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Lecture Note on Intellectual Property

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What is property? The notion of property encompasses five principal dimensions. One; the right's bearer we called as the subject of property. Second; the thing over which property rights are exercised this is called the object of the property. Third; the sovereign right accorded to the subject over the object we call this right exclusive or monopoly right. Four; they are not absolute right they are limited. Fifth; bestowing or conferring some sovereign right upon the subject in respect of the object.

Let us focus on the second dimension that is the thing over which property rights are exercised. In the classification of things, there is one attempt to divide things in to corporeal and incorporeal. In respect of corporeal things, the conventional rule of appropriation or the law of occupancy easily applied. A mere appropriation is a significant step in the enjoyment of the property right. But this would not make sense in respect of incorporeal property rights. This is because you cannot physically control or you cannot simply enjoy your rights by taking physical possession over the object. So, to enjoy property rights over incorporeal things we need a full package of law.

To enable the enjoyment or the transfer of right in respect of incorporeal property right, the concept of quasi possession which is expressed by the continued enjoyment of the right and by defending the right whenever the occasion calls for it.

Not all incorporeal rights are property rights. There are incorporeal rights outside of the sphere of property right. This assumption leads us to the theory of right in *personum* and right in *rem*. Right in *personum* is the right is to be claimed against designated person or designated category of persons not against anybody else. You claim the right only against the contracting party. Right in *rem* is against the thing here, you against the whole world. You have the right of pursuit and you can pursue your object into whatever hands it might fall.

Definition of Intellectual Property: Objects of intellectual property are fruits of the intellect and products of the mind. It is a bundle of exclusive rights enjoyed by a person in respect of fruits of the intellect creation and invention.

Features of IPRs; Some of this feature might be shared by other property right as well especially, corporeal property right. Some of the features are unique only to IPRs.

General Features

1) In-corporeality or intangibility or mobility, as a rule the classification of things movables and immovable presupposes corporeality. This feature is ascribed by law. What is the advantage of regarding IPRs as movable rather than immovable objects? It is ease of transaction. Not all incorporeal property rights are IPRs. There are some property rights which are outside of IPRs. For example, Security to Bearer and negotiable instruments are incorporeal e.g. a note of money. But, not all negotiable instruments are security to bearers e.g. checks, bill of lading etc. they require endorsement. Business as a going concern under Art, 124 of Com C, business is as an incorporeal movable consisting of both corporeal and incorporeal element. Therefore, shares in business organizations, the business itself or securities to bearer are incorporeal rights nevertheless, are not IPRs.

2) Economic value; objects of IPRs often are economic value, of course this issue is not settled there are some controversies but there seem exist general understanding not general consensus. They should be proprietary or marketable or capable of monetary assessment being transacted in money terms. There is a concept of moral right also moral right is an extra- commercium in nature but it is not a sole right it comes only secondary to economic right for IPRs. For example, see the Copyright law of Ethiopia; the primary importance is economic right in the absence of it there will be no moral right. Art, 40/2 of the FDRE Constitution the phrase *"intangible thing having economic value"* qualifies economic value of incorporeal property.

3) Joint ownership: two persons can jointly write a book and enjoy the economic right thereof. They could be co-author a certain book and enjoy the Copyright together.

Matrimonial property: while the marriage is valid and sustained any property that has generated by the intellectual efforts of one of the spouses belongs to both of them.

Communal rights: even very rare the principle could also work for IPRs. For example, traditional knowledge of a given community may attain IPRS.

Public domain: you cannot own a high way it is a public domain. IPR is often time limited or duration limited e.g. Copyright is limited to the life time of the author plus fifty years after death. So, fifty years after the death of the author the right will be expired, that means it will be a public domain.

Unique Features: features more or less only for IPRs these are:

Territoriality: the protection of IPRs is conventionally territorial. If Sisay takes his cell phone and crosses the Ethiopian boundary into a neighboring country, he can still enjoy the rights in respect of that property. The enjoyment of property right in respect of corporeal objects is extra-territorial. The enjoyment may continue even when you cross the boundary of a given country. But the enjoyment of IPRs is exclusively territorial. You may not enjoy Copyright over a book in respect of which you have acquired Copyright under Ethiopian law elsewhere. To enjoy the right you have to satisfy the legal requirement defined by that state. And those requirements are differ even though some are similar.

However, there are some moves of countries towards extra-territorial protection through treaty regimes. For instance, regarding patent there is a Paris Convention for Protection of Industrial Property which was signed in 1883. Even though there are some attempts to internationalize the protection of IPRs, specially triggered by increased trade relation and cultural tie between and among countries the basic protection remains territorial till these days. Ethiopia is also trying to join WTO and one of the obligations that Ethiopia needs adhere to if it is accede to it, is Trade Related Aspects of Intellectual Property (TRAIP). If this is happened Ethiopia will be subjected to international obligation.

Dichotomy: refers to separation between knowledge/information and its physical embodiment for example, the song and the Disc in which the song is recorded. The physical embodiment of the song is the Disc. Often the information or Knowledge which is the object of IPRs is often found recorded in physical objects e.g. Copyrights in books. When this is the case, we must distinguish the ownership of the physical material does not result in the ownership of the information contained or recorded in that physical object. The fact that you have bought a certain song legally does not entitle you to reproduce it and lent it. So, the prohibition is because of the dichotomy between an object of IPRs and an object of

conventional property right.

Non-rival consumption: rival consumption is common for physical objects of property right. If you possess a certain thing, then you definitely go to deny other persons enjoying it or reducing the amount and the quality available for others to use it. This is not the case in IPRs e.g. song. If IPRs are non-rival in consumption, why protection is needed? Because the creator or the author taken as assume risks in terms of investing money, time and energy for come up with result so he/she deserves some kind of protection for the creation or invention as an incentive. How do you protect IPRs? It is by reference to the law that the person who is given this exclusive right over IPR would enjoy those rights.

Fragmentation: (divisibility) IPRs can be divided; of course in the case of corporeal things also dismemberment of right is possible. What is dismemberment of property right? The usufruct for instance, in respect of that physical object could rest on someone when bare ownership can be retained by somebody else. Whereas physical dismembering of the property itself doesn't retain the original utility we might find from the physical object. Dismemberment may applied on IPRs for example, take song; lyrics, performance, music composition, production etc. these things may be performed by four different persons. At the end of the day essentially the object of the IPR protection is single entity is a song. Each of the persons who have contributed to this song can enjoy independent protection under IP laws without prejudicing the right of other persons who are involved in that protection.

Time limited: generally, IPRs have *spacio-temporal* feature. Spacio refers place or territory while temporal stands for time. Often IPRs expire at the end of a certain legally defined period. So, expiry for Copyright is fixed as the life time of the author plus fifty years after death, technological inventions or patents for twenty years, trade marks for seven years.

The Scope or the Domain of IPRs

We can categorize IPRs into Copyright and industrial property right. Trademarks are also another regime of IPRs which protect good will, brands and reputation associated with products or services in the course of business. Trademarks are designation of products that distinguishes products of a certain trader with other traders. Another right related with trade mark is trade names which are usually not subject to IPRs. Many countries protect trade names under the commercial law as unfair competition. This is also true in Ethiopian case

under the Commercial Code.

Trade secrets are also other rights but not protected everywhere protected only in some states e.g. USA under the US legal code it defined as *“any information that can be used in the operation of the business or other enterprise and that is sufficiently valuable and secret commercial information to afford an actual or potential economic advantage over others.”*

Unfortunately we have no such kind of protection in our IP laws. Geographical indications (GIs) are also the domain of IPR although absented in Ethiopian laws. They protect the reputation of geographical origin of the market commodities in the course of the business.

There are two types of GIs indication of source and affiliation of origin
Theories about IPRs

We have some three theories that tell us something why we protect IPRs. These are the personality based theory, the Lockean labor theory and utilitarian theory. The first two rights are natural rights based approaches to IPRs. Because somehow they regarded as IPRs are natural and individual rights. The notion of these two theories is constructed on tangible property and later on expanded to IPRs. But the construction of utilitarianism is primarily associated with The European system and many continental legal traditions of IPRs theory is grounded on the personality based theory while Anglo-American's legal traditions of IPRs theory is built up on the Lockean's labor theory.

The Personality Based Theory

The theory is based on German moral philosophers named Immanuel Kant and Fredrik Hegel. It is basically the Kantian and Hegelian school of thought. They claim that individuals have moral claims to their own talents, feelings, character traits and experiences. According to these theorists, these things are important for self-actualization. So, IPRs are essential for the expansion of our personality to intangible products for what is regarded as the realization of external self-actualization. This is the basic tenet of this school of thought.

Critics

It is not clear that we own our feelings and character traits even though they are inside us, it does not mean we own them as a property. The personality theorists do not provide a kind of strong argument for establishing ownership of our internal feeling.

Secondly, Even if we admit that we own our internal feelings, internal character traits, it doesn't automatically follow that that such claims expanded when personality fused with tangible or intangible property. They say that rather than expansion of personality to such intangibles works, we should view as abandonment of personality.

Thirdly, even we accept moral claims personality could be expanded to tangible or intangible items, we should still need an argument justifying property rights.

Lastly, there are many intellectuals innovations that don't display the personality of the author at all. There are lot of works that are less associated with the personality of inventor. So, it doesn't work to all intellectual properties. Probably it works to copy rights works but not others like patentable works.

The Lockean Labor Theory

This theory begins with the claim that individuals are entitled to control the fruits of their labor. When you mix your labor with previously un-owned object you are morally entitled to control that intangible property. Labor in this sense is an intellectual labor, thinking, persevering etc. So if you come up with some invention or expression as a result of your thinking you are entitled to your invention or expression. This is because you have mixed your labor with that object. So, you are entitled to control that intangible object through the regime of property right.

