INTELLECTUAL PROPERTY LECTURE NOTE)the past is never dead) “JIF E”.

INTELLECTUAL PROPERTY CLASS LECTURE NOTE GIVEN BY INSTRUCTOR ADDISE SHIFERRAW

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Chapter one; the basic consideration and theoretical framework of intellectual property rights(IPRS).

Introduction to the basic concepts of intellectual property law

Intellectual property is one among subsets of property, which needs serious protection from
thepertinent laws of a given country. When we consider the property as a thing, we are equating
the part with the whole. Equating a part with the whole means, something inexplicable or in
other words, part can never be equal with the whole. Things or objects are jest one components
of a property concept which also includes various other dimensions. Basically, the concept of
property has five dimensions; these are

A.“the right bearer”;One dimensional understanding of property is to conceptualize property
throughthe mediumcalled the right bearer;/we call this the subject of the property. This subject of
property is an entity or person physical or juridical. This subject of property is expected to
exercise the right over the specified property. For example, if Mr. Kebek has his own phone he
himself will be the bearer of the right over his phone.

B. “the object”; it means, the thing or the object over which the right is going to be exercised.
Generally speaking this phenomenon is regarded as an object or a physical thing. This could be a
physical thing which is self defined, it can also be a legal thing over which property right would

not be there unless there is some kind of legal definition. For instance, Mr. Oliad can move
around caring his sale phone in his pocket this is a pretty self defined so no problem with this
definition, because Mr. Oliadexercise his right over the phone by controlling it or by taking
possession of it. But this self definition would not be true in respect of some other kinds of
objects, for example, incorporeal objects of property including intellectual property because of
this fact the exercise of right over this property requires a precise legal definition. We come back
to this concept later on but now it would be better if we understand-the thing or the object over

which the property right is exercised as either a self defined-physical thing or legal thing. By
legal thing we mean, something which is not out there or which is not self defined-but defined as
an object of property by the law it self.

C. the third dimension is the sovereign right accorded to the subject over the object. There is the
bundle of sovereign right, accorded to the subject over the object. Ownership right is one of these
bundles of right;-this sovereign right is basically understood as a monopoly right-or an exclusive
right over the thing. Mr. Tolosa has a sovereign right over a certain thing means that he has the
right to use the thing and he can do what ever he wants with his thing to the exclusion of
anybody-else in the world. This is so why, the thing under discussion belongs to Mr.
Tolosaexclusively; therefore, nobody is entitled-to interfere with his right.

D. The fourth dimension is the fact that often the right to property is an exclusive right but not an
absolute right. This is to mean, there are often limitations-or there are spheres beyond

which the
right cannot-go. This limitation could be imposed because of social policy and limitation based
on concerns for the rights of the others. So, there is the regime of the limitation in the c oncepts of
property. These limitations are more pronounced in respect of-legally defined objects of property
than in respect of self defined objects of property. The term self defined object of property is
used for explaining the tangible or-perceptible object. This perception however, could b e through
the use of our five sense organs.

E. the fifth or the final dimensions of the term property is the existence of grounds for b estowing
what is basically a semi/sovereign.-We dare-to reduce the right to semi/sovereign becau se of the
operation of the rules of limitation. The principles of limitation would reduce what we e xplained
as a sovereign to semi/sovereign right. So, there are grounds for bestowing the semi/ sovereign
right upon the subject in respect of the objects of property. We call this category as the
justifications. Why do you think the land is not subjected to ownership right under Ethiopian
law? It has its own justification, of course-there would be explanation behind any law, but in
respect of property law the justification is very common and assumed to be a mandatory. So,
whenever a certain object is defined as an object of property and whenever, the rights a re defined
in respect of that object for the subject, there would be justification. Natural right theory and
utilitarian based theory are for example the justification for the law of the intellectual p roperty.
As a result, the concept of property as a whole is not an object or a thing rather, a thing could be

one components of the whole therefore we shouldn't equate a part with the whole. Broadly
speaking, the concept of property includes all the steps such as the subject, object, rights,
limitations-and justifications.

There are classifications of things or goods, the Ethiopian civil code calls them as a goo ds not as
a thing, it looks like that a thing is very broader concept than a good;-goods are often u nderstood
as something of economic value, while thing includes an object which may not have an
economic value. But still held by the subject and therefore, deserves protection under law of
property. For instance, if somebody inherited-the Sword from his/her grand father-which has
been used in a war like that of Adowa, in which his/her grand father has won.-This inherited
property might have immense moral value that is to be memorized-than economic value it would
have. This could be regarded as an object of property not because of it could be marketed as
such, but it is regarded as a property for the reasons of your attaching for its spiritual v alue.

Accordingly, things or goods might be classified as corporeal or incorporeal goods or things.
Corporeal things means, the object in respect of which rights of property are exercised and are
basically perceptible with the use of sense organs. However, this does not necessarily-mean that
the thing must be perceived through the use of our all sense organ, it would be enough if it is
perceptible by one of our sense organ. Things do not indicate the object under our contr ol only it
also covers uncontrolled things such as sun, moon and stars. Such kinds of things are generally
regarded as universal things, because nobody has legal claim over them. So, such things are
categorized as corporeal things because they are perceptible through our sense organ a

t least by
one of our sense organ. But some of this corporeal categories might fall beyond private property
law, as we said above things like sun, moon, stars and air are commonly beyond private control
and they are available to mankind. We can also think of a thing that can be controlled by human
being but made beyond human control by law, things like highways could be regarded as a good
example for this scenario.

Incorporeal things; incorporeal things are imperceptible by senses. You may conceive them
through the use of mind but could not be perceived by sense. Corporeal things are basically
appropriable but the concept of physical appropriablity does not work in light of incorporeal
things. So, the conventional law of appropriation or occupancy does not apply here. The mere
occupation of the corporeal things or goods may result in exercising the right of possessing or

owning. One may ask that if incorporeal things are in-appropriable how one can be the
beneficiary of such things with due course of protection? As a result, the existence of the law
which regulates such kinds of incorporeal property would be very necessary condition-to come
out of this dilemma-because if law exists in such circumstances it serves as a ground for claiming
ownership right or compensation of damage if any.

In short, the existence of the law redefines-occupancy-or conventional appropriation to fit the
context of incorporeal property right.-So, one can still retain property right with the help of the
law in the cases of incorporeal property-specially by taking legal action against whoever go

against his/her recognized right.

Not all incorporeal rights are property right, tort right and contractual rights are incorporeal right
but not property right because both of them are right in personem not right in rem. So, they are
not regarded as property right. Hence, not all intangible or incorporeal rights are property right
because-to be regarded as property right it must be right in rem.

DEFINITION

What is intellectual property law?

Intellectual property law is the section of the law which deals with the creation of the mind or
more technically, it is the law which regulates the works of human intellect. Hence, intellectual
property means, the legal property which is the result of the works of human mind in the field of
industry, scientific invention and artistic fields. Intellectual property is regarded as incorporeal
property which everybody conceives by his/her mind, so, they are not perceptible through our
senses.

The term intellectual indicates that the product is the result of human mind or the fruits of human
intellect. Among such products creations, inventions, ideas, the way an idea is expressed;-
reputation-i.e. the attraction between the producer and the consumer could be seen as a huge
property-which may be symbolized by trade marks and geographical indications of the origin.
Generally speaking, such kinds of property are not materially existent but may be conceived by
mind and are the significant property for interested person.-Intellectual property law is about

exclusive right or sovereign right which are accorded to the person or to the creator of the
property, in respect of his/her creation.

Natures-or features of intellectual property;

some features of intellectual properties are general in the sense that they are also shared by other
kinds of property right, however, there are also some features that are unique to intellectual
property rights. Accordingly, it would be better if we discuss first the general features of
intellectual property right which the other property also shares; and unique features respectively;

GENERAL FEATURES;

The first-feature' of intellectual property right is intangibility; we have discussed about this issue
at the beginning of this course, so it requires no comment.

Second, mobility, the mobility feature is ascribed to intellectual property rights not because they
are naturally movables as corporeal objects/of property but because the law wants it to be. The
justification for this may be, movable object of property, has an advantage of easing-in economic
transaction. Not all intangible-or incorporeal property rights are intellectual property right, it
means, there are some incorporeal property rights which are not intellectual property rights. For
example, shares in a company, share in the business organization while this organization is in
operation; but-when it dissolves, it is no more incorporeal,-the share we have in business
organization as a going concern is an incorporeal property right but it is not an intellectual
property right. Second, the business it self.-If you see article 124 of the commercial code of
Ethiopia it tries to define the term business, under this article the term business has been defined
as a property having the features of incorporeal movable property right.

The third feature is an economic value. For corporeal things economic value is not as such
necessary, Mr. Murado-abdo has written that, it is not necessary that a good should have an
economic value to be property at law. The good may be invaluable or-may have negligible value
for worthiness-in economic terms. The object from the view point of private property law, could
jest have a spiritual value, it could have historical or cultural value. But when it comes to
incorporeal objects of property this will not be in a case, actually, this is not a settled issue but

the general tendency is intellectual property rights are specially expected to have or must have-
economic value. There is also the concept of moral right in intellectual property,

Fourth, the fourth feature is the existence of joint right, matrimonial right, communal right and
public domain. When two or more persons exercise their right jointly it is to be called a joint
right. For example, a. and b. can agree to buy car with one another to own it jointly. The above
scenario may also work in respect of intellectual property, I.e. a. and b. can write a book
together. Matrimonial rights are the rights which have inherent-connection with the property of
the spouses. Accordingly, if husband or wife wrote a certain book after he/she validly concluded
a marriage the right gained from the written document will be accorded to both of them.
However, it has to be noted that, what would be the common right for both husband and wife is
not the moral right derived from the written book rather it is the economic value which is going
to be the common right for both husband and wife. The society can also use certain property by
being in communal structure-for instance; the farmers have traditional knowledge through which

they can preserve the biodiversity. So, the concept of communal right is not only applica ble for
corporeal property right it can also be among one characteristics of incorporeal property right
especially intellectual property right. Finally, public domain means, a property designed for all
without any distinction. NOTE; joint rights, communal rights and matrimonial rights are the
manifestations of private property law I.e. if certain property belongs to particular com munity it
means that, no other community is allowed to use the specified property.-However, in th e case of
public domain there are no such kinds of exclusion, anybody can use it freely. Therefore,
intellectual property can also be public domain because of certain facts. As it is well kno wn the
exercise of intellectual property right is limited by duration of time. When that time expi res the
right would be entitled to the public at large. To take one working example, the work of Adolf-
hitlar in respect of meinkamph (my history) will expires at the thirty first of 2015 G.c. so, the
copy right in respect of this book is going to be the public domain.-Upto this day the pu blication
of this book was controlled by the Bavarian council because of its dangerous social mes sage,-but
starting from thirty first of December 2015 the Bavarian council would no longer exercise its
right with regard to this special book of the world. As a result, the concept of public domain
equally applies in respect of intellectual property right just in the manner it applies to other
property rights.

The specific or unique features of intellectual property rights;

1. The features of territoriality; in the absence of regional treaties, intellectual propert

y rights

are definitely-territorial;-they are protected-with in a certain country under the laws of that

country. Under property law we have one very crucial concept which is known as the

concepts of situs;/situs normally make sense in respect of corporeal property object. The

principle of situs envisages that the law of the place where the object is situated will have

application when dispute comes in to picture with regard to specific object of property. The

concept of situs does not apply in respect of incorporeal property interests;-because

incorporeal property interests are not capable of possession or they are not materially exist.

For instance, if A. has intellectual property right in Ethiopia A. can't claim such right in

other countries like kegna and Tanzania because; intellectual property right is normally

enforced in a country where we have obtained the claimed right. This tells the territoriality

of intellectual property right. Therefore, intellectual property right is equated as formal

independence plus territorial limitation.

2. The concept of dichotomy;-the dichotomy between knowledge or information and the object
in which it is contained. Knowledge or information versus object dichotomy, i.e. the music and
the disk in which the music is contained.Does the fact that you owned the CD will entitle you to
own the song as well? Obviously the answer will be no. because; the two are different from each
other. Even though, objects of intellectual property rights in this case knowledge and information
are stored in physical objects the property law that applies to the two objects are quite different.
The exercise of property right in respect of physical objects (CD) is governed by the conventional law of property. But, acquisition, ownership and enforcement in respect of the song

and the information-stored in that CD are basically protected under the law of intellectual
property. Generally speaking, the ownership of the CD does not entitle you to own the s ong. This
is all about what the dichotomy is. Another issue that must be given due attention in rel ation to
dichotomy is the dichotomy between an object of intellectual property right and physical
embodiment of that object of intellectual property right. Love songs and love, Good will and
their friendship and celebrity identity and personality. Can you think of a dichotomy in r espect of
these things? Think of the physical embodiment of the object of intellectual property-as a human
being himself-rather than other physical object. With regard to this point, you can't have any

right over love but you can have right over the love-sense. You may exercise a right over the
good will but you can't exercise a right over the friendship

There is also another concept which is very much similar to this scenario;-this concept is what
we call thenone/rivalries features of intellectual property-this concept is all about origin ality of
the work at any time and in any situation. The fact that one million people consumed the same
work at the same time does not affect its quality or originality. With regard to the physical
objects of property, the consumption is rivalry;if Mr. A. occupied certain chair by sitting on it,
nobody can again cit on that chair. Knowledge and information's are commonly charact erized by
being-none/rivalries-consumption; everybody can share it without reducing the amount available
to previous users. Here the question is if subsequent users do not-cause-any kind of red uction in
quality or amount to the previous users why we make it exclusive-right?-The possible

justification to this fact could be the moral fates of the original user and the investment he
invested on itAnd more technically, there are some sorts of risks which the original user could
assume; this risks could-be the risks in terms of expense, wastage of time and investing energy.

3. The concept of fragmentation;-It could also be pronounced as the concept of divisibility. In the
field of intellectual property the work may be fragmented or might have the characteristics of
divisibility, for instance, when one writes a book the process of writing the book passes through
different collective works like editing and publishing the book so, both the editor and publisher
have the respective right with regard to the book as the writer of the book does. As a result,
under intellectual property, what is basically single subject matter can be fragmented so that
many people can enjoy their own exclusive right without intervening with the rights of the
others.

4. Finally, the other unique features of intellectual property right is the issue of duration; the life
span of intellectual property is much limited than any other kinds of property right.

The domains of intellectual property right;

Thelucid cortex- of human being-has two main parts, this two parts are-the right part and the left
part. The right part deals with emotions-and feeling, so it is expected to generate the art. The left
part, deals with inventions, ideas and logic-and it generate the object which will be protected
under the subject matter of intellectual property.This is the result of conceiving intellectual

property right as predominantly occupied by these two items. The domain of intellectual property
right is occupied by copy right on one hand and industrial property right on the other h and.

What are the subject matters for copy right protection?

Strictly speaking,-modes of expressions in the fields of literature and arts are regarded as the
focusing area of copyright protection. It is not the idea expressed that is the subject ma tter-for-
the copy right protection, it is the manner of expression which is the subject-matter of c opy right
protection. Ideas are so important to be exclusively controlled; however, copyright regi me-does-
notprotect ideas rather, it protects-the manner in which the ideas are expressed. So, ideas are
fewer than their manner of expression, with regard to the industrial property right, we can have
patent right. Patent protects ideas but there are certain criteria to be fulfilled when we give
monopoly over the ideas of the inventors,-among such criteria it must be novel, it must be
nonobvious-and it must be industrially applicable. Unless, all of these requirements-have been
mate,-granting of a monopoly over an idea will not be effective. One may ask why the law
imposes such kinds of requirement in respect of patents; the main reason is monopoly over an
idea in the eyes of society is less acceptable.

So, patent protects ideas as opposed to copyright which protects the manners of expres sing the
ideas/and this idea is often considered as an invention (a technological invention). Broadly
speaking, we can think of three different kinds of patents these are utility patent, desig n patent
and plant patents.

Utility patents are given-to the functional inventions of an individual or a group of individuals.

This type of patent right is considered to be the normal patent, because it tries to solve the existing societal problems. When we see design patent, in some countries it is considered as industrial design and gets due protection. Design patent is a kind of patent which is granted for industrially applicable configurations or products. Example, product shape, and finally, plant patents, this is very important in countries like Ethiopia where agriculture is the means of economic system.

THE CONCEPT OF PATENT IN CONTEXT OF ETHIOPIAN JURISDICTION;

If we see the concepts of patent in context of Ethiopia; there is normal patent, utility-model, industrial design and plant breeding right. Again, under industrial property right we have trade marks, trade marks protect good will or brand associated with certain goods or services. Under Ethiopian law we do not have a clear idea which differentiates trade names and trade marks, however, some regimes also protect trade names as one object of intellectual property.

In other ways, there is also another component which is called as trade secret. The main reasons for which the intellectual property is given a protection is because of disclosure, a patent right is granted over an inventions for a disclosed technical information, apart from this, intellectual property right is granted over a trade mark for a glaring-reasons which is already used in the marketing of goods and services. As to the trade secret there are no such kinds of features, in this case it is very difficult to provide adequate public policy justifications.-but to the contrary, some countries have given protection for trade secret or for the rights which are undisclosed

to the
public at large like for example kokakolla trade secret right in U.S.A. In short, the protection of
trade mark presupposes two important features, 1. The secret must be absolutely maintained, this
means the firm which controls the secret-must be big enough. 2. It must be commercially
valuable

The last component is geographical indication of the origin;-it shows the origin of good and-
services. It is the name of an area, a designation or a name that is used in the courses of business
to identify the geographic origin of goods or services. But the goods have some reputation,
quality or characteristics that are essentially due to physical conditions like soil and weather-
condition which is not available any where else/or the human factors available in that specific
area, the word-champagne is the direct manifestation-of this-fact it is the sparkling wine
produced in France. Champagne is protected under the concepts of geographical origin of the
goods because, that sparkling quality is due to the traditional knowledge of the community-
residing in the southern france. Therefore,-the reputation behind champagne is essentially,due to
that traditional human factors. Accordingly, such kinds of specific facts i.e. geographical
conditions or human factors are recognized to be very important under intellectual property.
With regard to the physical conditions we can take for example, Ethiopian coffee, why most
Ethiopian coffee customers prefer Ethiopian coffee?-It is for the reasons/of the climate and soil
in which it is produced. So, the quality, reputation and characteristics associated with Ethiopian

coffee are mainly due to its geographical origin or in some cases the way it is produced might
also be regarded as contributing factors-for the above facts.

There are certain common areas-that trade marks and geographic indication commonly shares,we
will make clear this areas under chapter three of this book. But for now, we have to take note
that, a geographical indication regime is a designation or a name that protects a good will,
reputation associated with the geographical origin of the goods.

Justifications for the protection of intellectual property right;

There are three broad theoretical bases for the protections of intellectual property right s. These
are personality based theory, lockial or labor theory and utility based theory or utilitarianism.
Why do we bother to protect intellectual property rights?-The answer for the above que stion will
be gathered from these three theoretical justifications.

Personality based theory asserts that things of intellectual property rights are extinctions-of
individual self actualization, for the realizations of individuals-self actualization, intellectual
property right is very important. The lockial or labor theory has its foundation under th e works of
john lock; he was the-British political philosopher who said if you mix your physical labor or
intellectual labor with certain objects then you are entitled to control what you have produced
from your labor. According to john lock, everybody-has a right to be protected under the law if
he produced certain things through the mechanism-of physical labor or intellectual labor.
Furthermore, he says, the law must accord such person not only economic right over the
specified things but also it must accord him with the-right of moral claims if necessary.

The third theoretical justification for the protection of intellectual property right is a the ory of

utilitarianism. Utilitarianism-bothers about providing adequate incentive/regimes-for generating
large amount of intellectual works that benefits the society in the long run.

In addition to these three Theoretical justifications there are also basic critiques-set for the above
three theoretical justifications-or argument for and against. The first two are basically natural
right approach to the intellectual property; they are based on a natural right approach to
intellectual property. They base there justifications on the basis of moral philosophy. as a result,
the above two theoretical justifications allege that individuals have moral claims to intellectual

property, however, their premises are different from each other they also differ from on e another
in their purpose which they design to attain-from the protection. To put the above three
theoretical justifications in precise and technical order it would be better to treat them separately,
so, let see them in separate manner.

PERSONALITY BASED THEORY AND ITS CRITIQUES;

This theory is a theory developed in European legal framework rather than Anglo/American
traditions, the continental European traditions subscribes to this theory. The theorists a re moral
philosophers like Emanuel Kant/and-Fredirick-engels. These two personalities are from German
schools of moral philosophy, the supporters of this theoretical-justification of intellectual
property rights, strongly argue that-regardless of other extraneous-factors the products of human
intellect must be regarded as property and must be given much attention for their protection.
Regardless of whether the protection provides some benefits to the society at large,on a nd off it
self-intellectual property right deserves-some kinds of protections because, it is a natur

al right.
This is what the European tradition of intellectual property right generally subscribes to,
according to the personality based theorists; individuals have moral claims to their own talents
and experience's.

The personality based theorists-commonly share the idea of importance of this right for self
actualization, self actualization means, reaching the stage where we dream to reach in our whole
life. However, it has to be noted that, for those-theorists self actualization by it self is not enough
rather it can be the initial point for the designed plans, therefore, you need to have external self
actualization. To be successful-for the future or to reach on what we dream we do not have to
limit ourselves only by our internal self actualization, by and large, they suggest personality must
be expanded-beyond our own internal pressures. In order to realize our external self actualization
we should have property right but to have such kinds of right we must mix our feeling, talents
and experiences which are in us with tangible or intangible objects. After doing so, we will gain
moral claims to control those objects-and thereby expand our personality to those objects.

Our moral claim to the objects with which our feelings, experiences and talents are mixed with,-
are secured through the regime of property right-because , property right enables us to have that
control-over the objects which could be tangible or intangible with which our internal acts has

been mixed. According to personality based theorists, if we do not have control over such objects

the concept of self actualization will not be realized in its full sense.

Critiques;

among the arguments against this theoretical justification, the first one advocates that,-it is not
clear that we own our feelings or our experiences, this critiques doesn't-deny that they are inside
us but they argue this doesn't necessarily mean that we own them for the very reasons of their
internality. The mere fact that-these feelings are found inside-us does not mean that there is a
moral claim to own them.

The second critiques criticizes the personality based theory-by envisaging even if we say that we
could own these feelings or talents but it does not automatically follow that the personality or the
claim is expanded when our personalities are mixed with tangible or intangible objects.
Furthermore, the supporters of this critiques assert that, rather than claiming property right to
these tangible and intangible objects it would be better if we regard them as an abandonment of
our personality, for example, if some one goes to the house of hair and asks to be cut his hair he
is Infact,-abandoning his personality and also cutting the nails has the same line of thought. So,
according to this critique's-mixing our feelings, experiences and talents with tangible or
intangible objects could be viewed in the same line of argument.

The third critiques raises its line of argument-by further extending the second lines of arguments,
they argue by saying even if we could say that our personality is expanded-to tangible or
intangible objects we would still face with strong arguments for establishing property right. The
mere fact that, our personality expands to tangible or intangible objects that-have been mixed
with our internal feelings does not automatically mean that we gain property right, property
rights are monopoly right so to have such kinds of right we need to have strong lines of

argument
but the personality theorists did not provide these kinds of argument. In addition to the above-
point of critiques this third group of critiques provides the line of argument in such a way that,
personality based moral claims may not warrant more than some protections rather than
according it with the full-fledged/property right.

Finally, the fourth critiques says, there are many intellectual innovations/in which the authors or
the innovator's personality is not reflected at all. Many products of the intellect may be

characterized-as having no reflections of the inventor's personality as such, like for example,
patentable products. So, given these all challenges the personality based justification for the
protections of intellectual property would be inadequate to be an acceptable justification-for
intellectual property rights.

The personality based theorists reply for the above critiques in the form of rejoinder;

Take note of the following history, suppose that Mr. Kebede/buys a painting at a garage-sale.
Which was produced by Mr. Ulfaata.And Mr. Kebede takes the painting to his home and alters
the painting with the marker and draws cornnis-and-mustachios-on the figures in the painting.
The addition was so clever and fits so nicely-in to the painting that Mr. Kebedehangs it in a
window to the directions of busy street. There are at least two ethical worries to be considered in
this case, the first one is the alteration by Mr. Kebedemay cause unjustified economic damage to
Mr. ulfaata.

second, independent of economic considerations, Mr. Kebede's Action may damage Mr.

Ulfaata’s Reputation.-The integrity of the painting has been violated-without the consen ts of the
author. This action could pose to Mr. Ulfaata the long term damage with in a society in t erms of
economic consideration. If this claim is sensible,-it means that-we are acknowledging-
personality based moral strength-attaching to certain intellectual works. By producing
intellectual works, authors and inventors-put themselves-on display and incur certain pr ivileges;
intellectual property rights-afford the authors and the inventors some sorts of major con trol over
this risk.

The lockial or labor theory;

The labor theories begin with the claim that individuals are entitled to control-the fruits of their
labor, property rights are generated when individuals mix their labor-with an owned objects.
These objects could be a type of object which was not previously owned by another pers ons, so,
simply if a person mix his/her labor with an object which was not owned previously he/ she can
control its fruits and also have moral claims over the property he/she produced either through
his/her intellectual labor-or physical labor.

Critiques on this theory;

First, the ideas of mixing labor/is incoherent, because labor is an action while object is an object
therefore, how can we mix action with an object. The other critiques to this theory were raised by
Robert Nossick and John-Rewells;-they criticize this theory-by alleging/that it is not clea r why
labor mixing generates-property right rather than loss of labour. For these two personal ities the
labor that we have expended should be regarded as,a lose of labor/rather than generating

property right. The third critiques to this theory envisages that, the skills, the tools and the
equipment which we use in laboring may be the products of social activities, therefore, according to this critiques it is not fair to leave to private monopoly something which has social
contribution.

Rejoinder to the critiques;

Read the following history carefully, suppose Mr. Robsan-comes up with an excellent new
recipe-for Chinese/noodles-after weeks of effort and numerous/failures, and Mr. Robsan has kept
this idea to himself-in his mind and did not write it down. Would any one argue that Mr. Robsan
does not have at least some minimal moral claim to control the recipe?-Suppose that Mr. Nahili-
samples some of Mr. Robsan’s noodles/and desires to purchase the recipe. Is there-anything
morally suspicious-with an agreement between them that grants Mr. Nahilia limited right to use
Mr. Robsan’s Recipe provided that Mr. Nahili does not disclose the process?

Utilitarianism;

Utilitarianism is more directly associated with protection of intellectual property right; the other
two theories might perfectly work-in the realm of physical property right. In fact if you consider
the lockial-labor theory it was first formulated for the protections of physical property right. But
the utilitarian justification is more directly associated with intellectual property right
themselves;-so, it is the most relevant kind of justification for our purpose here. This is a model
of Anglo/American regimes of intellectual property. It talks about; incentives based regimes or
systems. According to this approach, a necessary condition for promoting the creation/of
valuable intellectual works is granting limited rights of ownership to the authors and inventors,
the protection of intellectual property right is not an end in it self-it is rather a means to

certain
end, and the end is the promotion of valuable intellectual works. Valuable in the sense that, the
society at large will benefit from the obtained works, so in order to achieve this grand purpose

the granting of limited intellectual property right is necessary. But, the previous two justifications view the-right to private property as an end in it self, there is no considera tion of
external factors as such/at least directly as they are. Here, intellectual property rights a re viewed
as instruments for realizing societal goals-of having maximum amount of valuable intellectual
property right for the long term benefits of the society.

So, in the absence of certain guarantees in the form-of property right, valuable intellect ual works
will not be created. Of course/utilitarian's-admit that, intellectual property rights thems elves do
not insure-the production of the maximal amounts of valuable intellectual works. But, at least
absence insures/failure. The theorists of this approach raise the question of if the proce eds of my
investment are shared by others freely in the absence of property right why would I bother to
invest my energy, time and effort then?

Accordingly, adopting systems of protection like copy right, patents and trade secret/ yields an
optimal amount of intellectual works being produced and corresponding optimal amount of
social utility.

This theory is not without critiques, critiques accept that, it is very important to generate
maximal amount-of-intellectual works, but they do not accept the means the utilitarian's used.

The critiques also raises that, for example, if we take trade secret they are very troubling from
the view points of societal benefit, why we provide monopoly-right-for what is basically undisclosed or what is basically kept secret. How society is going to benefit from something
which is kept secretor something which is protected in so far as the secrecy is maintained. So,
there is no guarantee of long term social benefit from protection of trade secret.

The other criticism is the empirical question about the costs and benefits of copy right, patents
and trade secret protection are notoriously-difficult to determine, even in the presence-of these
challenges and criticism the utilitarian/approach remains strong justification for the protection of
intellectual property right. In fact, most criticism focuses upon problems of
implementation/rather than intellectual property it self. Do you think that these three theories are
mutually exclusive?-Technically speaking, they are not necessarily mutually exclusive.

There are also some another general criticism for example, the free nature of information, the
free speech argument, the social nature of information-and knowledge.

The free nature of information or knowledge;

The two building blocks of intellectual works are knowledge and information, the free nature of
information and knowledge takes in to account the argument of none/ rivalries nature of
intellectual property works. Monopoly unduly restricts access and use which should not be
restricted. Since, intellectual works are not typically consumed by their use and since they can be
used by mainly individuals concurrently there is strong reason against moral and legal
intellectual property rights. So many people can consume the same intellectual work without

ever reducing what is available to prior users. This nature of the building blocks of intellectual
works calls for to be free. One reason for wide spread pirating of intellectual works is that many
people think restricting access and use is unjustified.

