traced to 1928 when the Right Reverend John Orfeur Anglionby, the Anglican Bishop of Accra (1924 to 1951) made his personal library collection of about 6000 volumes available to the public. Eventually, in 1944, the British Council established the first lending library in Accra. This initiative was received with enthusiasm from the public which led to the establishment of the Gold Coast Library Board (now Ghana Library Authority), and thus began the initiative to build libraries in the various regions in Ghana.¹⁶

Academic libraries are libraries developed with the aim of facilitating teaching, learning and research. These libraries are found in the tertiary institutions like University of Ghana's Balme Library. Special libraries are created for provision of information to support the objectives of the mother organization. An example of a special library is a law library found in a law firm. A practical instance is the Supreme Court library which is believed to have started with the establishment of the Supreme Court in 1876. The Supreme Court library contains statutes, court forms and precedents, law reports, legal textbooks, and government publications amongst others.

School libraries are usually found in second cycle and primary school institutions in the country to support, teaching, learning and recreational programmes of the schools. A typical example is the Achimota School library. This example is worth mentioning because the first library training school to be established in Ghana was at the then Achimota College in 1944, which was created as a joint venture by three British West African Colonies; Sierra Leone, Ghana and Nigeria.¹⁷

4.0 COPYRIGHT IN GHANA

Owners of copyright are entitled to put the internationally recognized copyright symbol on their work. The symbol “©” or the word “copyright” is used, after which the name of the author is used and the year of publication. For instance, © *Ebo Whyte* 2023. The use of this is to presumptively remind the person using the material that it is protected by copyright and thereby identifies the person who claims to be the owner of the copyright. This is incorporated in various artistic works that are produced in the country.

¹⁴ A.A. Alema. A Review of library provision in Ghana. 1997, *Library Review*. Volume 46

¹⁵ Ghana Library Authority Act, 1970 (Act 327)

¹⁶ G.M. Pitcher. Libraries and Librarianship in Ghana 1944-1969

¹⁷ *ibid.*



A creative in Ghana may choose to actively register his work or not. Non-registration of a creative work does not deny the creator protection of his work.¹⁸ However, registration of creative work comes with its own benefits which include: maintenance of record of works, publicity of the rights of owners and to give evidence of the ownership and authentication of intellectual property¹⁹.

The procedure for registration is stated in the Copyright Regulations, 2010 (L.I. 1962), where the author of a creative work, computer software, computer programme or derivative work must apply to the Copyright Office for the registration in a specified form, and attach a copy of the work to be registered and the prescribed fee to be paid for registration. After which, the applicant would be issued with a Certificate of Registration of Copyright upon successful determination by the Copyright Administrator.²⁰

The Works protected under copyright in Ghana include literary work, artistic work, musical work, sound recording, audio-visual work, choreographic work, derivative work and computer software or programme²¹. For the aforementioned works to be eligible for copyright protection, they must meet three criteria.

Firstly, it must be original in character. Originality, in this sense, is more focused on the manner in which the work was created and that the creative work was not copied from another work²². Lord Pearce in **Ladbroke (Football) Ltd v William Hill (Football) Ltd** was of the view that the word “original” requires: “...only that the work should not be copied but should originate from the author”²³.

Also, in the case of **Haenba v Electoral Commission**²⁴, the learned Ofori-Atta J referred to the case of **Alfred Bell & Co v Catalda Fine Arts Inc.**²⁵ and noted as follows:

“It has been held that ‘original’ in reference to a copyrighted work means that the particular work owes its origin to the author and no large amount of novelty is necessary. It seems to me therefore that for a product to qualify to be copyrighted, it must be new and interesting in a way that is different from anything that has existed before.”

Secondly, it must be in a fixed medium of expression (which is known or later to be developed) capable of being perceived, reproduced or otherwise communicated, and lastly, it must be created by a citizen or published in Ghana. If the work is published outside Ghana, it must subsequently be published in

¹⁸ Section 39(4) of Copyright Act, 2005 (Act 690)

¹⁹ Section 39(2) of Copyright Act, 2005 (Act 690)

²⁰ Regulation 1 & 3 of Copyright Regulations, 2010 (L.I. 1962)

²¹ The writer believes that this list may have to be updated. In the wake of digital writing, where one composes a post on social media which goes viral, is it protected under copyright? Or should it be registered under trademark laws for the author to benefit from his/her post. Ghanaian laws are silent on this subject and it is about time laws on intellectual property rights are put in place.