Critics

1. The idea of mixing labor with object is incoherent, how can mix actions with objects.
2. Why would we say that mixing labour generates property rights rather than loss of labor?
3. The skills and tools that we use in labor might be social products themselves. It is not fair to monopolize the contribution of the society.

Utilitarianism Theory

According to this theory, a necessary condition for promotion of creation of valuable intellectual works is granting limited rights of ownership to authors and inventors.

Intellectual works are important for the good of the society this is the premise of this approach. Authors and inventors will be rewarded for their effort but ultimately it's the society that benefited. Intellectual property rights are viewed as means to an end. They are not ends by themselves.

Critics

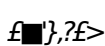
If we take trade secret protection for example, it appears to be the most troubling from utilitarian point of view because protection hinges on continued secrecy without the reciprocal benefit of the society private monopoly will sustain.

Do these theories are mutually exclusive,

General Critics on IPRs

1. Information wants to be free. This associates with the non-rivalness feature of IPRs. Non-rivalness nature of IP works provides prima facie case against right to restricted access because; IPRs are not consumed by use. But not all information should be free, for example, sensitive personal information, pornography, snuff films, information relating to national security.

2. Free speech argument: the protection of IPRs restricts freedom of thought and freedom of expression. Protection of Copyright for example, it restricts expression of ideas. In the case of patent right protection, it restricts the use of ideas. Trade secret restricts certain methods of acquiring ideas and information.

3. The social nature of information: information/knowledge is a social Product and enforcing access restrictions unduly benefits authors and inventors. The parable of a bridge, if a given bridge is constructed by the collective efforts of the society and finally the ownership is left for a single person  is not fair. But it is not clear if a society owns something. Even if information/knowledge has social nature, nobody owns them freely for example; you have to pay for it when you study.

International development of intellectual property protection

Principle of territoriality advocates IPRs protection is national rather than international. But there have been developed trade relations and cultural exchanges between countries. So

the mere national protection of IPRs was found to be very inadequate. Therefore, some kinds of international protection of IPRs are sought. The work of a single person may cross international boundary and get itself at the hands of people in other countries. Those persons who have created these intellectual works would seek protection in that other state.

Principal Treaties on the IPRs Protection

In the second half of 18th century industrial revolution replaced manual ways of production with automated ways of production. The relevance of protection of industrial property and technological inventions came into birth. What was basically unilateral strictly territorial mechanism of the protection of IPRs has gained momentum for extra-territorial protection. International IPRs protection started in Europe. Initially, this attempt at internalization was handled through bilateral mechanisms. But the exchange, trade relationships, exchanges in technology and culture intensified this bilateral regime also was inadequate so, a more multilateral arrangement was needed.

In 1873 there was a Vienna International Exhibition it was an international exhibition of industrial property hosted by Austro-Hungary. The concern of participants of this exhibition was a question of protection. The Austro-Hungarian government responded this concern by putting in place unilateral temporary, special protection mechanism. But the impetus gained from the exhibition and the protection put in place by Austro-Hungarian government did not stop there and it gave rise further internationalization of the issue.

In this same year the US and Austro-Hungarian governments sponsored an international conference which was called The Vienna Congruence on the Protection of Industrial Property. Then the two congruence held in Paris: in 1878 The International Conference for the Protection of Industrial Property and in 1880 The Draft Convention for the Protection of Industrial Property was promulgated. And finally, a diplomatic conference was held in 1883. The head of states and head of governments set out the agenda of ratification the International Convention for Protecting Industrial Property Right what we call today The Paris Convention for the Protection of Industrial Property Right.

The Paris convention was a difficult compromise between opposing blocks one was out rightly hostile the idea of international protection of industrial property right for example,

German was not a signatory party to the Paris Convention. Some other countries raised concerns that internationalization of protection is not satisfied and they claimed that national protection would be sufficient. The UK and US on their part argued that patents for example, are no less property right than tangible property so, they deserved international protection the way other property rights are protected. So, the ultimate result of these claims and counter claims was an international regime which is never thought to be rather a substitute for national protection; the national protection still was regarded as the stronger protection.

Issues of harmonization

In respect of each countries come into together and agreed were very important like the principle of National treatment and the principle of priority right. National treatment is the principle of an international trade law. It is one of the components of the principle of nondiscrimination.

One of the preconditions for obtaining the patent right is novelty. Novelty means that the invention has not been anticipated by a prior act anywhere in the world and it has not been disclosed for the public knowledge anywhere in the world. Assume for example, state A and state B are parties to the Paris Convention if Mr. X applied for patent right in State A and nine months later in state B, by the application of the principle of novelty this is impossible because novelty is no more there it is already disclosed.

But the principle of priority has established that the rights of inventors would not vanish during a certain grace period. Assume for example, Mr. X has applied for patent in state A, three months later Mr. Z applied in state B and then Mr. X wanted to apply in state B. there is a principle that prohibit two patents over the same invention. So, according to the principle of The Paris Convention Mr. X will get a priority right over Mr. Z. This convention put in place only substantive issues by leaving aside procedural matters to individual member states.

The Paris Convention has been revised six times. The latest of the revisions took place in Stockholm in 1967 what is called The Stockholm Act. Nowadays, this convention is one of the principal international conventions protecting IPRs, industrial property right

administered under the World Intellectual Property Office (WIPO).

Later on it was felt that to put some procedural matters found to be important. So, in the field of patents two treaties came into existence, which support The Paris Convention. These are The Patent Cooperation Treaty of 1996 and The Patent Law Treaty of 2002. These two treaties put in place procedural mechanisms of applying for patents and obtaining patent rights in different countries. They put only guidelines and never intended a substitution for national systems of protection.

In the case of trademarks, in addition to the Paris Convention, there is also a separate treaty what is called The Madrid Agreement Concerning the International Registration of Marks in 1891. This agreement was found to be inadequate because major industrial countries like Japan, USA were not parties for this treaty. In order to join these states, the Protocol Related to the Madrid Agreement Concerning the International Registration of Marks came into being in 1989. The basic protection laid down under the Berlin Convention and the Madrid agreement as well as the related protocol is the system of international protection of trademarks.

Regarding Geographical Indications there is a treaty called the Madrid Agreement for the Repatriation of False or Deceptive Indications of Sources of Goods in 1891.

Literary and Artistic Works or Creation

The History of protection of copyright is a little bit older but it was confined in the territories of individual countries until the second half of the 19th century. The first unilateral country initiative to protect foreign authors and composers came first from France. In the middle of 19th Century different bilateral agreements emerged which provide for reciprocal protection for literary and artistic works. The system of protection for copyrightable works has been European by design. After these bilateral arrangements some series of conferences were held in Western European cities which culminated in the adoption of the Berne Convention for the Protection of Literary and Artistic Works in 1886. But the USA was not a party for this treaty till 1980s some 90 years later this is because she did not want to block that kind of development come from Europeans literature. Then when its own works of literature

proliferated she joined this treaty.

The principle of Priority right is not functional in the copyright regime. Rather it follows the principle of automatic nature and independence of protection. Because no application is needed for copyright protection, the protection is automatic - automatic upon your work been produced. The fact that the work has not received protection in its country of origin doesn't prevent it from obtaining protection in the country of destination. This is what the principle of independent mean. The Berne Convention provides this basic principle. The Berne convention applied only to productions in the analogue forms so, the Digital Age copyright works are out of the protection of this treaty.

To conform to this Digital Age, another treaty has been signed like the WIPO copyright treaty in 1996. This treaty extends protection to literary and artistic works produced in digital form.

In 1961 the Rome Convention for the protection of Performers, Producers of Phonograph and Broadcasting Organization was signed. These individuals are not authors they obtain protection for the role they play in connecting authors with the consumers.

General Treaties The WIPO Establishment Convention (Stockholm Convention)

WIPO was established in 1967 with the aim of coordinating the system of protection both industrial property and literary and artistic works. Ethiopia joined the system of international IP selectively; it has acceded to the WIPO establishment convention.

The Trade Related Aspects of Intellectual Property Rights (TRAIPS) agreement

It is part of the WTO system, there was a system also called General Agreement on Trade and Tariff (GATT) it was signed in 1949. But as a result of 8th round of multinational trade negotiation and WTO is created and WTO has over taken GATT. Then Trade in Services and Investment has been created and finally, TRAIPS came into existence. Ethiopia is not the member of WTO although the attempt to accede to the organization started ten year ago. What will happen if Ethiopia joins the system of WTO with respect to TRAIPS? It would be difficult free download of foreign films and the unauthorized translation works of books.

Intellectual Property under Ethiopian Laws

Article 40/2 of the FDRE Constitution has phrases dedicated to IPRs such as "*creativity, intangible*

object of having value". What is the philosophical basis of IPRs under the constitution? To answer this question Art, 41/9 says the state is duty bound to put in place the mechanism that promote science and arts which indirectly/implicitly shows the utilitarian's theory. According to the instructor, personality theory seems not the justification to recognize and protect IPRs under the Ethiopian Constitution this is because property right is not part of human right in Ethiopian context. But under international instruments such as UDHR and ICCPR property rights are recognized as a fundamental human rights.

If you look at the preamble of patent laws and copyright law As of Ethiopia, you will find that the protection of IPRs is based on explicitly utilitarian theory.

Legislative and Administrative Authority in respect to IPRs under the Constitution

Art, 51/19 federal government has general power regarding patent and copyrights, Art, 55/1(2) g legislative power, executive power is also belongs to the federal government Art, 74/3 77/1 &5 by implication. Matters related to commerce are the federal jurisdictions and trademarks are definitely part of commerce. We may think of trademarks and industrial designs as parts of the implied powers of the federal government. Implied power doesn't confuse with residual power it is really connected with the direct power. Art, 51/12, Art, 55/1, Art, 55/2(b) & 55/4 tell legislative powers, Art, 51/12, general power and the administrative power inferred from Art, 74/3 & 77/1. So, there is nothing states power about these matters.