Let us take some formal argument in such a form of logical premises and conclusion;

The first premise states that if an intangible works can be used and consumed by mainly individuals concurrently then maximum access can be used or should be permitted. Intellectual
works falling under the domains of copyright, patent and trade secret protection are none/rivalries. So, it follows that intellectual works must be free. To put this logical argument in
other words, there is an immediate prima facie case against intellectual property rights or for
allowing maximal access to intellectual works.

QUESTION TO BE ANSWERED BY YOUR REASONING CAPACITY:

is the above logical argument valid? If yes why? And if no why not? Where do you think the
weak point lye's; do you think every block's of intellectual works should be free. Can you give
one best example of none/rivalries types of knowledge or information which should not be
permitted? Do you think information related to national defense or national security could serve
by being answer for the above raised question. What about the movie's that are pornographic in
which one of the participants's of the sexual act dies a little after participating in the act of
performing the said behavior. Don't you think there is a qualified social policy reason for
restricting access and use of this kind of works? Each of this is none/rivalries in nature,but free
access are not justifiable so the above logical argument does not entirely work. As a result, the
restriction of use and access of intellectual works can be viewed in this sense.

The free speech argument against intellectual property;

This critique is based on the freedom of speech. It says that, permitting intellectual property
rights is inconsistent without commitment to free speech. This is because, intellectual property
rights restrict methods of acquiring information; this does make sense in the fields of trade secret
protection because, you are prohibited from acquiring that information through some
mechanism. Intellectual property rights also restrict an idea; patents grant monopoly over an
idea.

of course, there are strict procedures or pre conditions to be mate. But once these preconditions
are mate, a patent system allows monopoly over an idea. And thirdly intellectual property rights
restrict the expression of an idea. This would be the case in the manners of expressing the ideas.
For example, if you have expressed your idea in certain manner then you are entitled to
monopolize that manner of your expression. Nobody else can express in that way; so, in this
sense,-some how the copyright regime-it self restricts a freedom of expression.

Replies to the critiques;

First,-providing intellectual property right in the long run advances-the commence of thought
and expression. By limiting access to information and knowledge for jest short run system of
intellectual property rights have in built incentives culture that advances knowledge and
information in long run. So, in the long run systems of intellectual property rather advance
commence of thought and expression rather than restricting them. Second, it is not always true
that free speech is so presumptively weighty than other values; There are some other values
which bear equal weight if not more for instance, hate speech and verbal sexual harassment; so

restricting this kind of behavior is based on other values.

The last argument against protection of intellectual property right is based on social nature of
intellectual works;

Knowledge or informations are social products or social constructions. Because, Individuals are
raised in societies that endow themacquaintance and informations with which these
individualsuse to create intellectual works of all kinds. They are raised in societies, they are
educated in societies and the knowledge or information which they acquire from societies

enables them to have creative talents that they use to come up with all kinds of intellectual
works. So, creations are basically the products of social nature; so, restricting access or
monopolizing this kind of intellectual works specially that are essential-social constructions is
unjustifiable or unfair.

According to this critique, individuals should not have exclusive or perpetual ownership of the
works that they create because this works are built upon the shared knowledge of the society.
This argument uses analogy from ownership of some tangible property take for example a public
works dam; it is a kind of dam constructed by efforts of hundreds. Do you believe that the person
who has placed the last bricks in the construction of the dam should be entitled to monopolize
the construction work?

Replies for the critiques;

To begin with, it is not clear-whether the society can own something. How can we say society is
owning something or how can we say society owns something. Some even go to the extent of

saying that, individuals who have been taught in the society were attending their education by
paying for their education.

The system of international protection of intellectual property rights;

For the most parts of its emergence, intellectual property right protection remained the national
issue. But lately after the era of industrial revolution, countries came together both in trade and
culture. As a consequence, this in turn facilitated for the intensification of cultural exchange and
also resulted in increasing the volumes of trade relations among different countries. As a result,
individual writers of copyrightable materials and individual inventors of technological products-
have started to advance their technological invention across the border;

being aware of these developments, some countries took the initiative to unilaterally protect
works of foreign origin.-For instance, France; it took the initiative to protect intellectual works
that are foreign in origin. Then this initiative grew to bilateral protection; under bilateral
approach, two countries that are very much related in greater exchange of technological product,
copyrightable works or trade relationships could engage in bilateral agreement whereby they
reciprocally protect intellectual works of their respective nationals. For example, U.s.a and U.k.

but, as trade and cultural exchange intensified specially in twentieth century following the
eruptions of industrial revolution this bilateral arrangement proved to be inadequate because it
couldn’t keep the pace with the level of exchange. Because of this inadequacy, a system of
multilateral protection was conceived; for the details of this point it seems necessary to

refer
what we have already discussed in relation to classification scheme of intellectual property
rights. The treaties or conventions in the national agreements are designed based on this
classification of intellectual property rights. We classified intellectual property rights in to
industrial property, literary and artistic property.

The development of international protection of industrial property;

Industrial property incorporates patents, industrial design,-trade marks, geographical indication
of origins, trade secret and some countries also bring-with in the realm of intellectual property
system protection against unfair competition. In the second half of the nineteenth century the
development of more international oriented flow of technology and increase of international
trade calls for harmonization of industrial property laws throughout the world.

It was first begun-in 1873 via congress of Vienna international exhibition of inventions and other
industrial products. This exhibition was sponsored by the then government of Austria/Hungary;
the government of Austria/Hungary sponsored an international exhibition of industrial property
to be displayed for those invited governments.

To avoid the tensions of coping the copyrightable things, the Austria/Hungarian government put
in place the system of IP protection-for foreign products to be displayed in the courses of
exhibition. This protection of IP was regarded as key development which initially raised the
awareness of many countries to recognize the international protections of IP right.

Because of this international exhibition another development was came in to effect; this
development was the expansion of the ideas of international protections of IP right which was
realized by subsequent congresses made in different countries. For example, in 1878 th

e United
States and the government of Austria/Hungary jointly sponsored an international congr ess called
the Vienna congress. This congress was named as international congress on industrial p roperty;
this development led the world to another big conference-which was known as conference of
delegate. It was held in Paris (France) in 1880. The Paris international conference managed

todraft a new convention. As a result this draft could be regarded as the achievement of Paris
delegate. Here it has to be noted that the Paris convention did not deal with patent righ t only it
also dealt with-trade marks, geographic indications, industrial design and trade secret.

Another more sophisticated conference was also held in 1883 it was diplomatic conference
therefore, it can be said that it was the conference of heads of state and government. It was
designed to solve some issues; finally, this diplomatic conference came up with the Paris
convention for protection of industrial property.-the fruits of this conference are still rel evant and
applicable.

There was some objection to these structured systems; this objection was very serious e specially
with regard to patents, Germany for example, automatically rejected the idea of international
protection of patents because it thought it would undermine national technological capa bility. So,
Germany was not doing the system; other objection to these structured systems-raised the
concern that system of protection for patents should be left to individual countries. On t he other
hand for U.K and U.S.A. patents, especially inventions are basically property rights which

require protection jest like other tangible property interests.

So, the harmonizing effects of the Paris convention was not universal however, national treatment, and priority rights are the substantive point in respect of which the system of protection under the-paris convention managed to agree on; but, for the most part, the protection
was left to individual countries.

National treatment means, a treatment whereby a certain country extends the same kind of
treatment to nationals of foreign country or contracting parties as they grant to their own
nationals. For instance, assume that-Kegna, Uganda, Tanzania and Ethiopia formed a certain
custom union through which they exchange their own tradition for-one another; hence, national
treatment means Ethiopia would treat the nationals of Tanzania,Kegna and Uganda jest like it
treats its own nationals the same also applies for the mentioned three countries. Therefore, the
contracting parties of Paris convention agreed that they will treat the nationals of the all contracting parties in the way they treat their own nationals.

on the other hand there is the principle of priority right or procedural right;

Patents are expected to be novel in the sense that it shouldn’t be disclosed anywhere in the world,
if it has been disclosed anywhere in the world the novelty requirement would vanish and there
will not be a patent protection for that invention. So, to avoid such kind of problems, the re is the
allowance of grace period which is twelve months; for instance, if certain technological inventor
who has French nationality-applies his invention to France he can also have such right t o apply
to Germany provided that the period of grace or twelve months have not been expired. The grace
period was given to allow inventors of technological products to make their applications

in other
countries” this is all about what priority right is. Generally, it is twelve months kinds of principle
but the whole lot of procedural and other matters are left to individual countries to be dealt with;
this shows that the territorial feature is still intact.

Here, it has to be noted that the above mentioned conventions are not the only held conventions,
there are also another supporting conventions or treaties for example, in the realm of patent
scheme there are two treaties these are the patent cooperation treaty of 1996 and the patent law
treaty of 2005. These two treaties provided for systems of application like for example, how
applications for patent in different countries are managed in advanced way.

Treaties in the fields or schemes of trade mark;

There are some treaties which have direct relationship with the issues of trademarks, among such
treaties the first treaty is the Madrid agreement for the international registration of marks; it was
adapted in 1891, this treaty provides for the systems of registration but, the protection is left
entirely to the unilateral decision of countries. We have also Niece agreement on the
classification of goods for the purpose of international registration of marks. By the way, the
Ethiopian trade mark law provides for, the compliance with these international agreements even
though, Ethiopia is not a party to this convention.

In 1957 it was found out that, for a working system of international protection of trade marks,
the products to which these-trade marks are affixed must be classified in a certain standardized
manner. The systems of classification laid down by the Niece agreement try to address this
concern.

Thirdly there is a treaty called trade mark law treaty; it was adapted in 2000 but it was

came in to
force in 2005. It provides for stronger procedural rules for the international protection of-trade

marks-jest like the patent law does. Shortly, it lays down sophisticated procedural rules-especially in relation to how to entertain applications and the contents of those applications.

The Madrid agreement-concerning the international registration of marks has identified protocol
pronounced as the Madrid protocol which was signed in 1989; Protocol stands for supplementing
the original treaty or to fill the gaps that have been left by the original treaty. Major trading
countries were not a party to the Madrid agreement concerning the international registration of
marks. Therefore, under the Madrid protocol of 1989 those countries were brought back to the
international protection oftrade marks. U.S. and Japan could be the best examples. To
incorporate their interests, the original Madrid agreement was somehow amended and the
interest of Japan and U.S. has somehow been incorporated and in 1989 the Madrid protocol
supplementing the Madrid agreement for the international registration of marks has been
adapted. Hence, the protocol is also part of the international system of protection for trade marks.

with regard to Ethiopian trade marks-proclamation no. 501 states that, when a person seeking a
registration of trade marks, makes application to the Ethiopian intellectual property office, the
person must make sure that the goods to which his trade mark is going to be affixed conforms to
the international classifications of goods made under the Niece agreement. In fact, Ethiopia
makes use of the principles underlined under this treaty without being a party to it; gen

erally, this
is what the international protection of trade mark looks like.

The third scheme is the geographical indications of origin;

In the field of geographical indication the Paris convention provided the basic protection but,
there are also a supplementing conventions and protocols. There is a Madrid agreement for the
equation of false and deceptive indication of source on goods this was signed in 1891 it deals
with one aspect of the geographical indication regime. The Paris convention fully recognized
geographical indication as full-fledged intellectual property right.

Systems of protection in literary and artistic field;

Literary and artistic works are subject matters for copy right protection. Until the begin ning of
nineteenth century the protection of copyrightable works like literary and artistic works have
exclusively been territorial confined to the geographical boundaries of individual countries. So,

only nationals of a particular country were protected or only literary and artistic works produced
by nationals of particular countries were protected until the beginning of the nineteenth century.

At the beginning of the nineteenth century, some countries took the unilateral initiative to extend
protection of artistic and literary works created by foreigners as well. For example, France, in
1810 came up with the law that protects not only its nationals but also the foreigners; o f course
some connecting factors must be satisfied like being a domiciliary and the work to be p ublished
in France. If these kinds of connecting factors are fulfilled then works of foreigners will receive

the same protection as works of French nationals do. So, France was the first country that
recognized the rights of foreigners; other countries followed the suits or example set by France,-
Denmark in 1828 Germany in 1836 and England in 1837 all took this unilateral initiative to
internationalize protections of literary and artistic works.

In the middle of nineteenth century however what was basically unilateral approach to international protection has somehow turned out to be bilateral whereby two countries came
together for putting in place the system of protection on the basis of reciprocal standards.-this
bilateral initiative comes in to picture when two countries agreed mutually to provide protection
for the works of the nationals of the agreed country; for example, great Britain and U.S.A. were
countries known by having greater cultural exchange so the U.S. and Britain came together on
the basis of bilateral initiatives for the reciprocal protection of their citizen's literary and artistic
works.

In the second half of nineteenth century a multilateral approach was appeared;especiallyEuropeans were very interested in making the system of protections of
literary and artistic works based on the approach of multilateral agreement. As a result, serious of
conferences were held in different European cities in the second half of nineteenth century
which culminated in the adoption of the Bern convention of 1886 for the protection of literary
and artistic works. It protected the works of authors via varieties of works in the fields of
literature and art; books are good examples of the fields of literature while painting and sculpture
could be the best example for the domains of artistic field and were protected under the Bern
convention.

Like the Paris convention the Bern convention has also put in place some substantive p
rovisions
like the national treatment; the Bern convention also provides for minimum level of
protection
for the authors to go below which is prohibited.-This minimum standard of protections p
rovides
for automatic protection of literary and artistic works and independence of protection, t
hese are
two important principles. By automatic protection we mean that unlike patents and trad
e marks,
no registration is required, no administrative grant of the authorities of particular
country is
needed. Protection is rather automatic upon the creation of the works; this is an
important
difference or feature of copyrightable material that distinguishes them from patentable
or trade
markable products. In the field of trade mark and patent, normally you are required to g
o to the
authorities to receive the blessing of the authorities. Unless and otherwise, it will not be
active
before registration. But in the fields of copyright, creation of the works suffice to be acti
ve and to
be accorded with protection.

this important principles were laid down by the Bern convention and nowadays almost
all
countries in the world in their domestic legal system recognized the automatic
protection of
copyrightable products. Of course, there could be some notable exception like for exam
ple U.s.
requires that in order for copyright to be fully operational, it is-necessary to notify the c
oncerned
authorities; for instance, during the publications of books, it would be necessary to notif
y who
the holders of the copyright is and that the owners of copyright needs to exercise his rig
ht; this

notification in turn facilitate the recognition of all right reserved and no part of this boo k may be
reproduced without the prior written consents of the original right holders.-generally, c opyright
operates regardless of any kind of procedural requirement, meaning no need of notification, no
need of registration and no need of publicity. This principle has been expressly affirmed under
the Bern convention.

The principles of independence of protection;

Independence of protection means the fact that, the work is not protected by one of the
contracting party does not mean that it will not be protected in the other countries; the protection
given for the work in each contracting party is independent. The person who has create d literary
or artistic works is entitled to independent protection in each country; the protection in one
country does not defend of the presence or absence of protection in other contracting c ountries.

So, regardless of protection in any other country, protection must be given in the contracting
country for the authors of certain intellectual property.

In short, The Bern convention provides protection for authors. However, these all bundles of
protection apply for intellectual works in analog or nondigital form. The timing of the ad option
of the Bern convention meant that, it applies only for works which are manually created because
at that time there was no digital technology. But nowadays, digital technology is so soph isticated
that it can be utilized for the creation of works; accordingly, such kinds of works as computer
programs and databases would be left unprotected if this systems were to be followed s trictly.

Therefore, some kinds of extensions of protection are needed because the Bern convent ion would
be no more adequate to provide protection for these kinds of products of the digital like computer
programs and data bases.

The Wipo copyright treaty;

It was adopted in 1996; the purpose of this treaty was mainly to extend the protection g iven by
the Bern convention to works that have been produced through the use of digital technology.
Hence, computer programs and data bases have now been protected as literary and arti stic works
under a copyright regime; if you look at Ethiopian proclamation as well, it protects computer
programs and data bases as literary and artistic works.

The 1996 Wipo copyright treaty also gave recognition for the special works of some another
person’s with in a single creation; such persons could be those personalities who serve as bridges
between the consumers and the original creator or persons who immensely contribute to the
dissemination of art and literature.-For example, publishers, editors, promoters, producers and
musicians. But the Bern convention only protects the author of the works or persons wh o have
intellectually created a literary or artistic work. So, it can be said that, under Bern conv ention the
role of singer has not been recognized unless the singer himself/herself authors the melody and
other necessary things.

The Rom convention for the protection of performers, producers of phonograph and bro adcasting
organization;

this is something that the Ethiopian law recognized it as the copyright and related right; that
related right is a right of these entities or entities that serve as bridge between authors and
consumers. If we look at the Bern convention with respect to the protection of authors, it is built
up from the national system of protection to the international plain.

General treaties;

The Wipo establishment convention;

The term wipo stands for the “world intellectual property organization”; it is the specialized
organ of united nation, it coordinates the protection of intellectual property in world wide
standard. It administers intellectual property related treaties like the Paris convention, the Bern
convention and other special treaties; it also assists individual countries while they embark in
devising the laws. In order to receive the assistance of the Wipo it is requirement to be a party to
a Wipo establishment convention;

but, being a party to Wipo does not require being a party to the other conventions it administers.
This means, if Ethiopia wants to join the Wipo system it shouldn’t necessarily be a party to the
Paris convention, the Bern convention and the accompany treaties. Even if, individual countries
are not parties to the major conventions, so as to be automatically obligated by the terms of that
treaty the Wipo can still assist countries by helping them to come up with the systems of
protection that somehow incorporates major principles laid down in those international
conventions.

The trips agreement;

Trips is an abbreviation for trade related aspects of intellectual property;

Backgrounds for trips;

There was a system called “Gatt” which means, general agreement on trade and tariffs;

it was
signed in 1949. This institution-basically-deals with, international trades in goods; this is not
related with intellectual property in any way. The “Gatt” is both a treaty and a law governing
international trade in goods and also an organization it self. Its main goal is to avoid artificial
trade barriers like quotas and unjustifiable customs; there is the concept of most favore d nation

clause. This clause advocates for the protection given to the most favored nation must also be
given to other contracting parties.

At its inception the “Gatt” put in place the systems of multilateral trade negotiation. fro m 1950’s
to 1990’s about eight rounds of multilateral trade negotiation were convened; the achie vement of
these agreements were very historical because it managed to create what is today called the
WTO. WTO is a very strong institution because its dispute settlement mechanism is so s trong it
can enforce its decision by imposing sanctions. this WTO took over the roles of the inter national
trade organization under the “Gatt” therefore, the system of protection of trade in goods laid
down under the “Gatt” is now taken over by WTO.

The difference between these two is basically, the countries acceding to the WTO’s syst ems of
protection cannot selectively do so. Meaning, a country which wants the “Gatt” has no o ptions to
leave Trips; Ethiopia for instance, has joined WTO for the sake of selling its agricultural
products; accordingly, Ethiopia has already started negotiation some years ago but there are
some stumbling blocks to the accession process because for one reason it must be a par ty to the

other conventions at least to the Trips agreement. In addition to intellectual property, WTO
provides for trade in services; as a result, the service sector of the Ethiopian economy must be
liberalized in Ethiopia where to accede to the WTO.

This may be a negative component of acceding to the WTO but there are positive component as
well; specially, trade in agricultural products of Ethiopia to be traded or exported from Ethiopia
to European countries, it seems to be difficult because, the European Union provides quotas and
also-subsidies for quotas; furthermore, it also gives high protection for domestic farmers. if
Ethiopia's products exported to European countries, it would be difficult for Ethiopia's product
to compete with the domestic products of each European countries. Therefore it is a better option
for Ethiopia to join WTO specially to compete with domestic European products by getting rid
off artificial trade barriers like quotas and unjustified customs. Hence, as far as trade in good is
concerned, joining WTO is something very necessary; because it tries to remove trade limiting
factors which are artificial in nature.

This is briefly the international systems of protection for intellectual property rights.

CHAPTER TWO INTRODUCTION TO ETHIOPIAN INTELLECTUAL PROPERTY LAW;

The constitutional law of intellectual property in Ethiopia

THE CONSTITUTIONAL RECOGNITION'S OF INTELLECTUAL PROPERTY AND ITS PHILOSOPHICAL UNDERPINNINGS IN ETHIOPIA;

Under art 40 sub (1) and (2) of E.F.D.R.E constitution, the issues of private properties have been
provided in such a way that, it identifies how private property can be acquired, transfer

red and
used. This constitution also provides another very important provision under sub (2) of t
he same
article. This specific provision has direct relevance for our discussions in relation to inte
llectual
property. This special article defines what private property is; it defines it as private pro
perty
shall mean tangible or intangible things having value and produced by the labor,
creativity,
interprise or capitals of an individual citizen…….

Intellectual properties are intangible in nature and again, they have economic value;
therefore,
intellectual property fulfills the above mentioned criteria of private property in so far as
they are
of economic value.

PHILOSOPHICAL UNDERPINNINGS OF INTELLECTUAL PROPERTY IN ETHIOPIA;

The close observations of different articles of E.F.D.R.E. constitution reveals that the Et
hiopian
constitution prefers to combine the labor theory with utilitarianism approach in a very e
quivocal
way.

Legislative and administrative authority of intellectual property under Ethiopian constit
utional
law;

Ethiopia being the Federal country, it is far more important to know the legislative and
administrative authorities of intellectual property.-Accordingly, the Ethiopian E.F.D.R.E.
constitution under its article 51 which talks about exclusive federal power. Under article
51, it
has been clearly provided that patenting inventions and protecting copyright falls with i
n federal
jurisdiction. The powers of federal government which has been mentioned under article
51 are
commonly considered as the general powers of federal government; so, it would be
better if we
translate the above mentioned power of federal government in to specific legislative and
administrative authority. With regard to legislative and administrative authority article

55 sub (2)

(g) has specifically provided about patenting inventions and copyright protection; hence,

legislation power in relation to copyright protection and patenting invention has specifi cally been
assigned to the federal legislative branch(HPR).

Copyright and its governing regimes;

Copyright applies to the protection of literary, artistic works and other creative works. The
following provisions and proclamations have applicability in relation to copyright protection
under Ethiopian jurisdiction; book Iii of Ethiopian civil code beginning from article 1647/1674.
Since 1960's literary and artistic works were protected under these provisions. Ethiopian civil
code under article 2672 and 2697 also deals with special contract and that special contract is
called "prohibition" contract. Again tort provisions of civil code of Ethiopia are relevant to
copyright protection.

There are also some laws which are governing copyright protection at this time from a mong such
laws the following are the prominent; copyright and-neihborie right protection proclam ation.-No.
210 2004. This proclamation has tacitly repealed some provisions of civil code that deals with
literary and artistic works.-However, this proclamation has been amended by newly enacted
proclamation which is called proclamation no. 872 2014. In addition to the above law other
provision which apply in the realm of copyright protection is criminal code of 2004specially
article 721 has direct relationship with the issue of protecting copyright.

Patent and its governing regimes;

Proclamation no. 123 1995. This proclamation was enacted before the coming in to forc e of the
1995 ETHIOPIAN CONSTITUTION. It was enacted under the transitional government of Ethiopia. But, it is still relevant for interpreting issues related to patent right. The full name of
this proclamation is pronounced as proclamation governing inventions, minor inventions' and
industrial design. There was also a proclamation named as transfer of technology regulation.Properly speaking this is not the regime of intellectual property law. It was e nacted in
1993 it was named as proclamation of transfer of technology regulation 1993. Again, we have
another proclamation which is plant breeders right proclamation.-Oproclamation no. 48 1 2006.-
This proclamation specificly provides right for plant breeders.

Trade mark and its applicable laws;

Before 2006 trade marks were not protected as industrial property right. Rather it was regarded
as unfair competition whenever infringed.-therefore, suageneris protection of-trade marks as
industrial property begins in 2006 by the enactment of trade mark registration and protection
proclamation no. 501 2006. The other law related to this industrial property is trade mark
registration and protection council of ministers regulation no. 273 2012.

Laws applicable to geographical indication of origin;

There are no separate laws designed to govern geographical indication in Ethiopia till now but
one lady has written that the minister of justice is drafting this law and further more, sh e asserted
that with in a short period of time this law will come in to effect. But, this does not mean that
there is no law governing community knowledge; there is one legal proclamation which was

designed to protect community knowledge. This proclamation is known as access to genetic
resources and community knowledge and community rights proclamation no. 482 2006.

Chapter three-Copyright and it’s over all protection;

copyright encompasses the protection of expression or expression related works. In all kinds of
media, it protects production or expression of certain idea it could be artistic way of expression
which includes music painting and other important ways. It could even be architectural
expression and scientific expression in so far as that is an expression. Literary expressions are
also the subject matter of copyright protection. These ways of expression does not only include
written works or printed expression rather it also includes those which are not in written form
and which are not printed. This means of expression may even include the digital media; so,
copyright is not limited to expression in the traditional form of analog media we used to have in
earlier times. However, The emphasis attached to ccopyright differs from one legal system to
another.

The nature of protection or emphasis under Anglo/American legal system;

Under Anglo/American legal tradition the protection is generally regarded as the copyright
tradition. While in civil law tradition it is called the author system or science tradition. under
common law legal system copyright means the main act contained in copyright this is the
multiplication of copies from the original. Therefore, Anglo/American legal tradition gives

emphasis of copyright-to acts rather than the person. But under continental legal tradition

emphasis is attached to the author or the person. Hence, under common law tradition the right
holder or the subject of the right is not necessarily an individuals who claims themselves as the
author; accordingly the employer or the person who commissioned the production of th e works
could ultimately become the owner of those production. Contrary to this approach in civil law
legal system nobody can enjoy such rights other than the author, all the right contained in the
copyright are to be enjoyed by the producer or in this case the author of the work3s.

The premise of the Anglo/American legal tradition is utilitarianism in consideration. Cop y right
is made available because it was believed that it encourages the further production of works of
art that ultimately benefit the society at large. under Anglo/American legal system the p remise is
utilitarianism in approach and the purpose is to encourage the production of works of art and
literature and other important copyright regimes that can benefit the society in long ru n. And in
so far as this could be achieved no discrimination made between who actually produces the
works;

so, ownership right could belong to the individual which is usually the case, it could also be
given to juridical person. The emphasis under common law legal system is attributed to
economic right or the system attaches greater emphasis to economic aspects of copyright;
copyright is not regarded as natural right rather it is an artificial right or it is the creature of the
law. Copyright is not necessarily an individual right because it can be enjoyed by juridical
persons.

Comparatively speaking,the civil law tradition gives much emphasis for moral claim of the
author. Under common law legal tradition there is a natural right theory, this theory

advocates
that works obtained from the personality of the author or the labor of the author inherently or
inalienably-belongs to that author. Under this system moral association between the wo rks of the
author is inevitable. More precisely, the work is assumed to be the indicator of the pers onality of
the author. So, the author will have moral claim of his creation under civil law legal tradition.
Furthermore, under this system there is the assumption of considering intellectual works as
natural right so, juridical persons will no more be the owner of such right.- no protection is
available for juridical person under this system. If juridical person is accorded with prot ection it
is assumed under this system to be the result of contractual agreement.

The issue of moral claim deserves much emphasis under continental legal tradition; it is believed
that the personality of the author is reflected in the works; this reflection must be prote cted under
the law.the continental legal tradition attaches emphasis to the protection of moral right. The
existence of such right does not depend on putting in place positive law or the law that protects
such right. under this legal tradition what state does is not creating the right rather it is expected
to recognize the existence of such right and provide for effective enforcement mechanism;
however, such rights are protected not because they benefit the society at large but because
individuals have moral claim to the fruits of their intellect.

Overtime, the distinction between the two legal system declines in some senses; becaus e, many
countries shifted their tradition to middle ground of the two extremes. But, the distincti on has not

been totally disappeared because the TRIPS agreement includes one article which allows
countries to recognize moral right or not to recognize. Article 9 of this agreement says that
countries wishes to join the WTO are at liberty to provide protection for moral right or not to do
so if they think fit.

Ethiopian legal system in relation to this point;

Article 1647 of the Ethiopian civil code explicitly states that copyright is an individual right of
the author regardless of whether the work has been produced under employment relationship or
under the service contract. Even if the work is produced under the employment relationship
copyright belongs to the employee or the author himself. Therefore, copyright protection is
accorded to the person who have intellectually creates certain intellectual property. But the
preamble of new law proclamation no. 410 2004 and of course article 91 sub art (3) and art 41
sub (9) of Ethiopian E.F.D.R.E. constitution implicitly tells us that the current protection is
grounded on utilitarian consideration. On this ground protection is not given to the author or the
person who has created the works but the protection is active when the person can benefit the
society at large. Furthermore, the deep reading of this new law reveals that under article 2 sub art
(8) defines copyright as an economic right which could belong to anybody; And also where
appropriate includes moral right of the author. So, from this observation we can understand that
Ethiopian legal system lies between the two extremes of the two major legal systems.

General features in copyright protection;

Like we have already said, copyright deals with expression; but not all expression receives legal
protection it should be those expression that are creative in their very nature. Copyright gives
exclusive bundles of right like for example, multiplying copies for the sake of making the
original work disclose to the public; basically copyright encompasses both negative and positive
rights. The prerogative to prevent others not to interfere in the enjoyment of the right is regarded
to be negative right.

