CHAPTER TWO

Copy Right and Neighboring right

Applicable Ethiopian law and International Agreement

- Proclamation No 410/2004 copy right and neighboring rights protection proclamation
- Proclamation No 872/2014 amendment of copy right and neighboring rights protection proclamation

- Civil code of Ethiopia (1960) (articles 1947-1674, 2027-2178, 2672-2679)
- Criminal code of Ethiopia (2004) (article 721)
- The Bern (Switzerland) convention for the protection of Literary and Artistic Works (1886)

- The convention for protection of performers , producers of phonograms and broadcasting organizations (Rome convention 1961)
- The TRIPs agreement (1995) (Articles 9-14)
- The WIPO copy right treaty (1996)

- Objective of the chapter
- Explain the basic features of copyright;
- Identify the justifications for copyright protection;
- Discuss authors rights and their limitations;
- Explain the nature of neighboring rights;
- Distinguish neighboring right from copyright;
- Explain the scope of neighboring right.

- Copy right
- After completing this chapter, the student will be able to:
  - Define copyright
  - Explain the reasons why copyright should be protected;
  - Identify the proper subject matters of copyright law
  - Distinguish the legal requirements for copyright protection;
  - Identify the excluded works.

- Over view of copy right industry in Ethiopia
- The history of literature in Ethiopia highly related with introduction and development of Orthodox Christianity from abroad in fourth century.
- Even though Ethiopia had its own Sabian scripts by which engravings were made on stones, there are evidences that formal writing started after the acceptance of Christianity.

- Hence the New testament and the old testament were translated from Syrian language to Geez language (the then government language)
- The unique characteristics of the then translators was the deliberate omission of their name for the reason of modesty.
- In addition serving the religion considered as public domain

- Because of this one Ethiopian scholar has stated that there is no country like Ethiopia on which religion had put strong influence on literature.
- This situation had given the freedom to the upcoming translators and writers to use freely the anonymous or pseudonymous or works bearing the name of the author, and as a result the indigenous concept of copy right could not easily develop

- The ancient development of art in Ethiopia is also mainly attached to painting and drawings in churches and monasteries which were considered as public domain.
- The other important point that may be raised to contributing factor in connection with the absence of any restrictions on the use of literary and artistic works of others in ancient Ethiopia is , may be the absence of economic value of the creation of minds.

- The issue is also similar with that of Music.
- Ethiopia is reach in its own melody and reteam of music. Tizita, Anchi hoye, Bati and Ambasel are Ethiopian original music style with no name of creators or inventors.
- There are a lot of songs attributed to the public domain.
- Being a musician was not considered as respected professional.

- Even introduction of the printing machine in 1906 could not be a land mark for the development of literary work in Ethiopia.
- The establishment of Brehanina selam in 1921 had its own impact on literary work expansion.
- These all leads the need of recognition of authors work

- With increasing in production of news papers magazines and books , the emperor issued the first regulation governing magazines and books in 1927 EC.
- Which was not as much to protect the rights of authors but rather to introduce censor ship of authors and printers.
- The 1927 law is the first attempt

- Specific rules on IPRs targeting authors and inventors emerged towards the end of the 1950s and the beginning of the 1960s when Ethiopia embark upon codification of its laws.
- Title XI of the code entitled ‘literary and artistic owner ship’ dealing with different aspects of copy right (Art 1647-1674)
- Provisions were also included on publishing contracts dealing with transfer or assignment of copy right (Art 2672-2697)

- Now a day, while Ethiopia lack a specific IP policy, different policies of the country show recognition of the necessity to encourage creativity and innovation.
- In 1993 the Transitional Government of Ethiopia declared the National science and technology policy with the objective of "to build national capability to generate, select, import, develop, disseminate and apply appropriate technologies for

- Similarly, the 1997 cultural policy of Ethiopia clearly recognizes the need to protect copy right in order to promote the creation of literary and artistic work.
- The FDRE Constitution state “the federal government shall patent invention and protect copy right” (Art 51(19)
- The HPR is required to enact specific laws on patents and copy rights, while the council of ministers is required to protect patents and copy right. (Art55(2) g)

- In addition, as part of the cultural objectives, the FDRE constitution obliges the government to support the development of arts, science and technology the extent its resource permitted.
- Then, the copy right and neighboring right protection proclamation No 410/2004 came to live. And the amendment of it come up with some increment (proclamation 872/2014)

The two legal traditions

- However, there are two legal traditions for protecting literary and artistic works: copyright tradition that is associated with the common law legal system and author's right (*droit d'auteur*) tradition that is rooted in the civil law legal system.

- The term copy right utilized in common law legal tradition but authors right used in civil law tradition.
- The premises of copyright system is utilitarian in that it stimulates the production of works of authorship by providing rewards or incentives to the author.
- The focus is on economic rights of the author

- The authors right system is rooted in the natural right theory which propounds that authors be entitled to protection of work stemming from their personality as a matter of right and justice.
- Aspects of authors right under this traditions are economic and moral

- **The distinction of the two tradition decline over time**

Nature of Copyright

- Copyright law is, in essence, concerned with the negative right of preventing the copying of physical material existing in the field of literature and the art. Its object is to protect the writer and artist from the unlawful reproduction of his material.

- It is concerned only with the copying of physical material and not with the reproduction of ideas and it does not give a monopoly to any particular form of words or design.
- If it could be shown that two precisely similar works were in fact produced wholly independently of one another, the author of the work that has published first would have no right to restrain the publication by the other author of that author's independent and original work.

- Copyright protection is not in ideas but in the form of expressions (countenance) that has embodied the idea.
- The claim is not to ideas, but to the order of words, and this order has a marked identity and a permanent endurance.

- Copyright law, however, protects only the form of expression of ideas, not the ideas themselves.
- The creativity protected by copyright law is creativity in the choice and arrangement of words, musical notes, colors, shapes and so on.
- Copyright law protects the owner of rights in artistic works against those who “copy”, that is to say those who take and use the form in which the original work was expressed by the author.

- Copyright protects literary, artistic, and scientific work. It protects the economic and moral rights of the author /creator/.
- These are the two interests which the law recognizes in the copyright field.
- Works protected are works of the intellect.
- It protects the production and dissemination of the work but not of ideas. This introduces the

- The question is why are ideas not protected? Ideas are inherently in appropriable.
- Physically controlling of the idea is impossible.
- Is there a difference between ideas and expressions of ideas in appropriability? There is no! Granting monopoly of ideas is not advantages to the society. Even a person may be prohibited from discussing ideas

- Copyright developed as the means by which ‘works’, i.e. materials deserving copyright protection, reach the public.
- At the beginning it was the invention of the printing press which gave copyright its impetus. The protection of printed material against unauthorized reproduction was the main concern of copyright and the right to prevent such reproduction.
- The reproduction right was the basic and the main right, followed by the translation right in literary works.

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Purpose of Copyright Protection

- Regarding the purposes of copyright protection, the preamble of Copyright and Neighboring Rights protection proclamation No. 410 /2004 provides that "literary, artistic and similar creative works have a major role to enhance the cultural, social, economic, scientific and technological development of the country".

Justifications of copy right protection

- There are two theories about the justifications of copyright protection.
- The first theory is natural rights theory that states that copyright is not the creation of the law but always existed in the consciousness of man.
- The product of mental labor is by right the property of the person who created it.

- It follows then that the public has no more right or justification to take away or impair the originator's property in his mental creation than it has to deprive him of any other of his ownerships.
- Thus, what the law has to do is just recognize this natural

- The second theory is the bargain or contract theory. (utilitarian)
  - This theory starts with the premise that people will be encouraged to produce new creations if there be some reward as an incentive.
  - It means a creation of mind is merely a contribution to a common stock of knowledge and enjoyment of mankind in which the public have heritage.

- In this theory, copyright is relegated to the level of an artificial right and a creature of the municipal law of each country to be enjoyed for such time and under such regulations as the law of each state may direct.
- The theory dictates that had it not been for the need to encourage new creations, the creator or works of the mind would have been denied of the right or ownership to his creations.

- However, though there is controversy between these theories, they advocate that protection should be given to copyright ownership.
- On top of this, copyright is justified on a number of grounds.

- First, there are reasons of social justice which advocated that the author should be able to benefit from the fruits of his labor. This benefit given to the author is in the form of royalties which are compensations for the use of the copyrighted material.

- These royalties function as an intellectual worker’s remuneration. However, denial of protection goes against the ideals of common social justice. The remuneration paid to authors is borne by the ultimate ‘consumers’, that is, purchasers of books and records, or the paying customers of the cinema or theatre

- The second ground relates to cultural progress, which is ensured through the system of copyright protection. By putting the results of his intellectual activities at the disposal of mankind, he contributes to the spread of knowledge and cultural education of millions of people.

- If his works are protected by copyright, the author will be encouraged to produce new creations and thereby enrich his county's store of literature, drama, music and science.

- Listen to what a certain author had to say; “without copyright, there would be no incentive for creative individuals to write novels, paint pictures or compose books. Nor would there be any incentive for publishers, broad casters and record companies to invest in the exploitation of those works.”

- Thus cultural progress will be lost if there is no copyright protection in a country. But if his works are protected, the intellectual laborer will engage in his work with more spirit and as a result there will be progress in the culture of a given country.

- Thirdly, copyright protection can also be justified on moral grounds. We can say that the work is the personal expression of the author's thoughts__ "the child of his thought." Therefore, he should be given the right to decide when and how his work may be reproduced or performed in public and the right to prevent mutilations.

- Taking the expressions of Cavendish and Kate pool, “the main purpose of copyright law is to ensure that authors receive some share of any money and prestige resulting from the exploitation of their own original work”.
- In general, therefore, it is immoral as well as illegal for anyone to reproduce an author’s work without his express permission.

- This means that no one may safely copy or steal it and pass it off as his own unaided creation because the law defends the real author's prior rights. It also means that no one may publish a work, or use in other ways, as it is immoral, without first reaching an agreement with the author- an agreement, which will normally involve payment.

- The fourth justification for copyright protection will be on economic grounds.
- The necessary investment for the creations of intellectual works is easily obtained if protection exists. Creating a property right in works enables them to be traded and permits copyright owners to earn money from their works.

- It provides a very useful and effective way of exploiting a work economically. It also envisages a mechanism for allocation of risks and income derived from the sale of the work

- Granted the fact that copyright is intangible, absent property right, the producer of works of the mind will find it difficult to recover his expenses.
- Thus, the investment that is necessary for the creation of works (e.g. filmmaking or architecture) or for their exploitation (e.g. Book publishing, record manufacturing) will be more easily obtained if protection exists.

- In general, a creation of works of the mind is a result of tremendous cost – it needs time money, labor, etc. Unless these creations are protected, the author will not be able to appropriate the value of the information that he produced.

- Finally, the justification for copyright is that without it “the freedom of expression in literature and arts … would be in danger.”
- Once it is conceded that copyright enhances the publication of creative works, it is obvious that it enables the society to have access to new ideas and new works.
- In addition, an idea becomes useful only in proportion to the degree of communication and its supreme triumph would be achieved where it is known to all men..

- To the extent that creative works are available, freedom of expression is enhanced because the public will express its ideas in works of the mind published in abundance because of copyright protection

- Copyright protection is above all one of the means of promoting, enriching and disseminating the national cultural heritage.
- A country's development depends to a very great extent on the creativity of its people, and encouragement of individual creativity and

- Copyright constitutes an essential element in the development process. Experience has shown that the enrichment of the natural cultural heritage depends directly on the level of protection afforded to literary and artistic works.

Definition of copy right

- Copyright encompasses the protection of cultural works in all media: literature, musical, arts, architecture and audio visual productions
- Copy right is a legal protection provided works of authorship under specific conditions.

- Copyright law is a branch of that part of the law which deals with the rights of intellectual creators.
- It deals with particular forms of creativity, concerned primarily with mass communication.

- It is concerned also with virtually all forms and methods of public communication, not only printed publications but also with such matter as sound and television broadcasting, films for public exhibition in cinemas, etc, and even computerized systems for the storage and retrieval of information.

- Copyright has been defined as the right to multiply copies of a published work, or the right to make the work public and still retain the beneficial interest therein.
- It has also been defined as the exclusive right of multiplying copies of an original work or composition, and consequently preventing others from so doing

- A copyright is a form of protection provided by a national government to authors of original works of authorship including literary; dramatic, musical, artistic and certain other intellectual works.

- The Ethiopian copyright proclamation defines copyright as "an economic right subsisting in a work and where appropriate includes moral rights of the author" (Art 2(8))
- As can be seen, it is defined from the perspective of the rights of the author as it is based on the bundle of the author's economic and moral rights in his work that are provided under Art.7 and 8 of the Proclamation.

- A critical component of copyright is the term ‘work’ defined by copy right in art 2(30)

"Work" means a production in the literary, scientific and Artistic fields. It includes in particular:

a) books, booklets, articles in reviews and

newspaper, computer programs;

b) speeches, lectures, addresses, sermons, and other oral works;

c) dramatic, dramatico-musical works, pantomimes, choreographic works, and other works created for stage production;

d) musical compositions;

e) audiovisual works;

f) works of architecture;

g) works of drawing, painting, sculpture, engraving, lithography, tapestry, and other works of fine arts;

h) photographic works;

i) illustrations, maps, plans, sketches, and three dimensional works related to geography, topography, architecture or science.

J) Applied art – Art 2 (1) of Proclamation 872\2014

From the definition accorded in Ethiopian law, it is an economic right

Art 7 Economic Rights

1) Subject to the provisions of Articles 9 to 19 of this Proclamation the author or owner of a work shall have the exclusive right to carry out or authorize the following acts in relation to the work:

a) reproduction of the work;

b) translation of the work;

c)adaptation, arrangement or other transformation of the work

d) distribution of the original or a copy of the work to the public by sale or rental;

e) importation of original or copies of the work;

f) public display of !he original or a copy of the work;

g) performance of the work;

h) broadcasting of the work;

i) other communication of the work to the public.

2/ The Provisions of Sub-Article (1) (d) of this Article shall not apply to rental or public lending of computer program except where the program is an essential object of the rental or lending.

3/ In case of original work of art or original manuscript of a writer or a composer, the author or his heirs shall have the inalienable right to have a share of the resell price of the work subsequent to the first transfer of the work by the author. The amount of the share as well as the condition of entitlement shall be determined by the regulation that may be issued under this Proclamation

From the definition accorded in Ethiopian law it includes Moral right

Art 8.Moral Rights

1) The author of the work shall have the following moral rights irrespective of whether or not he is owner of economic rights;

a) to claim authorship of his work, except where the work is included, incidentally or accidentally, in reporting current events by means of broadcasting;

b) to remain anonymous or to use a pseudonym ; and

c) to object any distortion, mutilation or other alteration of his work, where such an act is or would be prejudicial to his honor or reputation.

d) to publish his work.

2) *The rights enumerated in Sub-Article (1) of this* Article shall not be transmissible during the lifetime of the author. The rights, however, shall be transferred in accordance with the law to heirs or legatees after the death of the author;

3) *The author or his heirs or legatees may waive any of* the moral .rights enumerated in Sub-Article (1) of this Article in

a) the waiver, shall be made in writing clearly specifying the right waived and the circumstances in which the waiver applies,

b) the waiver specifies the nature and the extent of modification or the action in respect of which the right waived.

4) Moral rights shall be enjoyed by heirs or legatees of the author until the expiry of economic rights.

- Which of the competing theories are given recognition in our law? Is it the natural right theory or utilitarian theory?
- It is possible to promote the cultural, scientific, technological development of a country when creators are allowed to control their work.
- It is the utilitarian theory which is included under the preamble.

- In countries like the USA it is stated that copyright law is important for the society.
- Similarly, copyright law in Ethiopia has the public purpose in that by rewarding authors, it is possible to encourage them and produce works useful to the society.

- It is a means to an end /the social end / in creating the creator's interest.
- However, in France, (the birth place of natural right theory), copyright law is important for the recognition of the natural right of the author.