Regarding jurisdiction of courts, by the virtue of Proc. 25/1996 the federal high court has first instance jurisdiction to entertain cases connected to IPRs. So, state courts have only a delegated power to see cases of IPRs.

The Ethiopian Statutory System of IP

1. Copyright and the governing law

There is part of the Civil Code which deals with copyrights, Title Eleven of Book III, literary and artistic ownership Art, 1647 to 1674. The other title in the code is Extra-contractual liability provisions especially, infringement and enforcement Art, 2027 to 2177 are can be applicable. Art, 2672 to 2697 is also relevant which is about publishing contract.

But presently governing law is Proc. No 410/2004 Copyright and Neighboring rights

Protection. This Proclamation is a comprehensive in protecting authors of original works, authors of secondary works entities who engaged in the dissemination of literary and artistic works from the authors to the public. It also provides greater enforcement mechanism. Recently it has been amended by Proclamation No.872/2014. The provisions of the Civil Code are relevant as long as they are in consistence with this proclamation.

2. Patents and the governing legal regime

Proclamation No, 123/1995 along with its Regulation No, 12/1997 this law is older than the FDRE Constitution but substantively there is no disparity with the supreme law. This law covers normal Patent and design patent but there is a separate law for Plant Patent Proc. No. 481/2006.

3. Trademark Laws

Trademarks are protected by an unfair competition provisions provided in the Commercial Code. Unfair competition is also one area of tort law so; claim of damage is governed by principles of tort law not considered as IPRs claim. Now, infringement of trademarks are not considered as an infringement against proper competition and the laws are not just laws of unfair competition rather the infringement is an IPRs under Proc. 501/2006 along with its regulation 273/2012

The Law of Copyright and Neighboring Rights

Copyright encompasses the legal protection of expressions in all media, printed media, audiovisual media, architectural and scientific expressions and etc. The nature of the right differs from legal system to legal system. In the Anglo-American system the word copyright is used while in the continental legal system it is named as Author's Right. Copyright tradition emphasizes the word itself some acts related to the word-the making of copies from the original work is belongs to the author. This doesn't necessarily tell us only the author is entitled to the right. But the author's right tradition emphasizes the right belongs only to the author. However, currently these differences of expression are not important.

The premise of the protection copyright of the common law system is utilitarian. Protection is accorded to works of art and expressions of all media based on instrumentalist reason. So copyright under this tradition is not a natural right but an artificial right and creature of the

law. The right is not necessarily individual even juridical persons can be beneficiaries of the right. The right of employer and the persons commissioning the creation of certain works is also recognized under this tradition. This is the basic difference between the two traditions.

Author's right theory of the civil law tradition rooted in the natural right theory. Authors are entitled to the protection of works distinct to their personality and their labor by reason and justice alone. The right is essentially individualistic and authors are only natural persons. Recognition is given to the right as a natural right inherent in the personhood of the individual. The right is not dependent upon the existence of the statute. If there is a statutory framework it is only for the purpose of providing enforcement whenever there is infringement. So, moral right is associated with this right.

Art, 6Bs of the Berne Convention recognizes moral right independent of the author economic right. It seems there is a huge influence of the continental tradition over this convention. But the copyright and the author's right distinctions are declined over the years. Individual countries have come to the middle ground of a hybrid system recognizing both economic and moral rights not just individuals but legal entities as well under limited circumstance and also moral rights. However, it is not totally disappeared because the TRIPS agreement Art, 9/1 "contracting parties of the WTO do not have the obligation to respect Article 6Bs of the Berne Convention" *so this agreement recognized the difference.*

Regarding Ethiopian copyright law Art, 1647 to 1674 of the CC it is a continental legal system prototype. According to Art, 1647 copyright is individual right. But under the preamble of the current law this tradition is changed and copyright is recognized for the utility/utilitarian purpose. Other provisions of this law recognize copyright is also available for an employer who could be a juridical person. So, that tradition of the Civil Code has been reversed and currently it is a hybrid one.

Expressions

Copyright deals with expressive creativity or manner of expression, not all kinds of expression but all forms of creative expression. Copyright law protects creativity in the way the work is done, the choice and arrangement of words, musical notes, colors, cheeps etc. The particular mode or form of expression doesn't matter for protection what count is there

must be a creative expression. It can be in written form, audiovisual or any other form.

What are Copyrightable Works?

Copyright is a legal protection for copyrightable works. Basically, a copyrightable work is a form of expression in the literary, artistic and scientific domain. (Art, 2/30) lists, literary works, musical, and dramatico-musical works, works for sketch production, 2D or 3D works in the field of geography, architect or science and works of applylat.

Literary works; include books, booklets, newspaper, journals, prose, works of poetry, novel (printed) etc. also include oral woks. Expression of great laconism for instance, Abraham Lincoln's statement *"democracy is the government of the people for the people by the people"* Advertisement expression is also protected under the law of unfair competition and infringement of the right causes tort liability under the Commercial Code.

Computer programs were not included under the Berne Convention because at that time there was no digital technology. In 1996 the WIPO convention copyright treaty clarified to include productions in the digital form. Computer programs are a form of expression and protected as literary work. (Art, 2/7) computer programs are protected both under the copyright and patent laws. What the program/software does is patentable while the way the program is written is copyrightable.

Oral works include lectures, speech, religious sermon etc. they must be recorded but their nature is oral expression.

Musical Works; Art, 2/13 musical composition notes or symbols without words but Berne convention says musical notes or symbols with or without word.

Works created for stage production; involved dramatic works, pantomimes, and choreographic works. Works of fine arts; include paintings, sculpture, lithographic works and other works of fine arts Art, 2/30/g. works of applylat or works produced by handicraft; they made in glass, wood and etc. they have some artistic creativity and social function. What makes them different from fine arts is they are often put to social use. Countries differ the way they approach the issue of where fall handicraft works whether patent or copyright. The new amendment Proc. No. 872/2014 has added new provision under Art, 2/30 works of

apply as sub/30(j). 2D and 3D works are also copyrightable.

Secondary or Derivative Works

These types of works are categorized into adaptations and collections. Their existence is dependent upon the preexisting work and once they came into existence they would be protected just like primary works. Art, 4 of the proclamation lists;

A) adaptations; translation, adaptation; changing a script to audiovisual or cinematographic work or dramatization of a script, arrangement; musical remixing, in the case of writing, abridgment, annotation.

B) Collections; these are also called independent derivative works and the creativity seen in the way the content is selected and arranged; compilations, encyclopedia, anthology/compendium, journals, database. What about dictionary? The way the meaning is given to the words displays the originality of the work. What about letters and portraits? They are confidential and this nature makes their copyrightability as doubtful. It's better if it is determined by agreement of the parties. Countries with Continental Legal System favor to the author.

There are also satirical works like parodies, travesties and caricatures. *ገጽ ፲፱* *Pifj*

Parodies is changing of the tone of the original work and presenting in a satirical way. Travesty is using the original work for different purpose. Caricature is blaspheming misrepresentation of the work e.g. cartoon. These are generally works of adaptations. But their protection is very controversial. In our law the author has moral right although critics are allowed, the work which affects moral right of the initial author should not allow.

Excluded Works or Subject matters not protected (Art, 5)

This's outright exclusion; most of these works don't fulfill the definition of copyrightable work particularly, expression. Even they have originality and creativity but they are not being expressions. Copyright protects concrete form of expressions not abstracts or ideas or concepts. But the phrase 'as such' in this provision is very important if the idea or concept is expressed, that will be protected. Works listed under Art, 5/1 are very important

monopolizing these equates with depriving basic building blocks of further creativity and defeats the utilitarian objective.

Official legal texts Art, 5/1(b) are out of the ambit of copyright protection not because they are not expression as such not they are creative as such because rather policy reasons. Speeches made in public, debates by parliament, litigants in a court of law etc. which are made officially treated as limitation under oral works.

Anonymous Status: Some kinds of popular origin are works which are artistic, musical works they don't receive the blessings of copyright because the authors are not known and having long aged from time immemorial. Regardless of this nature, some developing countries protect folklore as part of their national heritage under a specific copyright regime. The protection doesn't expire with time unlike other copyrightable works and the copyright often belongs to the concerned organ of the government like the Ministry of Culture and Tourism. But in the case of Ethiopian law folklores are not copyrightable rather they are protected as national heritages.

The concept of dichotomy Art, 3/7: it is a dichotomy between expression which is copyrightable and the material embodiment of the expression. The book belongs to you when you buy it but what has been expressed there, is not yours.

Who is the Right Bearer?

A person who intellectually created the work Art, 2/2 the word '*person*' is not a correct one under this provision because it stands for both natural and juridical persons. But artificial persons are devoid of any intellectual effort. So, the right word should be '*individual*'. As a rule economic as well as moral right are belong to the author.

But Art, 2/16 somebody other than the author, juridical person can also be the beneficiary of economic right of the copyrightable work. This third person may acquire such right through contract/transfer or by the operation of the law for example, employer.

Connecting Factors or Points of Attachment

It involves relationship between a country and its legal system as well and the work or the author. In order to qualify protection under the law of a given state there must have a

connection between the author and the country or between the work and that country. Territoriality protection also requires some kind of connection between the work of the author and the particular state. The determination of points of attachment is usually based on the twine principles of nationality and territory.