LEASTS OF COPYRIGHTABLE WORKS;

Copyrightable works seems to have broad definition so it would be necessary to have some
particular leasts of copyrightable works; again most of the time the least provided for defining
such copyrightable works are illustrative not exhaustive least. So, it is an open ended least to
which other types of copyrightable works can be added in so far as they fulfill the basic pre set
aspects. Copyrightable works are expressive creations in the fields of literature, art and science.
Article 2 sub art 13 of Ethiopian law says work means a production in the fields of literary,
scientific and artistic field such as……. Such kinds of definition mostly are illustrative least
because it doesn’t include the whole point under it.

Literary works; literary works may extend from the biggest works of writing the book and may
extend as small as writing pamphlet. In this extension, there are a lot of works that attain
protection under copyright regime like for example, booklet, article in journal, newspaper and
magazine. But, under copyright regime single words will never receive protection;even though
this is the case,short expression and great laconic expression might receive protection under
copyright regime. When we say laconic expression we are referring to the expression

which is
witty and-which can serve as one basic sources. For example, the term democracy is of people,
by the people and for the people is attributed to Abrhamlincolin.

In short, a unique way of expression which displays great laconism mostly deserves protection
under copyright regime. However, the general understanding is short expressions, titles and
single words do not carry adequate creativity to be considered as copyright. Copyright is
available to expression in any kinds of media whether it is digital media or conventional media;
accordingly, computer programs are categorized under digital media. Therefore, computer

programs are presumed to be literary works; one can ask two different questions with regard to
considering computer programs as literary works/

the first question is, are computer programs really an expression?and even if we consider
computer programs as an expression, can we again consider them as literary works? Certainly
computer programs were not included under Bern convention because, it was after all that, the
computer programs comes in to picture intwentieth century. So, at the period of Bern convention
there were no computer programs; computer programs are products of the digital technology that
begun in 1980’s.

Generally speaking, computer programs ar patentable products, they carries patentable ideas; in
considering software as new invention it falls under the domain of patentable works but the way
the course code is written or constructed and the way the object code is constructed make such

software to be under the domain of copyright regime. from this perspective we can understand
that computer programs can deserves protection under both copyright and patent right. The fact
that, the computer programs are used in written form makes them to be categorized under literary
works; now the great problem will be if the Bern convention didn't recognize computer
programs as being copyright, how one can conceive them as copyright? Even if, the Bern
convention has not specified computer programs as copyright, the newly established agreement
recognize them as part of copyright;This agreement is the WIPO copyright treaty of 1996.-the
newly enacted law of Ethiopia also recognizes computer programs; this enacted law under its
article 2 sub art (7) it says it is a set of instructions which control the operation of the computers
in order to-perfectly perform specific task; That specific task is usually, the storage and retrieval
of information.

Works performed for stage production;

article two sub art (30 c) of the copyright and neighboring right protection proclamation,
underlines that dramatic works, dramatico-musical works, pantomimes' and calographic works
fall under works created for stage production. Dramatic works means, works connected with
theatre and place: while dramatic-musical works refers to a theatrical works performed together
with music on stage.

Difference between dramatic works-vsv drama script in a book or booklet; drama script in a
written form in a every types of book or written material is a literary work. But, both of them are

considered to be set under copyright protection but they are in a different category.

Pantomimes;

Pantomimes means, a work based on fairy tire specially as to children's history. This is usually
performed to entertain children on stage together with musical works; pantomimes are also
belongs to the category we have described as works created for stage production. mostly,
pantomimes look likes dramatico-musical works; but, the fact that the pantomimes is fairy tires
and performed to entertain childer differentiate these two works of stage production.

Thirdly, calligraphic works are the subject matter for stage produced works, it means simply,
movement, dancing and arrangements of movement. Of course, it generally refers to works and
entertainment in dumshow. Dumshow means, the movement which lacks spoken words.

Musical works;

under article 2 sub art 30 (d) of this proclamation the legislature has tried to define the concept of
musical works; however, under this article the law prefers to use the term musical composition
instead of musical works. It refers to musical notations, symbols without any word spoken;
accordingly those kinds of works are protected as musical composition under article 2 30 sub art
(d) but, the fact that words spoken together with musical works excluded from the definition of
musical works does not meant that those kinds of works are excluded from protection, they will
be accorded with protection under separate bundles of right. The definition of musical works
perse is defined under article 2 sub art (13) as referring only to notations and symbols therefore
those works by themselves are protectable. If we look at the Bern convention it says that,musical

works are protected with or without words; protection would be extended even if they a re created separately.

Audio visual works;

the other category is audio visual work it has been dealt under article 2 sub art 30 (e). audio visual works refers to a broader array of works which combines image with sounds; the

definition of this concept has been provided under article 2 sub art (1) of this proclamation. It encompasses all categories of works that combine visions and sounds. Some prefers to understand this audio visual works as the photograph of motion pictures. Obvious example is cinematographic works like film(movies).

Photographic works;

Under article 2 sub art 30 (h) the work of photograph is provided with its peculiar features; furthermore, it’s definition is manifested under article 2 sub art 18 according to this article photographic works means, the production of steal image. Photographic works are not r egarded as a motions of pictures; in short, photography is a process of the curving images by exposing light sensitive materials with appropriate instrument of curving photos. Hence, all analogous processes that could be assimilated to works of photography can definitely fall under this category.-For example, micro filming and-xero /graphy.-When we say photographic works it is not only pressing the buttons of camera and taking some pictures of refered objects, rather the analogous works created through similar process are assimilated to photographic works and protected as such.-So,-Xero graphic images, radio graphic images and other images

passes
through the process of similar act would be regarded as photographic works.

Xerographic image means, images formed by attracting powder to an electro statically charged-
plete and then, that image would be transformed in to the-papers by the aid of heating. The Bern
convention has also envisagedthat, all works assimilated to photographic works areothe r works
produced through analogous mechanisms. However, there were some precondition for
photographic works to be considered as copyrightable products, so in order to be regarded as
copyrightable products, the photographic works should be published as a book and ther e should
be the signature of the photographer or the producer.

Fine arts;

Fine arts are works that are appreciated for the purpose of long term usage; because th ey can be
put in some social use by virtue of their artistic value. For instance, lithographic works could be
best example for fine arts;inscriptions on stones and on some hard material is known as
engraving. Engraving is also one category of fine arts, lithographic works are the process

ofprinting from smooth surface that has been specially prepared so that ink will be stick s to the
design to be printed.

Works of applied arts;

The difference between fine art and applied art is basically, in the case of fine art, the art is
pursued for its own sake apart from its function; but, in the case of applied art they are mostly
pursued for their social function.-For instance, decorating value: they are also regarded as minor

arts. They are often classified according to the material used to make them. meaning, it could be
arts made from wood, stone and glasses. Another point we need to make in respect of applied art
is the fact that they were not explicitly provided for under article 2 sub art (30) and often there is
competitions between the industrial design law and copyright law.

In fact,legal systems differs from one another in the way they protect works of applied arts. For
example, works of hand craftsmen would be protected under industrial design law in some legal
systems but under some other legal systems it is protected under copyright law. Surprisingly, the
Ethiopian legislature did not clarify where they fall as one sect of art but now the newly amended
law has added under article 2 sub art (30) another specific article (j). so, in Ethiopia applied arts
are categorized under copyright law;

Two dimensional and three dimensional works;

Two and three dimensional works relating to topography, geography, science and etc. two
dimensional works means, something that has only length and width and which lacks the aspects
of thickness. For example, maps; in addition to length and width if there is the aspects of
thickness it would be pronounced as three dimensional works. these kinds of works or two
dimensional and three dimensional works relating to topography, science, architecture and
geography are protected as artistic works.

Primary works and secondary works;

Primary works are otherwise called as original works where as, we call secondary works-other
wise, derivative works; a work might be original in it self. Meaning, its creation might not have

depended on any other pre-existing works; such kinds of works are mostly considered to be

primary works. But, there are some works that are directly or indirectly preempted by prior
works; such kinds of works are mostly fall under the category of secondary works. Some prefers
to call them as derivative works, derivative works in so far as they display creativity of t heir own
they would be protected as independent copyrightable works.

in so far as, certain preconditions are met, derivative works whose existence depend on pre-
existing works are independently protected or they would be placed in equal footing with the
original works. From among such preconditions the first is that their production must not
prejudice the protectable interests that subsists in the works that they are derived from . However,
if they do not prejudice those interests and if they display the requirements of originality they
would be perfect candidate for copyright protection in their own right;

the two categories of secondary or derivative works;

The first category is called dependent derivative works. All separate sects which fall un der this
category is known as adaptation this includes translation, all modifications, other transf ormation
and alteration of works. For example, when we say adaptation it could be changing the original
work in to another mode of works; adapting film script in to audio, changing the provisions of
civil code in to audio in a way it benefits visually impaired students is also a sort of adap tation.
Shortly, adaptation refers to the mode in which the original work was created and expre ssing it in

another mode. Article 4 sub art (1) (a) of the copyright protection proclamation has direct
relationship with the issue under discussion.

The second category is one which is provided under this proclamation article 4 sub art (1) (b) it
is independent derivative works; the way those contents are selected and arranged make this
category new and independent at least in character. For example, encyclopedia as we know, the
part of this book is taken from various written references but what is unique about this book is
the way the content is selected and arranged; we can also take another example, like anthologies.
Anthologies means, different works are collected from different areas or places and arranged
and edited together and published together.

It could be for example, the compilation of different verse, Compendious, compilations,
collections, encyclopedia and arrangement might fall under the above category. But it has to be

noted that, in the first category we can have annotations, annotated version means we take a text
that was already prepared then we provide some explanations on it; for example, by using the
foot note to clarify the concept by using the word like the author wants to say this or that. So,
annotated version is protectable in so far as it does not prejudice the legal interest subsists in the
first text book.

Dichotomy between the particular form of expressions and the physical embodiment of that
particular forms of expression;

This concept has been dealt with at the beginning of this course, however for the purpose of

clarity it would be necessary if we raise some related points about this concept under this
chapter; dichotomy between the legal interest in a copyrightable works and the material object in
which the expression is embodied. As we have tried to touch it upon, the two legal interests are
different from each other; the physical embodiment of expression is governed by the ordinary
law of property, while the form of expression is the proper subject matters of copyright regime.
So that, dichotomy is explicitly is stated under article 3 sub art (7).

One critical component of copyright protection is the person who enjoys the right in respect of
copyrightable works, basically the person enjoys the right in respect of certain object of
copyright protection is assumed to be the author of the works. As a rule, it is the person who
have intellectually created the works who also enjoys the right subsisting in relation to particular
object of copyright protection. But, if we see the definition of person under article 2 sub art(2) it
says, the person is one who has intellectually created the work; but in accordance with article 2
sub art (17) the term person could represent both natural person or juridical person.

Accordingly, the basic question that must be posed here should be can a juridical person be the
author of the work? As we have seen under article 2 sub art (2), the term author refers to the
person who has intellectually created the work. So, by taking in to account this specific article
can we say juridical person could be an author. The answer of the above question would
obviously be no, because only natural person has the capacity to create certain object of property
by using his/her intellect. Therefore, the term person with regard to creating object of property
through application of intellectual capacity should be interpreted as being natural person rather
than being juridical person.

authorship always belongs to the physical person, but the right of ownership could belo ngs to
the juridical person. The fact that, the author has intellectually created the work does not
automatically mean that, he/she will be the beneficiary of the refered rights; the beneficiary
could also be the juridical person, for the purpose of realizing this fact it would be better if we
look at article 2 sub art (16) of this specific proclamation. With the operation of the law, the
juridical person could be the original owners of the copyright in respect of certain copy rightable
things; the author's of the refered intellectual property can also transfer his/her copyright to
juridical person. Now, our specific task is to emphasize how juridical person could be th e owner
of certain intellectual property with the help of the law: among such possible fact on wh ich the
juridical person might be regarded as the owner of the created property may be in the s ituation
of employee/employer relationship.

In principle, the work created under employee/employer relationship is considered as if, they
will be ruled under the sole ownership of the employer in our case the juridical person. in such
kind of circumstances the juridical person might be the original owner of the copyright;
therefore, the mere fact that copyright originated in the minds of human beings does not
necessarily implies that, they are going to be owned by physical person. In fact, juridica l person
could also be the original owner's of the copyright by the operation of the copyright law it self.

But, here it has to be noted that moral right always belongs to the author of the work; because,

moral right has to do with the personality of the author. Hence, the concept of third party
ownership that we have conceived so far does not work in relation to the moral right. However,
the privilege of economic right may be transferred to third party including juridical persons;-
what we understand from this assertion is that, authorship of the work and beneficiary of moral
rights are always natural persons: it can be said that the above two concepts overlaps everywhere.

Points of attachment;

Points of attachment means, the author should have some kind of connection with certain
countries in order to receive some sorts of protection. For example, in order to receive protection
under Ethiopian copyright law there should be connection between the author or the work and
the Ethiopian legal system. The connection between the person or the work and the country as

well as it’s legal system arises because of two main reasons, these two reasons are nationality
and territoriality.

The equivalent term for the purpose of mentioning the concept of nationality is personal status;
here, the term nationality will not only be used to express citizenship rather it is employed to
cover a various issues which relates to specified country. Example, residence and domicile; to
identify this concept in terms of physical and juridical person, for natural person we use
citizenship, residence and domicilewhere as for artificial persons we use place of incorporation
and place of head quarter. When we see the concept of territoriality, it means that, the work must

have connections with Ethiopian territory, for example, it must be created, published or erected
in Ethiopian territory. This and other related issue have been provided under article 3 sub art (1)
(a) (b) (c) of this proclamation.

Works that have been excluded from the ambits of copyright protection;

article 5 of the proclamation is entitled to clarify the works that have not been included under
copyright protection regardless of whether creativity is involved; we can divide them into two
major categories, the first category refers to ideas, concepts and formulas. In short, it refers to all
fundamental things that are important for knowledge in general.

These are the subject matters upon which the entire knowledge is built; accordingly,monopoly
in respect of these subject matters will be unjustified at least from the view points of the public
interest. For example, the works of albertenstaine-which relates to the theories of relativity
concept have been published in varieties of forms.if there is any legal interests protected by legal
regime in respect of the idea it is through the patent regime rather than the copyright regime.
Even the persons who are involved in expressing this ideas in different forms will not be liable
for copyright infringement; rather, they might be liable for plagiarism academically speaking.
Meaning, a person who takes somebody’s idea and expresses it in his/her own works without
making due acknowledgment might be held guilty of plagiarism but not copyright infringement.
We have said that, copyright is accorded for the means of expression, not for the abstract ideas
and concepts which are embodied in the manner of expression. Sub article (a) of article 5 talks
about this fact.

The second important areas of works that have not been included under copyright protection is official text of legal nature, this issue has been dealt with under sub art (b) of article 5 of the proclamation. To take some examples which have direct relationship with official text of legal nature, judgments of the court, particular judgment written by individuals who assumed the position of judges and other related works are very important and fall under the category of official text of legal nature.

furthermore, some other countries put limitations by considering the contents of the work; for example, the irreligious nature of the works and the criminal nature of the works. If the works are found to be irreligious and immoral by their nature they will not enjoy copyright protection.- Simply, this is an exclusion based on contents of the works; however, as a matter of principle, the copyright protection is not concerned with the contents of the works; rather, it is concerned with form of expression, so, works that have such kinds of contents will be addressed by any other form of protection: example, protocol, tort and law of crimes. To put this in a precise term, “let the person produce the work and let him/her get the copyright, but then make him/her accountable for the consequence of his/her action either by criminal law or other relevant laws of the country”. So, according to this principle, a person who wrote or works certain intellectual works which are immoral or irreligious will enjoy or get copyright protection; but some other countries even deprived him/her of enjoying or getting copyright protection.

Additional reading on the titles of points of attachment;

So far, we have addressed how to make works copyrightable and at the same time how to accord
it legal protection: as we have tried to analyze in our discussion, copyrightability needs to pass
in a various consecutive forms to be recognized as copyrightable objects of intellectual
property.-From among such consecutive forms: the first is the fact that it needs to be production
in literary, artistic and scientific fields; the second requirement is the principle of points of
attachment,copyrightability often associated with specific geographical boundaries.

This means, some kind of connection is needed between the work of the author and the specific
country. In short, the relationship between a country and it’s legal system on one hand and the
author with his/her works on the other hand so that, there would be protection by the law of that
country for that author, in respect of that particular works. Therefore, in such relationship there

is a concept called the twin principles of relationship, which is nationality and territoriality. The
term nationality has to do with the author or the owner of the copyright; it refers to the particular
relationship between a country and it’s legal system and the author’s of the work. Territoriality
on the other hand refers to the relationship between the country and it’s legal system and the
work performed. Technically speaking, the term nationality may interchangeably used with
personal status while, the principles of territoriality may be used with the concepts of sites.

Residence, domicile and citizenship are the concepts which have direct relationship with the

principles of nationality; hence, in respect of physical persons we use the nationality pri nciple
which is explained by residence, domicile and citizenship.-Where as, in the case of juridical
persons we use the principle of sites or the principles of territoriality which may be exp lained by
place of incorporation and place of head quarter.

To understand about this concept it would be far important to consult article 3 sub art (1) (a) of
the proclamation. It states that, the protection-under Ethiopian copyright lawwould be accorded
in respect of the works of which the author is ofEthiopian nationals or of Ethiopian principal
resident. Under this specific provision, we have two alternative principles these two pri nciples
are having Ethiopian nationality and being Ethiopian principal resident; here, it must be clear
that the law requires to be either of the two principles. If a person who create certain i ntellectual
works belongs to Ethiopia by his/her citizenship the law of Ethiopia will protect his/her
copyright and provide him/her with copyright protection. The same will also be true in r espect
of Ethiopian principal resident. Do you think the Ethiopian domiciliary will also have th e same
protection under Ethiopian legal system? The clear answer for the above question woul d be yes,
because the concept of domiciliary by it self fulfills the minimum requirements of principal
residence;

Under article 3 sub art 1 C again, we have another forms of works which is audio visual works:
as it is well known, the nature of audio visual works is that they are so complex and often
requires huge investment of money, which often needs some kinds of legal organization Like for
example recording companies. So, if the head quarter of the work is in Ethiopia it would be

enough for audio visual works to be accorded with copyright protection; or if the author of the
work is an Ethiopian principal resident again the copyright protection would be accorded to the

work performed in Ethiopia under it's legal system. Here, it has to be noted that if the author of
the work is the legal person, the place of incorporation is not important if the company or
specific institution has head quarter in Ethiopia.

Question to be answered;

In the absence of other factors, let as say that,the author has acquired the protection under
Ethiopian law because of residence, assume that the residence is lost some times after the
protection commence; do you think the protection would continue or should also terminate with
the termination of the residence?

Generally, sites is another alternative and factors that constitute physical property.-the sites
category are themselves alternative. The principle of sites is found under (b) it includes various
factors like publication for works that are capable of being published like literary works and
even artistic works could be published. When we say publication it is not only in a written form,
the meaning and definition of publication has been provided for under article 2 sub art (22) of
this proclamation.

Under this definition, the consent of the author of the work is needed, the means of manufacture
of the copies doesn't matter this means it could be paper bound publication or it could be sound
recording which takes the form of reproduction. But, one important feature is provided

that the
availability of such copies has been such as to satisfy the reasonable requirements of th
e public.
In short, to call certain works as published works the following requirements are very i
mportant
to be present, material copies of the work, the consent of the author and it must meet
the
reasonable quantity. Simply, the combination of the above three elements helps the wor
k to be
recognized as published works. So, the combined application of sub art (b) and article 2
sub art
(22) satisfies the requirements of sites; hence, the work would be protectable under
Ethiopian
legal system.

However, the publication of the work must first done in Ethiopia: the work must be first
published in Ethiopia, if it was published else where and if it subsequently published in
Ethiopia
as a matter of rule, protection will not be available; so, when we think of publication thr
ough the

combined application of sub art (b) of 3 (1) and article 2 (22) we mean, publication
made in
Ethiopia for the first time.

But there are some cases where publication would be assimilated with first publication,
E.g.
simultaneous publication in abroad and in Ethiopia; meaning, if the work published at t
he same
time in Ethiopia and abroad the work will enjoy protection under Ethiopian law. But, th
e term
simultaneous publication does not only refer to the same day or the same time, it also p
rovides
the grace period or with in 30 days of foreign publication a work that is published in
Ethiopia
with its 30 days of foreign publication would still receive protection under Ethiopian
legal

system.

For architectural works and other artistic works the principles of sites will be fulfilled if there is
the point of erection or incorporation in to a building or structure situated in Ethiopia; publication, erection or incorporation in to a building or structure situated in Ethiopia will ended
up with full concepts of sites,from this it automatically follows that the works will receive
protection under Ethiopian legal system; This is always the case with architectural works,sculptures and other artistic works which can be made or incorporated in to structures and
buildings.

International conventions;

Ethiopia might join a systems of international protection for copyright protection, accordingly
the issues of international protection of the copyright has been dealt with under article 3 sub art
(2) of Ethiopian copyright protection. This specific article states that, protection for authors and-
works eligible by virtue of and in accordance with any international convention or other international agreements to which Ethiopia is a party to. This article is seems to be some what, a
forward looking provision. For example, if Ethiopia were a party to the Bern convention, the
protection of the works would be such that, if an author of the particular work is a resident of
one of the contracting parties his/her work would receive automatic protection in all contracting
parties, regardless of whether the author is the resident of that particular country or not. So far,
as we have already said Ethiopia is not a party to the major conventions. but, one day if we
accede to such international system, protection to authors for works would be extended and that
kind of protection will be available in accordance with the above legal provisions.

The right to property under E.F.D.R.E. constitution is found in the democratic right part of the constitution; so, apparently it looks like that the right is available only to Ethiopian citizens. But under the ICCPR as well as UDHR the right to property is a civil right to be enjoyed by all human beings regardless of differences in nationality.

there should be no discrimination based on national origin for the enjoyment of civil right; even if, the Ethiopian E.F.D.R.E. constitution categorized the property right under the democratic right part of the constitution, the cross reference of article 13 sub art (2) of the same constitution indicates that the right to property is enjoyed by all human beings regardless of their national origin. Again, under the civil code provision, particularly under article 389 and 390 shows that foreign nationals enjoys the same right as Ethiopians when it comes to the enjoyment of civil right.

If we look at article 389 sub art (2) of the Ethiopian civil code, civil rights are those all right with the exception of participation in the state administration for state activities; but outside this specific activities: foreigners are as a matter of principle, placed in the position of Ethiopian citizens with respect to the enjoyment of the civil rights. This civil rights includes the right to enjoy property right; but, enjoying property right is not without exception, this only exception is the foreigners do not have automatic right on the enjoyment of rights relating to immovable property right. this tells us that, the property right including intellectual property right should be available to Ethiopians and foreigners alike; therefore, national origin shall not be taken

in to
account in granting rights for individuals because, that would amount to discrimination which
has been prohibited by international human rights instrument.

but, exception could be admitted with regard to intellectual property rights because of their
features. We can not really say that, foreigners automatically enjoy intellectual property right;
this is mainly, because of the territorial nature of intellectual property rights.

Additional requirement for the concepts ofcopyrightability;

The first requirement is related to the intrinsic characteristics of the work it self; the other
requirement is external to the workit self. The requirements that we have been discussi ng so far,
are also external to the work it self. They do not deal with the internal characteristics of the

work; for example, points of attachment that we have been discussing does not also show the
internal characteristics of the work so it is external to the work. Accordingly, we can ca tegorize
the requirements for intellectual property as being internal or external to the work;

under the jurisdictions of externality we can have the concepts of fixation, points of att achment
and the legislative definition that we have discussed in our previous session, while for the
category of internality we can have the principles of originality. The requirements that we have
seen so far enables the lawyers to identify which types of the work is copyrightable and which
types of the work is not. But, they are inadequate to have clear idea about the full conc ept which
relates to copyright principle; so, more precise information is needed.

Originality;

It is not an easy task to define the term originality in legislative language, because it needs the
clear knowledge of the people with artistic or literature-specialty it is not a knowledge available
to the lawyers as such. Of course, lawyers are equipped with the application of rules, but they do
not have the capability to deal with works like art and literature by defining its internal quality.
Copyright is one of such areas where expert opinion is needed in court litigation, the lawyers can
not dispose off case involving copyright without the help of the expert. This is so because, the
nature of the work involves technicalities which are beyond the grasp of the lawyers: for this
reason, the lawyers are advised to read a different types of book which contains related topics
and are advised to observe the case which the cassation bench decides before.

The internal criteria generally include notions like originality, creativity, expressions of
personality, quality, purpose, state ofcompilations and length of the work. These are generally
considered as the inherent characteristics of the work it self. Some of these characters are
requirement meaning, they must exist for the purpose of copyright protection. From among such
characteristics originality, creativity and expression of personality will be added to the positive
requirement.

But, some of them are not required, so they are negative requirements like for example quality,
purpose, state of compilation and length of the work. So, copyright subsists regardless of the
quality, purpose, state of compilation and length of the works. What is really important in

copyright is to examine whether the work is original, creative and whether it is capable of
expressing the personality of the author.

For the purpose of this short note, I consider originality as an umbrella term, that includes an
expression of personality and creativity in it self. There is a general agreement that a production
will be copyrightable only if it meets the minimum requirements of originality; now the
elementary question would be what is originality? To what extent it applies and how it is going
to be determined?

Originality is usually understood as something which is new by its content and by its
presentations, as we have discussed above the legislative language for mentioning the concept of
originality is not clear enough to come with concrete understanding of the term, but there are
some approaches which the legislatures used to describe the term originality. Among such
approaches the following three important definitions are crucial to understand the concept of
originality in light of legislative language.

The first definition is,“by a proper choice of words to describe the process resulting in the
production concerned”.

To describe the qualities of newness, the examiner can make his/her focus on the process of the
work. For example they can say, protection is granted by reason of selection and arrangements
of the content; hence, originality is now being alluded to by bringing some attentions on the
process that result in the work concerned.

The second approach is, by “adapting a suitable name for the product or the work concerned”;

for example, they can say personal intellectual creations-or protection under copyright

is given
for personal intellectual creations. The close reading of article 1647 also reveals the same fact,
according to this second component of describing the term originality, originality is viewed by
attaching more weight to the product it self.

The third is by combining the two components; for example, the author of intellectual work
shall, by the mere fact of creation……. In the above description for example it can be ascertained that the description incorporates the two principles, when it says the author of the

“intellectual works” it shows the product and the term which says “by mere fact” composes the
processes of the work concerned.

How the issues of originality will be entertained in case law in different legal systems;

Generally there are Four major legal systems or approaches with regard to the definition of
originality, These approaches are Civil law approach, British common law system, the American
approach and the Canadian system. These four different legal traditions entertains the principle
of originality in a very different ways from each other;

The approach of originality in continental Europe (civil law legal tradition);

Originality is understood in continental European traditions as expressing the intellectual
personality of the author; if the work expresses the personality of the author they consider
the work as being original and therefore it is copyrightable. The followers of this legal
traditions alleges that, artistic and literary works usually expresses the internal term oil of
the author, this is to mean they bear the internal in print of the personality of the

author.

Traditionally, for example-sculpturing, painting and drawing are used to express the internal feelings of the author; we could say that, these kinds of artistic works are capable of expressing the internal term oil of the author. But, the approach faces difficulty in relation to other works, for example, there are certain works regarded as small poems of copyright such as pamphlet and other laconic expressions but which are in fact in capable of expressing the personality of the author as such. from this understanding, one may conclude that the approach is really deficient or it is not comprehensive because, it doesn’t cover the small poems of protection as its regulating fields.

If we are to apply this legal tradition, it follows that we are going to exclude thus small poems of copyright. In addition to this, the scientific works are generally considered as not bbearing the personality of the author in the sense of criteria required by cont inental European traditions;because they do not bear the personality of the authors. if we adhere to what they say we are expected to exclude such important works.-among such important scientific works computer programs and data bases are the commonly consumed softwares, again if we dare to directly applying civil law tradition, we are

again expected to exclude thus computer programs and data bases because of their less capability of expressing the personality of the authors of such programs and data bases.

In order to rearrange the civil law legal traditionby avoiding it’s technical failures, the

fans of
this approach have tried to change their perception of ‘expressing the personality of th e author’
to obtain copyright protection and have introduced the principle of ‘minimum lebel of creativity’.the work would be regarded as original, if it involves minimum lebel of creati vity by
the authors; this consideration of minimum lebel of creativity enables the civil law tradition to
include scientific works and small poems of copyright under its copyright protection. B ut, as a
matter of principle, they understand originality in the sense of expressing the personali ty of the
author, but some quantitative requirements has been added or introduced to what is ba sically a
qualitative requirements.

Common law legal tradition;

the common law legal tradition consists of three different legal tradition these are British legal
tradition, American legal tradition and Canadian legal tradition. Let first consider the British
legal tradition.