²² Ibid.

²³ [1964] 1 WLR 273 at 291

²⁴ 1 GLR [2008-2009] 66

²⁵ 191 F2d 99 at 102



the country within thirty days of its publication outside Ghana, or it is a work that Ghana has an obligation under an international treaty to grant protection.²⁶

When one claims credit for a work that that person did not create, that person may be said to be infringing on the rights of the original owner of the work whose work is protected under copyright. This means that the copyright owner/original owner of the work can rely on his statutory rights to bring an action against the misfeasor.

There have been several cases of copyright infringement in our courts. One of which is the case ***Kwadey v CAF***²⁷, where Ghanaian music producer, Kwabena Offei-Kwadey, popularly known in the music space as Spiky initiated a suit against the Confederation of African Football (CAF) for using his music beat titled “Komfo Anokye” as part of their promotional campaign for their 2018 CAF awards without his consent. The court found in the plaintiff’s favour and he was awarded damages worth \$250,000.00 and costs of GHS 40,000.00.

Essentially, copyright owners have two rights; economic rights and moral rights²⁸. Economic rights, according to Andrew Amegatcher²⁹ are the rights of exploitation of the work and the resulting right of receiving remuneration therefrom. He further expresses that the creation of a work will not itself generate income for the author. It is the exclusive right it gives to the author to exploit his work and to receive appropriate remuneration which makes copyright a commodity which can be bought, sold or transmitted to others by will. The economic exploitation of one’s work requires the author to enter into many forms of licensing agreements.³⁰

Moral rights, on the other hand, refer to the right to be known as the author of the copyright-protected work. Put differently, moral rights constitute the right to claim authorship and the right to object to modification and derogatory treatment of the author’s work³¹ In essence, this includes the right to have the author’s name mentioned in any dealings in respect of the work and to prevent the modification of the work in any manner that harms the author’s reputation³². In the case of ***Fred Kusim Awindaogo v Martin Luther Kpebu and Another***,³³ per the terms of the Author Collaboration Agreement signed, the Plaintiff’s name was to appear first and the 1st Defendant’s name was to follow, even though they were both to be considered as “Co-Authors”. However, the 1st

²⁶ Section 1(2) of Copyright Act, 2005 (Act 690)

²⁷ Suit No. CM/IPR/0595/2022

²⁸ Section 5 and 6 of Copyright Act, 2005 (Act 690)

²⁹ Andrew Amegatcher. Ghanaian Law of Copyright (pg. 26)

³⁰ Ibid.

³¹ Ibid.

³² Kwabena Frimpong Mensah. Kirani Ayat v The Republic- A New Dawn for Copyright Protection in Ghana. October 28 2022.

³³ (2023) JELR 112042 (HC)

Defendant changed the position of the plaintiff's name on the book at the displeasure of the plaintiff. This situation exemplifies moral rights in action.

The moral rights of copyright owners cannot be transferred, and therefore exist in perpetuity³⁴, what can be transferred is the economic right. In this respect, the copyright owner is afforded protection under the copyright Act for seventy years from the date the creative work was first published or made available to the public³⁵. Once the seventy years elapse, those works are no longer subject to copyright protection and can enter the public domain subject to the moral rights of the author of that work.

However, while the copyright protection right is still subsisting, and is in danger of being infringed or are being infringed upon, the law prescribes a remedy by the initiation of civil proceedings in the High Court for an injunction, detainment of goods (where the right is in respect of imported goods or goods ready for export), or the recovery of damages for the infringement.³⁶

5.0 COPYRIGHT AND LIBRARIES IN GHANA

Libraries hold the balancing duty of two interests; to satisfy the information requests of patrons and at the same time, protect the interests of authors and publishers who need to benefit from their works, in terms of recognition or economic benefit. Copyright is important in the sense that it provides a means for allocation of risks and income that are garnered from the sale of a work. It also provides remedies for published and unpublished works. Thus, works which are copied and sold without the consent of the author or copyright owner, the author or copyright owner per the circumstances may be entitled to remedies such as damages, additional damages, accounts of profits, and injunctions.³⁷

Copyright creates an effective initiative of exploiting a work economically³⁸. This is the idea behind Copyright law. Perhaps, the erudite Dr. Date-Bah JSC in the Supreme Court case of **Pearson Education Limited v Morgan Adzei**³⁹ crafts it in a more suitable way, when he wrote:

"Copyright law endeavours to strike a balance between protecting the economic rights of owners of copyright and the need to encourage the free exchange and dissemination of ideas which is vital for the development and progress of any society."

This duty can be daunting for librarians, because how does one know the parameters within which one interest ends and the other begins? Fortunately, the law has intervened to give reprieve to librarians.

³⁴ Section 18 of Copyright Act, 2005 (Act 690)

³⁵ Section 12, 13, 14, 15, and 16 of Copyright Act, 2005 (Act 690)

³⁶ Section 47 of Copyright Act, 2005

³⁷ Supra.

³⁸ Supra.

³⁹ [2011] GHASC 47 (1 June 2011)

Libraries are permitted to make copies of protected copyrighted work to some extent, to enable fair use. To balance interests, libraries do what is known in the realm of copyright law as ‘fair use’ or ‘fair dealing’. Fair dealing enables the use of work which would otherwise be an infringement, and usually, a relevant amount of the original work is used.⁴⁰

Some libraries reproduce copyrighted works which are stored in institutional repositories in universities and research institutions. A typical instance is the Digitization Department of the Balme Library. Such repositories comprise collections of intellectual publications including those of faculty members, theses, research reports and scholarly publications of lecturers and students in the institution.

Many research institutions and universities are adhering to the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities. The Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities was published in 22nd October, 2003⁴¹. It advocates for accessible scientific and cultural works to be easily accessed and disseminated⁴². Most academic institutions as a result, have enabled their libraries to implement the open access policy by collecting all research material produced by the researchers and making them available to all. In order to provide access, most of the time, literary works would have to be digitized.⁴³ Also, the digitization of these materials makes it easier to easily identify plagiarized work.

But there is a quandary. Section 42 of Act 690 outlines a long list of copyright and related rights offences, one of which involves the reproduction, duplication, extraction, or imitation of the protected work, except for that person’s private use. This is an offence which surmounts to a fine of not more than one thousand penalty units and not less than five hundred penalty units or to a term of imprisonment of not more than three years or to both. Where it is discovered that the offence is a continuing one, the offender is liable to a fine of not less than twenty-five penalty units and not more than one hundred penalty units for each day during which the offence continues.⁴⁴ This is why the provision in Section 21 of Act 690 is relevant.

6.0 THE AMBIT OF SECTION 21 OF ACT 690

⁴⁰ Supra.

⁴¹ “Berlin Declaration” <https://openaccess.mpg.de/Berlin-Declaration>

⁴² “Forty-Six (46) African Higher Education Institutions to Date Have Signed the Berlin Declaration on Open Access to Knowledge in Sciences and Humanities” (AAU Blog, July 21, 2016) <https://blog.aau.org/forty-six-46-african-higher-education-institutions-to-date-have-signed-the-berlin-declaration-on-open-access-to-knowledge-in-sciences-and-humanities/>

⁴³ Dusollier S. 2013. The limitations and exceptions to copyright and related rights for libraries, research and teaching uses. In Study on the Application of Directive 2001/29/EC on Copyright and Related Rights in the Information Society (the “InfoSoc Directive”) (pp. 243-414). European Union.

⁴⁴ Section 43 of Copyright Act, 2005 (Act 690)



In Ghana, libraries and archives have been granted certain privileges within the ambit of Section 21 of Act 690, when it comes to copyright. Section 21 has six subsections and these provisions will be reviewed in subsequent paragraphs.

First, Section 21 states that a library with activities without gain, may, without the authorization of the author or other owner of copyright make a single copy of the work by reprographic reproduction⁴⁵. The Copyright Act does not define what “reprographic reproduction is. A simple internet search, however, reveals that reprographic reproduction involves the process of making copies or reproducing images or text through electronic or mechanical methods. Instances of reprography involves scanning, photocopying, printing, digitizing or electronic storage in databases.

Basically, what Section 21(1) of Act 690 seeks to set across is that a non-profit library, which is usually an academic or public library, is entitled to only one reprographic reproduction of the author’s work without the permission of the author or copyright owner.

Section 21(2) of Act 690 goes ahead to state as follows:

“A reprographic reproduction under subsection (1) may be made when the work reproduced is a published article, other short work or short extract of a work and where the purpose of the reproduction is to satisfy the request of an individual.”

This provision, in essence, relates to the reprographic reproduction mentioned earlier in subsection (1) of Section 21 of Act 690. Unfortunately, this provision does not delve into what constitutes “**short work**”, neither does it explain what “**short extract of a work**” entails.⁴⁶ But it seeks to give out the idea that the reproduction of the copyrighted work should not constitute the whole work if it is not a published article.

The next provision⁴⁷ sets out to specify the library’s involvement with respect to the reprographic reproduction. It charges the library to ensure that the copy that is being made is to be used only for the patron’s study, scholarship or private research.

Section 21(4) of Act 690 further stipulates:

“The act of reproduction under subsection (1) shall be an isolated case which shall occur on separate and unrelated occasions and shall occur where,

(a) there is no collective license available under which copies can be made, or

⁴⁵ Section 21 (1) of Copyright Act, 2005 (Act 690)

⁴⁶ This includes another reason the author thinks the Copyright Act must be revised. For all purposes, the author reckons that the word “short work” should have a definition based on pages, volume or size of a particular work.

⁴⁷ Section 21 (3) of Copyright Act, 2005 (Act 690)



(b) the copy is made in order to preserve or replace a copy which has been lost, destroyed, or rendered unusable in the permanent collection of similar library or archive if it is impossible to obtain the copy under reasonable conditions.”

This indicates that the reproduction of the copyrighted work in a non-profit library should be an isolated case and should occur on separate and unrelated occasions. However, this condition of reproducing the copyrighted work on separate and unrelated occasions must be subject to two conditions. The first condition is where there is no collective license available under which copies can be made. A Collective License, as defined by the interpretation section of the Copyright Act, means ***a license issued by a collective administration body under which copies of a protected work can be made.***

The Copyright Act grants authors, producers, performers and publishers the right to form collective administration societies in order to both promote and protect their interests, as far as copyright protection is concerned. It is on the authority of the copyright owner that a collective administration society has the right to collect and distribute royalties and other remuneration accruing to the owner.⁴⁸ In Ghana, the collective administrative society responsible for this activity is known as Collective Management Organizations (CMOs). A typical example of a Collective Management Organization in Ghana is CopyGhana. Per Section 18 of the Copyright Regulations, 2010,⁴⁹ an organization like CopyGhana has the right to determine photocopying fees on works protected by copyright and related rights by educational institutions and any other outlets where reprography is carried out commercially.

The second condition is for preservation purposes or to replace a copy where obtaining a copy under reasonable conditions prove futile. The practice that the writer of this article observed in some libraries is that where a book is too damaged, the librarian makes a scanned copy of the book to be added to the e-book collection in the library. It should however be noted that where the library requires double or multiple copies of a work, permission must be sought from either the author, other owner of the copyright, or an appropriate Collective Administration Society authorized by the publisher since the interests of the author, relevant administration society or the publisher are at stake.⁵⁰

But the above exposition raises a question; does it mean that libraries that are opened for commercial purposes may not be able to exercise this permission that has been granted non-profit libraries? Clearly, this seems to be the message that is being sent across. The present writer submits that it is imperative that commercial libraries be made to benefit from this rule with specific restrictions, as they also attend to the information-seeking interests of patrons, encourage reading habits through their promotional strategies, and inadvertently market publications of authors.

⁴⁸ Section 49 of Copyright Act, 2005 (Act 690)

⁴⁹ (L.I. 1962)

⁵⁰ Section 21(5) & (6) of Copyright Act, 2005 (Act 690)

7.0 CONCLUSION

In summation, Section 21 of the Copyright Act have served non-profit libraries very well, but there is room for improvement when it comes to the Copyright Act. There is the question of how this provision can apply to profit-making libraries since they also fulfill information needs of patrons. To what extent can they benefit from the provision in Section 21 as they garner their profits?

The Act also needs to answer questions on whether copyright provisions will apply to viral posts on social media? Whether quotes by artificial intelligence sources like ChatGPT would amount to a breach of copyright protection? Whether books or information resources on an archiving website like internetarchive.org would infringe on the authors' rights? Or whether an action in copyright law would subsist against copying an advertising slogan or headlines on an internet website? What about the right to privacy in photographs and films in light of social media and privacy laws? It is questions like this call for an amendment on the current Copyright Act.