- In the case of utilitarian theory, if a certain creation does not benefit the society in case of conflicts of interest between the individual and the society, it will be rejected.
- In a copyright word, there is always a conflict between the creator and the public because the public want the work to be accessible and the creator not. In the preamble, moral rights are not mentioned although inside the law all the moral rights are mentioned

- To give more emphasis, if we see the preamble of the proclamation as to the question of why copyright protection, it is because of the role of those works in bringing about overall change. It is provided, in the Preamble of the Proclamation, that "literary, artistic and similar creative works have a major role to the cultural, social, economic, scientific and technological development of a country". It seems the legislator wants to give incentive for societal benefit.

- On the other hand, it can be argued under the Ethiopian copyright system, copyright includes the economic and moral rights of the author though it emphasize the economic rights in the definition part of the Proclamation. However, the moral rights of the author in his works are equally treated like economic rights under Art.8 of the Proclamation.

- Author is defined as a person who has intellectually created a work (Art2 (12) of the Proclamation). To be an author it requires mental creation that the juridical person lacks.

- Copyright taken as a natural right is also reflected in the Constitution of the Federal Democratic Republic of Ethiopia (FDRE). The FDRE Constitution recognizes the right to private property as one of the democratic rights. Private property as defined in Art.40 (2) of the constitution includes any intangible product having value.

- Copyright being a property right on an intangible product of labor and creativity, and having value, becomes the private property of the author, thereby being recognized as one of the democratic rights. Therefore, it is a natural right of a person to create an intellectual property, have ownership right over it thereby making it private property. This implies that a natural right theory is recognized in our copyright system.

Scope of Copyright Law

- A protection accorded to a work of an author may arise either by virtue of the author's personal relationship to a country_ his status- or the country is the first place of creation or of publication or is where unpublished work is found in

- Thus a copyrightable work may be so either because of the personal status (nationality or domicile) of the author or by virtue of the fact that the work was created, found or published in acceptable theory.

- While the work remains unpublished, the connection can only concern personal status of the author or the place where it is created except where the work is no longer found at the place of its creation where upon the place where it is found is taken into consideration to see whether the unpublished work is in an acceptable theory.

- Coming to our Law, in case of author ship Art 3(1) (a) envisages that the works of an author whose nationality is Ethiopian is automatically protected by the proclamation. In addition, if the author is a foreign national but his principal residence is Ethiopian, he

- In case of published works, if the work is firs published in Ethiopia, this work will be protected regardless of the nationality of authors. In other words, though the author is a foreign national, as long as his work is first published in Ethiopia, to protect his work, the

- However, if the work is first published abroad, it should be published in Ethiopia within 30 days to get protection of the proclamation. Unless the work of the foreign national is first published in Ethiopia or published abroad and published in Ethiopia within 30 days, it will not be a subject matter of copyright protection. (See Art. 3(1) (b) of the proclamation)

- Therefore, regardless of the nationality or residence of the author, his work will get copyright protection and be the subject matter of copyright protection if the work is first published in Ethiopia or first published abroad and published in Ethiopia or first published abroad and published in Ethiopia within 30 days.

- The question may be what does publication mean? Its definition can be inferred from **Art.2 (22)** of the proclamation which, defines "published work" as a work or a sound recording, tangible copies of which have been made available to the public in a reasonable quantity for sale, rental , public lending or for other transfer of the ownership or the possession of the copies, provided that, in the case of a work, the making available to the public took place with the consent of the author or other owner of copyright, and in the case of sound recording, with the consent of the producer of sound recording.

Published Cont.

- Therefore, publication will be considered as issuance of authorized copies to the public, including making the work available by means of electronic retrieval systems.
- Copies should also be reproductions of the work in any material term (not just in writing). Works are published only when authorized reproductions in written form had been issued to the public.

Published Cont.

- An authorized publication is one made with the agreement of the copyright owner or someone to whom the necessary control has been delegated.
- The other thing for the existence of publication is that more than one reproduction must be made. Making a single copy is not publication. Moreover, the actual text of the work should be reproduced.

- Regarding **audiovisual works**, they would be a proper subject matter of copyright protection if the producer of those works had his headquarters or principal residence in Ethiopia. It means if the person that undertakes the initiative and responsibility for the making of sound recording works has a headquarter or principal residence in Ethiopia, his audio visual works will get protection (see Art. 3 (1) (C) of the proclamation).

- Art. 3 (1) (d) of the proclamation also provides other subject matter of copyright protection. This is work of architecture erected in Ethiopia and other artistic works incorporated in a building or other structure located in Ethiopia

- Moreover, the protection envisaged under the proclamation shall apply to works that are eligible for protection in Ethiopia by virtue of and in accordance with any international convention or other international agreement to which Ethiopia is a party.

- However, the provisions concerning copyright and neighboring right should not extend to a material object. In other words, the protection given to the music or painting or dance will not be applicable for the ownership of the musical instrument or the painting

Requirements for Copyright Protection

- Art 6 provides that copyright protection is automatic-the protection comes upon creation of the work. There is no formality. However, there are two conditions: originality and fixation. We will see those requirements as formal and substantive.

Formal Requirement

i) Fixation

- The formality requirement stated under the proclamation is fixation. (See Art 6 of the proclamation).
- It means works that enjoy copyright protection have to be reduced to a tangible medium.
- This is a requisite, a condition precedent for copyright to subsist in.

- In order to attract copyright protection, a work that is a product of the creative activity of its author must exist in some objective form before it is considered an object of copyright.
- In other words, an expression of an idea is copyrightable when it is reduced to a concrete form from which reproductions can

- Thus "copyright arises whenever a work is created and expressed in some external form such as a manuscript, drawing, film, or mechanical recording or it can be expressed in the form of speech.

- The requirement that a work be expressed in a material form means that "the work must exist in some form that may be perceived and reproduced by third parties." This requirement is an explanation of the exclusion of ideas from the ambit of copyright protection.

- Fixation is also defined under Art 2(11) of the proclamation as the "embodiment of works or images or sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device prepared for the purpose".

- There are Two aspects of fixation

1. the work is embodied in unchanging physical objects not merely in human brain.
2. Situation where the work is static overtime. That is every time one looks or hears to the work he/she perceives the same thing

Why fixation as requirement?

- may serve as evidentiary purpose, to confirm the author has indeed produce the work
- Ensure that the author would less likely to change what s/he has created.
- Encourage authors to reduce their works to something that is discernable so that it could easily be reproduced/published and disseminated to the public.

- **Argument against fixation**

- ✓ it is a denial of copy right protection for unfixed creation b/s of different socio economic factors.

- **Additional requirement for photographic work (Art 6(2))**
  - However, in case of photographic works, there are other additional requirements to be considered as a copyrightable subject matter. In other words, they will be protected where they form part of a collection or are published in a book or; bear the name and address of the author or his agent.

- Bear in mind that forming part of a collection or publication in books or bearing the name and address of the author is applicable for the protection of photographic works.

Substantive Requirement (originality)

- A literary or artistic work which is an object of copyright and which is created by a subject of copyright is not copyrightable if it lacks originality irrespective of the fact that it is reduced to a

- The question is what is originality? Originality is not defined in the proclamation. Some jurisdictions dictate that the work should originate from the author himself.

- There are two approaches in answering the questions raised in relation to originality:

1. *Anglo – American Approach*
2. *Continental law Approach*

- In Anglo-American approach, the level of creativity is low (but existing), whereas in continental law approach it is a high level.

- The Americans believe that if skill, judgment and labor are involved, it is original. In England, schedules of Football soccer are protected under illustration. In the continental law, a work is protected if the work shows the creative capacity of the author (የፀሐፊው የፈጠራ ችሎት የተከተበበት). The author’s personality must be shown.

- Under the Ethiopian copyright law, artistic merit/quality irrelevant as those laws which have a modern copyright law. It is not relevant to ask if the work meritorious. Or not. However, the content may be illegal.

- Is anything that comes out of the author's mind worth copyright protection? Are immoral and unlawful subject matters copyrightable? How do you see Art 640 of the criminal code on the obscene and indecent? For example, the work may be phonographic works. Should this matter (illegal or immoral) be relevant for purposes of copyright?

- There are two standards.
  - ✓ If the work is illegal, copyright should not exist as it will encourage unlawful activities and different laws should coexist. The other is whether or not the content is unlawful; it should not be the determinative factor for the copyright ability of the work as it will be against freedom of expression and the law does not expressly require so.

- Which trend is given recognition in the copyright law? It may be argued that the preamble states that the purpose of copyright law is for scientific, educational and cultural development. Laws have to co-exist with each other. So, we should not grant a copyright for a work which does not co-exist with other laws.

Subject matter not protected

The copy right protection proclamation excludes some subject matter in its Art 5

a) Any idea, procedures, system, method of operation, concept, formula, numerical tables and forms of general use, principle, discovery or mere date, even if expressed, described, explained, illustrated or embodied in a work; and

b) Any official text of a legislative, administrative or of legal nature, as well as official translations.

- As we know, historically copy right protects expression of ideas rather than ideas.
- In other words, as we have already discussed, an author's ideas, no matters how novel, are not subject to copy right protection.

- Non protection is not limited to ideas in Art 5 of the proclamation, it is extended to procedures, systems, methods of operation, concepts, formula, numerical tables and forms of general use, principles, discovery or a mere data.

- According to Fikremarkos book, similar provisions included in the copy right laws of a number of countries.
- Example , in US copy right act of 1976 states " in no case does copy right protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated or embodied in such work"

- Art 9.2 of the TRIPS agreement on the other hand stated, " copy right protection shall extend to expressions and not to ideas, procedures, systems and methods of operation, or mathematical concepts as such"
- Copyright is not merely protects the interest of the author; it also promotes the interests of the public by encouraging scientific and artistic creativity.

- National Laws vary on whether official texts such as legislation should be subjects to copy right protection or not?
- Japan, US, German copy right laws excluded these documents from protection!
- UK the crown has copy right over acts of the parliament.

- Copyright proclamation is not conditional on registration or any other administrative requirements and a work could be protected as long as it is original and fixed without further conditions.

Owners of right and presumptions

- **(Categories of copy right owner ship)**
- The owner of the copyrightable work is always either the actual author or someone who has acquired the copyright from the author directly or indirectly, by agreement or by operation of law.
- The first type of author is the original author who has created the work (Art. 21(1) of the proclamation).

- This person is the person who create, i.e., writes or composes the wok or who originates the whole of one work.
- The stated provision (Art 21.1) states that, the original owner of the economic rights shall be the author who has created the work.

- co-authors.
- However, it is not always a single author that creates a work. It is important to underline that the actual authors, where from copyright descends to others can be more than one. The first type of these authors may be co-authors. As per Art 21(2) of the proclamation, where the work is a work of several authors, the coauthors shall be the original joint owners of the economic rights.

- In case of coauthors whose contribution of a work is clearly separable from the text of their collaborators, all co-authors own the copyright in the text they themselves have written and they have no claim on the rest of the work.

- In case of collective works, the person at whose initiative and under whose direction the work has been created shall be the original of the rights (Art. 21(3) of the proclamation).
- **Collective works** are also defined under Art. 2(5) as literary and artistic works created by two or more physical persons at the initiative and under the direction of a person with the understanding that it will be disclosed in the name of the latter person without indicating the identity of the contributor.

Works created in the course of employment or commissioned works

- an employee may create a work in an employment relationship. The question here is as to whom owns the copy right on an work that created by an employee while in the course of employment.
- Generally in the civil law legal tradition, an individual employee is presumed owner of the copy right unless there is specific agreement to the contrary.
- In the common law legal tradition, the presumption is reserved and the copy right on a work created in the course of employment primarily rests on the employer save to specific agreement to the contrary.

- There are also works created by another employed or commissioned by a person in the course of his employment contract of service. In this case, unless agreed otherwise, the original owner of the rights shall be the employer or the person who commissioned the work. (See Art. 21(4) of the proclamation)

- In other words, if an author produces a work under a contract of service or in the course of his employment, the employer will own the copyright unless the author and employer agree otherwise. A contract of service is a certain kind of relationship between a person and his work and the person or firm for whom he does the work. The author may be a salaried employee or a commissioned freelance

- In this regard a contract of service should be taken as the work in which the employer closely directs and controls it.
- If the authors are given only a vague brief on none and the execution of the task is left to his judgment, the Author is not under a contract of service but a "contract for services."

- It should also be taken as works unconnected with the daily work for the employer. Works unconnected with the author's duties and done in his spare time will not belong to the employer. Moreover, the employer should have the power to hire or fire at will and/or the work is done for a set remuneration

- In case of audiovisual works, the producer is the owner of economic rights. However, the script writer, director, cameraman, lyricist, composer and other authors thereof shall enjoy the right of authorship in the work. On top of this, the authors of the screen play, musical works and other works that are incorporated in an audiovisual work and can be exploited separately shall be entitled to exercise their copyright independently as envisaged under Art 21(5) of the proclamation.
- How ever the moral right is always belongs to the author. (Art 8.1)

Presumption of authorship

- Regarding presumption of authorship, Art 22 (1) clearly provides that the person in whose name the work was published shall be deemed to be the author thereof unless there is a contrary proof.

- Also, writing anonymously or under a pseudonym doesn’t prevent authors from owning the copyright in their work)
- In other words, even though the author used a pseudonym in the publication, he shall be deemed to be the author to be the author thereof, provided that there is no doubt as to his identity. (see Art, 22(2)) of the proclamation

- Lastly, save sub articles (1) and (2) of Art 22, a publisher whose name appears on the work shall be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the moral and economic rights of the author.
- But this presumption is reputable, i.e. there will be a contrary propose. In other words, it uses is proof to the contrary, the publisher can't represent the author. Moreover, this presumption shall cease to apply when the author reveals his identity (see Art. 22(3) of the proclamation).

Economic and moral right accorded by copy right

Copy right



Economic right

- Art 7
- It is property right

Moral right

- Art 8
- it includes non-property attributes of an intellectual and moral character

Economic right

- consists of a temporary monopoly over the exploitation of protected works.
- It assures the author of the exclusive right to control the reproduction, derivative works, performance or exhibition of his creation.

Moral right

- which give legal expression to the intimate bond that exists between a literary or artistic work and its author's personality
- It is intended to protect his personality as well as his work

- it is there to allow the owners of the rights to derive financial reward from the use of his/her works by others.

- The moral right of the author is a recognition that copyrightable works are extensions of the personalities of their creators, i.e. it is the "outward manifestation of the author’s inner self.”

Economic rights

- The economic rights of the author involve his pecuniary interest.
- They relate to the right to exploit, put his work to economic purposes.
- The basis of economic rights is that the author should be compensated and rewarded, and is entitled to receive remuneration from the use of his work by others.

A) **Right of reproduction**

- Reproduction, as an **exclusive right of the author**, is recognized under Art 7(1) (a) of the proclamation.
- As part of the **economic rights of the author**, reproduction allows the author or copyright owner to exclude all others from reproducing the work in the form of a copy or phone record.

- Art. 2 (25) of the proclamation defines reproduction as the making of one or more copies of a work or sound recording in any manner or form, including any permanent or temporary storage of work or sound recording in an electronic form.

- It is possible to say that reproduction is copying a literary, artistic and scientific work (or indeed any copyrightable work) in any material form that includes writing and all the multitudinous forms of ordinary printed matter (from a single coupon through magazines and news papers to sheet music, books and encyclopedias), photocopies, video and cassette tapes, and soon.

- It is illegal to reproduce the work in any material form (e.g. print of any size, video or audio recordings, and films) and specifically includes storing the work in any medium by electronic means (including on computer disk) without the permission of the author or copyright owner.

B) **Right of derivative works**

- An author has the right to exclude others from creating works based on his own. This right safeguards an author from what otherwise might be unduly narrow interpretation of the reproduction right, which could then permit another to vary elements of the work sufficiently to assert that it is not actually a copy /reproduction

- A derivative work is so comprehensive a term that it includes such things as translations, dramatizations, fictionalizations, Films, recordings, arrangements, and abridgments, condensations in which a work may be recast, transformed or adopted.

- Under the Ethiopian law of copyright and neighboring rights proclamation, derivative works are categorized into translations, adaptations, arrangements, transformation or modification of works and collection of works pursuant to Art 4 (1).

- Among these, the right of translation is treated as an aspect of the economic rights of an author as per Art 7(1) (b) of the proclamation.
- It is clear that the author or owner of the work has exclusive right to translate his work or to authorize others to translate it. Therefore, the author can derive benefits from his works by authorizing its publication in different languages when he himself translates the work.

- In addition, he can derive material benefits from his work that has been translated by a third party.
- This shows that an author or owner of a copyright can object to translation of his work. Accordingly, a person cannot translate the work of another without the authorization of the author. The basic reason behind this law is that it would be contrary to social progress to benefit from an author's intellectual work without granting him appropriate remuneration or compensation.

- The second type of derivative work is adaptation. In this regard, like translation, the author or owner of the work has exclusive right to carry out or authorization of adaptation of his work as per Art 7 (1) (c) of the proclamation. If a work is to qualify as an adaptation, it is a requirement that either it expressly refers to the original work or it is evident that it derives its inspiration from the original work.

- Adaptation retains the intellectual content and general construction of the original but clothes it in a different outward form.
- If a person seeks to adapt an original work, therefore, he must in advance secure the permission of the author of the original. Put differently, the author has an exclusive right to adapt the work himself, and to authorize others, if he so wishes.
-

- One form of adaptation may be dramatization of works. Dramatization is described as a version of a non dramatic work in which it is converted into a dramatic work. A dramatic work will normally be a play for performance in the live theater, a script for a TV or radio program, a screen play for a film /or radio/ a work of dance or mime or words associated with music.

- The other exclusive derivative right given to the author or owner of copyright is the right to arrange or authorize other persons to arrange his works pursuant to Art 7(1) (c) of the proclamation. However, the person who makes substantially a new arrangement of works after authorization is entitled to copyright protection in the new version

C) Right of distribution of works

- The other basic excusive right of the author or copyright owner is the distribution of the original or a copy of the work to the public by sale or rental as envisaged under Art 7 (1) (d) of the proclamation. The exclusive right of reproduction is nothing unless the author or copyright owner gets an economic benefit from the reproduced works by sale or rent. The only means of securing an economic benefit from the fruits of his work is either sale or rent.

- However, this shall not apply to rental or public lending of computer program except where the program is an essential object of the rental or lending (see Art. 7(2) of the proclamation). Our copyright law defines public lending as a temporary transfer of possession of an original work or a copy of a work or sound record by libraries achieves or similar institutions whose service is available to the public without making profit. Also, rental is defined under Art 2(27) of the proclamation as a temporary transfer of possession of a work, sound recording or fixation of a performance for a profit making purpose.

- The law also did not omit to define computer program. Under sub article 7 of Art 2, it is defined as a set of instructions, expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a machine-readable medium, of causing a computer to perform or achieve a particular task or result.

D) **Right of importation of works**

Apart from the above rights, the author or owner of a work has the exclusive right to carry out or authorize importation of his works. It means he can import his original or copies of his works or he can authorize importation of original or copies of his works. This exclusive economic right of importation of the works is at the hand of the author or copyright owner as it is envisaged under Art. 7 (1) (e) of the

- **E) Right of public display of works**
- Like those economic rights discussed above, the author or owner of a work has an exclusive right to display his original or copied works to the public. However, to display the original or copy of a work, the works should be fixed in a material form. This includes the public presentation (exhibition) of works like figurative arts. This right of public display of works is recognized under Art 7 (1) (f) of the proclamation.
- However, the display of works may be made in various ways. The author or copyright owner can display his work by means of a film slide, television image, or otherwise on screen or by means of any other device or process.

- **F) Right of performance**
- The author or owner is granted of a work exclusive right to perform (produce) his work by Art 7(1) g) of the proclamation. In other words, the performance right of the author protects one of the channels through which economic benefits deriv from. The expression “performance” refers to production and is used interchangeably in literatures on copyright. It is possible to define performance from the word “performer” defined under Art, 2 (19) of the proclamation, as acting, singing, delivering, declaiming or playing in or showing otherwise any literary and artistic works.

- Art. 2 (24) of proclamation defines public performance as performing a work to the public by recitation, playing, dancing, acting or otherwise, either directly or using any communication media; in case of an audiovisual work, showing the images in sequence and; in case of sound recording making the sound recording audible to the public. It can be said that performance is reciting, rendering, playing, dancing or acting of a work either directly or by means of any device or process.

- **G) Right of broadcasting**
- The other economic right of the author or owner of copyrightable work is broadcasting of his work. Broadcasting is defined under Art 2 (3) of the proclamation as transmission by wireless means for public reception of sounds or of images and sounds. Therefore, in order to transmit his works with sounds or images and sounds through a wireless means, the author or owner has an exclusive right.

- **H) Right of communication of works to the public**
- This kind of right is other than broadcasting of the work. Communication to the public is defined under Art. 2 (6) of the proclamation as the transmission by wire or without wire images or sounds or both of a work, a performance, a sound recording or a broadcast in such a way that the images or sounds can be perceived by a person outside the normal circle of a family and its closest social acquaintance at a place or places so distant from the place where the transmission originates, that without the transmission the images or sounds would not be perceivable and, further, irrespective of whether the person can receive the images or sounds at the same place and time, or at a different place and/or time individually chosen by them.

- In general, irrespective of the means of communication of works to the public, the author or owner of a work has the exclusive right to carry out or authorize communication of the work to the public.

Moral Rights

- The doctrine which purports to protect the personal rights of the creator as distinct from their mere economic rights is known as moral right.
- A moral right, as the negative right, is to prevent violations of the personality of the author.
- Its objective is to assure respect for the author's thought and personality.

- It is the right which confers upon the creator to dispose freely of the product of his creativity, to modify it or to destroy it entirely, as he sees fit.

- The various ramifications of the doctrine of moral right may be said to consist of the right to create and to publish in any form desired, the creator's right to claim the paternity of this work, the right to prevent every deformation, mutilation or other modification thereof, the right to withdraw and destroy the work, the prohibition against excessive criticisms and the prohibition against all other injuries to the creator's personality

- The work bears the stamp of its author's personality because in every man's work, the character of the writer is recorded.
- Use and dissemination of the work, therefore, not only bring economic profit, they also enhance the author's name and fame.
- The author seeks economic gain and the promotion of his reputation through his work.

- Accordingly, independently of the economic aspect of copyright, and even after the transfer of it, the author has the right to claim authorship of his work and to object to any distortion, mutilation, modification or other “derogatory” action in relation to his work which would be prejudicial to his honor or reputation.

- Attached inalienably to the author as per Art 8 (2) of our proclamation, therefore, the moral right always protects the personality of the author.
- Like the economic aspect of copyright, the moral aspect has many ingredients that constitute the bundle of rights in it and that is the reason, which calls for a discussion of the components of moral rights.

A) Right of paternity

- The right of paternity entitles the author to insist that he and not another person is credited with the authorship of the work he created.
- An author is a man who brought out of nothingness some 'child' of his thought and up on its creation he is dubbed the ‘father’ of such ‘child’.

- As a unique result of a unique temperament, the work of art is the most intense mode of individualism that the world has ever known.
- Its beauty is an external reflection, a projection of the creator's inner self to the external world, that is, its beauty comes from the fact that the author is what he is.

- As a result, the author is given the right to require all others to associate his name with his work and to prevent attribution of his name to a work that is not his.
- The right to paternity is, therefore,
- ✓ Firstly, the right of the creator of the work to present himself to the public as such,
- ✓ Secondly, to require others to present him as such, and
- ✓ Thirdly, to prevent others from attributing works to him which he has not created.

- In essence, the right of paternity protects the author not only against unauthorized denial but also against false imputation of paternity as well.
- Of the three ingredients of paternity right, the first is the right of the author to demand his name to appear on all copies as well as on advertising or other publicity for the work.

- The second component prevents plagiarism of his work. Out and out plagiarism presents at once the most obvious violation of this interest and the most serious invasion of the author’s pecuniary rights.
- The third aspect provides protection against being named as the author of a work that has been mutilated or altered.

- In Ethiopia, the author of a work does have the right to claim authorship of his work. In other words, he has the right to be identified as an author upon copies published to the public save the work is included in reporting current events by means of broadcasting (see. Art 8(1) (a) of the proclamation).

- Also pursuant to Art 22 (1) of the proclamation, the person in whose name the work was published shall be deemed to be the author there-of unless there is a contrary proof.
- Thus, a creator of a work can demand others to identify him as the author once his name appeared on the work.
- This right is basic in the sense that it is the stake by virtue of which the author establishes his name in the minds of consumers' of his work thereby producing fans for himself.

- The fact that he is permitted to have his work published under his name necessarily affects his reputation and thus impairs or increases his future earning capacity.
- Failure to associate his name with his work denies him recognition of his achievement while attribution of his name to a work not his own preys on the value of his name and makes him 'heir' to the consequences of another's labor.

- Alteration of an author’s work both misrepresents the author’s efforts and mischaracterizes the personality to which the work is attributed.
- Hence the right to paternity is a fundamental moral right

- This right of paternity extends to a translator and the director of a film. In other words, like any other authors, directors and translators have the right to be identified whenever their work is published commercially (including by means of an electronic retrieval system); performed, shown or exhibited in public; broadcast or included in a cable program service; or included in a film or sound recording that is issued to the public.

- On the contrary, though he has the right to be identified (to claim authorship), he has the right to remain anonymous or to use a pseudonym as per Art 8 (1) (b) of the proclamation.
- In other words, the author of the work can remain silent without disclosing his name or the identification can be in the form of a pseudonym, initials or 'any

- Moreover, the author may claim the benefit of presumption of authorship granted under Art. 22 (1) of the proclamation notwithstanding that he used a pseudonym provided that there is no doubt as to his identify (see Art. 22(2) of the proclamation).

- However, to be anonymous for his work or using pseudonym is a right reserved for the author not an obligation for him. In other words, in Ethiopia an author is entitled to use pseudonym, or publish his work anonymously.

- Therefore, if the author wishes to use pseudonym, he has the right to be identified in his pseudonym. It means the obligation to disclose the name of the creator of a work extends not only to his true name, but also to the pseudonym. The moral rights protect the identity of the creator as he has chosen it.

- In this regard; I want to raise one foreign case that has a direct relevance for our law. The plaintiff-author had published two un copyrighted stories under a pseudonym. Subsequently after the plaintiff had acquired a reputation in his own name, the defendant published the two stories under the plaintiff's actual name, without permission. However, the plaintiff's motion for temporary injunction of these facts was granted by the court.

Right to integrity of the work

- The right of integrity is the right of the author to safeguard his reputation by preserving his work from derogatory treatments.
- A treatment of a work is derogatory if it is subject to addition to, deletion, alteration, unauthorized adaptation that amounts to distortion or mutilation of the work or is otherwise prejudicial to the honor or reputation of the author or his work.

- Therefore, the author of a work has the right to object any modification up on his work in the process of reproduction by the publisher, during translation act, and soon.
- To put differently, the author has the right to have the integrity of his work respected i.e., he may prevent all unauthorized deformations, mutilations or modifications.

- This right does not arise until, after completion, the work has been put on the market by the author, has been sold, or has been made the subject to contracts of publication or performance.
- From that time on, the author has the right to insist that its integrity must not be violated by measures which could alter or

- Therefore, a non author cannot make changes in the work except upon securing the author's permission.
- Thus, the right of integrity is infringed if a derogatory treatment of a copyright work, or part of a work is published commercially: performed, shown or exhibited in public; broadcast, or included in a cable program service; or if copies of a film or sound recording of, or including, a derogatory treatment of a work are issued of the public.

- The right of integrity is also infringed if a graphic work or a photograph of a derogatory treatment of the model for a building, a sculpture or a work of artistic craftsmanship is published.
- In connection with integrity of the work, there is a situation where an extremely delicate problem arises. This is a problem of protecting the integrity of the work when the author has authorized its adaptation to a different medium, as in the case of adaptation of a novel for a cinema or a theatre.

- The problem here is to ascertain to what extent the author of the original work can insist on its integrity when this claim conflicts with creative freedom of the adapter who is the would-be author of the work which purports to be equally original. How may a conflict between these two equally valid moral rights be resolved?

- In the first category are contracts in which adaptation is authorized unconditionally.
- All the adapter is required to do is that he executes the contract in good faith, and to refrain from distorting the spirit of the original work with the intention of doing harm. In the absence of such intention, the adapter is at liberty to make all changes he thinks necessary for the purpose of adaptation.

- The second type of contract is one which contains clauses authorizing all changes and modifications which do not distort the spirit and character of the original. Under such contracts modification in the original work that is required by necessities arising from the need to commercialize the adaptation are said to be

- The third type of contract is such that the author who has authorized an adaptation of this work actively participates in the process of adaptation-as a scenario or a dialogue writer, for instance. Thus under this type of contract, the original author stipulates that his text be subject to no modifications without his approval.

- Under the Ethiopian law, undoubtedly the right of preservation of integrity of an author's copyrighted work is provided under Art 8 (1) (c) of the proclamation. It provides that the author of the work has the right to object to any distortion, mutilation or other alteration of his work, where such an act is or would be prejudicial to his honor or reputation.

- Therefore, no person will be allowed to distort, mutilate or alter the work without the author's consent where the act is or would be prejudicial to his honor or reputation.
- Giving permission by the author to alter, mutilate or distort his work that prejudices his honor or reputation is unthinkable.

- Thus, any one can’t alter or mutilate or distort the work of the author if this affects his honor or reputation, unless he permits, though he is not an owner of economic rights.

Right to publish

- The right to publish a work or to keep it secret is said to be a natural and incontestable as the right to create.
- So long as a work has not been completely created- of which the author alone can be the judge- it remains a mere expression of the creator’s personality, as it has no existence beyond that which he tentatively intends to give it.

- It is exclusively for the author to determine whether the work shall be published at all, and if it is to be published, when, where, by whom and in what form.
- In other words, the author of an unpublished work, so long as he does not publish it, may keep it as a private matter which he is not obliged to give to the world.

- Accordingly, the Ethiopian law of Copyright and Neighboring Rights proclamation under Art 8 (1) (d) gives the right to publish his work only to the author. The author is undoubtedly free to publish his work irrespective of whether he is an owner of economic right or not. In other words, the author has the exclusive right to decide whether and when a work is to be released to the public.

- The issuance of his reproduced word to the public is at the disposal of the author.
- No one may publish a copyrightable work of the author without the permission of him.
- Apart from this, a person publishing a work of the author cannot do so without infringing the authors' rights.

Right to create a work

- The very basis of all creative works lies in the protection of the right to create, which is a function of the right of individual liberty. This right is said to become part of the moral right when the author, having concluded a contract with another to complete and deliver a work, becomes unwilling to do so.

- The effect of such a contract is said to depend on the moral right because creation is closely related to the personal and moral interests of the author, his honor and reputation. An author could not be forced to create a work against his will. “If I do not want to create an original work,” says Pierre Recht, “surely that is my own business. The law cannot tamper with it. It is my freedom-my prerogative-to create or not to want to create a work.”

- This is, to be sure, the line followed by the Ethiopian law. Art. 2675 (1) allows the author of a work to assign his work even if he has not yet executed it provided that the work is sufficiently well-defined and that the author can complete it in a period not exceeding two years.

- In addition, under Art 2270 (1), a sale contract may be concluded even if its object is a future thing that has no existence at the time of the contract. Provided that the seller undertakes to deliver such future thing-as, for instance, when the author contracts to write a dialogue for a cinema-the contract is valid by virtue of Art 2270(1)

- The immediate legal question presenting itself in exploring the extent of this aspect of moral right is the treatment accorded by law to contracts obliging one party to create.
- Once it is conceded that the right to create a work is an aspect of individual liberty, it will be easier to admit the corollary, i.e., the right of an author not to create, to refuse to

- A court cannot give a mandatory injunction compelling the author to create a work for so to do goes against the creator's individual liberty.
- In line with this argument, Art. 1776 mandatorily provides that specific performance is not to be ordered if and when such order affects the liberty of the debtor-the author in our case.

- And there is no better liberty for the author than to be free to create or not to create. Thus, the author is at absolute liberty to create or not to create a promised work without being obliged to create it. If he refused to create the promised work, however, he is liable for any damages caused to the promisee by his act of breach of the contract and that is the outrage of his liability for he can’t be forced to create

E) Right to withdraw (disavow)

- Notwithstanding the transfer of his right of exploitation, the author, even after his work has been published, enjoys the right of withdrawal. He may not exercise this right, however, without accepting the obligation to compensate the assignee for the losses, which the author's act of withdrawal might cause

- The usefulness of this right is difficult to see, however. Once the thought is expressed, circulated and criticized, it cannot be erased. Copies of a work which have been sold cannot be destroyed. Hence, the rationale for this right, i.e., the change of conviction of the author or his convictions being obsolete due to changes that are brought about by the passage of time, cannot work even if the author exercises his right to withdraw.

- Thus the author whose conviction is changed has actually only one recourse: to set the creations forth in a new edition.
- This right of the author is not directly incorporated under Ethiopian law. It can be inferred from Art. 2687 (1), however, when the law states that the author is at any time given the

- These corrections or improvements may require the withdrawal of prior editions and thereby prejudice the interest of the publisher. In such cases, he will be indemnified by the author for the expenses he incurred by the act of corrections or improvements (Art. 2687 (2).
- Hence, the author can make any additions, suppressions and other modifications, which he thinks necessary in order to make the work conform to the state of his intellectual convictions. However, the right to withdrawal is not incorporated in the new Copyright and Neighboring Rights proclamation.

Limitations on Copyright

- The exclusive right of the author or owner of copyright on reproduction is not absolute, it has an exception.
- Why limitation?
  - ✓ Because the ultimate aim of copy right is not benefit an author enjoys but rather achieving a balance between an author's exclusive rights and other social, educational and cultural interest of the public, which may results in limitation of authors exclusive rights.

- The followings are limitations provided in the proclamation.

1. Reproductions for personal purposes

- There is limitation on the authors reproduction right. Art 9(1) provides the possibility of coping works without the permission of the copyright owner.

The reproduction for personal purpose should fulfill the following

- It should be for using it privately/ not for public service
- It is for physical person/natural person/ not for juridical/legal person
- The work published work
- It should be in single copy/ not more than a single copy

- However, reproduction of works for private (personal) purposes is not allowed under Art 9 (2) of the proclamation
- ✓ where reproduction is that of a
  - work of architecture in the form of a building or other construction,
  - musical work in the form of notations, or
  - of the original or copy made and signed by the author of a work of fine art,

- the whole or a substantial part of a data base in a digital form,
- a computer program except as provided in Art 14 of the proclamation; or
- a work that would conflict with or causes unreasonable harm to the normal exploitation of the work or the legitimate interest of the author.

- Some argued that private reproduction without the consent of the author or copyright owner is permitted only in the case of backup copy. That means a person, who bought the original may copy it and will have a reserve copy for his personal purpose as per Article 9 of the proclamation.

2. Quotation

- It is possible to make quotations from a work which has already been available to the public. Art 10 (1)
- The law clearly provides that the owner of copyright cannot forbid the reproduction of a quotation of a published work.
- However definition for quotation is not provided in the proclamation.

- Quotation shall be compatible with fair practice and does not exceed the extent justified by the purpose (see Art. 10(2) of the proclamation).
- In this case, reproduction should not conflict with normal exploitation of the work and should not unreasonably prejudice the legitimate interests of the author.
- Besides, the person that quotes the work of another has to acknowledge the author. That is why Art. 10(3) of the proclamation clearly envisages that where the quotation is taken from a source which contains the name of the author; it shall indicate the source and the name of the author

3. Reproduction for teaching

- A noteworthy limitation to the exclusive right of reproduction is where the work is out of print, copies or reproductions thereof are authorized in several copies for educational purposes.
- Accordingly, the proclamation envisages under Art 11(1) as the owner of copyright cannot forbid a reproduction of a published work or sound recording for the purpose of teaching as long as the reproduction doesn't exceed fair practice and the extent justified by the purpose.
- However, the copy shall indicate as far as practicable the sources of the work or sound recording reproduced and the name of the author (see art 11(2) of the proclamation).

4. Reproduction by Libraries, Archives and Similar Institutions

- As emphasized above, the ultimate goal of the copyright system is promoting an efficient mechanism of dissemination of information and knowledge so that the required scientific and cultural transformation will materialize.
- To that end, it is necessary to make sure that institutions that are engaged in this blessed task of dissemination of information are getting the necessary input which in turn is to be made available for the benefit of the general public. These institutions are belongs there for providing information for researchers too

Other additional reason for protection

- Rare books and manuscripts are usually photocopied to secure against their destruction or loss. Similarly, for the purpose of preservation, photocopies are made of newspapers and other items printed in fast deteriorating paper

- In our country law, the exclusive right of reproduction or authorizing the reproduction of author's work is limited when the reproduction is made by libraries, archives, memorial halls, museums and other similar institutions that are engaged in gainful activities directly or indirectly (see Art. 12(1) of the proclamation).
- The provision provides conditions for the application of such exceptions (art 12 (1)
  - ✓ 1st only reproduction of article, short work or short extracted work allowed.
  - ✓ 2nd the institution should not work for gain, directly or indirectly. (exclusion of commercial establishment)

- 3rd the following condition have to be met (Art 11(2))
  - a) It should for solely for the purpose of study, scholar ship or private research
  - b) Is an isolated case occurring, if repeated on separate and unrelated occasion
  - c) No available administrative body to provide collective license of reproduction
  - ✓ Such reproduction is allowed for Art 12 (3) situations only
    1. Preservation and replacement
    2. Impossibility to obtain a copy
    3. Stated under b in the above

5. Reproduction, Broadcasting and other Communication to the Public for Informatory Purpose

- However, this exclusive right is limited under Art 13 of the proclamation. In other words, the owner of copyright cannot forbid the reproduction in a newspaper periodical, the broadcasting or other communication to the public of an article published in a news paper or periodical on current economic, political, social or religious or similar topics (see Art 13(1) of the proclamation.

- But in order to apply this limitation, the author or copyright owner should not lift such powers in such works. If the right or authorized reproduction or broadcasting or the communication to the public is expressly reserved on the copies by the author or owner of copyright or in connection with broadcasting or other communication to the public of the work, no person can reproduce, broadcast or communicate to the public without the permission of the author.

- Moreover, the right of reproduction, broadcasting or other communication to the public of short excerpts by the author is limited under Art 13(2) of the proclamation. Reproduction and broadcasting other communication to the public of short excerpts of a work seen or heard for the purpose of reporting current events is possible without requesting and blessing the permission of the owner of copyright.
- Lastly, the owner of copyright cannot forbid the reproduction in newspaper or periodical, the broadcasting or other communication to public of a political speech, lecture, address, sermon or other work of a similar nature delivered in public or, a speech delivered during legal proceeding to the extent justified by the purpose of providing current information (see Art. 13(3) of the proclamation).

6. Reproduction and adaptation of computer programs

- The other limitation on the exclusive right of reproduction or adaptation of works is a single copy reproduction or adaptation of computer program pursuant to Art 14(1) of the proclamation.

- However, this kind of limitation under Art 14(2) of the proclamation is permissible when it is found necessarily
- to make use of a computer program with a computer for the purpose and extent for which the computer program has been obtained;
- a back-up copy by a person having a right to use the computer program in so far as it is necessary to ensure future use, or
- adaptation that is indispensable for using the computer program in conjunction with a machine for the purpose, and to the extent of use, for which the program has been lawfully obtained

7. Importation for personal purposes

- As we have seen, the author or owner of a work has the exclusive right to carry out or authorize importation of original or copies of a work pursuant to Art .7 (1) (e) of the proclamation.
- However, this exclusive right is limited to import copyrightable works for personal purposes by physical persons.
- Accordingly, the owner of copyright cannot forbid importation of a copy of a work by a physical person for his own personal purpose.

8. Private performance free of charge

- This limitation is performance of other works in private at family gathering or in a school.
- This kind of limitation is evident because prohibiting each and every individual from performing a copyrighted work exclusively for himself is rather absurd. Most importantly, since private performances cannot by any stretch of imagination be prejudicial to the economic interests of the copyright owner, there is no need to prohibit private performance of protected works. Therefore, for such kind of works neither the authorization of the author is required nor this unauthorized use of the works would entail copyright infringement

- Coming to the Ethiopian law, Art 16 states that “the author may not forbid private performances of his work given free of charge at a family gathering or in a school. So the intention of the legislator in precluding the author form forbidding private performance should be construed in light of the last limb of the provision which says, “At a family gathering or a school”

- The feature that Art 16 shares with many foreign laws in this aspect is that it exempts non commercial performances i.e. the author is prohibited from forbidding performances that are given free of charge. Also, it is not enough that the performance be given free of charge, the audience is also strictly limited. The performance, though given free of charge, will be an infringement if it is presented to an audience than is outside of a family

9. Issuance of Non- voluntary license

- Relating to free use, servicing similar public purpose, there are other limitations, namely non-voluntary license.
- Non- voluntary license is justified on the ground that sometimes it is not practical to find the copyright owner and secure his blessing, especially long after its publication.
- It is also argued that introducing the concept is important to avoid the creation of monopoly that may be against public interest.
- Accordingly, copyright laws provide general limitations to facilitate this demand in favor of the interest of the public and make works available without request from copyright owners and irrespective of their opposition in some cases.
- On the other hand, it is criticized on the ground that it creates difficulty to exercise moral rights by the author, and it erodes the bargaining power of the right-holder as the latter is bound to permit the use.

- Generally, there are two forms of non-voluntary license systems.
- The 1st being statutory license where everything, including the royalty will be determined by the statute recognizing the concept.
- The 2nd is named "compulsory license" in which the user must negotiate with either the author or collective society representing the interest of the author where he wants to use the work. The author or the society is bound to permit the use against the payment of remuneration

- In Ethiopia, the Office is empowered to grant license to authorize the reproduction or translation or broadcasting of a published work even against the objection of the author, heirs or legatees as per Article 17(1) of the proclamation.
- The Office pursuant to article 2(15) of the proclamation is the Ethiopian Intellectual Property Office established by proclamation No 320 /2003.
- But the Office has to authorize reproduction, translation or broadcasting published work for public interest. However, the requirement of public interest is not found in the English version of the proclamation but in the Amharic version we can find as "ለሕዝብ ጥቅም". As the Amharic version is the official text, we have to apply it.
- Also, as the provision is an exception it should be interpreted narrowly. The other reason is if the office is empowered whenever it likes, it will be invasion of the rights of the author or copyright owner. The conditions, forms of such authorization and in particular the fair compensation to be made to the owner of copyright shall be determined by regulations (see Art. 17/2/ of the proclamation). However, no regulation is enacted up to now.

- In fact, the compulsory license can be given only after the publication of the work to the public.
- For the right to publish falls in the domain of the moral right of the author, which is exclusively personal to him, the Office needs to wait for that moment to come.

- It is also to be emphasized that although the act is performed without the permission of the copyright owner or even against his objection, non -voluntary licensing the use of the work is to be made in return for the remuneration to the author.
- Thus in copyright law the effect of such licensing is that the exclusive right of the copyright owner is reduced to a right to equitable remuneration. Nonetheless, pursuant to Art 17 /3/ of the proclamation, the office may not authorize the alteration of the work, come what may.

10.Display of works and distribution of copies of works

- As per Article 18 of the proclamation, without the authorization of the author or owner of copyright public display of originals or copies of works is permitted where the display is made other than by means of film slide, television image or otherwise on screen or by means of any other device or process and the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor.
- The other limitation is on the distribution of copies of works. Where a copy of a published work has been sold to the public such a copy may, without authorization and payment remuneration, be redistributed by means of sale (see Art. 19 of the proclamation).

11. Lapse of Duration of Economic Rights

- Talking of copyright duration, two things must be understood at the outset as preliminaries of primary importance. First, copyright term merely concerns itself with the economic aspect of author's rights for we cannot conceive of duration of moral right because it is "in general, perpetual in duration, although certain of its incidents, such as the right to create or to modify, must lie with the author".
- However, regarding the enjoyment of moral rights by heirs or legatees Art 8 (4) provides that they will enjoy the moral rights until the expiry of economic rights. Therefore, there is duration of moral rights for heirs or legatees in outlaw.

- Secondly, the expiry of copyright marks the end of the protection accorded to the work to which it has been given. Naturally no work can have a period of protection unless it qualifies for protection to start with. If this term expires, the works which for all legal requirements deserve protection will be stripped of copyright and be available to the world at large for use or abuse without any restraint.

- Under the Ethiopian law, this period of protection is available for the life time of the author plus fifty years.
- In other words, economic rights shall belong to the author during his life time and to the heirs or legatees for fifty years from the death of the author (see Art. 20(1) of the proclamation).
- Likewise posthumous works will be protected for a period of fifty years from the date of publication of works pursuant to Art 20 (3) of the proclamation.

- In case of a work of joint authorship, the term of fifty years shall commence to run from the death of the last surviving author (see Art. 20 (3) of the proclamation). Where the work is collective work, other than an audiovisual work, the economic rights shall be protected for fifty years from the date on which the work was either made or first made available to the public, or first published, whichever date is the latest. (See Art. 20(4) of the proclamation.)

- Our law also provides a period of protection for works published anonymously or under a pseudonym. Sub articles 5 of Art. 20 provides that where the work is a work published anonymously or under a pseudonym, the economic rights shall be protected for fifty years from the date on which the work was either made or first made available to the public or first published, whichever date is the latest.
- However, in case where the identity of the author is revealed or is no longer in doubt, prior to this period, where the author is a single author economic rights shall exist during his life time and to the heirs or legatees for fifty years from the date of his death and where the authors are joint authors, fifty years shall commence to run from the death of the last surviving author. (See Art. 20 (6) of the proclamation).

- Sub articles 7 and 8 of Art. 20 of the proclamation puts down the life span of copyrightable photographic and audiovisual works. For photographic works, economic rights shall be protected for twenty five years from the making of the work. In case of audiovisual work, the economic rights shall be protected for fifty years beginning from the date of making of the work or communication of the work to the public, whichever date is the latest.

- In determining copyright duration, there are two interests at stake: creators of works of the mind must not be deprived of their just reward for their ingenuity and labor, and the world may not be deprived of the free enjoyment of the works of the mind. The longer the duration, the more is the tiltation of the law in favor of authors; the shorter the term the more unsympathetic is the law to them and that means the public interest is given primacy. The question in issue is one of striking the balance between two interests and this is recognized in our law.

- Be that as it may, when its term expires a copyrightable work is said to be out of copyright or in the public domain. Once its term expires, the same work is not entitled to more than one copyright and it will be a “historical document, a monument” which is striped of copyright protection.

- Upon the lapse of the life span of the copyrightable works, the owner (s) of a work will be denied of protection of copyright. Thus a person taking such work as his own without the author's consent infringes no right protected by copyright. In other words, infringement of copyright, in general, is only conceived of when there is copyright in work.

TRANSFER OF COPY RIGHT

- The author may exercise his right of ownership either by his own or transfer it for others, may be in part or in whole.
- While discussing transfer of copyright, a point that must be emphasized is that what can be transferred is merely the economic right of the author.
- moral rights shall remain with the author even after the transfer of economic rights.

- The transfer of copyright from its original owner to others may take the form of either ***assignment*** or ***a license***

Distinction b/n assignment and license

- **Assignment**
  - transfer of ownership of the whole right or part of it, whereas a license is**.**
  - makes the **transferee exercise an exclusive right** within his own domains.

- **License**
  - ✓ the authorization of acts, without which such authorization would amount to infringement
  - ✓ securing the ***green light to act***. *Simply the licensee is authorized to act but that does not, necessarily, make him an owner of the fruits of his acts*

Forms of Transfer of Copyright

- As a property owner, an owner of copyright may transfer his monopoly rights in all legally possible ways.
- An ownership (or a segment of it) of copyright may be transferred in any of the following four ways:- a) will, b)operation of the law, c) contracts and d) judicial decisions