Connecting factors involving the personal connection of a person with a particular country are citizenship, residence and domicile for physical persons; place of incorporation and head office for juridical person. Factor which connects the copyrightable work with a certain country is situs; for example, erection, creation or publication of work in a given country, a book published in a certain country. Art, 3/1(a) of the Amharic version ^{^TIP} is vague under this provision, it seems the person has only one and permanent residence at a time. The Civil Code and the Berne Convention use the term habitual residence. So, the English version '*principal residence*' is preferable than the Amharic one. The law doesn't talk about domicile, which is residence plus intention, which has stronger connecting factor than residence. So, the work of a person who domiciled in Ethiopia also qualifies protection. Art, 3/1(c) is also talks to personal connection the producer's residence.

What if the principal residence vanishes? Does the protection last? It is possible if other connecting factors are existed. What about if there is no connecting factor other than the residence of the author?

Art, 3/1(b) publication is original and simultaneous publications, publication in Ethiopia and abroad within sixty days. What is published work? Art, 2/22 where copies are released with the consent of the author whatever the manufacture might be provided that the availability of such copies has been to satisfy the reasonable requirements demand of the public.

Works of foreign nationals and works produced in a foreign country also received protection under Ethiopian law.

Standards or Prerequisites for Protection

We have two kinds of standards substantive and formal standards. The substantive is internal criterion for copyrightability while the formal is an external standard. The internal requirements tell you something about the inherent intrinsic features of the work. They are associated with looking the work inside into itself.

The general descriptions and detail enumerations of works do little more than draw an outline of the sociocultural and intellectual province in which the objects of copyright are to be found as distinct from patents and trademarks. So, for receiving copyright under the law a little more is required. More precise information to the lawyer to be able to define clearly copyright is needed. Internal criterion is notoriously difficult to define. It is in fact controversial in national copyright laws. This is because the internal criterion is too subtle to be easily defined in statutory language. It often requires looking through the lenses of an expert rather than through the lenses of a mere legislation drafter or a judge entertaining the case. As a result often in statutory terms the internal criterion often merely alluded to rather than fully described. It contains matters too technical to the judge to entertain. There is no universal consensus regarding these internal criteria on the issue what do they constitute.

So, national statutory frameworks merely alluded to the requirements of these internal criteria. Contemporary IP laws either indirectly alluded to these requirements or they even leave it in a complete silence. So we find details from leading case laws or from scholarly researches or from the legislature's intent report.

These internal standards consist of a subject matter which is an immeasurable and subjective kind. Legal systems differ in respect of how to treat the subject. Courts are differ regarding how entertain the subject. Languages also pose their own problem.

These internal criteria include notions like originality, creativity, expression of personality, quality, and purpose, state of completion, length or size. Some of these are positive requirements or positive internal criteria. The positive requirements fall under an umbrella term called originality. It includes notions such as creativity and expression of personality. There is a significant level of uncertainty regarding even the positive requirements there is also disparity between legal systems regarding the threshold or minimum requirement.

Qualities, purpose, state of completion and length or size are quantitative and negative requirements. Some legal systems put these as requirement in exceptional circumstance, e.g. the purpose of the work. Generally, copyright is not concerned about the purpose of the work.

There is a general consensus that for a work to be copyrightable it must be original or it must display a minimum of originality. Part of a work which is to be copyrighted is one which is original to the author. There is no copyright without originality. Originality is the *senquaten* test of copyright.

Originality is defined as something which is new and doesn't do ever before. So, what is new? What degree of newness is required? The answer may be found in the case laws and scholarly writings.

- 1) By proper choice of words to describe a process resulting in the work concerned. In this case originality is associated with the way the content is selected and arranged.
- 2) By adopting the suitable name for the work as such for example, personal intellectual creation.

the third is a mixed approach of the two However, these are not clear and additional details are needed. And these details often lay down by judicial construction. This attempt to judiciary construction concept gives rises to differences in scope and in scale across legal systems.

Continental Legal tradition like Germany and France for example, describe the originality requires that the work must reflect intellectual personality of the author. The work must bear the inner turmoil of the author and must bear the imprint of the author's personality. This is also associated with expression of personality. So, traditional works of arts like paintings, sculptures are deemed to be the expressions of the internal personality of the author. But the small coins of copyrights like brochure, advertisement pamphlets they don't bear the author's personality. Some scientific works like maps and computer programs are also lack this expression of personality.

The difficulty of this standard necessitated a modification that is minimum level of creativity. Something objective/quantitative is supplied to what is essentially a subjective/qualitative standard. The consequence of this modified standard is that two authors engaged independently in a certain creative works but coming fortuitously with similar works can receive independent copyright protection for their respective works. However, the chance of come up with fortuitous similarity between works is very minimal. Copyright doesn't care

even works fortuitously come to be similar. What matters under continental legal tradition is the work must be the product of independent creativity of the respective authors. So, fortuitous similarity doesn't deny copyright protection. This is how originality viewed under countries of civil law legal systems.

English common law defines originality in terms of mere industriousness or formally speaking, "*sweat of the brow*" test. Even if the work doesn't display creativity, as long as the author makes effort that suffice for protection. The standard is too low. This is really strange way viewed from the view point of copyright in general.

The US common law approach was used to "*sweat of the brow*" test of the UK, but the US Supreme Court rejected that notion and established a higher standard called modicum of creativity test. A mere industriousness of the author doesn't suffice; the work must have a creative spark as well. So, it raises the threshold for receiving copyright protection. Generally, the US approach is that to be original, works must be both the product of skill and labor of the author and also some extent a creation of the author.

The Canadians common law approach is the kind of middle ground between the lower standard of UK and the higher standard of US. Their test is that independent, labor, skill and judgment of the author. But commentators say this is a replica of US approach not a middle path as such.

The Ethiopian law approach, Art, 6/1 of the Proc. defines originality irrespective of negative requirement; quality, purpose... Art, 1647/1 of the CC adds the mere fact of creation. Both legislations didn't define what originality means. So in this situation we resort to case laws for example, the case Alemyehu Fenta vs. Alemayehu Eshete during 1980s. The dispute was over the originality of the songs entitled "*h-Zt Ann (Eshete) A<Th-Zt Ann (Fenta)*" finally the court decided that the works are different.

Productions in the literary, artistic and scientific fields are results of one or three kinds of choices. 1) Technical choices; it refers to things essentially dictated by the method or the technic used for the production of the work. 2) Functional choices; a choice dictated by the function that the work might serve. The utilitarian purpose it may serve. 3) Creative choices; these kinds of works truly stem from the author because intrinsically related with the person

making this choice two persons probably wouldn't come up with the same work.

Intellectual property generally and copyright particularly are not concerned about technical choice unless that it is new for the purpose of patent works. Functional choices of production are certainly not the concern of copyright it might be the concern of industrial design. So, originality is to be judged only with respect to the creative choice displayed relation to works.
Common Understanding of Originality

It is the notion that the work should originate from the author. The thought is not relevant here we aren't bearing originality in the sense that the work should involve original thought or conception. Copyright doesn't protect ideas rather it protects the way the idea is expressed. Novelty of idea is protected under the law of patent.

Measure of Independent Input

How can we measure this independent input? The threshold level regarding a certain way of expression to be copyrightable doesn't that much higher. The work would be copyrightable if it displays some distinguishable variation from previous works. So in economics term, in the case of primary works it is value creation; in the case of secondary works it is value addition. The level of protection corresponds to the level of independent input made by the author. The protection limited to the part of the work which is added or created by the author.

Does Seifu's Show on EBS fulfill the minimum level of creativity for the originality requirement?

Probably that is the reason behind the non-copyrightability of titles, single sentence expressions and short statements. Because it is generally believed that they don't satisfy the minimum threshold needed for copyright, saving exceptions of laconic expressions.

Negative Requirements for Originality

These are generally what are not required for originality.

1) Quality; there is no qualitative requirement because it is subjective on the eyes of human. Another reason is that quality of expression is the province of art critic and scholars as well as the market rather than the authors. That means the most vulgar song whose only feature

is banality/boring would receive copyright protection.

2) Purpose; social utility and intension of the author are immaterial for copyright protection. The work might have irreligious or violence content or to whom it addresses these matters don't take into account. But this doesn't mean that authors of such kind of work wouldn't escape any kind of legal (tortuous or criminal) liability. If purpose of the work is a requirement for copyrightability, it is equivalent to imposition of an indirect censorship. Some countries deny copyright protection on works of irreligious, libelous contents e.g. England; immoral, obscene contents e.g. Brazil.

3) The state of completion of the work; the means or procedures adopted in the production of the work are not important as long as the distinguishable variation come to be seen. The work need not have reached its absolute stage of completeness to be granted copyright protection. Therefore, sketches, drafts, plans, outlines etc. can be copyrightable.

The time spent in making the work is also immaterial. Works which are results of spur of a moment can be protected. There is no requirement spending minimum amount of time for producing works.

4) Quantitative requirement; length or size of the work for example, number of pages in a book or the size of a painting is immaterial or few lines of poetry work could suffice for protection. Generally, all these requirements are forms of the work not substances.

Requirement of Fixation

The requirement of fixation means that the oral work must be reduced or fixed on some tangible medium in any format. It must be recorded or must be written down. But this requirement doesn't deny oral works. Fixation is not requirement under the Civil Code regime. In fact it isn't a requirement in the whole continental tradition. Fixation is the notion of Anglo- American tradition.

Some legal systems require any tangible medium known now or later from which the work can be perceived, reproduced or communicated. Any material form permitting the reproduction of the creative activity. Some objective durable medium is required according to this notion a work which doesn't reduced durable medium will be susceptible to frequent

change.

Transients or ephemeral works are subject to change. When we say fixed we are referring written, (books) drawn, (drawings) painted, (painting) printed. Filmed or captured in some form. Original works such as speeches and live performances don't be protected unless they are expressed in some tangible medium.

Why fixation?

For evidentiary purpose; it proves that the author has indeed produced the work. To ensure that frequent changes would be minimized because the work requires sufficient permanence and stability. To encourage authors to reduce their works something that is discernible.

There are arguments against fixation; the mere fact of creation is sufficed why we need to impose this external requirement. This requirement prejudices those classes of authors who are not in a position to fix their works. Socioeconomic problem like illiteracy, lack of access to resources, technology and knowhow are amongst the problems. The requirement also encourages piracy. Fixation has been a requirement under the new copyright law regime Art, 6/1.

Who should fix the work? Does the identity of the fixer matter or make any difference on the protection? Assume that a professor makes a lecture and somebody recorded it finally, who will receive protection? Basically a work is conceived of as existing separately from its fixation. The creation of the work might not coincide with the reduction of some tangible medium. Persons who fixed the work might not be authors. The fixation of the work is not an element of the act of authorship of the work. Therefore, copyright subsists by a work to the benefit of the author regardless of whether the author himself has fixed the work or regardless of he has given permission the fixation of the work by third party. Even amanuensis/agency contractual relationship between the author and the fixer still doesn't affect the author's copyright unless otherwise the right is transferred to the fixer. Art, 6/1(b) cum Art, 2/11 deals about fixation but, it doesn't states the consequence if the fixation makes by third party.

Some other legal systems also impose other kind of requirement for example, requirement of deposit, notification, examination, registration or publication which is *prima facie* evidences.

However, these requirements are nothing to do with copyright protection under Ethiopian law because copyright protection is automatic upon creation and fixation. Even registration is also not a requirement for copyright it applies only on industrial properties. Fixation doesn't necessarily require publication. Therefore, publication is a sufficient but no necessary condition for fixation.

Type and Scope of Copyright (Content)

Basically, it encompasses two categories of rights economic and moral rights. Economic rights are pecuniary benefit accruing to the beneficiary. Moral rights are based on personal relationship between the author and the work for example, reputation, honor etc. They are exclusive private property rights.

Economic Rights and forms of Exploitation (Art, 7)

1) Material form of exploitation; reproduction, distribution, importation. 2) Exploitation in non-material form; public performance, broadcasting and other communication. 3) Derivative rights; adaptation, translation 4) exhibition or display.

Exploitation in material form

Reproduction right; art, 7/1 (a) under the Civil Code there is no definition but in this proclamation it has been defined under art, 2/25. Reproduction is the most basic right in the copyright regime. You can understand from the work itself copy-right. It tells you that the act of multiplying copies is the most important element of copyright. It is a right that serves as a gateway to the other right as well e.g. distribution.

Regarding scope, the medium in which the reproduction made doesn't matter. For example, a book in the form of electronics copy, without seeking authorization anybody who temporarily stores this format in a computer it is an infringement of copyright of the author or owner of the work. Facsimile copies or exact copies of the work regardless of its enlarged or diminished size include reproduction right. But it is not limited on facsimile copies rather slight changes could come under reproduction. The change must not go into the level of adaptation otherwise it will Copyright be secondary work. So, reproduction right covers more than the manufacturing of slavish copies it also includes modified imitation of works.

Distribution right; it allows the owner to control the circulation or the dissemination of the work to the public. This right provides to the owner with the prerogative to control an important turnpike on first distribution. Distribution right is very important because it involves transfer of ownership of copies to potential users from the public. This means payment is effected on this stage and economic exploitation will be visible. So, sale, bartering and gift are included but not lending and rental because the author's right is perpetual it doesn't extinguish with the first distribution of the particular copy. But in the case of sale the author exhausts his right by first distribution.

The fact that the right extinguishes upon first distribution means that the potential conflict between the rights of copyright holder and the property right in the copy are divided. **ftAfrU nmgmtf fl*^ mf* hAm 'lIC 'lJ T9 mf* &A+? d*^ pmffT mf* hAm IPT^m h)ET9 AmffT pmftAh^ mf* pAm^::**

Rental or lending right

This right is different from sale in the way that it doesn't extinguish the right of the author so we cannot rent the copy because the right still remains to the author.

Importation

Importation is related to distribution because it is a question of where to be distributed. It is a concern of dividing market into domestic and foreign market. Here territorial nature of IPR makes importation right very important. There is also a concept known as parallel importation. It means the copies are available in the market and they have been marketed with the consent of the author/owner in the foreign market and those copies are being imported in a domestic market. If we apply the principle of international exhaustion, the author cannot prevent domestic sale. By the principle of first distribution the right exhausts so the author cannot prohibit subsequent sale of these copies which are already distributed. But by the virtue of importation right [art, 7/1(d)] the author can effectively control the sale of these copies in the domestic market.

Why importation is provided as a privilege? First, unless there is a treaty regime IPR protection is territorial provided that individual copyright system is independent one another. So all acts that create rights and terminate those rights must be determined in relation to what happens within that territory. Acts those took place in foreign country should not determine what happen here.

Another justification is that demand and supply are different in different market. This means the price is quoted for the sale can be cheaper in one country and expensive in another. However, the basic justification is that the territorial nature of IPR.

Exhaustion; there are two kinds of exhaustions, national and international. Exhaustion in principle means the vanishing of the right of distribution upon the first distribution. International exhaustion refers to regardless of the country where the first distribution takes place the author's right would exhaust after first distribution. Domestic exhaustion is simply termination of the author's right upon first distribution of the work in the domestic market.

By the reading of Art 7/1(d) cum Art, 19 we can fairly conclude that Ethiopian IP law follows the domestic exhaustion approach because the law recognized importation right.

When we talk of exhaustion of the right we are talking in relation to works in which copyright is still subsisting. The rule refers expressly to concrete batch of copies which are actually being in to circulation. The principle operates only in respect of such distribution of copies as taken place with the author's/owner consent. So unlawful or unauthorized circulation doesn't give rise to exhaustion of the author's right. The rule of exhaustion doesn't operate over rental and lending. When we talk about importation it is about the copies don't enter into the domestic market but distributed elsewhere. But if these particular copies are entered without the consent of the author the latter's right doesn't exhaust because the importation is illegal.

There is also a continental exhaustion in the EU which is a middle path between international and national exhaustion. We don't talk about exportation because IPR protection is territorial and exportation deals with the market of another country.

Exploitation in non-material form

It includes performance, broadcasting and communication to the public.

Public Performance (art, 2/24); it is personal rendition of the work. This means basically live/direct presentation. Not all types of performance rather it is an act which requires the personal appearance of the author. A person appears before a group of people assembled in a concert hall and perform in front of them or an orchestra performs a symphony to the

public.

There is also indirect public performance. Because of the development of new technological devices performance is no more limited to the personal rendition. For example, music might be played from a recording in a shopping mall, in an airplane, in a public transport vehicle, in a night club (disco tics). It also includes the presentation of works which have been recorded through amplification devices e.g. loud speaker in music shops. The rationale behind controlling these acts by the author is to protect his economic interests. Even though the person who purchases the works of the author enjoys ownership of a material property over it, his right is limited only for private use. So, public performance is interpreted broadly.

When the author produces his own work for example, poems or songs the right of performance is entrusted to him. Unless he gave consent no one can perform the work in public and failure to do this amounts to infringement of copyright. This infringement causes not only civil liability but also criminal liability under the Criminal Code, look at Art. 721. The new copyright proclamation also comes up with the establishment of Copyright Collective Society which is in charge of protecting copyright infringement. Even if it is nonmaterial form there is economic benefit e.g. the audience pays for access to the event. For example, songs in talent shows, broadcasting etc. must have got permission from the author.

Broadcasting; it is wireless transmission of sounds or audio-visual for public reception Art. 7/1(h) cum 2/3 by wireless means it is airborne signals and transmissions are available to the public. It is not intended for a certain segment of the society rather it has made available to the whole public. Broadcasting involves Radio, TV and satellite transmission. Music broadcasted in a radio or TV must have secured the authorization of the author. There is also a concept called communication to the public. It means making the work available to the public through wire or wireless transmission Art. 2/6. Some jurisdictions prefer to name it as narrowcasting. Cable transmission, online streaming etc. are involved in this category.

Exhibition or Display Right; traditionally it is displaying material copies of the work to the public. So this right belongs to the author. However, this right is exhausted like the right of reproduction. Painting for example, the right to exhibit for a public display is belonging to the painter. If the owner of the gallery displays paintings without the authorization of the

painter, that amount copyright infringement.

Derivation Rights; (Art, 7/1 b & c) The author of the primary work exercises exclusive right over works of translations, adaptations and modifications. Derivative works are copyrightable so Art, 7 again applies to the new/adapted or collected work. If you want to display this work publicly, you have to have double authorization from both the primary and derivative work authors.

Special economic right; (Art, 7/3) it is special because it is inalienable. Economic rights are normally assignable but right in art, 7/3 is unassignable. A certain original work of art or original manuscript of a writer or a composer which has been sold by the author may be resale by the buyer in a public auction with very expensive value. This applies specially to those works that the copies of which is difficult e.g. paintings. In this case the author cannot engage anticipatory submission of his right to share in the resale price.

Moral Rights and their Features

1) They are nontransferable or inalienable they remain with the author while pecuniary rights are transferred. The exception is when the author dies the exercise of the moral right would be transferred to heirs by succession.

2) There are some copyright systems especially, Continental Europe consider moral rights as perpetual or imprescriptible. In other words they don't expire.

There is another concept of moral right in Ethiopia called waiver of right. You cannot transfer it when you are alive but you can select not to exercise the right. The waiver must be made in writing (Art, 8/3).

Types of Moral Rights

Right of Paternity; sometimes it is called the right of attribution. It is the right to claim authorship of the work. Moral right is an important right which preserves the personal link the author has with the work. The right to attribution means the author's right to be known whenever the work is used. If the work is publicly performed for example, right of paternity requires that the name of the author be mentioned. Not only the name but the author might prefer to be known by his signature. The author may also use pseudonym and may want to

be known thereof.

Right of paternity is understood in its positive form. It could also assume negative form. This means the right to disclaim paternity. In other words the author may choose not associated with the work. The author has also the right to remain in anonymity with regard to the work. So, the right of paternity involves claiming authorship as well as disclaiming it.

The Right of Integrity; it also called right of respect. It tries to preserve the owner in reputation of the author. Preserving reputation of the author may be achieved by preventing derogatory treatment of the work. So basically, this right is the right against derogatory treatment of the work. Some changes, modifications, mutilation and deformation of the work

F'rdit'
fic' **might** significantly prejudice the reputation of the owner of the work. This right may be related to works of caricature, travesty and parries which negatively affects the integrity of the work. Copyright systems face difficulties in striking a balance between protecting caricatures or generally called anti-thematic adaptation and protecting right to integrity of the author of the primary work. As we discussed earlier these anti-thematic works are copyrightable. But whether these works go into the extent of seriously disrespecting the primary work and ultimately prejudice the right to integrity of the author will be determined by the judge.

Right of Publication; is making the production of the work known in this context publication goes beyond the definition provided in Art, 2/22. In addition to issuance of material copies of the work, broadcasting the work for the public or divulgation is also determined by the author. Not only the determination of the decision to published the work but also the right to determine the means of divulgation is reserved to the author. The moral element of the right associated to publication is that while making the work available to the public the author also decides to make his personality disclosed to the public. So in this situation the author who ordered publication of his work and upon the completion of the printing process he might stop the launching of distribution of the published work.

Matrimonial property; the work of the author in the currency of a wedlock is resulted in communal property of economic right of the work. But right to publication is a moral right

which is personal to the author. So the author may adversely affect the economic right of the matrimonial property in exercising his exclusive right of publication for example, the author may prohibit the publication of the work. So the economic benefit that could be derived from the exploitation of the work would not going to be materializes. Unfortunately we don't have clear rules that will put limitation on the exercise of the right to publication by the author.

The economic aspect of copyright can become component of insolvency proceedings or court judgment order. The author aware of the tools available to him under the copyright law could manipulate his moral right which is personal right entitled to so as to escape the attachment of his proprietary interest in a court judgment.

The right to correction or retraction; in respect of works which might place the author in unfavorable or bad light the author has the right to revision or even destruction those works. The exception is that the author cannot reclaim the copies already purchased by end users because his right is already exhausted over those copies.

Exceptions and Limitations in Copyright

Copyright consists of a bundle of rights which are exclusive but they are not absolute rights. This is because copyright is a compromise between the private interest of the author and a public interest. So there could be consideration of public interest that justify imposing some limitation on the exclusive bundle of right that in the matter of principle the author enjoys. These limitations or exceptions are results of a stronger emphasis on certain societal needs that trump/undermine the private interest of the author. Important values of the society for example, information, education, scientific research etc. this is justified by the basic philosophical approach to IPRs protection which is known as utilitarianism.

Limitations

IPRs are really different from conventional property rights because there is no such kind of limitation imposed in relation to conventional property right. When limitations or exceptions applied the result will be suspension or termination of the right. If they are terminated there is no need of authorization from the author. So you can exercise acts provided under Art, 7 without seeking of the authorization of the author or the copyright owner. In addition to this

you can exercise those rights without payment of royalty.

In respect to suspension, some rights may be suspended temporarily and resume later. Compulsory licensing for example, authors because of varieties of reasons they might refuse to give authorization to use the work. In this case the administrative office can grant third parties compulsory licensing. So some kinds of limitation have the effect of reducing the full right just the right only to receive remuneration.

Most of the limitations are imposed in relation to the act of reproduction right of the work. There is a justification behind limitation on reproduction right which is called the fair use doctrine/principle. These exceptions must also put explicitly in the law. Fair use doctrine is a rule/principle but in this case it is exception to the rule and it should be construed strictly. There are three step tests of fair use doctrine (Art, 9/2 of the Berne Convention). In certain special cases (1), when the act/reproduction doesn't conflict with normal exploitation of the work (2), and doesn't unreasonably prejudice the legitimate interests of the author (3). The notion of special case means that a rule of exception in national legislation must be special which will be defined as limited in scope or specific in purpose. The second test dictates the number of copies those authorize should reasonably be smaller in amount. The third step is that the exception doesn't unreasonably prejudice the legitimate interests of the author. The exception to be reasonable this test requires remuneration to be made to the author.

These tests involve some sequence but not separateness. In other words they apply in a sequential manner and they are exclusive. If the second element not complied with there is no need to go into the third element. If the second element complied with it doesn't mean that reproduction is permitted because the third test must still to be considered. Generally, the steps would admit some sequentiality but not separateness. They apply together to determine whether or not the act is permitted.

Limitations under Ethiopian Law (Art, 9 to 20)

Limitation as to reproductive right; (arts, 9 to 13) the scope is limited to a published work. Also unpublished works are not to be freely reproduced. Limited purpose is a manifestation of special case the phrase under Art, 9/1 "*personal purpose by a physical person*" it is not available to juridical persons. It is only a single copy and this single copy doesn't conflict with the normal

exploitation rule. The new amendment Proclamation makes clearer this issue. in order for a physical person to make a single copy reproduction of the work for personal purposes he must have lawfully obtained the original copy of the work. (Art, 2/4 of the amendment). this is a kind of backup copy and it is only for personal purpose. (Art, 9/2 a to d) are typical examples of acts cannot be allowed for personal purpose.

Art, 10 here a limited purpose is *quotation*, compatibility with fair practice and does not exceed the extent justified by the purpose. The purpose of the quotation for example, for research purpose not for commercial purpose. The nature of the copyrightable work also takes into account in determining the extent and fair practice. What is fair for quoting from a work of poetry could be different from what is fair quoting from a prose. The amount and substantiality of the portion used in relation to the whole work is also matters. (look at provisions of the amendment proclamation) another determining factor is that the effect of the use upon the potential market of the copyrightable work.

Art, 11, the limited purpose is teaching and instructional purpose, the real case Dr. Asseffa Fisiha vs. Justice and Legal System Research Institute jointly with Alban University.

Art, 12, the limited purpose is Reproductions by Libraries, museums, memorials, archives and nonprofit making institution. This applies with in consistence of conditions provided in sub/3.

Art, 13 reproduction for informative purpose, we can use the work for the purpose of news. This provision has two components reproduction of the work for informative purpose which is public performance and broadcasting purpose.

Art, 14 reproductions of computer programs for the purpose of personal backup.

Art, 15, Importation for personal purposes of physical person, but that copy should be a single copy.

Art, 16 Private performances free of charge at a family gathering or in a school, if there is payment and performed out of the family gathering it doesn't serve the purpose.

Art, 18, Display of works, this is an exhibition of the material copy of *published work* because the right to display the work of that particular copy is exhausted by transfer. But nonmaterial display through devises or other process for example, by means of a film slide

or television image is not permissible.

Compulsory licensing; (Art, 17) this is special because its effect is not limited to termination of copyright in its entirety but also it reduces the right of authorization of the owner to the right to receive remuneration. The system of compulsory licensing goes even against the clear objection of the copyright holder or heirs. In the case of Ethiopia IP law EIPO get into the shoes of the copyright holder and issues the license. This applies when authors are unwilling to give licensing to that work.

Legal licensing is technically, it means licensing is available to third party users of the copyright by the operation of the law. It is not practical under Ethiopian law. But the most common and practical one is voluntary licensing. But the effect of those licensing are more or less is to establish remuneration.

There are procedures must be fulfilled for the issuance of compulsory licensing to take place. The remuneration must be equitable and it must be determined by the Council of Ministers Regulation. But currently the regulation is not issued for the time being compulsory licensing doesn't apply.

NB. Compulsory licensing scheme doesn't necessary in exercising limitations under art, 9 to 16, 18 & 19. By the virtue of those provisions we use the copyrightable works without payment and authorization of the author. So compulsory licensing applies with regard to acts don't fall within the limitation we discussed earlier.

Limitation as to Duration; (Art, 20) the effect of duration is that all components of copyright come into an end and the work remains public domain. The basic rule is that life time of the author plus fifty years after death. But there are cases in which some works remain unpublished during the life time of the author. Even sometimes IP works may be owned by juridical persons so the life time plus fifty principles doesn't work here. Look at exceptions and conditions provided under sub/2 to 8.

In our jurisdiction the way this fifty year is calculated begins from the date of death of the author. But this is amended by the new law in the way that the calculation of fifty year begins in the first day of new calendar year after the death of the author. Why we concerned for the method of calculation is that in order to fix what exactly the end of the fifty year. The

amendment law adopted Gregorian calendar.
Who is entitled?

To answer this question we need to detail rules because ownership might differ from authorship. The general/presumptive rule is a work expressing a creative effort of certain intensity and a certain individual uniqueness both justify and delimit copyright protection. Author is a person whose personality is indestructibly imprinted on the work. Both justice and expediency demand that the real author or biological father/mother of the copyrightable work be entitled to the protection. However, this presumption can be rebutted by proof of the contrary.

So there are many cases where the presumptive rule doesn't provide us adequate solution. For this reason there are adjective/auxiliary rules. We need to apply auxiliary rules for the following circumstances;

1) When two or more authors involve in the work, 2) when the real author is not named or his identity is unknown, 3) works which are commissioned by other persons or the product of commissioned copyrightable works, works produced under employment relationship or under contract of service. With regard to commissioned works, there is a difference in attitude between continental author's right tradition and Anglo-American Copyright legal tradition. 4) In a cinematographic works there is a complexity of creative process because cinematographic works are often works of contribution by multiple individuals and the production entails heavy cost as well as the importance of making the consumption of these works internationally available. The solution is that the copyright must be given to the producer. This is because most of the time producers are PLCs or Conglomerate which are juridical persons.

Individual Solutions

The general rule is that the *prima facie* author is the presumptive owner. *Prima facie* author here refers to a person whose name appears on the work. But not necessarily name also the person's signature. (Art, 22/1] Posthumous Works; works published after the death of the author so who will be the owner? The rules on transfer of copyright or *mortise cosa* or succession will apply and heirs or legatees who are beneficiaries of the testament of the

deceased can be succeeded.

Anonymous or Pseudonymous Works; regarding the use of pseudonymous it could have the effect of clearly identifying the author. In this case beneficiaries can also be identified so the rule of presumptive owner shall apply. Sometimes there is no clear line between real/clear designation name and a pseudonym because they have almost the same effects however; still there is a difference between pseudonymity and anonymity. The anonymous or pseudonymous author should be represented by the publisher. If subsequently the identity of the author is revealed, we refer to the rule of presumptive owner. But in so far as the identity of the author remains pseudonymous and the pseudonymous cannot help us to determine the identity of the author, the solution the law provides is that the publisher would be substituted on the shoes of the author and exercises copyright.

Publisher have no copyright by the operation of the law, the closest they come original entitlement of copyright protection is representation through the consent of representation in a publishing contract. Provisions of the Civil Code dealing with publishing contract are still effective.

Works of Several Authors; are works that are products of collaborative efforts between two or more persons. They can be categorized as works of co-authorship and collective works. (Art, 2/5cumArt, 22)

Works of Co-authorship; refers to works belongs to a single genres i.e. contribution of individual authors to be lost in the totality of the final product, for example, a certain article written by two persons. In this case authorship can be determined by the rules of joint ownership. They must act unanimously to carry out all economic transaction. And those rules of the Civil Code (Art, 1259 & subsequent provisions CC cum Art, 38 of IP Proc.) dealing with joint ownership are fully applicable. The feature of this work is oneness/single whole; interdependability and inseparability between parts contributed by different authors at the finality of the wok.

Collective Works; attributes of this work is that individual contributions remain clearly visible so individual ownership can remain intact. The works are also separated and independent of each other they can firm stand alone. But where these individual works are collected and

published as a single work it is a new copyrightable work in which its ownership vested to the physical person who take the initiation of that work. Magazines, newspaper (without employment relationship) individual columnists, etc. are examples of collective works.

Hiring Works; refers to works produced under employment or apprentices and commissioned works. Commissioned works involve portraits and photograph and other works.

NB. Difference between Contract of service and contract for service, the former refers to contract of employment and apprentices and the latter not an employment relation it is calling someone to provide service.

Employment Relationship; in such a relationship the employer is the owner of economic right of a copyrightable work by the operation of the law while moral right remains to the employee. Copyrightable works produced by employee are presumed to be created in favor of the employer who has taken the risk in organizing the facilities and recruiting appropriate personnel and etc. So, the visible tests are the employer taken the initiation, supervision and control and provided tools and invested on those tools for the production of the work this justifies copyright protection.

Continental legal traditions argue that regardless of whether works are produced employment relationship, the ownership vested to the author/employee unless they agreed to the contrary. So what matter here is, their contractual stipulation. In Anglo-American tradition including Ethiopia regardless of whether such terms in the employment contract the employer is the owner of the work. But by the terms of contract employee can also be the owner.

Commissioned Works; some legal systems provide this right to the person commissioning the work because he makes available materials needed, pay for the service and the portrayal or the picture is also his own likeness. Similarly in the case of photograph it is the commissioning of the work that enjoys ownership. But not all photographs if it is done without commissioned that is up to the photographer. Other jurisdictions state that in the absence of contrary agreement except portrait and photographic works in other works the copyright ownership is bestowed to the author. In our law as a rule commissioned works are

owned by the person who commissioned the work. For example, a lawyer who prepare memorandum of association for a company cannot claim copyright ownership unless he agreed otherwise.

There are general tests to determine whether the work is belong to the author or another person these are the control test (employment relation), organization or integration test and economic reality test (the party who ultimately take the risk and benefit).in Ethiopian context, it is bluntly all works made in hiring belong to the person who commissioning the work.

Cinematography Works; involves complex creativity process and there are varieties of contributors to the work. It also requires capable production facilities. An individual cinematographic work is an independent work not a co-author or collective work even though there are contributions by different persons. The rule says that the initial copyright owner of cinematographic work would be the producer. The owners of cinematographic works have demanded different auxiliary rules because of the spectacular convention of modern technology, complex organization of creative activities and new aesthetic ideas and ideologies. The script writer, Director, Cameraman, lyricist and composer subject to the contract they conclude with the producer they the right to receive remuneration (Art, 21/5 a & b) with regard to the whole copyrightable work the ownership is the producer. It doesn't mean that they have independent copyright their right is actually reduced to receiving remuneration.

Sub/5 b talks about a cinematographic work which can be exploited separately from the whole work for example, if a certain soundtrack of a film is engaged separately for another work, individual author shall entitled to exercise his copyright independently.

Transfer of Ownership (Art, 23 to 25)

Copyright is a proprietary right and it can be subjected to any kind of transactions. It contains all elements of ownership right *usu + fructus + abuses*. Transfer of copyright is limited to economic rights because moral rights are personal to the author. Mode of transfers include; Will, intestate succession, contract, donation and judicial attachment. All these forms of transferring ownership are applicable to IPRs. But here our focus is in the form of transfer by contractual relation. There are forms of contracts to which copyright is frequently subjected

to be transferred. These are called assignment and licensing. Copyright can be assigned or licensed often in return of payment known as royalty. So a licensing scheme is really useful for copyright holders to derive maximum economic benefit out of their copyrightable works. For example, the author of a certain novel can derive economic benefit by licensing his primary work for adaptation of cinematographic work.

Assignment of a Copyrightable work refers to transfer of the right to authorize or prohibit the acts that a copyright vested in the right holder. Licensing doesn't transfer the authorization or prohibition or ownership part to the licensee. The ownership still remains with the initial author.

Types of license; license can be exclusive or nonexclusive but for our convenience we can divide into ordinary, sole and exclusive licensing. In the case of ordinary license the copyright holder retain full ownership. The owner can use and transfer to another person this same act/right. The copyright holder may mitigate conflict of authorization arising out of relicensing for example, by region especially distribution right.

Exclusive license gives exclusive authorization it is only the licensee that can carry out that specific act. The copyright holder cannot relicense to other persons. Strictly speaking exclusive licensing bars the copyright holder from carrying out the act which is subject to the license. The copyright holder barred from licensing other persons with regard to that specific act. But the licensee cannot transfer that specific act because that is the regime of assignment.

Sole license; the copyright holder can carry out the act which is subject to the license. But the holder cannot relicense for third parties other than the sole licensee.
The form and Content of Assignment or Licensing

Art, 23/2 regarding to form it must be made in writing, must be stated explicitly and the assignment or the licensing is limited to the act which explicitly refers to. However, parties are at liberty to make broader or narrower the scope of an assignment or a license. But if a contract is silent as to means and ways the assignee or the licensee could exploit the work in such a way and means as are necessary for the purpose envisaged by the parties. Regarding time limit in the absence of explicit term into the contrary, assignment and

license expire within ten and five year respectively (Art, 24/3).

The parties are at liberty to broaden or shorten the time. But this seems contrary to the law of sale because in this case ownership doesn't retain with the assignee after the period legally or contractually stipulated. The rationale behind this principle is that because the author could make a deal during his life time that will be improvident to his successor's entitlement. This ten or five year limit may operate after the death of the owner for example, if the assignor dies one year after concluding contract of transfer unless the parties agreed otherwise in the contract the right will be expired ninth year after the death of the assignor.

Non-use of Economic Right (Art, 25)

When the initial copyright holder transfers right normally it's for return of royalties and the remuneration mostly hinges on the use of the right. the agreement of the royalty could be based on actual exploitation of the right for example; the agreement can be

“The use or nonuse of economic right can affect the economic interests of the initial copyright holder so in this regard the law allows revocation by the right holder.

If the transferee or the assignee or exclusive licensee (not ordinary license because if it is not exclusive the author himself may act) fails to use the assigned right, the assignor/licensor is entitled to revoke the assignment or the license. Non-use defined as total inaction and inadequate action for example, if the owner assigned reproduction right to the publisher the inaction on the part of the publisher is going to harm the distribution right of the copyright holder. So in this case the copyright holder can revoke the assignment or the license.

The revocation is being exercised conditionally; where the non-exercise or inadequate exercise of a right is primarily due to circumstances which the author can be expected to remedy. The time of revocation The right to revoke an assignment or a license shall not be exercised earlier than 3 years from the date of assignment or license or if the work is supplied subsequently, from the date of delivery of the work.

Can the right of revocation be waived? Art, 25/4 there is a prohibition of waiver of revocation but the prohibition is only an anticipatory submission of the right or advance agreement to

waive the right of revocation. But after the end of three year the assignor can use his right.

Abandonment; art, 8/3 waiver of moral right is exercised in a strict circumstance and it must be made in writing. Is it possible waiver of exercising of economic right? It is possible for example; you can post your copyrightable work in the internet so that others use for free it. Some books may be published bearing a text *"NOTFOR SALE"* which a clear manifestation of relinquishment of economic right by the author.

Neboughring rights

Neboughring rights are related to but not identical to copyrights. Neboughring rights don't have the creative spark that copyrightable works have. Therefore, they are not full protection status as copurighable works. They are dependent works of copyrights. Neboughring rights are protected because

1. They have some protection since they have some contribution for works of copyrights. By themselves they don't have creativity or originality.
2. Technology makes easy to copy and enjoy the works which are recorded or which takes more investments. So, technology has definitely contributed to strong protection neboughring rights.

The regime of these rights are available for 3 catagories of holders. They are performers, producers of sound recording and broadcasting organizations.

The proprietary of neboughring rights are auxiliaries in the intellectual creation process since they extend their assistance to the authors in the communication of author's work to the public. There are important intermediaries that make authors work accessible to the consimers through aquistic or visual reception mechanisms.

With regard broadcasters, although broadacasting implies by definition the defusssion of a message to cooanasin and accounted to public and although it may be argued that by defusing the message the broadcasting agency gives up all control over its further destiny, there are forms of reuse of broadacasting programs which imply unjustified exploitation of the work and expenditure invested by original broadacasting organization.

There must be some connection to protect these rights.

Perfomers right: subsistis under Ethiopian law only as regards performances of performers who are nationals of Ethiopia or having performance taking place in Ethiopia or having

performance incorporated in sound recording protected under Ethiopian law based on 3/3. Performance which is not fixed in phonogram but included in broadcast that qualifies for protection under Ethiopian law.

Phonogram is protected when having Ethiopian nationality as producer or sound recording first in Ethiopia or first published in Ethiopia.

Broadcasts subsists under Ethiopian law only as regards broadcast 1. Broadcast of broadcasting organization head quarter in Ethiopia. Or 2. Broadcast transmitted from transmitters locating in Ethiopia.

Generally, it is used nationality or territoriality.

Fixation is not a requirement for performance of performers. It is a right.

Patent

Patent protect ideas while copyright protects expressions. For copyrights a low level expressive creativity is sufficient but, the standards to obtain the patent rights is a little bit high. The patents don't require the level of idea being like Albert Einstein.

The exclusive right in patents is stronger than copyrights. In the case of copyright other persons would be prohibited from producing, adapting, copying the work which is the intellectual property of another. But, in patent you cannot even make use of an idea that you have independently created. Creation which are independent product of one person can be copyrightable regardless of their exact being copyrighted by another person. 2 parallel expressions which are independently created but having fortuitous similarity might be copyrightable. But, in case of patent, the level exclusive right effect that other persons cannot even make use of inventions that they have independently created.

The duration of patent is short.

There are rigorous tests which are substantive and procedural tests. It is an administrative granting right. But in copyright it is automatic.

The purpose of Patents

The purpose is to provide adequate incentives that inventions that are usable for the society.

Disclosure of information is important concept in patent.

Meaning of patent: art. 2/5 reads that "Patent" means the title granted to protect inventions; the invention may relate to a product or a process. Patent is a legal title that

confers on its holders the exclusive rights to make use or otherwise exploit an invention over a limited period of time.

Subject matter of a patent: the invention constitutes solution to a specific problem in the field of technology art 2/3. Therefore, the content of the work is very important unlike copyright.

Product:

Process: it is demonstrable. It may not represent materially. Process refers a manner of conduct in certain conduct. That action lead to a manufacture of product. Process is patentable so long as it is usable.

Composition of matter: merger of units with the view to come up with a specific outcome. The rule of patentability requires coming up with inventions that constitute solutions to particular specific problems.

There are substantive and procedural requirements. Substantive requirements are 1. Industrial applicability. 2. Novelty. 3. None obviousness.

Procedural requirements: 1. Full Application. 2. Examination stage. 3. Refusal or granted.

None patentable things: look at art 4. The patent policy discourage certain kind of creations.

None patentable inventions are divided which are listed under art 4/1 into 3 categories. 1. Subject matter not qualifies as inventions. Look at art 4/1/f. computer programs, business methods, methods medical treatments. 2. Subject matter ordinarily invented but excluded from patentability on public policy grounds. Look at art 4/1/a. 3. Subject matter where patentability questionable or controversial.

As matter of rule there is no rule point of attachment in patent process. So, foreigners are treated similarly with nationals art 5. But, there are some auxiliary rules like reciprocity and international agreements to which Ethiopia is a party. For procedural reasons, foreigners should appoint agents resident in Ethiopia art 9/7 of proclamation and art 48 of regulation.

Patent of introduction art 8. It is important for developing countries. Patent of introduction is treated as patent of invention. Industrial applicability and inventiveness are applicable in patent introduction. All rules of patent of inventions apply to patent of introduction.

Substantive requirements of patent:

There are 3 cumulative and strict substantive requirements art 3/1.

1. Novelty: refers to inventions not unknown a solution for a specific problem or never existed before. To understand novelty read about the concept of prior art. Determination of prior art is very important. Prior art is the state of civilization in the field concerned before the date of application for the patent. Anything disclosed before the date of application constitutes prior arts. The other element novelty is that absolute novelty that is disclosed anywhere in the world. But there is exception to patent of introduction read art 18. The other exception is art 3/3 the grace period of 12 months. Even if it is disclosed within 12 months before date of application, it is considered not disclosed. For detail read art 19 of the regulation.
2. Inventiveness or none obviousness: the views of the ordinary person skilled in the art is very crucial component for determination of whether the invention is inventive or the invention is none obvious. Read art 2/2 of the proclamation and art 26.
3. Industrial applicability: read art 2/5. It is capability being production.
In patent law, one invention one patent. There are different options 1. First invention. 2. First use. 3. First to file. Ethiopia follows first to file. So, priority right is established by first

to file that is making successful application to the concerned administrative body. The date of receipt is considered as the date of file. Read art 10 to 12. But, for foreigners the date of application in foreign countries is taken as the date of filing for the purpose of determining or establishing priority right so long as the application is made in 12 months. Parts of invention of foreign invention applied in Ethiopia.

Whether multiple priorities is possible in respect of single application and partial priority? The principle is you could priority right in different foreign application concerned different components different features of invention can brought together and subject to a single application in Ethiopia. Partial priority is also you could combine elements for which is claimed with elements for which no priority is claimed. First to file and first to invent can compete. Ethiopia and Europe use first to file USA uses first to invent.

Problems of first to file: 1. Competition to file first and to find the patent. This competition makes to declare invalid patent.

Procedural requirements:

1. Patent application: art 7 and 9/1 shows that 1. the inventor can apply for his invention. 2. For invention made by 2 or more persons, joint entitlement of patent right is granted. 3. For invention made in contract of service or in employment relationship, it belongs to the person commissioning or employer if there is no contrary agreement. An employee can be entitled patent if he invents without employment relationship and without using the resource of employer. Otherwise the invention would be joint. So, being patentee and being an inventor could lie in different persons. One invention one patent one solution is the principle read at art 9/2 at the second paragraph. But, there is exception that 2 or more inventions belonging to a single consensus art 17 of the regulation.

Content of the application holds in it

- a. Request: art 9/4/a of the proclamation and 10 of the regulation: request is petition. Petition for grant a patent include name, address, nationality, party of the invention and ETC. it also holds the title of the invention.
 - b. Description art 9/4/b of the proclamation and art 11 of the regulation. He has to describe sufficiently and at minimum level. It is very important to interpret the invention.
 - c. Claims art 9/4/c of the proclamation and 12 of the regulation. It is about that he wants to get the scope of the protection. The important protection he seeks. Claim must be limited to the disclosure. If the disclosure more than limited, it will be rejected. Claims may be many. They are arranged in hierarchical. Most of the time there is principal claim or independent claim. Then there will be subsidiary or dependent claims.
 - d. Abstracts art 9/4/d of the proclamation and 14 of the regulation. It holds about technical information of the invention in order to enable concern office to search possible inventions in the prior arts. It is not related to interpretation of the invention.
 - e. Drawings if necessary art 9/5: it is the graphic showing the representation of the invention. They may be used to interpret the claims. It is optional. It is not mandatory. If the concerned office needs it will be provided.
2. Examination art 13 of the proclamation and section 2 of the regulation. Applications are examined: 1. to ensure that they comply with the required formalities. 2. To ensure that the invention doesn't belong to in the excluded categories. 3. To ensure the invention fulfill the substantive requirements. There are 2 kinds of examinations. 1. Examination as to form art 13/1 and 13/2 of the proclamation and 27 of the regulation. IEPO ensures that formal requirements whether are fulfilled. Formal requirements are art 9/3, 9/4/a of the proclamation and art 10 of the regulation, art 8, art 5, art 9/7 art 9/8 of the proclamation and art 10 of the proclamation. The second examination is examination as substantive art 3, 4, 77, 9/2 with 17 of the regulation, art 9/4/b plus 11 of the regulation, art 9/4/c plus 12 of the regulation, art 9/5 plus 13 of the regulation.

3. Grant or denial: decision on granted or refusal art 29 of the regulation. With regard the content and form of the grant art 14/1, 15 of the proclamation and 30/1 of the regulation.
4. Publication: it is the reference to granted patent of the invention art 14/1/a of the proclamation and 31 of the regulation.
5. Certification of the patent: this evidences the grant of patent art 14/2/b of the proclamation and art 32 of the regulation.
6. Registration: recording of the patent in the registry of IEPO art 14/2/c
Duration 15 years for normal patent and extension of 5 years art 16 of the proclamation. Filing application is the basis of duration for all Ethiopian and even for foreigners. so, duration is the same for Ethiopians and foreigners.
Exclusive rights:
these are provided under art 22/1 of the proclamation. These exclusive rights involves 3 acts. Exclusive right of making, using or exploiting of the invention or to authorise to other person to use or exploit.
The right of making: it is the right to make to manufacture the articles or patented products not patent process.
Using: it refers to products and process. Using means putting the products or process into the purpose for which it was invented. Applying the process.
Exploitation: it includes selling, lending renting importing and ETC.