The English common law system defines the concept of originality in terms of industrio usness.
Australia and Newzland is also assumed to be the followers of this approach; the test of the
approach is “the sweet of the brotest” according to this legal tradition, if the author of t he work
invested his/her labor to come up with the refered works he/she will enjoy copyright pr otection
regardless of whether they fulfill the criteria of creativity or not. There was one importa nt case
in English court, this case was the journalist called Biftu sat for an interview with one famous
politician however, some after recording the interview journalist Biftu took the words of the
interview and reproduced it in a newspaper, what make the case very complex was, the

journalist did not make any modification or reduction to the interview. She rather copied them in
the form of verbative copy. So, as per to the tests of British legal tradition the work performed
by journalist Biftu is regarded as original and hence assumes copyright protection. Therefore,
under the British common law legal tradition, the standard is not creativity as such, rather
whether you-have sweated in the collection of the work or not. This test provides a very low
standard for copyright protection; because whatever has been produced through the exertion of

labor is to be regarded as original and at the same time would deserves copyright protection.-
This kinds of standard are very strange when viewed with the modern concept of originality for
copyright protection.

The American legal tradition;

The United States of America was also using British system at the beginning of its legal courses;
but, a few time later, the supreme court reversed this trend and laid down a new system for
copyright protection. This newly emerged standards for copyright protection is what is called the
modicum of creativity test. It is historical fact that America was under the colony of British rule
for many consecutive years, hence, it is not surprising to find British legal tradition exported to
American territory. This is why, the American was using the sweat of brotest tests for copyright
protection;

but, now thanks for independence, American’s are currently using their own standard for

copyright protection. American standard of copyright protection was first introduced by the
American Federal supreme court.as per to the newly introduced standards, the tests for originality requires not only that there must be some amount of independent inputs by the
authors but also, the works must have a creative spark as well.under this newly introduced legal
tradition the mere industriousness does not suffice in it self, there should be a creative spark
displayed on the work by an author. Therefore, the position of the current American approach is
that, for works to be original the work must be both the product of the labor of the author and at
least to some extent, the creation of the author.

The Canadian approach;

The Canadian approach suggests that the British standard is too low and the American standard
is too high, so, they prefer to remain some where in between the two approaches. It is a kind of
compromising standard between the two extremes; the advocated test under the Canadian
approach is the exercise of enough skill and judgment by the author. But, critiques says that, the
Canadian approach is not that much different from the American approach for copyright protection.

The Ethiopian position with regard to the principles of originality;

The Ethiopian prevailing-law prefers to insert the quotation of intellectually created works by
mere facts of creation; Therefore, the Ethiopian law seems to recognize both the process and the
product it self. The issue of originality has been dealt with under article 1647 of Ethiopian civil
code and under the current law article 6 sub art (1) (a). however, with regard to the

concept of
originality, these two different laws do not show much difference;

accordingly, there was one very complicated case which was decided under the regime of civel
code. The case was between Alemayehufenta and Alemayehueshete, the bone of contention was
the music played by both musician, The music was addisabeba bête which was performed by
Alemayehueshete and Addis abebabetuwa which was played by Alemayehufenta. The case was
first presented to the eyes of the court by Alemayehufenta by alleging that,“Alemayehueshete’s
music is not pure work; because, he tried to perform his music based on my own music without
changing its content” however, Alemayehueshete tried to provide appropriate defense for his
action, by saying, “no this is my original work, I can call upon experts to prove that this is my
original work”then accordingly, after calling upon the experts, the experts decided in favor of
Alemayehueshete after making serious examination on both mucic. The experts commented that,
even if the work shows similarity on their face value,but deeply they are not similar; therefore,
the two music have their own peculiar characters that may distinguish them from one another.
So, they are original to the authors.

In short, what we can understand from the above presented case is,fortuitous similarity does not
mean that, the work will not be protected; but, different circumstances will be taken in to
account in verifying whether the work performed is original to the author or not. From among
such circumstances timing is the basic and the crucial point to be taken in to account. For
example, if somebody wrote a fiction: that, has fortuitous similarity with the work of FIKIR

ISKA MEKABIR, the degree of being accepted as original work for the newly created art will
be very rare. Because, the probability of copying the previous work is very high; so, the performer of the newly created work is expected to verify originality for his work.

General remark;

The fact that there are differences between different legal systems does not imply that,
there is no consensus-with regard to the concept of originality at all. Despite

thisdifference, there are also consensus in respect of originality. The production in the
literary, artistic and scientific fields are the result of one or more of types of choices. This
means, whenever there is work, the work is often the result of one or more of three kinds
of choices, the first choice is technical choice. Technical choices are choices that are
essentially detected by the method or the technique used. For example, in painting and
photography, there are unique technique that helps us to identify the work.- Cuebism and
collageia are among these techniques.

The second choice is known as functional choice; for example, if we take the works of
furniture, such works are detected by the function that the work it serve. For instance, if
the work is the work of the chair, it shouldn't collapse whenever used. The third choice is
creative choice; the creative choices are those that truly step from the author. If
somebody else has produced it, there would be most likely a different result. Under this
choice the presumption is, the work is original to the author; because, it emanate from the
author and if that same work is to be done by another person, there would be a di

fferent
result.

Accordingly, the first choice has no any concern with the issues of intellectual pro perty
laws. However, the second choice which is functional choice may be attached with patentable products. But, the third choice has to do with the issues of copyright. The
reason why we take the third choice for copyright purpose is basically the issue of originality because it is such creative choice that has an important bearing for ori ginality.

The principle which envisages, “the work should originate from the author” is reg arded to
be the common understanding of the term originality; however, when we say the work
should be original, it does not mean the original thought. So, when we say the work
should be original it is in the sense that, there should be some creative form of ex pression
which is to be made by original author of the specific work. So, the simple criteria for
originality under this context is proving that the author has not copied the work from
somewhere else.-So, the common understanding of the word originality is the work
should originate from the author. But, as I have already said; when we say, the work
should be originate from the author: we are not saying that the work should invol ve any

original or inventive thought. Because, thought and ideas are the domain of patent law
not copyright law; so, when we say original work, it is simply the manual expression
which is-copyrightable.

In addition to this, for expression to be regarded as copyrightable it is not necessa ry that
the idea embodied in the expression be original. Meaning, the idea which is embodied in
the expression-need not it self be new. Again, it is not even necessary that, the ma nner of
expression it self be novel; novelty means, something which is markedly different from
the preexisting works. In short,copyrightability does not require or take in to account
novelty, new and different in an interesting, unusual and enventive way. What
copyrightability requires or what originality requires is jest the work to be the pro duct of
the personal effort of the particular author that the work must display some difference
from other works. Therefore, the manner of expression need not be novel; the ele ment of
novelty might be important for patent law but not for copyright law.

Measures of independent input;

there should be a threshold so as to say originality is fulfilled:in fact, this threshol d might
highly be influenced by subjectivity, therefore it might be difficult to cutout certain
measures for originality. However, there should be a minimum independent input on the
part of the author; unless and other wise, it would be difficult to determine the
demarcation of originality. Hence, in order to determine that the work is made by the
author himself and therefore it is original to the author there must be some measure of
independent input on the part of the author so, there must be a threshold. But, in
measuring threshold, we take in to account indirectly the quantitative elements;

again, there is no common understanding with regard to the points of initial stage for
measuring independent input. For example, some legal systems considers certain work as
original when it exhibit creative efforts toward the work while some other legal sy

stems
make the necessary condition very stringent. But, the common understanding of most
legal systems is the threshold needed for originality is not like that of Pablo Picasso
because that will be a very high standard;

Accordingly, the threshold needed for originality is less stringent. But there should be
some threshold which indicates the existence of minimum input on the part of the author.
This minimum input should bring distinguishing variety on the work performed.
Meaning, comparing with a previous work there must be some variation which is
contributed by the author;hence, this distinguishing inputs is applicable not jest in
relation to the primary works where the expression it self is not existing before but also in
relation to secondary works that are compilations of previous works. Therefore, in all
cases the copyright protection is given to either value creation or value addition.

On top of this, in relation to primary works we can say it is value creation and in relation
to secondary works we can say the original contribution is in terms of value addition.
Generally, if there is value creation or value addition it will be enough to consider certain
works as original and accord it with copyright protection.

“mind you!” the level of copyright protection corresponds to the amount of the created
value or the added value” we can take examples for the sake of clarity: for example, a
person makes compilation of certain preexisting works in society will enjoy protection on
the basis of over all compilation right; though, you can freely copy or distribute- it in
relation to the particular components of this compilation: But you cannot engage i

n those
acts in relation to the form or the whole work. Because,the value creation or value addition is in relation to the over all works or the whole works. Can that person claim
copyright over the individual components of this whole work? No he can't because, that
is not his creations.

Therefore, copyright protection corresponds to the level of the distinguishing variation.
From the vantage point of this perspective, a person who exerted his efforts with regard
to particular set of works will have copyright protection for his efforts: because, the level
of protection corresponds to the level of distinguishing variation. However, it has to be
noted that, the copyright cannot go beyond the distinguished variation; meaning, a person
will be accorded with copyright protection based on his/her work's variation from previous or preexisting works.-But, the inputs of author need not be trivial; however, the

question which says,'to what extent it fulfills the threshold required and 'doubt as to
whether it is trivial' are something to be determined on case by case basis.

Simply, we can say that, where the expression of an idea is changed only very slightly
from the previous expression, the second expression will not receive copyright protection. Because, the independent input is trivial it does not qualify the minimum
threshold which is needed from the author. Due to this minimum threshold in originality,
short expression such as titles and advertisement slogans do not receive copyright protection; accordingly, the general tendency is that, they do not receive copyright protection but this presumption is rebuttable because there are certain expressions that are

very laconic in nature. However, as a matter of principle, if a work is very short it is less
likely to qualify that minimum threshold for copyrightability. But we have to admit there
could be very short expression of great laconism which could be original and receive
copyright protection.

Negative requirements(what is not required under copyright protection);

Under copyright protection there is no qualitative requirements-with respect to th e inputs
of the author's work seeking copyright protection. Usually, the questions of quality-
involves a highly subjective-judgment; so, quality is not often taken in to account for
copyright purposes. So, the qualities of literary,artistic works of intellectual works are
immaterial for granting copyright and immaterial for refusing copyright.

Copyright law provides protection to works not because of their intellectual quality or
because of their literary and artistic quality they display but simply because of being
original works of the author.-Further more, there is a categorical affirmation that the
intellectual aesthetic or other merits of a production of the mind do not serve for
copyright protection. what is required is a minimum originality not the good test or
learning or intelligence of the author; this means, for instance the most unartistic painting
could receive protection. For example, let assume that, a farmer living in rural areas of
Ethiopia sang a very amazing song after seeing that the car of the foreigner fail down
around his farm land, let assume the contents of his song as "Mr. peteri eating afa ri-becar
dangeri: here, we might think this is a bad expression, you might also think this is a work

of poetry with unremarkable features but such thinking is immaterial for copyright protection. Hence, the farmer’s song can have copyright protection if he so requir es.

The second negative requirement for copyright protection is the purpose of the w ork; the
utilitarian functions of the work is not taken in to account; utility may be importan t in the
field of patent law or industrial design.-regardless of the author’s good intention and
regardless of the works useful purposes or social utility certain work could enjoy copyright protection.

issues to be worried about,

don’t you think this assertion contradicts with the whole idea of utilitarianism?

So, here the applicable rule will be “let the guy express his idea in what ever way he
likes or she likes but make sure that, the guy would be responsible for what ever c riminal
or other consequences that the work might give rise to”.

The other negative requirement is the amount of time spent in producing specific work
doesn’t matter for copyright protection. Meaning, so long as the work performed has
fulfilled minimum threshold required by law the time it takes to accomplish the work
does not matter whether the work has been accomplished with in a few days, weeks or
months or even for years. For example, there are some works known as works pro duced
in the spur of the moment. So, some works might be performed without much refl ection
like for example, the work performed from the view point of dream.-In short, the time

spent or the amount of energy expended in relation to the production of the work is
immaterial.

The fourth negative requirement is the state of compilation-or the length of the work;
when we say state of compilation we are saying that, for certain works to be accorded
with copyright protection: it is not necessary for that works to be fully accomplished;
accordingly, sketches, drafts, plans, outlines and models can be protected as copyright
because of non importance of the state of compilation. By the way, you don’t see this
negative requirement particularly the fourth negative requirement clearly expressed in the
copyright statute.

The means and procedures for the creation of the work also doesn't matter for enjoying
copyright protection; again length and size of the work is not also taken in to account in
granting copyright protection. When we say size and length, for the purpose of acquiring
copyright protection it is not as such important that the work should be hundreds of pages
or should be too long; to get copyright protection, the number of pages and length of the
work does not matter. Rather, what is really important is to make sure that whether the
work fulfills the minimum level of distinguishing variation. Because, in so far as that
minimum-requirements of originality is fulfilled, size and length of the work doesn’t
matter.

The position of Ethiopian legal system in respect of negative requirements for cop

yright

protection;

Article 6 sub art (1) of Ethiopian copyright proclamation states that,“irrespective of the

quality of the work and the purpose for it the work may have been created” So, the

thorough reading of this article reveals that the two previous negative requirements are

also unnecessary under Ethiopian legal jurisdiction. But, with regard to the other negative

requirements the statute is silent; but the silence of statute does not necessarily mean that,

they will be taken in to account in granting copyright protection. For comparative

purposes you can see article 1647 sub art (2) of Ethiopian civil code of 1960.

Fixation;

The current law broke away from continental tradition and embraced the

new law from Anglo-American tradition. If the judge faced the question

of who is the owner of the work, it is difficult to prove the work which

merely exists in the mind. So it is believed that works which are fixed in

the tangible medium would be easier to prove and to easily determine.

But critics attack this kind of reason.

The point of attack is towards the assertion which says that Fixation is justified for the evidentiary purpose. The cardinal principle of evidence law says that one who alleges should

prove. So, why the court obsessed with the requirement of fixation? It is none of the business of

the court. The one who alleges the existence of the right should prove. The critics raise

this line
of argument to oppose the assertion.

The other reason for the requirement of fixation is that to minimize the frequent changes. If the
works are fixed it gives sufficient stability and permanence so that they will be reproduced latter
and communicate and dispersed. If certain creation does not reduced to tangible medium it could
be subjected to frequent changes. So there is potential possibility to change so that it is better to
reduce in to some tangible medium. Transient or ephemeral works have huge potential to
change. So to reduce the problem of being transient and ephemeral fixation is important.

The other reason related to the first justification is to encourage the authors to reduce their work
something desirable so that it could be latter reproduced and communicated to the public. There
is another argument against the fixation which says the requirement of fixation discourages the
authors who are not in a position to fix their works because of the socio-economic and lack of
technological and knowhow. For example, in order to reproduce the music you need facilities.
There could be authors of musical works who are not in a position to record their works. So the
requirement of fixation discourages this kind of authors whose works are oral.

In fact these kinds of people are subject to piracy by those who have the resources to fix it. And
these third parties who do not created the work but fix will unfairly benefit from the work. So
who should fix the work? Does the identity of the fixer matter for the protection of copyright? To
be specific should the fixation always undertaken by the author in person? What if the fixation is
undertaken by the third party? Does the fact that the fixation is undertaken by the third party

mean that the copyright beneficiary will be a third party? These are the important questions that
we should answer. If the identity of the fixer doesn't matter and if the third parties create in favor
of the author the last concern we raised will be dispelled. Generally, in the intellectual creation
what is required for the copyrightability is creation. Authorship and fixation are two different
things.

Author is someone who intellectually created the work not necessarily someone who has fixed it.
Authorship requires intellectual creation. And fixation is external requirement. So fixation is not
an act of the element of authorship. Since, it can be carried out by a person who is not an author.

May be the fixer can exploit the economic benefit for a short period of time. So the persons who
fix the works of others without the authorization the author will not receive the authorship right.
In fact, the fixation made by the third parties creates the right in favor of the author. The fixation
could be made by the third parties without the authorization of the author.

But it doesn't matter. What matters is the fact that the work is fixed. For example, lecturer could
employ the third party to record his teaching. This comes from the agency relationship. If the
record is fixed in material form the lecturer still get the authorship. This is called amanuenses
relationship. There is agency relationship between a person who fixes the work and the author.
The third party could fix the work without authorization. In general, the fixation of the work by
the third party creates copyright in favor of the author regardless of who fixes the work.
Therefore the crucial requirement for the copyright is authorship. What is authorship?

The author
is the person who intellectually created the work. In addition to this, fixation is set as an external
requirement. It is not as decisive as the requirement of the authorship.

Therefore, so long as you fulfill the requirements of originality and fixation the right of copyright
is automatic in the sense that you do not need to go to the administrative organ to draw the
certificate of authorship unlike in the case of patent and trade mark. There is no requirement of
publication. Answer this question for example, is it true or false- publication is sufficient but not
the necessary condition for copyright.

The statement is true. Publication is not necessary condition for the copyright rather it is
sufficient condition. Without reaching at the stage of publication the work can be fixed. Anyway
publication is not important for the copyrightability. It may be important for establishing the
copyrightability. It is something greater than fixation which is intends to satisfy the demand of
the public for the work. The works should be published to the extent the public wants the work.

The other requirement is registration. In the Anglo-American legal system you do not need to go
for registration. The right is automatic on fixation. So registration, notification are deposit not
requirements. There are some legal systems that impose notification and deposit as the
requirement. The USA legal system requires registration, notification and deposit as the
requirement for the copyright. In our case notification is there for commercial phonograms-read
article 28 and it is the only exception.

Rights and scope of copyright

This is very important part in the copyright law. Article 7 and 8 of the proclamation deals with
this issue. It refers to the time and scope of exclusive rights subsisting in the copyrightable
works. What are exactly the rights that the author or the owner of copyright exercises in relation
to work? There are bundles of right the author can exercise. These bundles of right are exclusive.
Nobody can engage in to these acts without the authorization of the copyright holder. They are
exclusive right but not absolute. There are limitations that are provided under article 9-19. These
rights are incorporeal property right and they are customarily fall in to two categories. These are
pecuniary and moral rights. Pecuniary right is related to the exploitation of work in terms of
receiving or driving financial remuneration from the work. Moral rights are on the other hand
kind of right that helps the author to protect some personal endowed. The personal connection of
the author has with the work. For example, reputation. It intends to protect personality and
reputation that is reflected in the work. So it establishes the personal attachment between the
author and the work. Let see these rights one by one.

Economic rights

Article 7 of the proclamation deals with this right. They are related to the right to exploit and put
it in to economic effect. They are justified on the ground of compensating and rewarding the
author for the efforts exerted in the production process. So because the author has intellectually
labored in creating the work she/ he deserve some kinds of financial remuneration for his/her
contribution. Generally, the economic right provides the author with certain prerogatives or the

economic exploitation of the work. That means these prerogatives are exclusive to the author.
The exclusive right is exercised in relation to authorizing and prohibiting certain acts which have
economic consequences. What are these rights? For example, the reproduction right, distribution
through sale and other mechanism of transferring ownership and importation. The other are
public performance and broadcasting. There are also derivative right like translating and
adapting. These are important turn packs that are listed under article 7 of the proclamation.

We can divide the rights that are listed under article 7 in to two. The first one is exploitation in
material form. These kinds of economic exploitation involve the use of material copies of the

work published. Reproduction, distribution, importation and display or exhibition through
material copies involves the exploitation of material copies. On the other hand there are acts
involving the exploitation in non material form. In this category there is public performance.
Somebody standing on the stage and performing the work to the viewers. It requires personal
rendition of the work. The other rights fall under this category is broadcasting. Broadcasting does
not require the material copies of the work. There is other means other than broadcasting by
which copyrightable work communicate to the public. Broadcasting is basically airborne. The
other mechanisms are for example cable television or online streaming. These are exploitation
non material form. The third category is derivation rights. The right to authorize, or prohibits, or
carry out translation, adaptation or modification.

Reproduction right

Article 7(1)(1) of the proclamation set this right. It is exploitation in material form. It is about the
multiplication of copies of work. Article 2(25) of the proclamation define what reproduction
right is. This right is a grand right which other rights depends on. The word copy itself r elated to
the reproduction right. The method of the manufacture of copies doesn't matter. Any form
manufacture of copies constitutes an act of reproduction right. Third party engaging in these
activities without authorization of the author infringes the right. the authorization from the author
is needed.

The distribution right;

What do you understand by distribution right? If you look at article 7(1)(d) distribution in the
form of sale and rental right. Rental right incorporated in the copy right system later on. So by
distribution right we mean the transfer of ownership of copies of works-which is legitimate
transfer. The distribution of copies through sale and other means of transfer of ownership of
copies exclusively belong to the author. The author exercises exclusive right to distribute the
copies of works through sale or through other means of transfer of ownership. So the re produced
copies cannot be transfer by other person other than the author. Other means of transfer of
ownership includes, for example, bartering or transfer through donation or gifts or succession.
But the most direct transfer of ownership is sale.

The distribution right allows the author the dissemination or circulation of the work in

to the
public. There is one problem we might face here. This is in relation to the dichotomy of the
object of copy right and object of conventional copy right. If a copy of single CD of the music
distributed through sale, the buyer wants to do whatever he like in relation to that CD. So don't
you think that the distribution right which give exclusive authority to the author over that copy
conflicts with the right enjoyed by the buyers or the transferee? It could be resolved by the rule
which distinguish the right of distribution upon first sale or transfer. So the right of distribution
enjoyed by the author in relation to copies is limited to the first distribution right. Subsequent
distribution will not be under the authority of the author. The reason is that it prevents the buyers
not to exercise the conventional property right. So the distribution right is limited to the first
distribution.

Thus by distribution right we mean first distribution or sale. The author does not have the right
to resale or any subsequent sales or subsequent transfer of that copy. The first distribution,
however, should be legitimate in the sense that there should be direct or indirect authorization or
consent of the author or copy right owner. For example, if you buy a book, you have the right not
only to read it but also resale it. The author doesn't have the right in resale process or retransfer
of ownership. So the buyer can have the right to resale or inherit or donate. Thus that is the
legitimate turn pack.

With regard to rental it is little bit different. We have said that distribution is limited to the first
distribution. Rental right doesn't extinguish with first distribution. For example, you can not rent

it out or lend the copy that you bought. Why? The reason is that it limits the opportunity that the
author has. The economic benefit of the author will be seriously affected. So, the rental of the
CD which the song is recorded significantly damage the economic benefit of the author. So we
should consider the rental and lending rights differently from the distribution right as many
literatures clearly provide or depict that. If it is sale it is one time transaction-thus the possibility
of sale affecting the economic interest of the author is very minimal. But if it is the rent,
theoretically there is repetition-you can reach many people within limited duration-thus it can
limit the opportunity of the authors not to be reached by the customers.

Besides, there is another reason. The rental right could widen the opportunity of the reproduction
right to be breached. So the rental right is under inclusive interest of the author. If you allow the

music shop to rent the work of copy right it is an incentive for them to reproduce the work.
Therefore, the law has in mind the protection of the reproduction right as well. To eliminate this
incentive regime so that the music shop, for example, do not engage reproduction right for the
purpose of earning economic benefit from the rental business and public lending. So rental not
only affects the economic benefit of the author but it can also violate other right which is
reproduction. Rental by its nature is a commercial while lending is not. In both cases there is fee
to be paid.

Importation right;

Look at article 7(1) (e), importation of original copy of works is exclusively belongs to the

author or the authors. It is special kinds of distributions-In the sense that it involves the question
of where to distribute. It involves the territorial nature of the copy right. Copyright is geographically specified. So the question of where to distribute is very important. What if the
first distribution of copyright entered in to foreign country? The law recognizes the importation
of copyright firstly because of the territorial nature of copyright. Ethiopia law should be concerned acts which take place within its territory. Secondly, the price of the copies could be
different in different places. The level of aggregate demand and supply differ obviously. So the
price quoted for a copy in Ethiopia and the price quoted for the same kind of copy might significantly differ. So these two factors make the importation of copy right.

Exhaustion principle implies the termination of the exclusive right of the intellectual property
right when the copies of the products are introduced in to the market by the right holder or with
his or her consent. This principle also applies to the patentable products and trademarks. In the
context of copyright, it applies to copyrightable works when the author released the work in to
the market. Literally exhaustions mean the vanishing of something. In the context of copyright
the exclusive right of copyright holder would terminate upon the first distribution of the copies
through sale.

So we should make clear that this principle and the importation right should go together.
Importation as we discussed above, it is a kind of distribution which answer the question of
where to distribute. In this regard we have two principles of exhaustion. One is called international exhaustion. And the other is national exhaustion. International exhaustions means

copyrightable works that have entered in to the market, wherever that market might be , with the
consent of the author would result in to the termination of the right. So the author cannot prohibit
the work from being imported. The copies of the work are distributed in to the market under the
direct or indirect consent of the author or the right holder. So it doesn't matter where copies are
entered. It could enter in to foreign market or Ethiopian market. Upon the first entry the right
will extinguish. This is the principle of international exhaustion. The consequence of the
application of international exhaustion is that there might be exclusive right to importation.

On the other hand, national exhaustion principle implies that subsequent transfer of the copies
could only enter in to another country by the consent of the author or the right holder. Ethiopian
law for instance has no jurisdiction over the copies that are sold in the foreign country. So here
the territorial nature of copyright applies. So any act that took place in foreign country cannot
create or extinguish right in Ethiopian territory unless there is treaty regime which regulate this
issue. Thus there is no consequence which follows from the transfer of the copies in the foreign
country.

If the country adopts international exhaustion under its copyright law there will not be the right
of importation. But if the country adopts national exhaustion it means that the right of
importation is recognized. From these assertions you could understand that Ethiopia adopts the
principle of national exhaustion.

There is middle ground principle which is called as continental principle. It is neither national
exhaustion principle nor international exhaustion principle. For example within European union
which has twenty eight country, if the copyrightable works is transferred within one

member
state it can distribute or imported freely in to other member country as well. This is the consequence of continent based exhaustion principle. The author can prevent the importation of
the copyrightable work in to another country, for example USA.

Let’s look at some important facts about distribution and the exhaustion.

- Only first distribution of copies constitutes a legitimate interest for the author to control.
- The rule of exhaustion refers exclusively to those concrete copies which are actually been
  put in to circulation. Take for example certain musical work, 10,000 of copies, first
  batch, have been issued first. Let say these copies are distributed in to the Ethiopian
  market. And let say again these copies have been transported in to USA. If as the result of
  market these copies imported back in to Ethiopia, the author has no right to control over
  these copies. The reason is that these copies have been distributed in to the Ethiopian
  market. Consider another 10,000 copies, second batch, which have distributed firstly in to
  USA, these can only be imported by the author. The reason is that they hadn’t distributed
  in to the Ethiopian market. So exhaustion can only apply with regard to particular copies
  that have been entered in to the market. If there is subsequent issuance of copies we
  should answer first whether these copies have been entered in to the Ethiopian market. If
  they have been distributed first in foreign country the author shall have the right to import
  exclusively. We call such importation as parallel importation. Under international
  exhaustion there could be parallel importation but not under the national exhaustion.

Importation has generally the purpose of economic benefit. The buyers can only enjoy the right over the copyright work at the place or the territory they live. They cannot export in to another country. The right to import into Ethiopia exclusively belongs to the author.

- Only such distribution of copies as has taken place with the consent of the author or the right holder produce the effect of exhaustion. Copies that circulate within the market without the consent of the author will not result in the exhaustion of the right.
- The principle of exhaustion applies in relation to copies which entered the market through sale or other means of transfer of ownership. If for instance the work has been shown in cinema, it cannot amount in to exhaustion.

Exhibition or display right;

This right also exclusively belongs to the author. Look at article 7(1) (f). There are exceptions to this right as provided under article 18 of the proclamation. Exhibition or display usually involves the material display of the work to the public. But there are also other means of display which is non-material form. The principle of exhaustion applies to the right of exhibition or display up on the transfer or distribution. But there is limitation with regards to exhibition or display in non-material form. You can display the work through technological devices, for example film, screens.

The display right has to be forpublic. That means private display is not within the presumption of the right of the copyright holder. What is prohibited is public display. You can display copyright

works through private means. To have complete picture of the exhibition or display right it is
good for us to see it with limitation. So we shall skip it for now.

Exploitation in non material form;

Here we have public performance, broadcasting and communication to the public. These activities involve the non material form exploitation. Distribution, reproduction, importation all
involves the material exploitation of the copies. But here you do not see the material copies of
works. Exploitation involves in non material form. Let discuss non material exploitation one by
one.

a. Public performance (contain two element public and performance (for example playing
music on the birth day party would not amount to public but playing music in companies
would amount to the public) - look at article 7(1) (g) which provide the right and its
definition is given under article 2(24). Performance means as matter of principle personal
rendition of works to a group of spectators. For example, a singer standing in front of the
audience in the concert or in theater or any kind of gathering and delivering the work to
the spectators. So musicians, actors or any group of artists who present the work to the
viewers regarded as performers. And their acts are regarded as performance. But
technology has created advanced performance mechanisms of consuming works. You
don’t necessarily have to at the concert or in the wall to consume the work.

For instance, the use of amplification devices has rendered the public performance in
different form. So public performance can be indirect. Thus public performance shouldn’t be
only live performance but also involves the works which are recorded in the phonogram and
played over amplification devices-which is called indirect form of public performance

. Acts
of public performance are not only limited personal rendition of works; it includes the
performance over the amplification devices. These works cannot be available without the
authorization of the author. Otherwise, it would amount to infringement. Anybody who
wants to publicly performs the work either in the form of direct personal rendition or
indirectly-through the use of amplification device must go to the copyright collective society

and seek authorization. And the copyright collective society is in better position to detect acts
of infringement and take appropriate legal action. Though,this requires capable
administrative structure to enforce.

b. Broadcasting- look at article 7(1) (h) for the right and definition is given under article
2(3). It is defined as wireless transmission of images or sounds for public reception. Its
transmission is through electro-magnetic signals which carry images or sounds. They are
airborne make available for public reception. If it is sound could be through radio signals,
if it is through image and sound it could be TV signals. So the airborne transmission of
radio or TV signals for public reception is regarded as broadcasting. So making works
available to the public through broadcasting requires prior authorization of the author or
right holder. There are also transmissions through technology. Cable transmission-
narrowcasting cannot be considered as public transmission. It does not fulfill the
requirement of public reception. The broadcasting also includes online streaming.
Because they are accessible whenever and wherever we want and, therefore fulfill the
requirement of public reception. For instance, if we upload certain musical work on
YouTube making available without locking by password it would be violation

unless
authorized by the author.

Derivation right;

It is difficult to categorize derivation right as material or non material form. We find this
right under article 7(1) (b), and (c). The basic examples are the right to translations and
adaptations. Adaptation in this context mean, for instance, changing the novel work in to
cinematography. Translation, on the other hand, implies the process of translating certain
work from one language in to another. These rights fall under the exclusive authority of the
author. That has been said, the author of translation and adaption has exclusive right over the
work translated or adopted. Wouldn't you think these rights could conflict with each other?
The person who translated or adapted should get first the authorization from the principal
author.

Share in the sale of copyright work;

This is special right recognized under the proclamation-look article 7(3) of the proclamation.
It is related to works of original manuscripts. Take for example painting or scriptures; you
cannot multiply it in the form originally made. Let say the author has sold this original work
to the gallery. If the gallery later on resale the work they could sale it into large amount of
money. So this right states that the primary author shall have the right to participate in the
share of resale of the painting by the gallery. This right is inalienable in the sense that the
author cannot waive this right in advance or he cannot transfer the right to another

person.

Any contract which attempt to alienate this right shall have no effect. It is economic right of the author which is not alienable. The resale, however, has to be public-through public auction or other means. If it is private you cannot dictate it. The benefit here is the incremental value the work. That means the difference between the original price and resale price. The percentage of the share is determined based on the incremental value of the resale.

It could be fifty- fifty percentage or forty-sixty. And this determined by the special laws which going to be enacted by the council of minister regulation regarding the manner of calculation or the amount of which the author is entitled to.

Moral right;

Essential features of moral rights;

1. The exercise of moral right cannot be transferred to third party. At least while the author is alive moral right cannot be exercised by third parties. The exercise of moral right stays with the author. Under proclamation no. 410 /2004 moral right stay with the author so that this right becomes non transferable or inalienable. It remains with the author when pecuniary rights are assigned, it in any way constitute a restriction upon the liberal action of the transferee of the economic right. The transferee of economic right could claim the right transferred to him/her and thus they can claim whatever action in relation to this economic right. But, there is a restriction on transferring of moral right. The transfer of economic right by no means suggests the transfer of moral right, so in any way the

assignee of economic right restricted by retention of moral right.

2. They are perpetual (imprescriptible); these rights are enjoyed for eternity. In some systems especially in continental Europe, copyright is imprescriptible. This means, even after the death of the author the moral right is going to be exercised by the successor or heirs of the author. Moral right cannot be transferred by will rather it transfer through the principles of intestate succession. Moral right come an end after a passage of a certain time. So, fifty years after the death of the author moral right are going to end. This shows that, under Ethiopian law moral right are imprescriptible.

Major components of moral rights;

Moral right constitutes a certain bundles of prerogative. Among these; RIGHT OF PATERNITY /ATTRIBUTION, RIGHT OF INTEGRITY /RESPECT, RIGHT OF PUBLICATION, RIGHT OF CORRECTION /RETRACTION.

A. Right of paternity or attribution; the right is identified as the father or mothers of the work. So, if you have produced a certain work you want to be recognized for your authorship. It means the right to have your name in relation to the work. Whenever your work is publicly performed you need to be recognized in name or other attribution of your choice. The right to claim authorships of the work goes to the author. It could be through the use of real name, signature or even by pseudo name (nom de plume). Generally, you have a right to be known by attributions of your own choice in relation to the work, the author can disclaim authorship through being anonymous in relation to the work. So, the author may want to be not known for his/her work while still getting protection of moral right as to its authorship, but it has its own consequence [will

see it in

our discussion of ownerships of works] who owns an anonymous works? Will be our

question for that part.

B. Right of respect or integrity; the right to have honor, reputation, respect is going to the

author. If for example the work is faced mutilation, deformation, destruction so that your

honor or reputation that has been displayed in relation to the work is in jeopardy. So, you

have a privilege to claim for your respect or integrity. So, in any action which might put

you in unfavored situation you would have this right. We have talked about caricature,

pasticles and travesties in relation to secondary works, these kinds of works result from

putting primary works in to satirical or comic effect. This action is treating the primary

work with disrespect. We are treating them in a derogative manner. So, moral right

reserves the primary work against this kind of treatment. In European countries the moral

right on integrity or respect is limited because this kinds of works are protected as

secondary works. Under Ethiopian law it is not clear with regard to such kinds of works

except for some shading light under the civil code of Ethiopia.

C. The right of publication; it is not just multiplications of public copies, rather it means that

divulgations of the work in any means to the public. It could be broadcasting,

divulgations (making the work known to the public). So the right to make the work public

is treated as a moral right which falls with in the exclusive rights of the author. The

author has the right to decide on the means of publication as well. So, the right to make

available the work to the public is reserved to the author. The economic rights of authorship which is created during marriage is regarded as common property, but the question is what about the moral right which suppose to be the author exclusively.

D. The right of correction; the author might feel that some aspect of his/her work needs correction, he/she can do so. He/she has the right to alter the work, to revise, retract is the right of the author. He/she has even the right to destruction providing that third parties interest are not going to be affected. For example, you buy a book and you distructor fired it. Can you be liable? Would it be any different if it is in public or not? Does the moral right of the author affected in this case? A person can use his/her property up to destruction, so a person who buys the book can destroy it but place of destruction matters. If publicly destructed, it might be against the reputation or honor of the author.

When you purchase a certain copy, all right goes to you except rental rights of that copy.

Rental right is the rights of the author, see article 8.

Moral right cannot be transferred, it is inalienable at least in the life time of the author. But the moral right though they are not transferable, they are waivable. What is the difference between waivablity and transferability in terms of effect to third party? If a right is waivable, the third party willreceive those rights. The author waive his right does not mean that, third party will have exclusive right in relation to the work. But if it is transferred the party gets a full right of the work. With regard to the waived act third party may use it but their usage is not in the form of right. So, by reading article 8 waiver is possible in this case providing that it should in writing and explicit. Revocations of license and assignment is possible in

a

certain special cases, so if the work is being exploited in contrary to your act of waivi ng then

the author reserves the right to revokes the waiving. It means, to reclaim back the moral

right.

THE RIGIME OF LIMITATIONS AND EXCEPTIONS ON COPYRIGHT;

We have already seen an important concept in earlier discussion, the bundles of right or prerogatives that the author or copyright holder exercises in relation to his work are ex clusive to
him; But they are not absolute. Even the exercise of conventional property right are not absolute.
This limitation even more pronounced to copyright. Different things like the utilitarian theory
and other justifies for this limitations of right of copyright, so the bundles of right that we have
seen in article 7 of Ethiopian copyright law are exclusive, but they are not absolute. Thi s means,
it admits the impositions of some limitations. So, copyright is not absolute, it is rather a compromise between the private interest of the author or copyright holder and the publ ic.

Limitations and exceptions are results of the stronger emphasis on a certain societal needs that
are greater than the private interest of the author. The exercise of copyright goes against
important societal values then the utilitarianism justification would be defeated. So, copyright
must be exercised in a way that doesn’t negatively affect those things or values. In this scenario
the regime of limitations and exceptions comes in to picture.

Under Ethiopian law, thus limitations are provided in many provisions around ten or eleven
provisions are devoted to such purposes. From article nine up to twenty. If thus limitatio

ns put in
place it means that the rights of the copyright holder terminate or suspends as a case might be.
When we talk of limitation and exceptions it is economic right that comes in to picture. Moral
right are not susceptible to this kinds of explicit exception and limitation. Moral right might be
restricted as a consequence of the restriction on economic right, this is in a very indirect way not
direct way. They are not directly susceptible to limitations and exceptions, but they would be
limited as the consequence of the operation of exception and limitation on economic right.

whenever we talk about exception and limitation we are talking about economic right. the effect
of exception and limitation on economic right are termination or suspension of rights. Some have
the effect of entirely terminating the right. The effect of termination results in no need of
authorization, no payment of remuneration (royalty) to the author. The limitation regime could

relate to some acts or the whole acts. When we interpret thus exceptions and limitations, we need
to construe them very narrowly as a matter of principle. Exception should explicitly stated by
law and interpreted in a restrictive manner. But, it doesn't mean that provisions of exceptions
and limitations should be close ended.

The principle related to exception and limitations;

Fair use; it comes in to picture largely in relation to reproduction right. when we talk about fair
use we are talking about the limitation and exceptions of reproduction right. When we talk about
fair use there is a principle called three step tests. It is a guide lines which used to

prescribe
exception. So, it can be a guide line or directives that guide the prescription of exception and
limitations on the right of reproduction. Legislatures whenever they try to legislate an exception
and limitations of reproduction these three step test would be a much help, thus three step test are
the products of the Bern convention. It said that, contracting parties of Bern convention needs to
be guided by the three step test whenever, embarking on prescription of exception and
limitations of reproduction right. Article nine sub (2) of the Bern convention, implies this.

Under our law, the three step tests are also clearly visible. It is defined as; in a certain special
places where the act doesn't conflict with the normal exploitation of the work and doesn't
unreasonably prejudice the legitmate interest of the owner. This is what the three step tests under
the Ethiopian law means. The three step test consisted of;

1. Special cases; it means that, a rule in national legislation concerning an exception and
   limitations must be special in the sense that it is limited in scope or having special or
   specific purposes. For example, national legislatures could permit free reproduction
   without seeking authorization for scientific research purpose, the purpose is now limited
   and could limit the copies to reasonable qquantity.-the scope and purpose is limited in
   special cases.

the free reproduction will not be available to whoever claims it, it is available to certain
activities and in a certain circumstances.-so special cases should be defined narrowly. We
have a lots of examples under the proclamation concerning special cases like reproduction
for information, education, quotation, scientific research.-that is how the notion of

special
case defined.

2. The reproduction must not conflict with the normal exploitation of the work. How does a reproduction conflict with the normal exploitation of the work? For example,if-every large quantities of the work had to be manufactured, it could result in or give rise to the normal exploitation of the work. Again for example, a book is written which is usable for university students, therefore if it is to be reproduced for educational purpose,the number of the universities are now going rise exponentially, if this book reproduced for those universities what is left for the author? he/she is not going to drive significant economic benefit if all universities are allowed to reproduce the text book freely. So you could easily imagine that the economic benefit that the author could have derived is going to be significantly damaged .-it conflict with the normal exploitation of the work. Free reproduction conflict with normal exploitation of the work. So, here in our case allowing free reproduction by universities of this text book is going to conflict with the normal exploitations of the work. So, such kind of production shouldn't at least freely allowed, because it obviously conflict with the normal exploitation of the work. No other economic benefit are going to derived by the author if it is freely allowed.

3. In so far as it doesn't unreasonably prejudice the legitimate interest of the author .

The three step test is consists of

E/L are to be taken in to account in some special cases that, they must be considered and
prescribed in so far as it doesn't conflict with the normal exploitations of the work and in so far
as it doesn't unreasonably prejudice the legitimate interest of the copy right holder.

Additional reading onthe three step test: in detail

1.-special cases: the notions of special cases means that, a rule in national legislation concerning
an E/L must be special in the sense that it is limited in scope having a specific purpose. E.g you
could permit reproduction, the national legislation permits reproduction without seeking
authorization for: scientific purpose, they could limit the copy to a certain quantity – so the
purpose and scope is limited in special cases. Free reproduction will not be available to certain

activities and in certaincircumstances, special cases have to be viewed very narrowly. We have
various examples under the proclamation concerning special cases: reproduction for information,
education reproduction for quotation, scientific research…

2.-the reproduction must not conflict with the normal exploitation of the work:

How does such a conflict be created? E.g very large quantities of the work had to be
manufactured, it could resulted damage to the normal exploitation of the work- assume that a text
book is written which is usable to all university students (common courses) – it have to be
duplicated in huge quantities, and assume that it is hugely reproducedand disseminated to all
universities or all universities are allowed to reproduce the work freely. Sine educational purpose
is free to be reproduced freely, we could easily imagine that the economic interest of the author

would be affected negatively- this shows the conflict free reproduction has with the normal
exploitation of the work- atleast it has to be reproduced with payment.

3.-it doesn't unreasonably prejudice the legitimate interest of the copy right holder:

Assume that 400 copies have to be reproduced for Semera University. In this particular circumstance the author has still thousands of copies to be sold therefore, this action couldn't
affect or conflict with the normal exploitation of the work (test 2). However, assuming t hat the
book was sold for 100 birr the author be unreasonably prejudiced (40,000) to avoid this atleast
there have to be a payment. – in case 10 or 20 books were reproduced for research(edu cational)
it couldn't unreasonably prejudice the legitimate interests of the author therefore, such minor
reproductions have to be allowed.

There have to be a special cases, but these special cases must have not conflict with the normal
exploitation of the work+, it didn't stop there, the reproduction also must notprejudice unreasonably the interest of the copy right holder

This is how the three step test guides prescription of E and L's.

Do you think the tests are separable or applied together? They are not separable. Why not?
Because, we didn't stop just looking the fulfillment of the first test, we have to look forw ardand
check whether or not the other two tests are satisfied. We goes step by step till the thir d test- the
steps don't show separability, rather it showed to as to stop move on to the other tests i n case

when the first test is not satisfied. The steps involve some sequentiality, but not separate.
Sequentiality in a sense means – first we look the first, up on its fulfillment we move to the

second, then to the third_ this helps and guides national law makers in their task of pre scribing E
and L’s.

The position of the Ethiopian law

Under Ethiopian law we see the applicability of the three step test by going through fro m Art.0-
113- this articles talks about E and L’S in the right of reproduction, some of them directl y tells us
the application of the three step tests.

Art. 9: special cases,what is the special case in respect of which the right to reproductionis
limited as per this article?You can see it from the vantage point of purpose and scope.
Regarding scope: published work,physical person- it is amust for the work to be published for
the application of article 9. Fixed but unpublished works are not going to be subjected t o Art.9?(
THEREFORE HERE THE SO CALLED SPECIAL CASE IS FULFILLED)

What about the other two tests? The contrario reading of art. 9(2) (E), showed to us the accommodation of the second and third tests , we can infer this from the terminologies such as:
with conflict(2nd) or unreasonable harm(3rd): therefore looking these,one can conclude that-free
reproduction of more than one copy has a negative effect on the economic interest of th e author.
9(2) (e) admits exceptions only in the case of single copies by physical person , for perso nal use,
when it doesn’t conflict with the normal exploitation of the work and unreasonably-harm the
economic interest of the copyright holder (we can infer this by the contrario reading of the
article)

Cases which violate the test are listed under Art. 9(2)(a-d) they are illustrative lists, we can add
and govern similar cases which violate the three step test and therefore which do not justify
limitations and exceptions under Art. 9 are listed in an open ended manner these are ca

ses which
are not admiceable, due to their failure in satisfying the three step test.

Can you copy a certain book by borrowing from your friend, and justify your action by art. 9(1)?
No, because it is against the economic interest of the author, you can implicitly understand it
from the reading of Art. 0- however for the sake of clarity the new law 872/2014, Art. 2(4) puts

that- the physical person have to get the ownership of the work (single copy) through legitimate
means (by buying it). We can't justify our act by borrowing or renting a certain work and
copying it (single copy),up on art. 9. So, the copy in respect of which we are making another
copy (single) must have not been acquired (we have to be owners either through purchase,
succession….) in no way borrowing or renting. The new law Art. 9(3) is added as an amendment
– it demand the physical person to acquire and own the work through legitimate means. It is
implicitly found in the former law, the new law only adds clarity.

In cases where huge amount of copy is allowed for free – it affects the normal exploitation of the
work. Third, although it can't affect the normal exploitation, still it is not fair to allow such and
such copies for free without payment, because of the unreasonable effect they have towards the
copyright holder.

Article 10: quotations

We take some expressions of others for the purpose of our work – it must notbe verbative
copying. It should be limited.

Art. 10(2) special case, it has been indirectly accommodated, we can infer this from the

term
purpose and from the general understanding of this sub article. The second and third te sts have
also been accommodated indirectly.

Compatibility with fair practice and have to determine fairness we take in to account th e nature
of the copyright work itself: is the use for commercial purpose? We take this as a yardstick to
measure the fairness and unfairness of the work, commercial purpose is unfair the inver se is true
for non-commercial purposes.

E.g pros and poems: in the regime of the civil code we are allowed to take the maximum number
10000 words from pros in the form of quotation. In case of poetry, 40 lines – because po ems are
short- the civil code has to be revised because, for instance allowing somebody to take 40 lines
from a certain poetry work which is 50 line is unfair. Therefore the amount and substant iality of
the part quoted in comparison to the whole work is also not fair. E.g taking 40 lines of main parts
of 200 line poem too is not fair substantially speaking.

Another measure of fairness is: the effect of the use upon the potential market , the potential
value of the copyrightable work.-the effect of the quotation on the potential market of th e work –
the effect of the quotation on the potential value of the work) art. 10(3) : requires you to comply
with the requirements just like you do in your academic carriers- e.g, in your research y ou have
to acknowledge the sources otherwise it would be plagiarism. If we are in compliance with this
Art.(Art. 10(3)) it would be free without seeking authorization- indicate the source and the name

of the author(in all cases whereby the name of the author is identifiable, it has some tie with the
moral right of the author).

Education is not as commercial as, whole sailing, reselling… the same is true for health(there
might be health institution for profit)… but they are strictly regulated) for instance traders are
regulated by ministry of trade, but entities involved in private education, because education is not
commercial naturally, they are important for the public (reproduction in teaching and
instructional purpose: Art. 11- it accommodate three step test indirectly- from other articles we
have seen before, it is only article 9 that directly accommodate the three step test) . the issue of
universities free copy of 400 copies unjustified….

Educational institutions can reproduce works for free-and without seeking authorization guided
by fair practice and to the extent limited to the purpose. However, certain practices like (copy
houses, e.g coca cola Siddis killo… books may be reserved there for copy to students it is not
fair)-

A case between Dr. Assefa and the university of Alabama; regarding his book federalism and
accommodation of diversity- the justice and research institute, reproduced and disseminated Dr.
Assefa's book to the students in collaboration with university of Alabama. Without receiving
authorization of Dr. Assefa – Dr. Assefasubsequently , lodged a legal suit, claiming that it
infringes reproduction right. And sought both moral and material damages caused to him by the
act of the University of Alabama. The case was partly decided in favor of Dr. Assefa. What do
you think is the reason that forced the court to decide in favor of Dr. Assefa?the intention of the
law is to allow free reproduction(reasonable) for Ethiopian schools, the university of Alabama is

a multi- million dealing … allowing it to reproduce the work freely-conflicts with the principle
of fair practice.

Art. 12 reproduction by libraries ,archives, museums, memorial hall…

Non-profit- museum …it must have not been privately organized for profit.-the conditions are
presented under Art. 12(3) we will see two types of reproduction under article 12(3): the first one
is reproduction by the library the museum…for the purpose of emergency, in case the copies are
lost, destroyed… in order to sustain the use of the copy which is already in their possession
reproduction is necessary – they can make it free of charge. The second case is: physical person
go to… seeking reproduction: in such circumstances the library, the memorial hall… serve as
agent. It authorizes the reproduction by such individuals on behalf of the worker. It checks that
the reproduction is for research … it checks the presence of an authorizing body private (public
for copying literary works… if there is, it has to transfer the private … to those entities. If there
is not it will authorize. Thirdly, it has to check, as a matter of principle-only one single copies
allowed for private person, if it is repetitive – it has to whether or not the repetitions are related
or unrelated.

Computer programming, Art. 14(1): it is not only about reproduction, this-article also-talks about
adaptation of computer works. As far as reproduction is concerned: single copy reproduction is
allowed. Back up copy, because of viruses and other related problems. The copyright holder
(author) can’t prohibit such single copies reproduction. Special purpose for backup. Fai

r use is
included in Art. 14(2) (a) (b) .-the limitations is not without limit. Art. 14 in general put limitation on adaptation.

Art. 13: according to this article information is one important value that justify imposition of
limitation on reproduction right. E.g when a journalist want to reproduce current event when he
make use of copyrightable work and reproduces the work for reporting current events, the
copyright holder cannot prohibit this kind of reproduction. E.g he can reproduce the oral
interview – for the purpose of disseminating current information in so far as it is important in
disseminating current events, That could be allowed to be reproduced. Terms such as information and current events have to be defined. A work can't be reproduced under a guise of
information, if it is not for the purpose of reporting current event the purpose is limited and
defined. Report of current events.-Social, political economic, religious…events. So, the right to

reproduction is limited in so far as, the reproduction is to be carried out in the reporting of
current events (it is narrow). The last limitation on reproduction right is that of: single reproduction for computer program (Art. 14(1).

Art. 14 principles: Art. 14(2) (A) (b) state the condition of fair use – the reproduction of a computer program is allowed in so far as it complies with fair use conditions. Why reproduction
of computer program allowed? Because, users can make a single copy of the computer program
they have acquired legitimately (unlike Art. 9, which demand a copy to be for personal purpose:
Art. 14 go beyond in that and allow commercial and other related…) Backup (backup also

works in relation to Art.9) – a company can have a single copy for backup purpose, what is the
other justification which in fact is distinctive from Art.9?) having many computers doesn't
justify, rather the additional criteria is that products of technology are vulnerable for various
problems they could be affected by viruses , it could collapse…the sustainable use of the
computer will be put in to question mark, under the regime of the original copy – in short, for the
reasonable sustenance of the computer program. Technology is very valuable and important, but
at the same time it is also susceptible to various problems. Due to these a single copy has to be
allowed…

There would be enforcement problems, controlling only single copymight be difficult, but in no
way impossible- such enforcement problems can be eliminated by introducing high level
protection system. The authors too can encrypt the work for that work to do not be reproduced,
and thereby protect themselves- therefore the talent of individual authors also matters. They can
help the investigation process.

Limitation on adaptation of computer programs: Art. 14

It is justifiable, to adapt a computer program, subject to fair use condition as envisaged under
Art. 14(2) (a) (b).

See Art. 7(1) (c): normally the right of adaptation is belong to the copyright holder. But, those
who own the computer program are allowed to adapt it. Unlike limitations of any other works-
limitation concerning adaptation is imposed in relation to adaptation , it is only imposed as far as
computer programs are concerned. What do you think is the reason behind putting limitation on
adaptation right of a computer program? It is to make the computer program compatible with the

computer system. By its nature a computer program must be adapted, adjusted to make it
compatible with other computer systems, for its fullest use. Adaptation is necessary, denying
such right will defeat the very purpose of purchasing computer programs.

Trying to adapt a certain program to a specific computer system, while another program which
fits to be used without adaptation is there in the market place would amount to infringement.

Art. 7(2) also provide another limitation to computer programs: by excluding the provisions of
Art. 7(1) from being applied to rental or public lending of computer programs, except where the
program is essential object of the rental or lending.

Rental right: is not an expired right, no concept of exhaustion applied. The right of rental is
partly exhausted in the cases of computer programs. Rental is allowed in cases where the
computer program is essential object of the rental or lending. If they are primarily using the
computer program for rent it has to be restricted. However, when the computer program is going
to be rented with other components Since it is the whole part of the computer (renting it with
those components, with which the computer program is subsidiary/auxiliary is not prohibited)
but, one can’t rent a computer program separately.

Limitations on broadcasting and other communications to the public: Art. 13- here the special
purpose is informatory.

Broadcasting: making the work available for public reception in the form of images and sounds
as well as sounds alone, through wireless technology- limitations for informatory purpose: which

we have mentioned in reproduction is applied here analogically : reproduction of information's
on current issues …(as is in reproduction, for the purpose of reporting current news events : one
may broadcast …)

Broadcasting or other communications to public- be limited for reporting current events. Information here mean, current, something with public interest: face book, twitter… are included
in the list. . One don't need to be a professional journalist, ordinary individuals can also disseminate current information's through face book and other social media's. What matters is
not the form of the medium of transmission or personality of actor…what matters is that the
work has to be current issue. (other communication to public 'face book…)

What if a person wrote a certain work on a website? Such acts are not governed under the realm
of broadcasting; rather it is fall under the realm of reproduction. Reproduction need not be in
print, it can be published online.

Limitation on importation

It is clear from our previous discussion of exhaustion- distribution right exhausts upon first sale-
distribution right contains the question: where to distribute? Authors have a prerogative right to
divide countries to regions and accordingly distribute their work. Importation and exportation are
consistent with this division of markets. To increase their profit authors may divide markets- the
right of importation creates this opportunity to the authors. Importation is a sale/ means of
transferring the work.

Principles of national exhaustion: the copyright holder's right of importation in Ethiopia will

exhaust in accordance with national exhaustion or national… a person who distribute his work in
Ethiopia may not prohibit the importation of those works just in case they were exported (in
case of their importation to Ethiopia).

On the other hand, International exhaustion: the author's right vanishes in the first sale of the
work, wherever the place might be.

Art. 7(1) (e)it is a national exhaustion, an author has a right over importation of his work, with
the condition that they are not distributed for the first time in Ethiopia. The copies may be sold in
other countries, however the fact that they are not sold in Ethiopia entitles the copyright holder
with certain right over those works upon their importation to Ethiopia. The right exhaust only
with national exhaustion, after answering the question: is the work firstly distributed in
Ethiopia?. However there still is a limitation on this right of importation, as per article15:
importation by physical person, for personal use, a single copy…is allowed – the author too has
no right to prohibit such importation.(personal use: not for commercial purpose) – physical
persons can for personal use import a single copy of a work which is not distributed in Ethiopia.
importation right is also limited by domestic exhaustion.

Limitation on performance

Public performance: a performance which is accessed to the public at large- not necessarily need
to be to the public at large, a performance outside of families and close social acquaints suffices
to call a certain performance public. For example, if CBE arranged a music exhibition to its
workers- this is public performance, because employees of CBE are outside of the so

called”
family and close social acquaints” group. The author’s right of performance is limited to public
performance. Private performance is going to be outside of the prerogatives of the copyright
holder. The author can’t prohibit a music performance for a birthday celebration: among close
social acquaints and families. But, even private performance with payment could fall within the
prerogatives of the copyright holder (art. 16). Though the performance is private, the essence of
payment infringes the economic interest of the author.

School: can normally be public because, it is a place where persons who are not in close, social
acquaint and families are found. However the performance in the school which is free of charge
will be out of the prerogative of the copyright holder’s right. If AAU: makes a deal with a certain
well known singer to entertain students for a holiday, if there is payment- it infringes the
copyright holders right, if not it shouldn’t. even the most private performance could be
considered as infringement when there is payment that determines the prerogative right that
would have been exercised by the author. What about performances in talent shows e.g Idol- it is
a clear infringement , it affects both the right of performance and broadcast: unless otherwise, it
is authorized by the singer- Art. 7(1) is violated. It is not there in the parts of the limitations. An
act which is not specifically listed in the law is considered as infringement.

Art. 18: display of works(right of exhibition); limitation on exhibition/display: traditionally
speaking it includes the material copies, not the non material forms. But, recently thanks to
technology: there are various mechanisms through which works could be displayed using non-
material forms e.g slide, screen… as far as material copies are concerned, as long as it is

published…

Material exhibition: has to be published and if the material copy is obtained through lawful
mechanism: donation, sale… and other means of transfer of ownership. There has to be a
reasonable quantity of the work(publication).

We can make it displayed to the public, what If you get it through rent and display it to the
public? No, we can’t do it because, for displaying it to the public one must be the owner. The
copyright holders right to exhibition is restricted in those cases: material, owner, publis hed.

Non-material: screen, slide…from the contrario reading of Art. 18 we understand that t he author
has retained a power to prohibit public display of works through non-material means’s. The
copyright holder still retains control over the display of works in non material forms.

Art. 19: distribution of copies of works:

the first sale principle: the copyright holder once he sold copies of his works, he/she can’t
prohibit the resale of those copies. When published works are sold to the public: such a copy
without authorization, payment of remuneration, redistributed.

Art. 17: issuance of non-voluntary license:

Compulsory licensing is especially thought: it just takes away the right to prohibit autho rization
on the parts of copyright holder; it reduces his/her right to authorize the work, the right to ask
remuneration in case of unauthorized acts. It engages in the reduction of authorization to
remuneration.

It suspends the right to provide or prohibit authorization. There is no right of authorizat

ion but,
there still is the right to ask remuneration. What is the payment for intellectual work? It is known
as royalty. Royalty is a technical term used to refer payment in relation to a certain intellectual
property work. In the case of compulsory licensing the right of the copyright holder is limited to
receiving remuneration- right to authorization wouldn't be there anymore, the right to receive
royalty is still there.

The concept of compulsory licensing: generally licensing provides authority to third parties to
exploit the work for payment of royalty. Licensing is a kind of transferring some acts or the
carrying outs of some acts are going to be granted to third parties.

Third parties would be provided with authority to carry out some acts for payment of royalty. We
can think of legal licensing and compulsory licensing.

Legal licensing: is very theoretical it means the law prescribes that the author himself must
provide licensing to certain groups of people. E.g ministry of justice has to give license for
qualified attorney's of law(not in copyright sense, but it just help as to grasp the point of legal
licensing). In the copyright and IP , legal licensing means the author himself provides licensing
without his free will, because he is ordered by the law to do so.

Compulsory licensing: the licensing is not going to be given by the copyright holder , rather it is
going to be given by the administrative organ. The copyright holder might object to the
exploitation of his or her work by third parties, so he/she may refuse licensing. Thus third parties
will go to the administrative organs and seek non-voluntary licensing.

Voluntary licensing: on the other hand is free and contractual licensing. Third parties and the
copyright holder – discuss over it in a detailed manner.

Why compulsory licensing scheme is needed by the copyright regime?

Copyright is in the first place instituted, especially taking in to account the utilitarian justification. For the long term interest of the society- the work needs to be made available to the
public for exploitation. Sometimes the author might defeat this purpose by blocking the carrying
out of acts by third parties- even with payment of royalty. So a compulsory licensing scheme is
introduced to overcome these, Art. 17 grants authority to issue compulsory licensing for the
Ethiopian IP office. EIPO could grant compulsory licensing. The necessity to go to EIPO for
receiving compulsory licensing might be mitigated by the establishment of copyright collective
society. The new proclamation provides an article for the establishment of collective societies.
Their responsibilities are:

- They act on behalf of individual copyright holder and provide licensing for whoever needs it. A compulsory licensing scheme could be resorted to because authors might
not be found. The probability of these problem will be alleviated by the full time copyright society.
- It mitigate the management of compulsory licensing, because people who need license will go to them and will be granted with licensing- for challenging situations EIPO will grant compulsory licensing.

Conditions under Art. 17

-a compulsory licensing could be issued by the EIPO, against the clear opposition of the copyright holder (the heirs and legatees).

Do you think compulsory licensing is Important or necessary in relation to the acts or t

hat fall
within the limitations we have addressed? Limitations allow individuals to have access a
certain work without authorization and remuneration (royalty) therefore, the issue of compulsory licensing is not necessary (in case of compulsory licensing at least paying remuneration is required; why individual resort for payment while they can have it without
payment on the basis of provision of the limitations) compulsory licensing is necessary to
carryout issues other than exceptions and limitations. The authority to make laws on the
conditions and forms of compulsory licensing (remuneration) be determined by council of
ministers. Such a law is not yet enacted, due to this, compulsory licensing is not yet operational (like the promise for applications of article 8 sub (3). There is one thing that is
not touched by the regulations of council of ministers, in no way would the compulsory
license authorize the alteration of the work (alteration of the work is impermissible. Council
of minister cannot authorize because this law is enacted by higher body (HPR) these too is a
moral right which can't be compromised.

Important components of exception and limitations;

Article 20; duration- what is the effect?unlike the limitations we have been discussing so far
the effect of the application of duration is the expiration of the whole bundles of right.
Limitations in our previous discussion are concerned with one or two acts. upon expiration,
the copyright work will become part of public domain. The effect is so devastating to the
copyright holder. The basic rule is found in article 20 sub (1) or (2) in the case of authorship:
work authored by a single author life time of the author plus fifty years post mortem (after
death). After death the right will devolves upon heirs and legatees of the deceased. H

ow is a
fifty period is going to be counted? From date of death…. current copyright legal systems.Count calendar years (no specific date). They normally take in to account full calendar years so full calendar years, from the coming January to January after fifty years-
the intering period between the death of the person and January- have protection. There is an

amendment on article 20 sub (1)- we use a Gregorian calendar- the amendment is on article 2
sub (5(proclamation no. 872 /2014. From the following January to the fifteenth full calendar
January; in the expose de motive- it is stated that it is so, to prevent different inprotection of
foreign and Ethiopian works. The proclamation is erroneous there will not be a problem as to
the duration.----------. They will not be prejudiced so the only justification will be
creation of consistency (if Ethiopia inters treaty regime)---

Joint authorship; two or more workers; the year of duration is going to be counted following
the last survivals death..Last time of the last surviving co-author plus fifty years post mortem.
Posthumous works; works fixed after the death of the author- protection has to be granted for
the benefit of heirs and legatees, but such work cannot be seen in the same manner as works
the author arena while he was alive. There is a requirement of publication. Posthumous work
wouldn’t be protected unless they are published (under Ethiopian law0)- we get this idea by
reinterpreting the article.

Other authorities (foreign require performance, broadcasting, making the work available as a
means--- Ethiopian law: posthumous works protected for how many years? From publ

ication
to fifty years- 20 sub (1) when we apply this article on the basis of the new amendment- the
period will be counted from the following January 1 to fifty years. (the protection starts and
goes without interruption to fifty years, January 1- is needed for just counting---).

Collective works; a work with the contribution of many persons, but edited by and published
on the name of one person- fifty years after making the work available to the public (duration
of collective works) to determine the duration of collective work, there are three options.

1. First making.
2. First made available to the public.
3. First published.

Article 20 sub (5) anonymous or pseudonymous works; anonymous- the author is not known.
Pseudonymous- the author uses pen name. since the author is unknown, the duration will
going to be counted starting from the making or availability to the public or publication—
whichever is the latest. What if the identity of the author is known in due course? When it is

revealed provision of sub (1) and (2) will going to apply, but has to be before the end of fifty
years period.

Audio visual or cinematographic works; in this case making of the work or communication
of the work to the public.

Formerly, we used the phrase (making the work available to the public) but, in the case of
audio visual works—we use communication of the work to the public- through wireless or

broadcasting, on line streaming. Communication to the public is narrower in scope as compared to making the work available to the public. i.e. communication to the public
doesn't include performance.

What is the difference between making the work available to the public and communicating
it to the public? Communication to the public includes broadcasting, on line streaming and
etc. making the work available to the public is wider it also include performance (for the
application of article 20 sub art (7) we use two criteria's)

Ownership of copyright;

A work expressing a creative efforts of a certain intensity and a certain individual uniqueness, both justifies and delimit copyright protection. Here, individual uniqueness and
creative intensity are mate, it means that, the work is going to be protectable, copyrightable
and the protection is going to be limited to the extent that it displays the individual uniqueness of the author,. So, copyright is therefore authorship. In authorship, you see
author, so here author is a person who displays his individual uniqueness and his creative
intensities in a work.

As a matter of rule, copyright protection is available for this person, that means, he/she is the
copyright owner. Copyright is vested in the person /persons who created the work,who
displayed this thing is the base. The general rule is that, it is the biological father of the work
who is entitled to the ownership of the work (the real originater is entitled to the ownership
of any copyright which the law makes available). But, this solution may not always work,
because we have other circumstances whereby the rules become inadequate, thus we need

additional or auxiliary rules. these are rules which feel the gaps that might be vacated by the application of the general rule, which is the biological fathers of the work in which the real originator to the ownership of copyright of his work. But, this by itself doesn't suffice to take care of a certain circumstances. For example, let us see situations where this general rule is inadequate;

- First, how can you apply this rule if the work is created by two or more authors? in this situations we need auxiliary or supplementary rules.
- Second, what if the identity of the author is not known? If the work is pseudonymous or anonymous? Pseudonymous means, the real author cannot be determined so, who is going to exercise ownership of the copyright for this kind of works, in such situations the general rule becomes inadequate so it needs supplementary or auxiliary rules.
- Third, what if the work is created in employment relationship? Anglo/American legal system and civil law traditions differs regarding how they treat copyright work in an employment relationship. Anglo/American system is not concerned about individual as such. What they are concerned about is just on incentive regimes so that, future works could be creative to sufficient extent for the ultimate betterment of the society. For them it doesn't matter whether it is the individual or legal person who enjoys copyright ownership. Based on this background they have rules in their copyright laws which provides copyright protection for

employer rather than the employee. So, employment relationship in some legal system might take away ownership of copyright from the author and might give it to somebody else or the employer based on the relationship.The general rule is not going to help us to go in detail therefore we need auxiliary rules.

- Fourth, in cinematographic works which is called audio visual works, there is complexity about this works regarding their creations. Many person involved in creation of audio visual works. Because, it requires a huge investment, great technological capabilities, resources and etc. accordingly, all these things necessitated the granting of the copyright not to other individual but to the producers. Hence, the general rule by it self is not going to help us, we need supplementary law that clarifies

the ownership of cinematographic works thus are generally introductory justifications for auxiliary works, we will see it.

General rule;

The prima facie author (who is identified with the work) is the owner. as there is presumption of ownership in authorship. So that presumptive owner is the identified author. If adequate reason can be presented, we might take away the ownerships of the work from the authorship. Ownership could lie somewhere else than authorship but as a general rule the presumption is that the prima facie author is the presumptive owner.

Individual auxiliary works;

Posthumous work; this is a work created after the death of the author. The author is dead, we are going to create copyright ownership not to him as such at least the enjoyment of economic right is not going to be established for the deceased author, for his/her no

more
dare to exercise those economic right. the general rule which establish copyright ownership
in favor of authorship doesn't help us, we need auxiliary roles. What should that auxiliary
rule be? Such kinds of authorship is going to be determined by the rules of transfer of
property /copyright, mortis causa. Therefore, those rules are our auxiliary rules for this
particular case.

Works of anonymous /pseudonymous authorship; anonymous works are works whose author
is not known for variety of reasons. The author might be anonymous because of forcible
circumstances, because of his choice he might be anonymous because he might afraid of the
coming criticism towards his work. In respect of literary works the pseudonymous (n om de
plume) might be used. the author might give his identity through the use of signature or
shortened version of his real name for his authorship. Here, we are seeking a help from
auxiliary rules because we thought the general rule doesn't help adequately. In knowing the
authors identity your pseudo name doesn't reveal your real identity. the supplementa ry rule is
needed in addition to the general rules. but exceptionally, some pseudo name might reveal
the author's real identity, but we are concerned in pseudo names which doesn't show the real
identity of the author's.

For instance, baby (Samson taddese), abbe tokicho (Abebe tola) even though those names
are pseudo names they can show us the real identity of the author. the general rule is enough

in this case thereby the authorship goes to those persons. But in pseudo names whic h doesn't
express the real identity of the author we need auxiliary rules. look at article 22 sub art (1),
(2) and (3).

Copyright as a matter of principle is an entitlement which give rise to a bundle of prerogatives. But, it also bears responsibilities. determining the identity who would e njoy the
right as well as bearers responsibilities must be known.

Article 22 sub (3), when the author remains anonymous, by using a pseudo name so that
his/her identity is not known, then the publisher would be substituted to the foot of t he author
and claims ownership of copyright in the work. The publisher here represents the au thor, the
name of the author may be unknown to the public but it may not really true that it also
unknown to the publisher. in this case the publisher represents the author and enjoy the moral
and economic claims of the author under representative capacity. The moment the anonymous author reveals his/her identity, she/her is going to take over the exercise of the
right. It means, in this case, we go back and govern it by the general rule, in which this
person becomes the owner. We can see it with publishing contracts of the civil code (2672---
2697). How does the publisher acquire those right, do they come from the application of
copyright law or other transactions? Here, the relationship with the publisher is gove rned by
those publishing contracts.

Works of several authors;

This is works created by;

- works of co-authorship.
- collective works.

Works of co-authorship;

Co-authorship under the proclamation article 2 is defined as a single work by two or more
persons. There is general commonalties, that means the individual contributions of the author
is not going to be identifiable rather it is merged in to the whole. Example, in preparations of

the book by dividing different parts for different person and make it finally a single work, is
works of co-authorship. In this case, the individual works merged in to single whole work.
These works are interdependent which are not separable. How about the ownership of co-
authorship? It is governed by joint ownership of general property law, so in this case this
principle applies. Let assume that, some authors are named and other unnamed, do you see
any difference on the effect of joint ownership? See article 1669 for this hypothetical case.

Collective works;

Here, works are separable, you can identify the individual contribution, but at the end of the
day it becomes one work. Who owns such kind of work? Collection are separately
copyrightable so long as it doesn't contravene individual's copyright. The one who collects
different work get protection for his/her collection, he/she has no separate protection for
works under his/her collections because this singled out work is belongs to another
contributor. If he/she does this he/she is going against the individual contributors right. In
anthology, the one who edit and collect has a right on his collection, individuals have no right
on the collected work as a whole but they only have a claim for their single work under the

collection. But the collector needs to have a permission of those individual contributo rs-when
he/she does his/her act of collection.

Works made for a hire;

Works made for a hire could be divided in to three different categories, thus are:

- Works created under employment or apprenticeship relations.
- Commissioned works.
- Portrait and photographs.

Works created under employment relationship;

one features of employment relationship is that, an employee under takes to provide
services to employer under the direction and control of the employer and at the same
time, the employee receives some amount of payment for his/her works from their

employer. But, materials that are necessary to carryout the required works will be made
available by the employer. Now, consider, if the act to be carried out involves the
creation of the copyrightable works: where shall the ownership rests? In whom control
such kinds of works vested. Copyright systems differ regarding how it treat these
questions; for example, Anglo/American tradition establishes the ownership right i n favor
of the employer. While, civil law traditions establishes copyright ownership in favor of
the author: they firmly believe that, ownership always follows authorship.

However, the Anglo/American tradition has now gained momentum and many cou ntries
follow and adopted it. as we have already discussed, the employer of certain works is
expected to provide tools helpful to perform the work, give direction, guidance

and
supervision and incentivize the workers in their activities. because of this stake, many
copyright systems including the Ethiopian copyright law establish ownership in fa vor of
not the author but the employer. Hence, ownership of the works created in emplo yment
relationships belongs to the employer. This is one of the areas where ownership and
authorship do not overlap: in many cases as a matter of rule, ownership and authorship
overlaps, but this is one of the exceptional areas where ownership and authorship do not
overlap. This is to mean, ownership lies somewhere else than the person who is the
author.

Apprenticeship relation has also similar definition with employee/employer relatio nship;
apprentices are a sort of training made by certain workers in order to develop nec essary
skills with in a provided working company. Such apprentice might get some amount of
payment from the company in which they are getting training to assume necessar y skills.
They carryout services under the guidance and control of the employer and the fa cilities
needed for the training are provided by the employer. according to Ethiopian law the
training could be for 45 days. So, for all practical purposes, they are regarded as being
employee/employment relationship. Accordingly, works of authorship created by
apprentices under the apprentice contract: again belongs to the employer.

Commissioned works;

Commissioned works means, you just take out some elements we mentioned in relation
to employment contract, think of independent contractors: independent contractors are
persons who under takes to provide services for a person who commissions the
provisions of a service for payment or remuneration. But, the provision of the services are
often carried out under the control and supervision of the independent contractor
themselves, rather than the person commissioning the under taking of the services. here
there is a tendency of working the required works independently;

for example, assume that you have purchased certain garment and you have taken it to a
tailor to get it sewed up for the preparation of a full garment: here you have employed a
tailor who actually follows certain guidelines informed to him by you. This guidelines
could be, your normal power of deciding the date for concluding sewing up the clothes.
But, you have to be sure that, you will not have supervision and controlling power over
the tailor. Therefore, for all practical purposes, the tailor is regarded as an independent
contractor. you are commissioning the preparation of your garment. such kinds of
relationships are considered as being commissioned works; the main difference between
employee/employer relationship and commissioned workers is basically, in the case of
commissioned works the employer cannot give supervision and cannot exercise
controlling power over his/her workers. But, in the case of employee/employer
relationship, the employer can do so. Some prefers to call commissioned works as
contract for service and employee/employer works as contract of service. Simply, the
elements of control and supervision is missing under the domain of commissioned works;

by considering these factors, some legal systems make the commissioned copyrightable

works under the ownership of the independent workers, because the control and supervision test is missing. As it has been discussed above, under commissioned works:
the worker has no direct relation with his/her employer in relation to the procedures
necessary for working the expected works; therefore, based on this fact, some legal
system give the ownership of certain copyrightable works produced in such independent
working relations to those independent contractants.

But, some legal systems do not adhere to this perspective, they rather prefer to say "no
the production of the work has been specifically ordered by the person who want the
work to be performed and that person has paid for it and therefore, just like employer
under employment relationship: he/she must deserves the ownership of the copyrightable
works. Ethiopian copyright law also follows this second lines of argument, which
envisages ownership belongs to the person commissioning the creation of the work. the
lawyer might prepare for example the memorandum of association for a certain company.
Assume that, the company has commissioned the preparation of certain document from
the lawyer association of memorandum, by paying some amount of payment. Here, the
lawyer association exercises freedom in performing the required work. Therefore, this
kind of relation is a type of commissioned works. Under such circumstances, if the
lawyer association has produced certain copyrightable works, according to the Ethiopian
law; the ownership of that copyright will be given to the company that ordered the lawyer
association to do certain work which result in specific copyrightable works.

To simplify,let us take one additional example, a lawyer representing the client in court
and preparing some headings like statement of claim, statement of defense and memorandum of appeal. in this case the client has definitely commissioned the preparation of these kinds of document. Under some copyright system, for example the
Canadian copyright system; a lawyer owns the copyright in the documents he/she will
prepare for the client. But, under Anglo/American tradition and also under Ethiopian law,
it is the client who owns copyright in this kinds of document. Because, it is a commissioned works, again the client has paid for it. Generally, he/she has commissioned
the preparation of the pleading.

Portraits and photographs are also a kind of commissioned works; there is strong relationship between the performer and the person who wants the work to be performed.
This relationship might be first, the person who for example in the case of portrait interred in to contract to perform certain specified works for whosoever want the service,
in performing his/her duty the portraiture will take the pure image of the person who
commissioned the work to be performed. Second, some legal systems even suggest that,
the person must prepare the objects needed for performing the act. Meaning, the plete on

which the portrait is to be worked on; therefore, if the person can prepare the necessary
tools in addition to his/her image, the copyright ownership will be accorded for him/her.
Photograph has also the similar process and justification for copyright ownership. If for
example, you go to photo rooms and get taken your image (likeness) by paying for it.

Like in the case of portrait, the copyright ownership will be accorded to you without
much hesitation. So, the ownership of photograph belongs to the person whose
photograph is being taken. Under Ethiopian law this does not make any difference, in
relation to portrait and photograph the copyright ownership do not belong to the author
but it belongs to the person commissioned the work to be performed.

To differentiate the commissioned work and portrait and photograph works, some legal
systems uses or applies some tests. From among such tests the following are the
commonly used test the control test, the integration test or organization test and the
economic reality test. They apply these tests to determine whether a work is made in
relation to the hire principles.

Control test is all about controlling and supervising the work desired to be done. While
integration or organization test is the work being created part and parcel of organ ization,
is it just an independent work; which incidentally comes with in other activities of the
organization. Thirdly, economic reality test mainly discusses with the issues of wh o bears
the risks of the investment. It raises the question like, is it the person who has cre ated the
work who is going to profit or who is going to derive a benefit from whatever profi t that
might be generated from the work? What if, the case is loss? Who is going to take the
risk. Look at the provision of article 21 sub art (4) which says where the work is a work
created by the author employee or commissioned by a person in the course of his
employment relationship or contract of service, unless agreed other wise the original
owner of the right shall be the employer or the person who commissioned the wor k.

Audio visual works;

According to article 21 sub art (5) and (6) audio visual works includes, works other than cinematographic works; most of the time we equate audio visual works with cinematographic works but that is not appropriate. Audio visual work is a broader concept that includes other works other than cinematographic works. Any way, we treat the question of ownership of cinematographic works and audio visual works differently; because, the production of audio visual works involves complex creative process and it uses the modern technological products. the question of who actually owns initial owner of copyright in this kinds of works is separately treated. Most copyright systems establish ownership of audio visual works in favor of a person called a producer; the producer is normally a privately limited company or a group of company. Therefore, most copyright systems establish initial copyright ownership in favor of the producer.

We can mention the persons who may involve in the creation of audio visual works and cinematographic works; for example, the author of the screen play, director, camera/man, composer of the music and lyrics. “To over come the problems of fragmentation in respect of copyright ownership: the copyright systems usually establishes initial ownership of a works, in favor of the producer”. But here, you can ask the question of fact which is the ownership of the audio visual must be given to the director: because, the director of the audio visual works mostly facilitates the organizational setting and facilitate the mode of capital management. Hence, they are justified because of economic

interest that they have in audio visual working process. However, under copyright law,
any person who has contribution in the process of audio visual works will have equitable
remuneration for their creative contributions subject to the agreement they create with the
producer.

With regard to this point, the Ethiopian copyright law provides that, these persons
deserves some kinds of remuneration for their creative contributions.even, the producer
cannot reject to inter in to contract with another person if it is so required by the
contributors. The right to contract has been legally provided for under article 21 sub art
(5) therefore, their whole contribution has not been disregarded but the right to own the
produced works. But, it has to be noted that, in the presence of contract the ownership of
the copyright can be transferred to the director of the work. But, as a matter of principle,
the copyright owner will be given to the producer of the audio visual works.

Let us take one working example, there was one film or movie which is called
broken/flower, in this movie, the Ethiopian music composers Mulatu astatike has
contributed his music performance for the purpose of making the movie very attractive.
in this case do you think the producer of the broken/flower can reproduce and sell the
works of Mulatu astateke without his consent? The answer for the above question
obviously be no, the legal base for answering the above question is article 21 sub art (6)
because the producer of the work exercises ownership right in relation to the total audio
visual works not on the separate sects of the audio visual works. in this case, the producer

of the broken/flower cannot reproduce the contribution of Mulatu astatike and sell it
without the consent of Mulatu astatike. Hence, the producer exercises it's right only in so
far as those components remains part and parcel of the movie.

Transfer of copyright;

When we talk of transferring copyright, we shouldlimit our scope only to the aspect of
economic elements; because moral right cannot be subjected to transfer. By its nature,
moral rights are personal to the author: meaning, they always remains with the author, so
they cannot be transferred to third party. Therefore, whenever we talk about transfer of
copyright we're talking about the transfer of economic elements of copyrightable works.
Transfer is more related with 'abuses' components of proprietary right;

General modes of transferring copyright;

in the context of copyright, the contractual transfer has two different divisions; thus are
assignment and licensing. The difference between assignment and licensing; assignment
is the transfer of property right as such. This means, in copyright context, you transfer the
authority not just to carryout some acts but also the transferee can authorize or prohibit
others from carrying out those acts. Therefore, there is a transfer of the right of
authorization or prohibition. But, licensing does not have such meaning, under the field
of licensing, what is transferred is just the right to use. The licensee cannot authorize
third parties to carryout some acts or prohibit the carrying out of some acts. If the right is
assigned it means that, the assignee can exercise the right to authorize as well as
prohibition in respect of the assigned right or acts in short, the assignee would be

the new

owner of copyright. However, a licensee is just given only the authority to carryout acts.

So, the licensee could not be regarded as the owner of the copyright; rather the ownership

is retained by the copyright holder. This is the basic difference between assignment and

licensing.

Types of licensing;

Compulsory licensing;

As we have discussed in our preceding pages compulsory licensing requires the

intervention of an administrative organ, in our case for example the Ethiopian intellectual

property office (EIPO) meaning,the Ethiopian intellectual property office can intervene,

even against the clear opposition of the right holder and can grant the authority to carry

out some acts to third parties.

Legal licensing;

Legal licensing on the other hand is all about licensing the right belongs to oneself by the

operation of the law or the right holder himself/herself should transfer his/her right by

operation of the law. In fact, This is rarely applicable; but theoretically it is possible. In

other words, this scenario comes in to effect or being, Where the law it selfoblige the

copyright holders to give the carrying out of some acts to third parties.

Ordinary licensing;

Ordinary licensing refers to free contractual transaction: meaning, by the free will of the right

holders. This is the most common kind of the licensing. By the way, all of them give rise to at
least the payment of remuneration (royalty). Therefore, the right to get royalty could be regarded
as common features of thus three principles. Can we think of gratuitous licensing? In the market
place, we don't see licenses granted without some amount of payment. So, it would be difficult
to believe the copyright holder will transfer his/her right gratuitously;customarily speaking, what
is common to all forms of licensing is the fact of receiving some level of payment. But,
theoretically speaking, the copyright holders might transfer their right gratuitously (with out
payment),

Contractual licensing;

We can think of three kinds of contractual licensing: these are normal licensing, sole licensing
and exclusive licensing. Exclusive licensing means, the licensee would be the only person to
carry out the act or acts mentioned in the license for the duration of the license. The copyright
holder in this case, cannot authorize other persons to carry out those act PLUS he/she cannot
himself/herself carry out those acts. Therefore, in the case of exclusive license: only the licensee
can carry out the act or acts with the effect that third parties would be barred from carrying out
the acts mentioned in the license PLUS more importantly, the copyright holder himself/herself
would as well be barred from carrying out the acts mentioned in the licenses.

So, the licenser can neither carry out the act or acts himself/herself nor can authorize others to
carry out those acts. in this context, at least from the vantage point of duration it relates

to the
principle of assignment.in the case of assignment, as far as the assigned act is concerned the
assignee would be the new owner of the copyright. But, in the case of exclusive licensing the
licensee cannot authorize third parties to act or cannot transfer his/her licensed rights.

Sole licensing;

In the case of sole licensing, the authority to carry out some acts is given solely to one entity.
But, the holder (licenser) can still carry out the act or the acts. in short sole licensing means, the
licenser is not barred from carrying out the acts himself/herself. But, he/she cannot transfer it to
the third parties. While in the case of normal licensing, if the holder of copyright so requires
he/she can give the right of licensee to how number he/she thinks fit.

under normal licensing, the fact that he/she gave the right to act for one licensee doesn't
deprieve him/her from giving it to any person. He/she can give it to any other person if he/she so
requires. To put it in a precise term, the granting of license to one entity does not bar the granting
of a license or a similar act to other persons. Therefore, the copyright holder is with in his/her
right to provide multiple license in respect of virtually the same acts to multiple number of
licensees. Secondly, under normal licensing the copyright holder can carry out bby him/herself.

Licensing under Ethiopian law;

There is nothing in the law that refers to only to one kind of licensing; As a result, all modes of
licensingmay be possible under circumstances. The licenser is at liberty to use one or more of

these licensing mechanism. Under Ethiopian law article 23, article 24 and article 25 directly
relates with the issue of licensing. Here, it has to be remembered that, the contract of licensing
and assignment must always be concluded in writing. Therefore, not every thing is left to the
party to be determined; because, there are certain obligatory preconditions that the par ties must
adhere to for their assignment or license produce effect at law.

One of thus precondition is that it should be explicit; hence, the form of being written is not just
a prove requirement (ad probationem) rather it is a validity requirement (ad validiatetem)
therefore, for both licensing and assignment it is requirement to fulfill this criteria to work in
actual fact.

When we say the contract should be explicit we are in fact saying that, acts which would be
assigned or licensed must be refered to specific object or must be identified by name. we can't
presume about authorization of certain acts like licensing and assignment. In fact, unde r ordinary
laws of contract interpretation might allow you to infer certain missing or excluded terms;
however, here, there is no room for interpretation. Because, this is an area where much more
interest is involved. Therefore, the assignment or licensing refers to only those acts that are
specificly or explicitly mentioned in the document of assignment or licensing.

According to article 23 sub article 3 of copyright and neighboring right protection procl amation,
the content is limited to acts which have cited in the contract.This specific article clearl y states
that, any assignment or licensing of economic right shall not bbe deemed to include assignment
or license of any other right not explicitly refered therein. Again, this specific article

under its
sub article (2) has provided the precondition of written formalities.

Ways and means of exploitation of the licensed or the assigned acts;

How can the licensee or assignee can carry out the acts that is authorized to be carried out? As a
matter of principle, the ways and means should be those which are mentioned under the assignment or licensee agreement; Sub art (1) of article 23 tells us about this fact. In addition to
this, sub art (4) of article 23 states that, where an agreement for an assignment or license

ofspecific unique right under sub art (2) of this article fails to explicitly provides the ways and
means of use and exploitation the assignee or licensee shall be entitled to exploit by such ways
and means as are necessary for the purpose envisaged by the parties. Hence, here the rule is strict
because we have said that it must be explicit as far as the act of authorization is concerned; but,
in respect of the ways and means of exploitation a little leeway is provided by the law. As we
have tried to touch it upon above, the principle is the assignee or the licensee must be limited to
the ways and means which are specifically mentioned in the contract.

But, exceptionally, if the ways and means are not specified or provided in the contract, the
license or assignment of the contract will not be invalid rather the assignee or licensee would be
entitled to resort ways and means which are necessary under the circumstances. In this regard,
article 24 sub art (2) of this proclamation talks in addition to basic principle it also provides that
the issue of dichotomy. The principle of dichotomy is found in article 24 sub art (2) and article 3

sub art (7) of copyright protection proclamation. Article 3 sub art (7) says that, the provisions of
this proclamation concerning copyright or neighboring right shall not extend to the ownership of
material object which constitutes the work. So, in this context, the assignment or license of
copyright does not mean that the material object which contains the copyright subject matters
would be transferred.

Technically speaking, licensing or assigning of copyright subject matters or copyright material
does not vest the assignment or license of the physical object which encloses the copyrightable
object of property. Therefore, the object which enclose the copyrightable object must be returned
to the owner;

Duration;

The copyright systems often impose time limitation on assignment and licensing: in fact, we've
said that in the case of an assignment; the assignee become the new owner at least in respect of
the acts transferred to him. But, it is not unconditional. Meaning, the assignee would be the new
owner only for the duration that is fixed by contract or by law. Article 24 sub art (3) has provided
that, if the parties have explicitly provided the duration of the assignment or licensing in their
agreement; this pre set time limitation will get effect under the law. But, if they fail to do so, the

law will establish a term limit. The term limit set by the law is ten years for an assignment and
five years for licensing.

However, it has to be noted that, the parties are at liberty to fix their term limit devoid

of any
intervention by legislature. for example, the parties can fix their period of limitation of assignment for 25 years and licensing contract 30 years. What if, the parties exercising their
freedom of contract make the assignment or licensing uninterrupted up to the ending period of
copyright protection as a whole? In principle, the copyright holder can assign or license his/her
right to longer period as possible, but for justifiable reasons he/she cannot assign or license the
refered right totally. This is so because of protecting the interests of the heirs and legatees of the
person holding copyright. Sometimes, improvident copyright holders who deprive their
successors the benefit of economy from the copyrightable works by making imprudent transfer
of their right during their life time. To begin with, the period run after the death of the real
copyright holder is assumed to be the time bonus provided for benefiting the heirs and legatees
of the deceased not to protect the interests of the deceased after his/her death. So, any contract
that will be concluded having in mind advantageous transaction after the death of the contractant
is mostly held of no effect.

In this regard, under Ethiopian law there is no clear provision that deal with such kinds of issues;
however, the accepted rule is the maximum time for which licensing or an assignment can be
granted is for the life time of the copyright holders. Hence, regardless of what has been stipulated
in the contract, if the real copyright holder died the right subsisting in the copyright will devolve
to the heirs of the deceased. Under Ethiopian copyright law, as we have already said nothing has
been said with regard to the issue under discussion. The law clearly ensures the existence of
freedom of contract; under article 24 sub art (3) of copyright and neighboring right

protection
proclamation.

Non use of rights;

Still we are talking about the conduct of licensees or assignees, accordingly their conduct might
be not carrying those assigned/licensed acts. Technically speaking, the total stoppage o n the part
of licensee or assignee or inadequate actions by licensee or assignee might negatively affect the
economic interests of the assigner or licenser.Here, one might ask, how and in what way it

affects the economic interests of the assigner or licenser? Obviously, the total disfunctio ning of
the assignee or licensee with respect to the licensed or assigned act or acts might cause problems
of undermining interests of the assigner or licenser. Because, as it has been tried to be pointed
outabove, the right subsisting in certain copyrightable object of intellectual property will be
assigned or licensed in accordance with, payments of money (for considerations).Even if, the
principle of assignment/licensing requires contract for consideration, however the mode of
contract for consideration that the parties agreed through: might differ from party to party.
Meaning, some identifiable parties might agree in such a way that the payment will be due after
entry to market or for example,the assigner/licenser might say sixty percent out of the market
dealing will belong to me. So, in this case, if the licensee or assignee totally failed to ex ercise the
right entitled to him/her, the assigner or licenser might be affected. Because, in this case the
possibilities of receiving payment definitely conditioned on the carrying out of the act li

censed or
assigned.

Second, the total inadequacy on the sides of exclusive licensee is going to seriously hamper the
economic exploitation of the original copyright holders, in respect of the acts already assigned/licensed. To simplify the case, it would be much important to take example: if for
example, the assigner /licenser transfers his/her reproduction right through exclusive licensingandif the licensee fails to take necessary actions (reproducing) the right of licenser to
have distributionright will be endangered. So, the non use of the transferred acts might significantly jeopardize the prevailing interests of the original copyright holders.Now, our next
task isproviding possible options for the assigner/licenser in such circumstances. Accordingly,
revocation of the contracts of licensing or assignment would be the primary and basic possible
option that can serve for the original copyright holders.

However, here it has to be clear that in exercising the right of revocation, what is only p rovided
is an assignment and exclusive licensing. Because, other kinds of licensing are not subje ct to the
exercise of the authority of revocation. Why not? This is because of the nature of the two principles (assignment and exclusive licensing), as it is well knownin normal licensing, the
original copyright holder can license his/her right to third parties other than one who fa ils to take
necessary actions even at the same time: so, under normal licensing, there is a little pos sibilities
of affecting the right of licenser. whenever, the inadequate action by assignee or exclusive

licensee gives rise to economic disadvantage towards the assigner or exclusive licenser, then the
assigner or the exclusive licenser can revoke the license or an assignment that give rise

to
contract.

This inadequacy could be related to partial or parts of the assigned or licensed act or ac
ts. If the
case is so, the revocation will also be reduced to partial revocation. revocation could be
partial or
complete revocation as the case may be. But, the contrary reading of article 25 sub art (
2) reveals
that, the right to revoke certain assignment or license will not come in to effect, if the p
roblem of
inadequacy is because of the original copyright holder (assigner and licenser in our cas
e). Hence,
if the circumstance of total or partial inadequacy is created by licenser or an assigner hi
m self/her
self, no right of revocation is going to be recognized. In addition to this, if the problem
can be
easily remedied by either assigner/licenser or licensee/assigneeno need of resorting to
revocation.In short, the right of revocation is regarded as the last resort.

Another condition is when to resort to revocation, the principle of revocation requires r
easonable
time to be effective; meaning, one cannot raise the right of revocation without waiting
for
reasonable time upon which it could be proved that the licensee or assignee couldn't ex
ercise the
right entitled to him/her.Accordingly, the law has provided three years from the date of
assignment or licensingto balance the above conflicting interests of the licenser to raise
the right
of revocation and the licensee or assignee to be given reasonable time to perform his/
her specific
act or acts. What if, the work which is subject to license or assignment is delivered later
than the
date of assignment or licensing? It is possible that, the work wwill be delivered after
entry to
contract of assignment or licensing or in other words, it is possible for works to be deliv
ered six
or seven months later from the date of the conclusion of the actual contract.

As we said above, the three years period will start to be counted from the date of the conclusion of the contract of assignment or licensing. Generally speaking, in the case of works delivered later than the date of the conclusion of agreement of an assignment or licensing the three year period is going to be counted as of the date of delivery not as of the date of licensing or an assignment. So, these three years period will be regarded as grace period;

Waiver of the right of revocation;

Anticipatory submission of right is prohibited under article 25 of copyright protection proclamation no. 410. Anticipatory submission of right means, deciding not to use revocationright from the very beginning or in other words to decide not to use the right of revocation before practically reaching the provided three years. But, after practically reaching the said three years one can waive his/her right of revocation; what the law basically prohibited is to conclude a contract not to exercise the right of revocation without practically reaching the pre set three years.

Abandonment of economic exploitation;

Abandonment of economic exploitation is possible, again in abandoning economic exploitation one who abandon his/her right may use notifications like{no part of this material may be used for commercial purposes}. in this case, such kinds of work will be freely available for everybody to usehowever, subject to the conditions that copyright holders might impose certain precautionary steps.

The protection of neighboring right in relation to copyrightable objects of intellectual pr

operty;

In some respects neighboring rights are similar withcopyright protection. But, there are differences between protection for copyright and neighboring right; the difference is usually
visible by looking at the protection is a little beat less than that of copyright. In fact, neighboring
rights are related to copyright but they do not enjoy full-fledged protection that is enjoyed
bycopyright. The protection exists parallel for copyright and for your information these rights are
often derivative in nature. Derivative not in the sense that we discussed earlier, here derivative is
to mean that their existence depends on the existence of copyrightable works.

In the absence of copyrightable works, there will not be due protection for neighboring rights.
from this point of view, neighboring rights are derivative as they are dependent upon the
preexisting copyrightable works.Neighboring rights regime traditionally involves three kinds of
holders: these are performers, producers of sound recordings and broadcasters. The notable
absentee from these categories is the publisher of the work; by the way, these entities do not
make a fullfledged creative contribution in the fields of literature and arts. For example, if we
take performers or musician, assume that the lyrics of the music is written by somebody else and

also assume that the melody is authored by another person and again, assume that, the music is
composed by another person. Most of the time, what the musician do is contributing his/her
natural talent which is voice. Therefore, we can’t compare the creative contribution made by the
author of the lyrics, melody and musical composition on one hand and the person who

contributes his/her natural talent (voice).

a performers who have just contributed their voice and an author who have produced all thus
works are not enjoy similar treatment under the law. Because, one qualifies for fullfledged
copyright protection and the other qualifies for a reduced neighboring right regime. Hence, the
law doesn't certainly treat them in the same way.

The producers of the sound recordings are also known by doing the fixation of works of arts;
because of their enough resources and facilities. in this regard, it can be said that: the
contribution of sound recorders is resource and facility, Therefore, their contribution m ust not be
treated equally with the underlined full-fledged and creative works.

In the case of broadcasters, they are as well facilitators' and resource contributers by which they
disseminate works of the authors to the public. Apart from this, the role of broadcaster is not
ready to deserve copyright protection. As we said above, the role of performers is to co ntribute
his/her voice to bring the work to an end and the role of sound recorder is to fix the wor k (voice)
is unique tangible medium while the role of broadcasters is to disseminate the produced work to
the public by contributing their resources. But, their contribution deserves some kinds of
protection because they are important bridges between the authors and the consumers (the
public).

Generally speaking, these entities or performers, producers of phonographs and broadcasters
serve as key channels of communications so that, works of authorship reaches the ears of the
listeners and eyes of viewers. For example, Television stations definitely have contribution by

dessiminating works, so that the works performed reach the eyes of viewers. In short, neighboring right holders enjoy some lebel of protection because of their being bridges between
the rightful authors and the people who are in need of the work performed. But, it has to be noted
that, the protection accorded to the neighboring right holders is not one that will be enjoyed by

the authors themselves rather it is too different from it and they will be accorded in accordance
with their contributions.

History of neighboring rights;

The Rom convention which was held seventy years after the Bern convention was basically
about the protection of neighboring right. The Bern convention was protecting the fullfledged
copyrightable works. The Rom convention came in to effect in 1991.The logic behind the delay
was the fact that, performers, recorders of phonograph and broadcasters were capable of
enforcing their right. During this period, their contribution could be protected without having in
place a legal framework. But meanwhile after, the technological development comes in to
picture; and this technological development irreversibly changed the prevailing state of affairs.
Because, before the coming in to effect of technological development, the three entities were
able to enforce their right in a way they think possible. For example, the performers can perform
his/her role either through concluding contract or other existed means of agreement; the same is
also true for both sound recorders and broadcasters.

Nonetheless, after the advancement of technology, everything couldn’t proceedin its pri

or path;
because, instruments that are necessary for communicating and broadcasting the work to the
public begins to be easily accessible. Meaning, before the advents of technological development,
for the work to be performed it was so mandatory that the performers needs to be present
physically and perform the work himself/herself. But, this condition totally changed because of
technological development. Nowadays, once the work performed, it would be easy for
everybody to record the ongoing performance and consume it at every time he/she wants or
transfer it to third parties to do so. As a result, this technological accessibility enables the
consumers, to consume certain performed works without calling the performer of the work to
perform it again. Consequently, this technological accessibility necessitated the protection of the
contributions of performers; because, the opportunity for the performers to reappear on the stage
and getting the corresponding benefit has been eliminated because of prevailing technological
development.

Accordingly, the possible solution set for this problem was to put a defined legal framework in
place. Hence,the above mentioned historical factgive rise to the coming in to effect of

neighboring right protection. The putting in to effect of legal framework enables the performers,
sound recorders and broadcasters not to be affected by illegitimate end users:

For instance, the recitation of ‘FIKIR ISKE MEKABIR’ was meticulously presented by
WEGAYYO NIGATU who used to be one among Ethiopian famous journalist. thus in our case:
we can consider the work of WEGAYYO NIGATU as performerof ‘FIKIR ISKE
MEKABIR’because he served as the key channel (bridges) between the author of FIKIR

ISKE
MEKABIR (ADDIS ALEMAYEHU) and listeners' of 'FIKIR ISKE MEKABIR' hence, WEGAYYO NIGATU should be accorded with some lebel of protection because of his contribution in publicizing the work of 'FIKIR ISKE MEKABIR' so, in considering WEGAYYO NIGATU as a performer of 'FIKIR ISKE MEKABIR' it can be said that he has definitely contributed to bringing ADDIS ALEMAYEHU'S work to the larger sections of Ethiopian society. This is why, ADDIS ALEMAYEHU sent a memo for WEGAYYO NIGATU by saying " you breathed alife to my work"

in light of this, WEGAYYO NIGATU has contributed his role of publicizing the work of ADDIS ALEMAYEHU; hence, the work of WEGAYYO NIGATU needs to be accorded with some lebel of protection. Because of the act of piracy that the technology paves the way to. So,
such contributors should be protected from illegitimate acts of end users (acts of piracy).

We can read one note from certain books and can have clear understanding about neighboring
rights; "the proprietary's of such rights are auxiliaries in the intellectual creation proce ss, since
they extend their assistance to the authors in the dissemination of the authors work to t he public.
They are important intermediaries that make author's works accessible to the consumin g public
through acoustic or visual reception mechanism; so that, the work reaches the ears of listeners
and the eyes of viewers".

Performance;

Performance has different components that distinguish it from other forms of neighbori ng right;
the first component of performance is the physical outward show of the performer himself/herself. The physical presence of the performer could be tested through watching the
physical movements of the performer directly not by movies or other technological

products.Seeing the person playing drama through direct physical participation on stage is good
example of the first component of the act of performance. The second component of performance is performing the act by or through loud speaker; this act might not necessarily
involve the direct physical involvement of the original performer himself/herself. For example,
in shoppingmoll, in hotels, in airplanes and public transportation vehicles it could be true that
performance of certain person might be addressed to the people through the mechanism of using
loud speakers. So, the original performer can prevent other people not to publicize his/her work
by using loud speaker without getting proper consent from him/her.

The prohibition of performance through mechanical device by third performer means, according
to article 7 of copyright and neighboring right protection: A. no one can engage in physical
performance of the work which has been already performed by legitmate performer; But, the
legitmate performer can for example in the case of film script perform the act by himself/herself
and B. the author of the film script can also authorize or give permition for third party to perform
the act in question. Performers performer basically concerned with individual performance or
individual presentation of the work. Therefore, it is a ephemeral. Meaning, it vanishes in the
absence of recording devices; so, by its nature individual performance is ephemeral. As we have
said before, the act of performance was ephemeral a little before the coming in to effect of
neighboring right;

This being the case,however, here it has to be notedthat, the performance that we have seen
under article 7 and the act of performance in relation to neighboring righthas little difference that

make some sort of difference between them. The performance that we know under article 7is all
about the prohibition of performance of certain act by third party if it has already been performed
legitimately and it also prohibit the performance of the said act through mechanical device. But,
in the case of neighboring right performers performance refers to the protection of certain
performed act which has the personal expression of the performer. In the case of article 7, their
might not be the performance of the author but the performed act cannot be performed by third
parties as a whole; again, the performed work cannot be addressed for consumer through
mechanical device.

Yet, in the case of performers performance in relation to neighboring right, what is required is
the image or sound of the performers should be presented for consumers to be consumed. Hence,
under neighboring right what is required is a performance that contain the voice of the performer
or the performance that contains the image of that individual performer. Therefore, if third party
other than the original performer performed the work the principle of performer performance
does not apply; to put it in a pricise order, if the same work is performed by third party, the right
of performer performance will not be given or enjoyed by third party who secondly perform the
act which was already performed. So, if another person other than the first performer performed
the work, the right he/she infringes is not the performers right rather he/she infringes the right of
the author’s.

As we've already discussed, the author of the copyrightable work has the right to performance or individually presenting the work to the public. So, other persons are totally prohibited from presenting the work to the public or the work cannot be presented to the public through mechanical device. But, the right of performers performance which qualifies for neighboring right regime is limited to performances that contains either acoustic or the visual images of the performer. If third party performs that work what might be violated is the right to performance of the author of the underlined copyright and not the right of performers performance.

Broadcasting;

Broadcasters contributes their resources and facilitate the way for dissemination of the work to the public at large. Let us take writings from another book which have direct relevance for broadcasters;

"although, broadcasting implies by definition the diffusion of a message to an unseen and uncounted public, and although consequently, it may be argued that by diffusing the message the broadcasting agency gives up all control over its further destiny: there are forms of reuse of broadcasting programs which imply an unjustified exploitation of the work and expenditure invested by the original broadcasting agency".

Therefore, if you have the necessary device you can disseminate the work. As far as the unseen and uncounted public is concerned, here the term public is understood as people who do have

radio or TV with themselves; in such case, the broadcasting agency cannot limit the right of

receiving information. The right to do as such by broadcasting agency will be no more effective
after first broadcasting. But, outside the use of TV and radio, there are also another forms of
broadcasting certain information to the public; for example, if somewhere in between the cable
television broadcasts the work for unthinked or unplanned people. This is unjustified form of
reuse because the first broadcaster did not forsight this event. Therefore, this is unjustified forms
of exploitation of the work and expenditure invested by the original broadcasting organization.

For instance, the TV signal interlocked from certain country to broadcast certain program for
certain specified group or people and assume that, the TV station found in another country
without getting proper permission broadcast the program intended for certain specified group or
people in first TV signal, this would be regarded as unjustified exploitation of the work;

In this regard, the neighboring right given for broadcaster is to protect the broadcaster from such
unjustified reuse or rebroadcasting of the work by certain group. Record is also regarded as
unjustified use of broadcasting, if for example Mr. Dejene records the program which certain
broadcasting agency broadcasts for the purpose of using it other days, the act of Mr. Dejene is
considered to be unjustified exploitation of the broadcasting. Because, the consumer of the
broadcasting must consume the work only at the time of broadcasting the issue directly.

The Ethiopian law in relation to this point;

The regime of civil code didn’t recognize neighboring right under its domain; the Rom
convention came in to effect we said more than seventy years after the Bern convention. The
Ethiopian regime of copyright protection came in to existence in 1960’s or more than

seventy
years after the Bern convention; while, the neighboring right protection came in to existence
more than 40 years after the Rom convention. With regard to the international develop ments of
copyright, we said that, the first source of copyright is national legislature and then the issue of
trans-boundary protection of copyrightable products comes in to picture. But, this is not a case
with neighboring right protection; neighboring rights are to your surprise international
innovation. It did not exist in mini of each single country before the Rom convention. So , we can
say neighboring right is a top down kind of development; because, it first concretized at

international level and gradually introduced to each single country unlike copyright which first
originate in domestic system and then developed at international level.

Anyway, it was at 2004 that the Ethiopian legislature recognized neighboring right under its
legal jurisdiction; there are three different activities that qualifies protection for neighboring
rights, neighboring rights are not work by themselves as per article 2 sub art (30) of copyright
and neighboring right protection proclamation no. 410.as a result we do not call them as works
rather we use the term like production, contributions and activities. the three activities that
received the blessing of copyright law are performance, sound recordings and broadcasts. The
corresponding owners of neighboring right subsisting in this activities are performance defined
under article 2 sub article (19) producers of sound recordings defined under article 2 su b art (21)
and broadcasting organization defined under article 2 sub art (4) we've already said that, the

rights of these entities are markedly different from those available to authors of copyrig
ht.

But, there are certain rules which are applicable to both copyrightable and activities th
at qualify
for the protection of neighboring protection. For example, the rules on transfer of rights.
Therefore, the concept like assignment, licensing can work for neighboring right. In
addition to
this, the rules of infringements are also applicable to the infringement of neighboring ri
ght. these
are some formalities that the neighboring right commonly shares similar points.

Points of attachment;

First, performance right subsists under Ethiopian law only as regards performers who
are A.
nationals of Ethiopia or B. performers who are non nationals but having performance 1.
Taking
place in the territory of Ethiopia or 2. Having works incorporated in a phonogram
(sound
recording) protected under the law.

This needs commentary for its clarity: in recording the sound the producer of phonogra
m might
also record the voice of performers performance so accordingly, if the voice taken from
the
performers performance entered in to the legally recognized phonogram under
Ethiopian law it
means that, the performance will also enjoy protection under Ethiopian law in addition
to the
sound recording (phonogram) this is just because, it has incorporated in to the part of p
honogram
which is protected under Ethiopian law.

3. Having work incorporated in broadcasting or works not fixed in a phonogram but incl
uded in
broadcasts that qualify for protection under the law. for example, if broadcasting agency
in

question has working office from Ethiopia or if they have the broadcasting facility in Ethiopia.
Based on article 3 sub art (5) broadcasting might enjoy protection under Ethiopian legal jurisdiction, if the broadcasting agency do have place of headquarter in Ethiopia or the second
option, if the broadcaster has the transmitter situated in Ethiopia. If these all requirement have
been fulfilled the broadcasting made by broadcasting agency will qualify according to E thiopian
law. As I have tried to mention above, if broadcasting qualifies under Ethiopian law, the performance that might be involved with broadcasting will also qualifies for protection and
hence enjoy protection under Ethiopian law.

Rights of phonogram producers;

Rights relating to phonograms subsist under Ethiopian law onlyin respect of those sound recordings (article 3 sub art (4) A. having Ethiopian nationals as the producers or B. sound
recordings first fixed in Ethiopia. These elements are alternative to each other. First fixe d means
the direct replication of publication for copyrightable products. And C. first published in Ethiopia; when we say publication it has direct relationship with material copies. But, sound
recordings are concerned with material production. You cannot speak of publication of performance as such no, but you can perfectly speak of publication of sound recordings because
sound recordings involve material production of works. So, if the process of fixation has first
take place in Ethiopia no need of publication and vice versa.

Rights in respect of broadcasts;

Rights in respect of broadcasts subsists under Ethiopian law as regards broadcasts (arti cle 3 sub
art (5) A. broadcasts of broadcasting organization headquarter in Ethiopia or B. as regards to
broadcasts transmitted from transmitters located in Ethiopia. These are again alternativ es, if the

broadcasting agency has headquarters in Ethiopia then no other requirements are need ed. It will
definitely receive protection under Ethiopian law from its broadcasts. The second option is the
principle which says transmitted from transmitters located in Ethiopia, under this princi ple even
if, the headquarter is not in Ethiopia the broadcasting may get protection under Ethiopian law;
for example, Algeciras has its headquarter in doha of quatar and it has transmition location in

London and U.S.A. so is CNN because it has transmition location inSingapore, London, Abudiabi and of course it has in U.S. in this case, for example if we follow Ethiopian legal
techniques; the broadcasts of CNN will be protected under the domain of Singapore, great
Britain and the united arab emirates (U.A.E.) because, CNN has transmitters located in those
countries.

The general understanding of the above three connecting factors can give us two distinct
connecting factors these two general understanding from the above given principles are the
principle of nationality and territoriality. Meaning, for example in our second example which
include headquarter and transmitted from transmition location will be added to the principle of
territoriality; while, in respect of performers the term nationals is related to the principle of
nationality. But, the term which says incorporated and sound recording protected under the law
can be either territoriality or nationality based on circumstance. Again, the term first fixed in
Ethiopia and published in Ethiopia could be reduced in to the principle of territoriality.
Therefore, points of attachment between a production that qualifies neighboring right r

egime and
a countries legal system is based on either nationality or territoriality principle.

Finally, sub article (6) states that, any other works which deserves protection under Ethiopian
law by virtue of international agreement or international treaties which Ethiopia ratifies. Fortunately or unfortunately, Ethiopia is not party to Rom convention; but if Ethiopia were party
to Rom convention it would have been mandatory for Ethiopia to protect other nationals work as
if it is its nationals performance. But, for time being Ethiopia is only a party to WIPO ESTABLISHMENT CONVENTION; so, we can consider article 3 sub article (6) as anticipatory
or forward looking article. However, this article is not just applicable only in respect of neighboring right but also in respect of copyrightable works.

Economic right and moral right;

moral right;

Moral rights are recognized for a performer because ofindividual presentation of the performed
work. this individual presentation or representation of the works deserves protection under the
law by a moral right regime. Accordingly, performers have the right againstdeprecating treatment

of their performance; please look at article 26 sub art (4). But, curiously moral rights are not
available for producers of phonogram (sound recorders) as well as for broadcasters. Therefore,
from the category of neighboring right protection only performers are entitled to enjoy the
protection of moral right. The logic behind is, as we have said in the case of performers, there is
individual presentation and representation of the work. Meaning, there is the expression of the
personality of the performers so this personality deserves moral right protection.

But, If we look at art 27 in the case of phonogram producers,much attention is given fo r material
fixation of the work rather than individuality of the work; so, there is nothing individual about it.
Hence, it is not logically enough to ascribe moral right to phonograms. The same is true for
broadcasters, because again in the case of broadcasting much attention is given to agency
(broadcasting agency) so, it has nothing to do with the personality of the broadcasters of the
work performed.

Economic right;

Economic rights are discussed under article 26 sub art (1) of the copyright and neighbo ring right
protection proclamation. This specific article deals with performers economic right: it doesn't
matter if the performance is undertaken by single person or by more than two persons. For
example, dances performed by single personunquestionably receives neighboring prote ction for
the performers, but similarly there are a lot of dances even with in a single works. So, a ccording
to this proclamation, all of these dances receives neighboring right protection under the law.
Therefore, the enjoyment of economic right would be in group; in musical work also, the ir might
be the leader of the music (one who song) and another group of people who are supposed to
follow the leader of the music: in such instances, the enjoyment of economic right will be in
accordance of their contribution. So, whenever a performance is undertaken by several
personsplease remember that all those persons are entitled to receive protection which
corresponds to their contribution;

But, as far as a legall right is concerned all of them will receive protection. With regard to

performers we said that, it is limited to restricted individual who performs certain work s; if the
work is performed by somebody else for example, this right will not be recognized for him/her.What about the performers of circus acts or performers taking place in sporting acts or

athletes and football; Do they receive protection for their performance? No, because su ch kinds
of activities are not regarded as an artistic or literary works’

The rights to broadcasting;

The broadcaster can allow or prohibit the broadcasting of certain works through broadcasting
agency or other communication mechanism if the work consists of his/her image or sou nd and is
at performance directly: but, this is not without exception, if for example, the performer of first
broadcasting by his/her consent authorized another person to record his/her performan ce, he/she
will not have a right to authorize or not to authorize in the next transmition of the work already
recorded with the performer’s consent. So, in our case,the performer cannot prohibit the
performance which is not direct and was recorded with his/her consent. But,if the perfo rmance is
direct transmission, the performer can prohibit the second performer not to do so.

The second exception isthe broadcasting made from the initial broadcasting agency; we have two
broadcasting organizations, these two broadcasting organizations are initial and second broadcasting organization. In the first or initial broadcasting agency, if for example the performer of certain work consented to the sound recordingsof his/her work to be incor porated
and consequently, the sound recorder authorize certain radio station to broadcast the work of
performer who consented to get recorded his performance, in this case, the performer

cannot
prohibit such acts. Because, the broadcasting is made from a fixation authorized by the performer
himself/herself.

In the case of the second broadcasting organization, for example let assume that the performer
authorize Ethiopian TV station to broadcast his/her work and if the Ethiopian TV station
authorize OROMIA tv station to broadcast the same work: again, the performer cannot prohibit
OROMIA TV STATION not to do so. Because, OROMIA TV STATION has received
authorization from the broadcasting agency that has initially broadcasted it. But, basically in the
absence of this circumstances the performer has the right to authorize or prohibit broadcasting of
other communications to the public of the performance which contains his/her image/voice.

B. the fixation of unfixed performance;

Authorization is needed from the side of performer for fixation of live performance; but as an
exception we can have ephemeral fixation by broadcasting organization that cannot be
prohibited: but this will be the case, if the first fixation is authorized by the performer
permanently. Assume for example, the performer has authorized the broadcasting of his/her
performance: then if he/she has made such authorization he/she cannot prohibit ephemeral
fixation by later broadcasting organization. When we say ephemeral fixation we are referring to
the instruments that are helpful for facilitating the process of broadcasting the broadcast to the
public or the devices needed for broadcasting process. But, reproduction of that fixation can only
be made by authorization; meaning, for instance, if certain TV station recorded the performance
of specified person that TV station need authorization from the performer to reproduce

the film
in which the performer’s performance is embodied. Because, reproduction is a basic right in
relation to copyrightable products; so, if there is a fixation which contains the performance of
artist the reproduction right of such right must be obtained from the performer himself/herself.

Distribution of the original or the copies of the fixation through sale or other means of transfer of
ownership is exclusively belongs to the performer himself/herself. Rental or public lending of a
fixation of his/her performance or copies thereof irrespective of the ownership of the copy rented
is also the exclusive right of the performer. Don’t you think there will be the possibility
ofconflict of interest between the interest of neighboring right performer and the interest of
underlying copyright holder? If so how can we reconcile it? The conflict of interest is inevitable
in such case, now the question is how can we reconcile this overriding interests. If we take
musical works for example, musical works are copyrightable works according to article 2 sub
art(30) so the author enjoys full copyright ownership and can carryout or authorize others to
carryout acts mentioned under article 7 sub art (1) that includes the right of reproduction,
distribution, broadcasting, performance and etc.

assume performer A. came and perform this musical work and because of his/her performance
let say she/he get recorded; in fact, this fact bring overlapping between the right of underlying
copyright holder and the neighboring right holders. In resolving such problems article 6 sub art
(3) would be far more important, accordingly the neighboring right holder to be beneficiary from
the fruits of article 26 of the copyright protection he/she must first get authorization from the

underlying copyright holder. However, most of the time this conflict of interest will be r
esolved

through the mechanism of contract between the performer and the underlying copyrigh
t holders.
So, in so far as the author of the work do not exceed the copy limit set in the contract th
ere will
no be conflict of interest. But, if the author of the work exceeds the said copy limit this
would
amount to infringement of the rights of the performers; because, we said that, the
performer is
entitled to personal interpretation of his/her own personal elucidation.

Article 26 sub art (5) talks about the period of protection. While, article 26 sub art (2) i
s about if
the performers authorized incorporation of his/her performance in audio visual work;
the
performer cannot claim economic right because of in an audio visual works the owner w
ill be the
producer of the work but the performer can claim for moral right. So, a performance
which is
authorized to be incorporated in to cinematographic works is not going to give rise to e
conomic
right under the law for performers.

The rights of producers of phonograms;

The Ethiopian copyright law uses the terminology of the rights of the producers of sound
recordings, the rights of producers of phonogram involves the material exploitation of a
production; as we have discussed in our previous sessions, moral rights are not
recognized for
producers of phonograms. The protection is accorded to recordings or the material prod
uction of
an artistic or literary works. So, there is no questions of personality being expressed or
in printed
on the work: therefore, the production of phonogram just requires technological
facilities and

resources this is why we don’t see moral right for this intity;

Fixation is considered as the definitional part of the phonogram. In relation to performers we
have said that, a performance is naturally ephemeral, so by its nature it does not requir e fixation.
Fixation is even a right under article 26. Here fixation is a part of the definition of phonogram;
so, fixation is nomore recognized as a right under article 27.

The word phonogram is defined as exclusively aural fixations of works while sound is defined
as the material fixations of sounds. Most of the time, the sound that constitutes a phono gram is
musical work. Phonograms are not audio visual works they are exclusively aural or it does not
involve picture rather it only containssounds. If some form of pictures are involved in th e work it
would be regarded as audio visual works. Hence, in the majority of cases, this aural fixa tions are

musical works; but, it is not necessarily limited to musical works and even it is not nece ssary that
the sound or the fixation has any meaning at all. It doesn’t need to have any meaning, what is
required is the underlying works (literary and artistic works).

Specific rights recognized for producers of phonogram;

We can see the following specific right for producers of phonogram under article 27 of c opyright
and neighboring right protection;

A. reproduction of sound recordings in any manner of forms; reproduction is a material exploitation of works: so, it is only logical that this right is recognized the form of repro duction.

B. importation of copies of sound recordings; this specific right of producers of phonogr amhas

been dealt with in our prior discussion, so, it requires no comment.

C. distribution to the public the original or copies of sound recordings that have not already been subject to distributionauthorized by the producer; here, distribution may involve the mechanism of sale or other forms of transfer of ownership it could be donation, it could be transferred through the application of the rules of succession and it could be even through bartering. The copies that consists sound recordings can be exchanged for another things with almost equal value. This specific article says on its last lines, that have not already been subject to a distribution authorized by the producer: this terminology is employed by legislature to denote that, after first distribution the right of the copyright holder in relation to those copies would exhaust. Therefore, what is recognized under sub art 1 of article 27 is first distribution of the original or copies of sound recording through sale or other means of transfer. Accordingly, redistribution is a free right available to owners of those copies;

D. importation; we are dealing here with material exploitation of the work: so, importation is directly related with the material exploitation of a work. Hence, the producer will have exclusive right to import the original or copies of his/her sound recordings; the principles of exhaustion that applies to this specific case is national exhaustion. By now it should be clear that, Ethiopia has adapted national exhaustion, this means: the producers right of importation would be exhausted if and only if, when the copy that are subject to importation have first been marketed in Ethiopia. So, in this case importation right exhausted If those original or copies have entered

in foreign market in first place, the right to importation of those copies to Ethiopian market
would exclusively fall with in the right of the producer.

E. Rental or lending; rental or lending of the original or copies of the work regardless of the ownership theretois exclusively given to the producer; the producers of sound recordings exercises exclusive rights of renting or lending regardless of the ownership of the copy concerned. What does the phrase regardless of the ownership of the copy concerned refers to? We said that, the right to distribution exhausts after first distribution but rental and lending do not exhaust with the first distribution of the copies. Even if, the ownership of the copy under discussion is transferred to third party, rental right does not exhaust; we have seen the reason behind so, no need of raising at this time. Therefore, rental and lending right does not exhaust with transfer of ownership. but, with respect to sale or redistribution, the right exhausts upon the first transaction of the copies concerned.

F. making available the copies of the sound recordings by wire or wireless means in such a way that the members of the public will have access to it from a place or time individually chosen. Here, broadcasting and public performance has not been recognized under this specific sub articles. What is recognized is the narrower means of communications; if a sound recordings is to be made available to the public so that, members of the public could have access to the sound recordings at the time and at the place chosen by them, then that will be recognized:however, broadcasting and public performance are only secondary

uses of
phonograms; so, it is natural that the law has focused on the material means. Which go
withthe very nature of this production. So, such works are in fact categorized under material
exploitation of the work, while broadcasting and public performanceare categorized under
non material forms of exploiting the work. Hence, in our case, it doesn't go with the very
nature of the work, even if it happens that it goes, it is considered to be the secondar y uses.
Then, if it is proved to be secondary: the right to be enjoyed thereof is what has been leasted
under article 13 of this proclamation. Those leasted rights are mostly, single equitable
remuneration (royalty) so, no authorization is needed.hence, the producers of the sound
recordings cannot authorizeor cannotprohibit thebroadcasting organization the use of the
phonogram for broadcasting purposes or the public performance of that copies. But,

he/shecan claim single equitable remuneration of the use of the copy by broadcasting or by
performers.

In the proceeding of single equitable remuneration, the payment is fixed only once but it
definitely takes in to account the possibilities of repeat ion of the broadcasting. The s ame will
be true in the cases of public performance. So, it just gives rise to the claim of single
equitable remuneration, the element of authorization and prohibitingis out of picture under
secondary uses. What if, the sound recordings that is to be used by broadcasting age ncy such
as radio station also contains a performers performance? How can we determine the possible

overlapping of the rights of these two entities. The right of the performer is often limited or it
is exercised in relation to copies which have not been authorized by the underlying performer. Meaning, if the copies are transferred to third party without authorization he/she
can prohibit the overall continuation of transferring. Again, the copies made without proper
consents of performer and phonogram or sound recorderswill be claimed by both performers
and sound recorders; either to get remuneration or or to prohibit the ongoing of transferring.

To put this in a precise order, the copies of the phonogram could be reproduced without
authorization from producer of the copies and that copy might unfortunately contains the
performance of performers, in this case, the rights of both performer and producer of phonogram have been infringed. Hence, if a sound recordings containing the performers
performance gives rise to secondary uses, the producer of the phonogram and the performer
will share that equitable remuneration; in the absence of the agreement to the contrary, the
share will be fifty fifty percent; This is what article 30 provides for. Here, however it has to
be noted that, article 30 has been deleted from the proclamation by the amendment law. So,
the remuneration that is to be received by producers of phonograms and performers in
relation to the use of a phonogram by broadcasting agencies and public performers is going
to be administered by a copyright collective societies. Therefore, article 30 has been deleted
so that copyright collective societieswill take part and perform the needed task competently.

The mode of counting term limit for economic right of phonogram producers;

The counting period commences from the date of publication or it starts following th

e year of
publication until the ends of fifty’syear or when there is no publication until the end of fifty’s

year following the year of fixation. the term limit for economic right will be counted as of
publication or fixation; here, you should be aware of the fact that, before coming to fixation,
we have to make sure that, publication is not present. Meaning, fixation comes in to picture
in the absence of publication or in the presence of publication no need of consulting fixation.

Article 28 and article 29 are kinds of procedural requirements imposed on producers of
phonogram and producers of audio visual works; in fact, the coming in to picture of audio
visual work is not appropriate because the part that we are dealing with is all about
neighboring right. But, as part of procedural requirements it is tolerable. Article 28 states
that, a producer of the sound recording or an audio visual work shall state on the lebel of the
recording or its container.

Normally, in relation to copyright there is no formal requirement; the only requirements are
originality and fixation. This means, there is no need of notification or there is no need of
deposit and there is no need of registration. But, here, in relation to sound recordings and
audio visual works some kind of notice requirement has been imposed by the legislature.
Under article 28 the lebel of the recording or its container should bear what has provided here
A B C D. the title of the work or works, the name of the author or performers, the name or
distinguishing mark of the producer.

In addition to this, another very important article has been added to article 28 by newly
amended laws. This newly inserted specific article states that, a statement on the lebel
ofsound recordings or its container refered to in sub art (1) of article 28 shall be prima facie
evidence of the facts stated thereon for the purpose of any proceedingbrought under this
proclamation with respect to the rights of the producers of sound recordings or audi o visual
works. This specific article envisages that, in the absence of the evidence to the cont rary, the
court make article 28 sub art (1) a prima facie evidence for its decision.

So, it can be said that, this specific article reduces the burden of proving that is required
from the court to pass valid decision. article 29 of copyright and neighboring right pr otection
applies in respect of sound recordings or audio visual published for commercial purposes;
with regard to its lebel it is represented by the symbol [p] (producer) and it's year limit
commences from the first year from which the work was published. Sub article of art icle 29

also exhibit the fact of considering certain elements provided in sub art (1) as prima facie
evidence. So, the procedures needed for commercial publication and other ordinary
publication is somehow similar.

Rights of broadcasters;

Broadcasters do not have moral right to be protected under the law rather they do have
economic right that deserves protection under the neighboring right protection regime; this
exclusive economic right for broadcasters are provided under article 30 sub art (1).

Do you
think the activities and the scope of the broadcasting provided under the definitional provision of the law corresponds to the scope of the definition of the broadcasting organizations? Look at article 2 sub art (3) and (4) according to this article broadcasting
means transmition by wireless means, for obvious exception sounds and sounds plus images.
While, broadcasting organization is defined as radio station, TV station, satilites and cable
television.

The activities undertaken by broadcasting organizations are not limited to the definition we
have given for broadcast under article 2 sub art (3). Activities such as transmission b y cable
television must also included under this article. therefore, the rights of broadcasters in not
only limited to traditional broadcasting. It includes, transmition by cable TV station or
networks like wire borne transmition; having said this the rights are A. rebroadcasting,
broadcasting organization exercises the right of rebroadcasting the work broadcasted; B.
fixation of broadcast, don’t you think this specific right of broadcasters might contra dict or
conflict with the right of performers? Because, we have said that, any work that invol ve the
performance of performer needs to get authorization from performer to be fixed; so, in what
way can we reconcile this two interests of performer and the rights of broadcasters?

Here, ephemeral fixation might resolve the problem that might come in to picture be cause of
the two interests. But, if the broadcasting incorporates performance totally it needs authorization from performer:

C. reproduction of the fixation of broadcasting; end users or consumers of television broadcasts or radio broadcasts cannot record and reproduce the fixed record. As we have said

above, the exclusive right of reproducing the copy is vested upon the broadcasting organization; how can we distinguish broadcasting programs and broadcasting signals? What
is protected here is a signal not the program; because, programs are the rights of underlying
copyright holders. broadcastingsignals are usually defined in terms of electromagnetic waves.
theoretically, they are different right; but, the refered signal will also include a program in it
self. Therefore, whenever we transmit the broadcasting through TV signal or other important
signals, we're needed to get consent from the underlying copyright holder.

For instance, Think of a football game and sporting events: obviously, the program is not
copyrightable, because it is not a literary or artistic works. But, do you think the broadcaster
can still exercise the rights under article 30? The literature says, regardless of whether the
underlying program is copyrightable the TV station or radio station enjoys neighboring right
protection in respect of the broadcasting signals which is to be defined in terms of electromagnetic waves.

Thecopyright collective societies and the collective administration of rights;

The copyright collective society acts on the behalf of the true right holders and provide
authorization. They also collect remuneration on the behalf of right holders and again, they
detect infringement and if they come across it: they take legal action to claim compensation
for the infringed rights. The advantage of having this centralized institution is basically it
solves the problem of not getting the right holder immediately and consume the required

works. So, the provision which starts from article 32 is regarded as a practical provision that
responds to practical problems. Hence, this is really a good addition to the corpus of Ethiopian copyright law; the provisions related to copyright collective societies are very clear
and self defined provisions, so it requires no comment'.

Enforcement mechanism of rights;

First, let us talk about the nature of the right it self and the nature of the action to be taken
and of course jurisdiction; what is the nature of copyright or neighboring rights? Copyright
and neighboring rights are property in their nature and mostly the action to be taken in
claiming infringement is either extra contractual claims or contractual enforcement. But,

obviously, we can't bring possessory or petitory action against copyright or neighboring right
infringement, because, copyright and neighboring right do not have material existence or are
not susceptible to physical possession or physical control;However, the majority of claims
relating to copyright infringement are based on extra-contractual claims or tort claims. As to
the judicial jurisdiction, if there is court action often you need to take action in court; which
court do you think exercise jurisdiction? Look at article t of the copyright and neighboring
right protection. The federal high court exercises the copyright related jurisdiction, copyright
regime might give rise to criminal consequences or cases. Through application of the
principle of delegation the state supreme court can exercise what the federal hight court
exercises.

Under the newly amended law article 44 it states that, intellectual property tribunal will be
established under the Ethiopian intellectual property office. So, it is a kind of quasi-judicial
bodies; it is an administrative organ which is expected to adjudicate certain copyright and
neighboring right matters. However, this established intellectual property tribunal exercises
limited jurisdiction; it exercises it's jurisdiction with regard to civil cases other than extra-
contractual liability. This means, at least in respect of claims arising from non-contractual
matters the federal high court may exercises the first instance court jurisdiction. He nce, case
involving contractual defects or non-performances will be submitted to intellectual p roperty
tribunal to be intertained. In respect of contractual claims the federal high court
exercisesappellate jurisdiction; however, in respect of non-contractual and criminal matters it
exercises the jurisdiction of first instance court.

Erroneous presentation of facts can be corrected through appeal: but, in respect of f acts, the
decision rendered by IP tribunal will be final saying on the matter. Therefore, if there is any
appeal from the decision of the IP tribunal with respect to the contractual or other p ossible
cases, the appeal must only relate to issues of law.

Definition of infringement; infringement constitutes acts done by others in violation of the
exclusive rights of the copyright holder or the holders of neighboring right. The occurrence
of infringement of exclusive rights presupposes that, the copyright is validly present;
meaning, the copyright must not fall under the limitations and duration of protection must not

be expired. Most of the time, infringement occurs, when there is no authorization from the
copyright holders; but, sometimes,even if, there is authorization third parties might exceed
the authorization and infringe the copyright and neighboring right. Generally speaking, there
are two types of infringement, these two types of infringements are direct and indirect
infringement. Direct infringement refers to acts done by unauthorized third party; for
example, the sole right to use the copyrightable material belongs to the copyright holders:
hence, for instance, if third party infringes right by doing certain act and give authorization to
third party to do certain act in relation to the claimed right; this would amount to direct
infringement of the right. In short, if third party directly involved in exercising certain right
in relation to certain copyright materials without obtaining authorization from the copyright
holderswhich needs to be exercised by the original copyright holders , it can be said that,
he/she is infringing the exclusive right belongs to original copyright holders directly.

Indirect infringement on the other hand refers to dealing with unauthorized copies of works;
for instance, buying illegally manufactured copies are considered to be indirect infringement
of the exclusive rights belongs to the original copyright holders. in the case of direct
infringement, the intention of the infringer is immaterial for establishing liability; liability
comes irrespective of the state of mind of the direct infringer. But, in fixing the amount of
compensation, the state of mind might be taken in to account: so, the innocent state of mind
of the infringer does not exonerate him/her from the state of being or held liable or
liability.Hence, under direct infringement, liability is imposed irrespective of intention. To
realize this fact you can take note of article 41 sub art (5) of the newly amended proc

lamation
and article 34 sub art (5) of the old proclamation.

theacontrario reading of this article should tell you that, the state of mind of the infringer is
immaterial for establishing liability in relation to direct infringement. But, the state of mind
will be taken in to account in the case of indirect infringement. Look at article 41 sub art (6)
second sentences. Therefore, the state of mind of the infringer is going to be taken in to
account in imposing liability on indirect infringer; accordingly, persons who do not k now or
are not expected to have reasonable knowledge of the fact that they are dealing with
infringing copies would not be liable. The old proclamation under article 34 sub art (6) has

also dealt with this points; so, in imposing liability under indirect infringement what is
required is not actual knowledge rather it is reasonable knowledge.

Proof of infringement;

The cardinal principles of evidence law is one who claims right
should prove; however, in this regard, it might be difficult for
copyright holders to prove the fact of infringement occurred.
Because, we said, copyright can subsists in works that are fortuitously
similar. Remember that, copyright protects fortuitously similar works
irrespective of the time of their production; but, the plaintiff is
fortified by certain presumptions, these presumptions are presumption
of authorship and ownership. A person whose name appears on the

work is going to be presumed as the owner: therefore, this kind of provision helps the plaintiff and shift the burden to the other party.

Second, you might take in to account, the commission of errors that are common in their nature. Most of the time to detect the nature of infringement particularly those of literary and artistic works, we might take in to account the common errors; so, the taking in to account of common errors can serve as circumstantial evidence in proving who the copyright holder is and helps in proving the infringement of the right recognized by the law. lastly, expert scrutiny could also serve as proving the infringement of the right concerned.In fact, copyright and neighboring right are predominantly proved by seeking expert witness or expert views.

Remedies of infringement;there are three different types of remedies: these are first conservatory or provisional measures; second, judicial remedies and third, administrative remedies;

Conservatory or provisional measures; it has two purposes. One is to prevent infringements from occurring speciallythe entry of infringing rules in to channels of commerce. Hence, it's overall purpose is to prevent such undesired incidents or practices, because of this fact, it is also known as preventive measures. If the potential infringer obtain knowledge of the action, he/she immediately get in to actions of destroying evidence; so, the second purposes ofprovisional measure is to protect such incident. Accordingly, the second purposes of

conservatory measure is to preserve evidences that help the rightful owner to prove his/her
right being infringed.

Hence, the procedure we need to follow is known as “in audeta altera partai” it means,
without the other party knowing about it. Because, if you let the other party to know about it,
you have to indisputably expect the destruction of evidence. accordingly, most of the time,
conservatory measure is to be taken, if waiting for normal proceedings could cause
irreparable damage to the rights of the owner. The question how it causes irreparable damage
to the owner could be asked here, but the way it causes irreparable damage is first, Rights
which are extra-comercium might be affected like for example, moral right and etc. second,
The compensation we would have got from the potential infringer might be reduced in
waiting for normal proceedings. Article 40 of newly amended proclamation and article 33 of
the old proclamation deals with this concepts.

Therefore, if it is proved that irreparable damage could be sustained and wherever there is
ademonstrable risk of evidence being destroyed, then without the other party knowing it:
action might be taken by the original copyright holders. This action might constitute, A.
restraining goods from entry in to the market. B. temporary injuction; until the final case is
resolved the owner of certain copies or neighboring right can proceed for injuction. What if,
the action taken proved to be the wrong accusation? In ordering certain measures, the court
shall ask the complainant to provide securities for possible damage that may result from his
/her mistaken accusation.

Judicial remedies;

Judicial remedy consists of civil suit and criminal suits; civil suit refers to proper law suit in a civil bench with a court having jurisdiction (federal high court or state supreme court if delegated) the remedies may include, injuctions, confiscation of infringed copies or articles and documents that are used for producing infringed copies. Article 41 the new and article 33 of the old proclamation talks about this fact. In addition to the above remedies, compensation is also another important remedy. Mostly compensation is paid for material and moral damage sustained;

the extent of compensation for material damagetakes in to account the two rules, the rule of equivalence and rule of equality. Rule of equivalence means, restitution in to comparable position. While, rule of equality refers to, exact restitution or reinstatement to the position had it not been for the infringement. The cumulative readings of article 41 sub art (1) together with sub art (4) of the same article will help us to fix the moderate amount of compensation needed by the right holder; so, in fixing the amount of damage, we do not take the exact damage suffered rather a kind of comparable face value is going to be taken in to account. However, in fixing compensation, the court should look in to the prevention of gain occurred because of infringement in addition to the lost interests.

Moral damage; moral damage is a result of harm to extra-commercial rights. The principle is the amount of moral damage is going to be fixed based on the sustained damage and the

minimum payment for damage is not 1000 as in tort law orordinary cases rather it is one
hundred thousand(100000) Ethiopian birr (article 41 sub art (4) second sentence) do you
think the award of nominal damage is possible under compensation for moral damage? Our
instructor strongly believe that, even if, the copyright proclamation did not provide for
nominal damage, award of nominal damage is possible; because, the provisions of extra-
contractual liabilities are too general that they can be applicable in all places where the
specific law doesn't cover it.

We can also take as remedy the payment made for right holders to cover expenses in curred
in the course legal suit: the law has provided it under article 41 sub art (1). Again, under

article 41 sub art (6) it states that, putting works outside the channels of commerce. It could
be for example, destroying the things under bone of contention.

Criminal remedies;

The mental element of the infringer is going to be taken in to account in determining
infringement under criminal law suit; accordingly, if the infringer infringed the right
intentionally, the nature of punishment will be the imprisonment minimum of five yea rs and
maximum of ten years and if it is proved to be gross negligence,the imprisonment would be
minimum one year and maximum five years. Not only this, in accordance with the newly
amended proclamation, it imposes in addition to imprisonment the punishment of fines
(article 43 sub art (3) and (4) Please look at those articles. The rational behind for im posing

punishment of fines is basically tomaximize the deterrence goals of the punishment. Juridical
persons can also be liable for infringement they caused to the right holders; but, punishment
will be determined in accordance with article 34 and 90 of E.F.D.R.E. criminal code.

Administrative remedies;

Administrative remedies are usually known as remedies by customs union; first application
must be presented to custom union in written form, so thatapplication is made to customs
office for restraining goods that in the opinion of right holder are infringing or that are
infringing with all initiative of the custom officers; the term all initiative was not included
under the old proclamation rather it comes in to pictures because of the newly amended
copyright proclamation.

Period of limitation;

The periods of limitation that have been provided in various legal framework will have
application in respect of copyrightable matters, this means, for instance the period provided
as a limit under a general contract law (10 years) will be applying in the case related to
contract under copyright domain: and also two years period of limitation will be applied in
the case of extra-contractual law in relation to copyrightable matters. The same is truefor
criminal law period of limitation.

Question to be answered by your analytical or understanding power:

‘the newly amended copyright law has introduced the concept of “works without masters”

so, compare this concept with vsv a work which is part of public domain; If we consider
works without master as copyrightable subject of copyright, who will be beneficiary t hereof?

CHAPTER FOUR patent and related concepts;

Introduction;

We have normal patents and moral rights that are related to patents. This allide right s could
be rights of plant breeders, utility models on minor inventions and industrial design. The
normal patent incorporates patent of inventions and patent of introduction. These are the
principal subjects of our discussion in this chapter. Patent of invention and patent of
introduction go through the similar substantive and procedural lines; the others are utility
models for minor inventions, right of plant breeders and industrial designs.

Features of patents vsv copyright;

First, a patent protects ideas and of course, it creates exclusive right in respect of id eas unlike
copyright which protects the manners of expression and create exclusive right in respect
ofmanners of expression. So, this is one important difference, the other difference is the
standard of protection. Meaning, the standard that is needed for protection is a little beat
higher in patents than in copyrights. A low level of creative expression is needed in
copyright; but, the level of creativity in idea required for patent under the domain of patent
law is a little beat higher. Therefore, the difference also lyes in their standard for pro tection
they require. Notwithstanding the difference discussed above, the level of expressive
creativity is not that of Picaso in copyright and the profundity of idea should not be at the
level of anaistaine. We are saying that, the standard required in patents is too high as
compared to copyright. But, that standard should not be at the level of albert

anystaine.
Because, if we are going to say all ideas should be in the level of anastine in order to be
patentable, probably we will not have any invention that is going to be patentable.

when we say the standard of protection is higher in patent, we’re not saying the standard
should be that of anstaine. But, certainly, the standard is higher than that is required for
copyright’ And thirdly, the protection in patent regime is stronger than that of copyright; the
standard needed for protection it self in patent is stringent as compared to copyright. Further
more, We said that, the standard needed for protecting patent is a higher than in copyright
because, in relation to copyright we have said that, the copyright holder is entitled to certain
guarantee against unauthorized reproduction; but, we have admitted that, independent
creators of the same way of expression might be entitled to protection of their own works.
Again, we have said that, two fortuitous authors may be entitled to copyright of their own in
respect of their creations. What matters is the existence of independent creations. So,
fortuitously similar works could be protected under the domain of copyright and neighboring
right.

However, in the case of patents, there is only one right holder; under patent regime, because
of this stringent rule, independent inventors of idea would be barred from using that idea if
they were preceeded by another person who first apply to appropriate administrative organ.
Hence, once a patent is granted in respect of certain invention, other persons who m

ight even
come up with invention through independent process would be barred from using or exploiting that inventions. This clearly reveals that, the protection is obviously stronger in
patents regime than in copyright. This is why, patents are regarded as creating monopoly
right;

To balance the effect of this monopoly right, there are certain measures that are used to
counter balance the strength of the right. From among thus measures the first is disc losure of
the invention; for patent to create monopoly right he/she must disclose the technical information of the invention which is thesubject matter of patent. So, disclosure is one
requirement for patentee to acquire monopoly right in respect of the work he/she co mpleted.
The rational for disclosing the technical information of invention is the fact that the latest
technical information are disclosed it facilitate further invention.

The second measures is shortening the term of protection granted for patentable pro ducts; the
term of protection is said to be shorter than that of copyright. Therefore, to counter

balancethe strength of monopoly right, usually patents are subject to shorten term limit for
protection (often 15 up to 20 years); This in turn facilitates the rapid expiry of the right
recognized. The monopoly right could give rise to abuse of the right because there is no other
competitive right holders. So, this state of affairs might create, the problem of costly product
production and misallocation of the resource; hence, patent law must make sure that, the
strength of the patent right should not give rise to market monopoly.

The other limitation set for avoiding monopoly right is thefact of making the patent law to
protect the specific application of the idea in addition to the idea protected; of course, what is
protected is an idea but it is possible to make the patent law not to protect the idea as a whole
and it could be possible to embrace the specific application of that idea. So, there is a kind of
a dichotomy between the idea as whole and its specific application of that idea, this specific
application could be in the form of specific product or process.Therefore, according to this
specific limitation, other parties are not prohibited from participating in such created ideas or
the process of creation. Hence, market place of ideas will not be prohibited, because, doing
so will defeat the sanctity of thought and it also would defeat the owner public policy
objectives. Therefore, products or processesare to be considered as the specific application of
the ideas, rather than being the idea only. Accordingly, one cannot monopolize the whole
idea as of his/her right under the law.

Patent is an administrative grant while, copyrights are automatic upon creation and fixation
of the concerned work. But, in patent in order for an inventor to have such kind of monopoly
right, he/she must pass through rigorious administrative procedures and at the end he/she
must secure that granted right from administrative bodies. this reveals that, the mere
invention is not enough to be accorded with the rights provided for under the patent law
rather it needs certain administrative procedures to be fulfilled as a criteria. Hence, while
copyright is an automatic right, patent right is administrative grant or it is not automatic. In
fact, the fact that the patents are administrative grant might help to counter balance the

strength of monopoly right. So, administrative procedures are very important for patents and
it only upon the satisfaction of this regorious administrative tests that an inventor would
secure the right of the patentee.

But, other features like it is a property right, it gives rise to exclusive right, the right can be
transferred and it imposes term limitation is to be shared by copyright. So, no need of
discussing them under the peculiar features of patent and copyright subject matters.

Purposes of patent right;

The purpose of patent is to encourage innovation and creativity for material prosperity;
patents are almost technical solution to the practical problems. If they succeed in solving
societal problems, we can say that the patentees are at improving living standard of society at
large. In addition to this, they act as incentives for individual inventors to engage in acts of
innovation (remember the principles of utilitarianism) so, the major purpose of patent is to
raise the material prosperity and as well as raising the living standards of society as whole.

Coming back to what the Ethiopian law says, look at the preamble of the law (proclamation
no. 123 1995) the preamble says, encouragement of local inventions so as to build national
technological capabilities and to encourage the adoption and transfer of foreign technology.
This preamble seems to encourage local inventions and transfer and adoption of foreign
technology to Ethiopia; you don’t find this purposes in preamble ofthe laws of developed

countries. Because, they are creators of technology, For this reason, they don't need to worry
about importing technology from other countries. But, for a least developed countries like
Ethiopia or developing country such preamble seems to be very important to get such kinds
of purposes. Because, developing countries are technology importers rather than being
technology creators. Therefore, there should be a mechanism for adopting foreign technology
to our individual circumstances. it is through this way that, the private interests of the
inventor and the interests of the public as a whole will be reconciled;

Definition of patents;

What is patent? Article 2 sub art (5) states that, patent is the title granted to prevent
inventions. According to this specific article patent means the title granted to protect
invention: invention may relate to a product or a process. So, patent is an administrative grant
that is given for inventions; generally, patent is a legal title that confers upon the right
holders (a patentee) the exclusive right of making, using or otherwise exploiting the

inventions in a manner he/she wishes. