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Copyright in the field of information and communication technologies in Mozambique

Copyright in the scope of information and communication technologies in Mozambique

Author rights within the scope of information and communication technologies Mozambique

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SUMMARY

This research aims to address Copyright in the Scope of Information and Communication Technologies in Mozambique. With the rise of information and communication technologies (ICTs), new challenges and opportunities have emerged for the protection of these rights. Copyright infringement occurs when someone uses a work protected by copyright without the permission of the rights holder, thus infringing on their exclusive rights. This may include unauthorized reproduction, distribution, public display, adaptation or performance of a protected work. In the face of the Internet, the dilemmas to be faced have multiplied, namely, the clash between freedom of information, knowledge and entertainment, on the one hand, and, on the other, the protection of the creator and the consequent investment, as well as the way in which this dynamic occurs and which will lead to the consideration of the much-desired balance of Copyright. Copyright, also known as copyright, is the right that every creator of an intellectual work has over his or her creation. This right protects literary, artistic and scientific works, giving the author the power to authorize the use of his work, whether for purposes of reproduction, distribution, adaptation or others.

Keywords: Copyright; literary, artistic and scientific works.

ABSTRACT

This research aims to address Copyright in the Scope of Information and Communication Technologies in Mozambique. With the rise of information and communication technologies (ICTs), new challenges and opportunities have emerged for the protection of these rights. Copyright infringement occurs when someone uses a work protected by copyright without the permission of the rights holder, thus infringing on their exclusive rights. This may include unauthorized reproduction, distribution, public display, adaptation or performance of a protected work. In the face of the Internet, the dilemmas to be faced have multiplied, notably the clash between freedom of information, knowledge and entertainment, on the one hand, and, on the other, the protection of the creator and

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the consequent investment, as well as the way in which this dynamic occurs and which will lead to the consideration of the much-desired balance of Copyright Law. Copyright, also known as copyright, is the right that every creator of an intellectual work has over his or her creation. This right protects literary, artistic and scientific works, giving the author the power to authorize the use of his work, whether for purposes of reproduction, distribution, adaptation or others.

Keywords: Copyright; literary, artistic and scientific works.

ABSTRACT

This investigation aims to address author rights within the scope of information and communication technologies (TIC) in Mozambique. With the rise of information and communication technologies (TIC), new challenges and opportunities have emerged for the protection of these rights. The infringement of author rights occurs when someone uses a work protected by author rights without the authorization of the owner, thus infringing their exclusive rights. This may include unauthorized reproduction, distribution, public exhibition, adaptation or interpretation of a protected work. Before the arrival of the Internet, the dilemmas have multiplied, in particular the conflict between the freedom of information, knowledge and entertainment, on the one hand, and, on the other, the protection of the creator and the consequent inversion, as well as the way in which this dynamic is produced, which will lead to the consideration of such a desired balance in the legislation on author rights. The author's right, also known as copyright, is the right that every creator of an intellectual work has over its creation. This right protects literary, artistic and scientific works, giving the author the right to authorize the use of his work, as well as for the purposes of reproduction, distribution, adaptation or others.

Keywords: Author's right; literary, artistic and scientific works.

INTRODUCTION

In this paper we will talk about Copyright in the Scope of Information Technologies. Communication and Information in Mozambique.

Copyright is a set of rights that protect literary, artistic and scientific, guaranteeing the creator control over the use of his creation by defining conditions under which other people can use or reproduce these works, usually through licenses specific. These rights ensure that creators are rewarded for their work and encourage innovation and creativity. The consequences of copyright infringement can range from legal notices and content removal to lawsuits resulting in fines and monetary damages.

In 1967, a Specialized Section on the Organization of the United Nations was created in Stockholm. United Nations (UN). It was especially intended for Intellectual Property, WIPO (International

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World Intellectual Property Office)2 , and it was its purpose to encourage creative activity and promote the protection of intellectual property in the world.

The advent of digital technology has brought new opportunities for exploration and also great challenges, requiring a global solution that could have been achieved through a review of the Berne Convention. However, the international environment was not favorable for this purpose. Hence the decision to adopt separate texts, namely: the Treaty on Instruments of Technical Self-protection and on Procedural Protection (TODA), in response to the industry discussions on advances in digital technology and the popularization of Internet; the Treaty on Performances, Interpretations and Phonograms (TOIEF), 1996, but which It only came into force on May 12, 2002, and its purpose was to protect phonograms of performing artists and performers3 .

Finally, there was an attempt to protect the performances of performing artists. who have consented to the inclusion of their performance in a fixation of images or images and sounds, at a diplomatic conference held in 2000 under the auspices of WIPO, which sought the adoption of a new treaty on this matter, which was not successful, however, due to the lack of agreement between the participating States4 .

It should be noted that, since 1858, at the 1st Congress of Authors and Artists in Brussels, the German delegation has questioned the possibility of abandoning the principle of national treatment in favor of a treaty codifying international copyright laws and establishing a law uniform among all contracting States. Although most participants have considered this proposal desirable, they chose to reject it, understanding that such a measure would require major changes to their domestic laws, which many countries would not have technical conditions to carry out.

In Mozambique, Copyright is regulated by Law No. 9/2022, of June 22, which repeals Law No. 4/2001 and establishes the rules for the protection of copyright and related rights.

[2] For a study on the history and activities of WIPO, see Debora HALBERT. "The World Intellectual Property Organization: Past, Present and Future", pp. 253-284.

3 For a more in-depth look at the genesis of the Treaties, see Pedro João Fialho da Costa CORDEIRO. Copyright and Broadcasting. A Study of Broadcasting Law from its Beginnings to Digital Technology, p. 140-143.
4 Dário Moura VICENTE. The International Protection of Intellectual Property, p. 132.

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THEORETICAL BASIS

History of Copyright

A brief observation on the genesis and development of the Copyright doctrine becomes necessary to understand its foundations and principles and, even more, its influence on its legal treatment.

The history of Copyright Law is normally treated from the invention of the printing press and, In fact, Gutenberg's invention brought about a series of changes that altered ways of production, systematization, dissemination and consumption of information, being one of the great drivers of the Renaissance and the Reformation5 , and making the environment conducive to the development of Copyright regimes. However, despite being considered the great precursor of this regime, it cannot be forgotten that, long before its advent, it was already they saw some signs of recognition of authorship of the works, it being certain that man has always been aware of his creative power.6

Given the difficulty of making a detailed description and also considering that the story Copyright can be analyzed from different perspectives – for example, the study of the expansion of its protection, and the study of the expansion of the rights granted7 _8 – we only intend to show the basis for protection. In this sense, the observation of historical events prior to being enshrined in law, allows us to better understand the reasons that led to structure the recognition of authorship and, subsequently, to design a provision for its protection.

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[5] Second thesis by Elizabeth EISENSTEIN. The printing press as an agent of change, p. 122.

6 For reports on evidence of recognition of authorship in Ancient Times, see Daniel ROCHA. Copyright Law, p. 14; Elizangela Dias MENEZES. Copyright Course, p. 21; Wilson MARTINS. The Written Word: history of the book, the press and the library, p. 393. In Rome, some evidence of a trade in intellectual works was already detected. However, unlike the current system, copyists were paid for their work, while the intellectual creator received nothing but recognition and glory. (Henrique GANDELMAN. From Gutenberg to the Internet: copyright in the digital age, p. 29). In Rome, books were generally reproduced by slaves for rich patrons. (Edward SAMUELS. The Illustrated Story of Copyright, p. 6 [Part 1 – Copyright and Technology, Chapter 1 – Books and Other Literary Works,]). Furthermore, the Middle Ages marked the beginning of a period considered backward in relation to the previous one in terms of literary and artistic production, with this activity being dominated by the Church, which used the labor of copyist monks who were secluded in monasteries, where they copied books from Classical Antiquity one by one. (Guilherme C. CARBONI. Copyright in multimedia, p. 37) and (Edward SAMUELS.

The Illustrated Story of Copyright, p. 7). In the 12th and 13th centuries, universities began to enter the book production business, using paid copyists. Ibid., p. 7.

7 Lionel BENTLY; Brad SHERMAN. Intellectual Property Law, p. 33.

8 The history of copyright has a multidisciplinary nature that involves legal, sociological, economic, political science, philosophy, etc. Umberto IZZO. Alle Origini del copyright e del diritto d'autore, p. 17.

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It was in the Modern Age that the creation of literary and artistic works once again experienced a strong increase, both in quantity and quality9 . This expansion became possible with Gutenberg's invention and with an urban cultural movement of intense intellectual production, which reached the elite of prosperous cities who felt culturally linked to Greco-Roman antiquity10.

This expansion led to the creation of a Copyright system that was the basis for the development of the systems we know today11 12 13, as it created an environment for commercialization of works. Thus, the need for protection of the work began, as well as a change in mentality regarding the concept of Author14_15, and a network was born of exploitation of artistic works with the emergence of the figures of the printer, the book seller and the commercial practice with a profit-making intention on the part of these figures16 17.
Despite this trade, the dynamics between the participants were very different from the way today we know it without the rules of ownership, and it often happened that editors and printers to reproduce each other's works, regardless of whether they were investors in the printing of the work. Another consequence of the advent of the printing press was that authors lost absolute control over the supervision of the production of copies, and third parties were often reproduce and print their own versions, without necessarily worrying about the original version and without also bearing the costs of the first edition18.
It was for this reason that printers began to demand protection for their investments, through privileges, at the same time that the need was felt by the Church and the monarchies, of some control over the distribution of books and the information contained therein. Thus

9 We say expansion because previously there was already a small movement around the book trade. Tönnes KLEBERG. "Library trade and publishing activity in the ancient world".
10 The invention and its dissemination throughout the European continent led to an increase in the trade of printed books and the formation of Book Fairs in several cities of some importance in this territory, such as Lyon and Frankfurt. Lucien FEBVRE; Henri-Jean MAR TIN. The emergence of the book. São Paulo: UNESP/HUCITEC, 1992, p. 326.
11 Eduardo J. Vieira MANSO. What is copyright, p. 13.
12 The need for protection also arose because at this time what could be considered the equivalent of "piracy" began. Antonio CHAVES. Copyright. 41-42 13 Antonio CHAVES. Copyright, p. 25.

14 The invention and its dissemination throughout the European continent led to an increase in the trade of printed books and the formation of Book Fairs in several cities of some importance in this territory, such as Lyon and Frankfurt. Lucien FEBVRE; Henri-Jean MAR TIN. The emergence of the book. São Paulo: UNESP/HUCITEC, 1992, p. 326.
15 Eduardo J. Vieira MANSO. What is copyright, p. 13.
16 José Costa NETTO. Copyright Law in Brazil, p. 32.
17 It is called expansion because previously there was already a small movement around the book trade. Tönnes KLEBERG. "Library trade and publishing activity in the ancient world".
18 Antonio CHAVES. Copyright, p. 25.

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a system was designed that established an exclusive right for printers, granted by the monarch and based on political criteria19 20.

This practice spread throughout the European continent, becoming consolidated in the 16th century. In In England, publishers and booksellers organized into an institution, the Stationer's Company, received from Kings Phillip and Mary Tudor the exclusive right to publish books21, gaining control over the writings, both in relation to the creator and in relation to the content. This control was called copyright, that is, copy right, an expression still used today22 23 24.

Privileges of the most diverse types were then granted. The authorities that granted them varied. granted (municipal, ecclesiastical, papal, imperial), the duration, the penalties imposed in case of infringement, the extension of privileges, not only for specific works but also for certain classes of works. Elizabeth ARMSTRONG. Before Copyright: the French book privilege system 1498-1526, p. 11-15.

Extending Copyright Protection and International Copyright Law

The international book trade and the emergence of new technologies have led to an extension of the Copyright rules, which occurred both in terms of territory and content protected. This movement ended up forcing the elaboration of bilateral agreements between countries Europeans, giving rise to a systematic elaboration of international treaties on Human Rights Author.

The first, the Berne Convention of 188625, last amended in 1971, still stands today as one of the main treaties on this subject26, giving rise to the "universal law of

[19] Elizangela Dias MENEZES. Copyright Law Course, p. 22.
20 José Antonio VEGA. Author's Law, p. 47.
[21] João Carlos de Camargo EBOLI. Small Copyright Mosaic, p. 21.
[22] Copy-Wrongs" of "Copy-Rights"! Are We Resurrecting the Licensing Era?", p. 134.
23 José Antonio VEGA. Author's Law, p. 47.
24Lyman Ray PATTERSON, Copyright in historical perspective, p. 20.
[25] The US initially adopted a strategy of non-adherence to international treaties, changing this stance only in 189248. Also late, in 1989, they joined the Berne Convention, aiming to include intellectual property in general in the discussions of the Uruguay Round of the GATT (General Agreement on Tariffs and Trade), which came to form the World Trade Organization.

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copyright”, with a series of general principles that should govern the treatment of works.
This territorial expansion occurred voluntarily and by imposition, in the case of the colonies of signatory countries such as France, the United Kingdom and Germany. The independence of these colonies led to questioning the imposed norms. In this sense, the meeting of the Stockholm Union in 1967, with the aim of dealing with some rules relating to countries in development, but no major changes to the imposed system emerged from it.
The World Trade Organization (WTO) and the TRIPS Agreement (Agreement on Trade-related Aspects of Intellectual Property Rights). It is understood that the inclusion of a chapter on intellectual property in the TRIPS Agreement was a maneuver by industrialized countries in order to ensure the correction of several deficiencies in the international protection of intellectual property, without having to go through a process of reviewing the Conventions already existing. We can observe the increase in protection granted to authors over the years years if we compare the initial text of Article 2 of 1971 of the Berne Convention with the current writing. Another international normative instrument that governs the subject is the Universal Convention for Copyright, approved in Geneva in 1952 and revised in 1971 on the initiative of the UNESCO. It aimed to recognize effective protection of authors' rights in the different countries and harmonize the different protection systems of several States that were unable to to join the Berne Convention. It was at this convention that the symbol of the Copyright©, to ensure protection of foreign works that bear such a symbol, in all countries.
At the same time, new types of literary and artistic works were being encompassed, with the emergence of new vehicles, of new Jane C. GINSBURG; John M. KERNOCHAN. “One hundred and two years later: the US joins the Berne Convention”.
Before the Berne Convention, several nations struggled with piracy problems. internationally in copies and reproductions through various bilateral agreements signed between countries that conferred more advantages on some parties than on others, that established the mutual protection. However, bilateral agreements required, in many cases, formalities that practically made the effective protection of authors on foreign soil impossible, such as registration and deposit of the work in both contracting countries. Cf. Philip V. ALLINGHAM. Nineteenth-Century British and American Copyright Law.
The country's resistance to signing the agreement was due to the reduction in formalities that Treaty required, and the imposition of, the recognition of moral rights. The North American regime

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American is still quite formal when it comes to works classified as "United States works" (i.e., works first published in the United States), as per Section 411 of the Copyright Act. (Paul GOLDSTEIN. International Copyright, p. 187-197; Roger E. SCHECHTER; John R. THOMAS. Intellectual property: the law of copyrights, patents and trademarks, p. 81-93). Victor NABHAN. "Ans de Droit d'Auteur sur la Scène Internationale: Bilan et Perspectives", p. 209-211. Patricia AKESTER. Copyright in Portugal, in the PALOP, in the European Union and in International Treaties, p. 53.

Historical Framework

Distribution methods and new consumption methods, the scope of protection of works was expanding. On the other hand, related rights were created as a way of reconcile the romantic conception of authorship with new forms of production and distribution of content and other less tangible forms of creation, and as a way of protecting the investment. These rights were treated internationally for the first time in International Convention for the Protection of Performers and Artists Producers of Phonograms and Broadcasting Organizations, of October 26, 1961 – the Rome Convention. In 1967, a Specialized Section was created in Stockholm on United Nations (UN).

It was especially intended for Intellectual Property, WIPO (World Intellectual Property Organization) Intellectual Property), and it was its purpose to encourage creative activity and promote protection of intellectual property in the world. The advent of digital technology has brought new opportunities for exploration and also great challenges, requiring a global solution that could have been achieved through a revision of the Berne Convention. However, the international environment was not favorable to such an end. Hence the decision was made to adopt separate texts, namely: the Treaty on Instruments of Technical Self-protection and on Procedural Guardianship (TODA), in response to industry discussions on advances in digital technology and popularization of the Internet; the Treaty on Interpretations, Executions and Phonograms (TOIEF), of 1996, but which only came into force on May 12, 2002, having as its object the protection of phonograms of performing artists and performers. It is noted that, since the 1980s, we saw a maximization of the protection of rights combined with strategies

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industry protectionists, with the aim of linking intellectual property regimes
maximalists to foreign trade law, which benefits countries.
This situation, although it is the target of great criticism by most scholars, does not
seems very surprising considering that the genesis of copyright protection is
came to fruition with commerce. Finally, there was an attempt to protect the artists' performances
performers who have consented to the inclusion of their performance in a fixation
of images or images and sounds, at a diplomatic conference held in 2000, under the
aegis of WIPO, which sought the adoption of a new treaty on this subject, but did not
however, it was unsuccessful due to the lack of agreement between the participating States.
According to some scholars, in these international normative instruments the
lack of a solution to the problems faced by States, many of which are
omitted, while others merely limit themselves to establishing minimum regulations, which
does not eliminate differences between national laws. In the 1940s, still in the
internationally, Copyright was elevated to the category of fundamental rights of
human person, and in the 1950s the new International Convention on
Copyright. After joint reviews of the two in 1971, the following were drawn up in Paris:
new copyright laws in almost the entire world, supported, as the doctrine criticizes, by the lobby
of multinational and transnational industries, dedicated to the dissemination of works of content
cultural, intellectual or entertainment. Currently, what can be observed is that, in an era
of instant transnational communication of protected works, the same issues that arise
faced by legislators since the Berne Convention remain in the international context,
with the maintenance of national legislations so far apart from each other, which has led to a
fragmentation of Copyright Law and a weakness in the protection of the creator.

Copyright and Related Rights

Paraphrasing CAMACHO (2001), “Copyright has been gaining importance
growing worldwide. The relationship between authors, performers and
creators of scientific, literary and artistic production makes them, today, one of the most

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current developments in the field of intellectual property".27

The treatise on the subject, ASCENSÃO (1992:30), teaches us that "often, the author, the more creative he is, the less capable he is of economically pursuing his interests. On the other hand, hand, the vastness of copyright protection sharpens greed. Intermediaries and exploitation companies multiply, considering that the income from Copyright is something too important to be left to the authors"28.

1. **Copyright**

a) Defining Copyright from the perspective of our legal system is the "exclusive right of the creator of a literary, artistic or scientific work to dispose of, enjoy and use exclusively or authorize its enjoyment, in whole or in part"29; and

b) From a doctrinal perspective, I appeal to the legal expert and lawyer REBELLO (1994:57) who defines Copyright as "the set of powers, faculties and prerogatives, of a patrimonial and personal nature, that the law confers on the author of a work literary or artistic, by the simple fact of its externalized creation, in order to free and exclusively use and exploit or authorize third parties to use and exploit such work, within the respect for his paternity and integrity, and to extract advantages economic benefits of such use and exploitation"30.

2. **Related Rights**

a) Related Rights or neighboring rights, defined from the perspective of our legal-legal system, are those that protect "the interests of artists

[27] Camacho, Esteves António, Final Course Work for a Bachelor's Degree in Law, Protection of Copyright in Mozambique, April 2001, Maputo.

[28] Ascensão, José de Oliveira, Civil Law, Copyright and Related Rights, Coimbra Editora, 1992, Page 30.

29 No. 8 of the glossary attached to Law No. 4/2001, of 27 February, published in the Official Gazette No. 8, Series I, 2. Supplement.

[30] Rebello, Luís Francisco, Introduction to Copyright Law, Volume 1, Portuguese Society of Authors, Dom Quixote Publications, Lisbon, 1994.

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interpreters or performers, phonogram producers and recording organizations broadcasting, as regards its activities, related to the public use of works of authors, any type of exhibitions by artists or transmission of events to the public, information and any sounds or images"31.

b) In the doctrinal perspective for ASCENSION (Op. Cit.:546) they are the classical rights32, related to copyright, namely:

i) performers;33

ii) producers of phonograms, including those of videograms;

iii) Broadcasting organizations. In the same vein as the REBELLO doctrinal perspective (Op. Cit.:21), adds in broadcasting organizations the ***sound expression or visual.***

II. Protection and Legal Seat of Copyright and Related Rights.

The legal protection of Copyright and Related Rights in the Republic of Mozambique has followed a long path that goes from colonial times to the our days. It went through the different stages of political, cultural development social and economic situation of the country, depending on the legal regime at each moment.

1. In colonial times, the matter in question was covered in article 1303 of the Civil Code, approved by Decree-Law No. 44344 of 25 November 1966, a re- reference to special legislation, was extended to the Republic of Mozambique by Ordinance No. 22869 of 4 September 1967.

31 No. 9 of the glossary annexed to Law No. 4/2001 of 27 February, published in the Official Gazette No. 8, Series I, 2nd Supplement

32 Ascension, José de Oliveira, Op. Cit. Page 546.

33 According to Ascensão (1992:551-552), the common genre is artists, later qualified by the expression interpreters or performers; (...) the generic term is that of the interpreter: performer is a term of species, intended to encompass those who express themselves through instruments. (...) An interpreter is anyone who gives life to a work. Starting from the normal figure, from the existence of a pre-existing work, the interpreter performs that complement of the work that allows its actualization through visual or auditory means.

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2. The aforementioned special legislation, embodied in the Code of Authentication Rights, tor34, approved by Decree-Law 46980, of April 27, 1966, was extensive to the Republic of Mozambique by Order No. 679/71 of 7 December.

a) During the validity of this Code little or nothing was felt in terms of its effects with respect to its application in the protection of the Rights of Author and Related Rights. Most Mozambican authors I didn't have any knowledge of how to activate the mechanisms to assert their intellectual creation in society, although the Code present the procedures that authors should follow to de- defense of their rights. The prevalence of this situation can be attributed to the lack of disclosure and dissemination among interested parties and stakeholders. culture res;

b) The Code in question made any and all use dependent on the creation intellectual, by the counterpart, with the special authorization of the author and that this authorization should be in ***written form.*** This Code included two chapters, one for the protection of ***property rights and another for the protection of moral rights;***

c) Textually, the same Code said, in its article 190, that *"every anyone who, without due authorization from the respective author, uses or exploit, in any of the ways provided for in this law, a work of another person incurs the penalties provided therein, and is also civilly liable. mind for the damages it causes".* The penalties ranged from ***compensation, imprisonment*** and ***fine,*** in addition to ***seizure of copies of the work,*** as well as ***of the devices or instruments used in the illicit reproduction or diffusion quotes.*** And, on the other hand, it indicated the entities to whom the author could or should appeal for the fair restoration of his tainted right.

[34] Mazive, José Julai, Copyright and Industrial Property, Legislation with cross-references and International Agreements, Maputo, 1992.

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3. The first legal diploma approved after the Independence of Mozambique, in An attempt to find a solution for the protection of Copyright was the ***Entertainment Regulation35,*** approved by Decree No. 10/88 of 9 August and provides for the mandatory nature of the ***performance contract.*** In paragraph c) of Article 12 of the same law refers to mandatory contractual clauses prescribing that they must include the "specification of the works to be presented and respective authors".

3.1 The protection of the author, in this legal diploma, consists of the precept that, regardless of whether it is ***criminally or civilly sanctioned,*** it punishes those who commit offences, as provided therein:

a) Recorded reprimand;
b) Fine of up to 300,000.00MT;
c) Temporary suspension of the exercise of the activity for up to one year; and
d) Cancellation of the license.

3.2 In this Regulation, as can be seen, the legislator ignored in the structure of its production, the existence of the aforementioned Copyright Code, by omitting in its article, any precept referring to procedural terms dimensional.

4 This situation was repeated with the approval of Ministerial Diploma No. 88/90, of October 3, when the legislator, in article 5, with regard to the exhibition tion, provides that "the distribution, rental and exhibition of videocassettes as

35 The Entertainment Regulations have never worked. In Mozambique, there are 68 companies promoting shows. This situation is paradoxical, compared to the market considered expensive and insecure, as it does not guarantee the return on the costs of putting on the show. This area lacks regulation for the rental of show venues and equipment and it is crucial that this be done, to avoid unjustified enrichment, as is currently happening;

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public spectacle are subject to the provisions of the Regulation of Spectacle in all that is applicable". Considering the data in this diploma legal we verify that what is subsumed in it is not Copyright, but yes, Related Rights.

5 ***Copyright*** came to deserve constitutional dignity when it was enshrined in the 1990 Constitution, and, received in the 2004 Constitution, ***the freedom of creation and protection of intellectual property,*** by the Mozambican State36.

6 In 2001, the Copyright Code was repealed, with the approval of Law No. 4/2001, of 27 February, the Copyright and Common Rights Law connections. This law, in its content and structure, according to CAMACHO (2001), pro-cure *"accommodate the model adopted by WIPO with a view to ensuring the adminis-administration and protection of Copyright and Related Rights, in harmony nia with international conventions and all member countries of the union of Bern".*

a) The Copyright and Related Rights Law is presented, in most of its precepts, with an eminently characteristic of ***substantive law,*** which means that it lacks, in many of its precepts for its application, of an adjective right;

b) With this, I do not intend to imply that its application is conditional onada, in all respects, to its regulation, because there are situations actions in which the law itself establishes the procedures with a view to pro-protection of Copyright in both Domestic and International Law. onal;

[36] The Constitution of the Republic prescribes in paragraph 1 of article 94 that "all citizens have the right to freedom of scientific, technical, literary and artistic creation" and in paragraph 2, that "the State protects the rights inherent to intellectual property, including copyright, and promotes the practice and dissemination of literature and the arts".

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c) It should be noted that, under this law, Copyright and Related Rights xos find legal protection par excellence, as it advocates, in cases of its violation, mechanisms by which the author must seek help. It states in paragraph 1 of article 59, that " it ***is the injured party or his legal representative, that it is up to legal mechanisms to defend their rights violated" and also says, as a general principle, that "the violation of human rights enshrined in this law is subject to civil and criminal liability. "minal";***

d) For this purpose, the author may request ***judicially or extrajudicially ,*** form the provisions of paragraph 3 of article 22, in the event of the death of the author; refer to the ***judicial bodies*** under the terms of article 66 regarding independence of action for ***compensation, criminal and judicial action*** for ***seizure are, suspension*** of the ***show or entertainment;*** to the ***court,*** in accordance with article 69 regarding ***precautionary measures37*** and ***arbitration, mediation*** and ***reconciliation*** in harmony with the provisions of Article 75;

e) On this subject, CAMACHO (2001) states that *"when we talk of the legal authority over copyright we do so with the awareness the fact that intellectual creation takes on very specific characteristics different from any other services, of being a vulnerable job, more easily violated, with a latent conflict always existing38 between the author and the user of that creation. A close look at the our Law makes us understand that* ***the most important means of protection in this area are divided into: Civil, Criminal and Administrative"39;***

37 Will it be a specified precautionary measure?

38 The conflict does not occur only between the author and the user of the intellectual creation. It occurs directly between the author and the publisher or entrepreneur and indirectly with the third party, who may or may not be a user.

39 The author, referring to Professor José de Oliveira Ascensão, breaks down each of the three means of protection indicated as follows: ***Civil sanctions,*** comprising ***compensation for damage*** (...), the absolute right (...) of the author to cease violations and to require third parties to refrain from future disturbances; ***specific precautionary measures*** (...) of the author being able to appeal to the courts to demand that the perpetrator of the damage be prevented from continuing with the illicit activity or from repeating the violations committed. ***Credit guarantees*** translated into the request for seizure of all revenues obtained in the event of unauthorized presentation of the work; ***the right to inspect*** establishments for pressing and duplicating phonograms and storage of material supports, derived from the publishing contract; ***the right***

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f) A new feature that this Law brings in relation to previous legislation is the express indication in Article 76 of the ***prevalence of international law,*** when it gives better treatment to the author, producer, interpreter or performer consecrated therein.

Mechanisms for the protection of Copyright and Related Rights

At first glance, we would be led to imagine only an ordinary law or a law in the strict sense of the term. But, in the present case, I will speak, first of all, of the law that results from the agreement between the parties, which is the ***contract*** that, broadly speaking, translates the manifestation of will between the contracting parties and after the ***law properly speaking.***

1. **Contractual**

a) If we examine a national or international law we see that it is up to the author ***the power to dispose of the work, use it or enjoy it, or authorize its use or enjoyment by third parties, in whole or in part.*** This means that the author has the exclusive right to enjoy and use the intellectual work that the ability to disclose and economically exploit by any means is important form, directly or indirectly, under the terms and within the legal limits[40].

to information and ***accountability*** as a condition for exercising their prerogatives: ***Criminal proceedings,*** in our Law, provide for the crimes of usurpation and counterfeiting as public crimes, punishable by a prison sentence and corresponding fine. ***Administrative sanctions*** are divided into ***preventive*** and ***repressive; preventive*** sanctions may be inspection (...) *ex-officio* conditioning (...) ***licensing or administratively authorizing*** the obtaining of the document proving that the author consented (...); ***repressive*** sanctions assume a completed violation and occur at the request of the author or ex officio. The 1966 Copyright Code gave the author the right to ***complain to the administrative or police authorities*** (...) as well as to the ***entertainment inspection services*** (...).

[40] No. 1 of article 405 of the Civil Code, approved by Order No. 22869 of 4 September 1967, Legislation Collection, 1st Edition, Plural editors, KPMG, Republic of Mozambique, 2003, Page 100; with the heading contractual freedom, states that "within the limits of the law, the parties have the right to freely determine the content of contracts, enter into contracts different from those provided for in this code or include in them the clauses they deem appropriate.

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b) In this case, what I am interested in addressing is the ***power*** that the author has to ***authorize the use or enjoyment*** of your work by third parties or indirectly. Because, by itself, it would not be able to proceed with the disclosure this in the form of publication, as I will discuss later. For for this reason, ***the author often does not use or enjoy the work of the your intellectual production.***

c) For this purpose, it is necessary to seek assistance from other entities with the which, I would not say, enters into contracts, but rather, signs the contractual clauses established by the counterparty. According to ASCENSÃO, "the author, when negotiate with publishers, he is faced with real ***adhesion contracts"41.*** He also says that "the protectionist concern of the law does not prevent, however, the author's unfavorable situation. Publishers hardly adapt `the idea that the author's remuneration is a cost. It appears to them as the ever-compressible portion".42

d) CORDEIRO (1994:100)43 indicates three normal ***characteristics*** of a ***adhesion contract,*** discriminately:

i) De facto inequality between the parties;

ii) Complexity; and

iii) The formal nature.

e) What I have just said means that the contract in question has the ***form written and is nominated.*** In this sense there are the following types or types of contracts:

i) Edition;

[41] Ascensão, José Oliveira; Op. Cit. Page 458. In this case, according to Cordeiro (1994:70-71), the author is restricted in his freedom of celebration and stipulation. The first implies "the freedom to choose the form of celebration (...) the freedom of celebration implies the possibility of imposing conditions (...) and terms (...) and the second implies that (...) the parties can freely establish (...) the content (...) of the performance (...). They can also stipulate the place and term of the performance (...).

[42] Ascension, José de Oliveira; Op. Cit. Page 458.

[43] Lamb, António Menezes; Op. Cit. Page 100.

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ii) Representation, recitation and execution;

iii) Film production;

iv) Recording or recording or phonographic or videographic fixation;

v) Broadcasting;

vi) Photographic and cinematographic reproduction;

vii) Transmission;

viii) Translation, arrangement and other transformations of intellectual works (instrumentations, dramatizations, adaptations, summaries, compilations and any other versions or transformations of intellectual works);

ix) Reproduction of artistic creations or plastic, graphic and applied.

f) I spoke here about contracts, but I did not characterize them in terms of their ***constituent elements,*** which I will extract from the repealed Code of Mozambican Copyright. It is important to note that some contracts do, with regard to the aforementioned constituent elements, reference to the contract of Edition. For this reason, in this topic, I take as a basis the ***essentials*** constituent elements of a contract, starting from the publishing contract;

g) In the concept contained in the Copyright Code, three concepts are recorded: “faculties that form part of the essential content of the contract” characterized by Ascension(1992), such as:

i) Produce ***(Reproduce);***

ii) Distribute; and

iii) Sell.

ASCENSÃO (1992), further clarifies that “as for distribution, it means simply placing the copies so that they can be purchased by the public.(...) It is a specific concept of the activity of edition".

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And he distinguishes the element of ***distribution*** from that of sale, saying that the latter "is essential element of the publishing contract, such as marketing through of sale of copies".

The concept of a publishing contract, which I have just reproduced, lacks ***"several elements that could be defining elements of the edition",*** but which appear at the throughout the Copyright Code in reference, as ***"merely supplementary",*** including the ***onerous nature*** and the ***exclusive nature*** which, in the view of the legal expert ASCENSÃO (1992), constitute essential elements.

h) In addition to these contents, the Code in question continues to indicate other great importance, such as the need to:

i) Mention of the ***number of copies*** to be taken, which is one of the elements that determine the validity of the publishing contract;

ii) ***Monitor*** the number of copies of the edition and require examination in the commercial records of the publisher or company;

iii) Author's ***remuneration ;*** and

iv) Participate in ***setting and modifying*** the price of the work.

2. **Legal**

a) Here I refer to the legal pyramid, which establishes the ***general rules substantive and adjective*** protection of Copyright and Related Rights, national positive law44. We often come across

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44 With regard to the gaps in the law on Copyright and related rights, it is considered that the Judge, in the exercise of his functions, cannot refrain from judging conflicts brought before him arising from the violation of the rights in question. He must observe the provisions of the *obligation to judge and the duty to obey the law (Article 8 of the Civil Code);* which prescribes that: a) *The court cannot refrain from judging, invoking the absence or obscurity of the law or alleging insurmountable doubt about the facts in dispute;* b) *The duty to obey the law cannot be set aside on the pretext that the content of the legislative precept is unfair or immoral; c) In the decisions he makes, the judge will take into consideration all cases that deserve similar treatment, in order to obtain a uniform interpretation and application of the law.* It is also considered that the judge observes the rule of filling gaps in the law *(article 10 of the Civil Code),* which prescribes that: a) *Cases that are not provided for by law are regulated according to the rule applicable to analogous cases;* b) *There is analogy whenever, in the case of omission, the reasons justifying the regulation of the case provided for by law are valid;* c) *In the absence of an analogous case, the situation is resolved according to the rule that the interpreter himself would create, if he were to legislate within the spirit of the system.* See page 19 of this intervention.

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with instructions set out in ***de facto instruments,*** but being matter with dignity to be treated in a legal instrument, being enough, to the effect, be approved by a Ministerial Diploma or by a Dispatch sectoral and followed by a publication in the official journal, the Bulletin of Republic.

b) It should be noted that the Mozambican legal system receives the ***Law International*** and provides, as I have already mentioned, expressly that, in situations in which it better protects Copyright and Related Rights ***and prevails*** over Internal Law45.

Compliance with protection mechanisms

The answer to this question also requires that it be given in two perspectives, contractual and legal.

1. **Contractual perspective**

The materialization of the contract is preceded by an act of establishment and celebration involving both parties, one of which is the author and the other the publisher or entrepreneur. However, as we have seen above, the author is always at a disadvantage46.

2. **Legal perspective**

From a legal perspective, we find several stakeholders that translate into just two, which are the Public Administration and the Administration Bodies of the Justice:

a) **Executive or Public Administration**

45 "In the event of conflict between the provisions of this law and those of any international treaty to which the Republic of Mozambique becomes a party, the provisions of the international treaty shall apply, provided that they have been adopted into the domestic legal system and provide for better treatment for the author, producer, interpreter or performer than that enshrined in this law" (article 76 of Law no. 4/2001, of 27 February).

46 "The situation of the author has only improved significantly due to a law external to Copyright Law, the law on clauses general negotiations"; Ascension, José de Oliveira, Op. Cit. Page 458.

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Which involves the responsible State Sector and Complementaries as well as well as its subordinate and supervised institutions, namely:

i. Ministry of Education and Culture;

ii. General Inspectorate of the Ministry of Education and Culture;

iii. National Institute of Books and Records-INLD47;

iv. National Institute of Adiovisual and Cinema-INAC48;

v. Ministry of the Interior;

vi. Ministry of Industry and Commerce;

vii. Industrial Property Institute-IPI;

viii. Ministry of Tourism; and

ix. General Directorate of Customs.

b) **Bodies of the Administration of Justice**

i. Court;

ii. Public Prosecutor's Office; and

iii. Police, which includes the Judicial Police (Investigation Services) Criminal-SERNIC).

Role of stakeholders

Each of the stakeholders has a specific role within the emerging relationship not only of contracts mentioned above but also copyright legislation.

47One of the main objectives of INLD is to represent the country in international bodies dedicated to dealing with issues relating to books, records and the protection of copyright (h) article 1 of the Organic Statute of the National Institute of Books and Records, approved by Decree No. 4/91, of 3 April); Within the structure of INLD, there is the Technical and Cooperation Department, which has as one of its responsibilities the licensing of companies or institutions that carry out regular publishing and bookselling activities (d) of article 6) and the Copyright Department, which is responsible for applying and enforcing the law on the protection of copyright (...) and ensuring compliance with the country's obligations in matters relating to intellectual property (e) of article 7).

48 The National Institute of Audiovisual and Cinema is responsible for (...) supervising audiovisual and cinematographic activities (...), licensing distributors and exhibitors of films and videograms operating in the country (...) respectively, paragraphs e), g), j) and m) of the Organic Statute, approved by Decree No. 41/2000, of 31 October and representing the country in international bodies dedicated to dealing with issues relating to audiovisuals and cinema. The Licensing, Inspection and Supervision Area is within the structure of INAC, which has as one of its functions ensuring the licensing of companies that carry out the activities of production, import, distribution and exhibition of videograms and films (...) and maintaining the register of producers, importers, distributors and exhibitors of videograms and films (respectively paragraphs b) and d) of article 10).

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1. We have already seen that Copyright belongs to the intellectual creator of the work. In a relationship contractual it is up to the latter to authorize the publisher or entrepreneur to undertake, on behalf of own, the ***reproduction, distribution and sale*** of his work under terms that both are adjusted. To this end, the author is obliged to make available to the publisher or from the entrepreneur, within the established deadlines, the original of the work that is the subject of the contract with a view to its reproduction;
2. The publisher or entrepreneur is responsible for reproducing the work within the established deadlines, in number of copies agreed and pay the author according to the fixed price;
3. As for the Responsible and Complementary Sectors, their role is to guarantee the compliance with the Copyright and Related Rights Law, from its ***regulation,*** including the ***official inspection*** of the industry's activity cultural;
4. With regard to the Bodies of the Administration of Justice, the court is the implementing body. of the law par excellence, its role is to, through jurisprudence, alert the sector competent in ***situations of doubts and omissions*** that occur during the course of their activity in relation to copyright legislation, with a view to its ***integration and due clarifications***[49]. As for the remaining bodies, their functions are to defend, exercise control over legality and preparatory investigation of criminal proceedings, its action does not escape the court. Therefore, ***it is up to this trilogy of bodies to guarantee the effective enforcement of the law,*** without one prevailing over the other.

Analysis and Discussion of Results

Copyright

Copyright is defined as the set of prerogatives granted by law to the creator of an intellectual work. This includes moral and patrimonial rights, guaranteeing the author to assign credit and remuneration for the use of the work (LIMA, 2015, p. 22).

[49] See the content of footnote no. 19, on page 16, of this intervention.

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According to article 8 of Law No. 9/2022, of June 29 (approves the Copyright Law) and Related Rights), Copyright covers rights of a patrimonial nature and rights of a commercial nature. personal, called non-patrimonial or moral rights. Which, in the exercise of the rights of patrimonial nature the author has the exclusive right to dispose of his work, to enjoy it and to use it it, or authorize its enjoyment or use by a third party, in whole or in part. As well as, the The author of a work relating to ICTs has the exclusive right to authorize the following acts:

a) reproduce your work;

b) translate your work;

c) prepare adaptations, arrangements or other transformations of his/her work;

d) represent or perform their work in public; and

e) import or export copies of his work; g) communicate his work to the public by broadcasting, by cable or by any other means.

Real Cases of Copyright Enforcement

i. ***Napster Case***

Napster, founded in 1999, was one of the first platforms for music file sharing. The service allowed users to exchange songs for free, which led to a series of lawsuits for copyright infringement. In 2001, Napster was forced to shut down its operations and pay compensation, highlighting the need for regulation specific to digital platforms (JOHNSON, 2001, p. 90).

ii. ***Google Books Case***

Another significant example is the Google Books project, which seeks to digitize and make books available online. Several publishers have sued Google, claiming that the unauthorized digitization of copyrighted works constituted a violation. The case was resolved with a settlement that allowed Google continue the project with restrictions (GOLDSTEIN, 2010, p. 85).

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iii. YouTube vs Viacom case

In 2007, Viacom sued YouTube for $1 billion, claiming that the platform allowed the publication of copyrighted videos without proper authorization. The case was resolved in 2014 with an agreement confidential, but highlighted the complexity of managing content generated by users and the responsibility of platforms (THOMAS, 2013, p. 145).

Impact of Copyright on ICTs

Copyright in ICTs significantly impacts the creative economy, stimulating content production, but they also face problems such as piracy and illegal sharing. In short, copyright plays a crucial role in ICT ecosystem, encouraging innovation, protecting intellectual property and ensuring a balance between the interests of creators and public access to knowledge and culture. (FERREIRA, 2019, p. 110).

Challenges and Opportunities

The challenges and opportunities of copyright reflect the ever-changing dynamics changing digital environment, which requires continuous adaptation and innovation to ensure that creators are fairly rewarded for their work, while providing access knowledge and culture is promoted broadly and equitably. Challenges include the digital piracy and the difficulty of monitoring. Opportunities arise with new technologies rights protection and management, such as blockchain and DRM (MARTINS, 2020, p. 123).

Copyright protection in ICTs is a dynamic and challenging field, requiring constant legislative and technological updating. ICTs have facilitated the reproduction, distribution and access to copyrighted works. This raises challenges unique for the application of copyright legislation. For example, digital piracy has become a growing concern in Mozambique, requiring effective enforcement measures

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of the law. Mozambican copyright legislation, as established in Law No. 4/2001, demonstrates a willingness to address the issues raised by ICTs. However, the effectiveness of enforcing these laws in an ever-evolving digital environment remains a challenge. Continuous efforts are needed to update and strengthen legislation, ensuring adequate copyright protection in the context of ICTs in Mozambique.

RECOMMENDATIONS

Strategies for effective protection to protect copyright in the digital environment. Which are several strategies that can be adopted:

• Education and Awareness: Inform creators and the public about the importance of copyright and the consequences of infringement.

• Protection Technology: Implementation of technologies such as DRM and protection systems monitoring to prevent unauthorized copying and distribution. And,

• Updated Legislation: Laws must evolve to keep up with changes technological and new forms of content creation and distribution.

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LEGISLATION

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Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, completed in Paris on May 4, 1896, revised in Berlin on November 13, 1908, completed in Bern on 20 March 1914, revised in Rome on 2 June 1928, in Brussels on 26 June 1948, in Stockholm on 14 July 1967 and in Paris on 24 July of 1971.

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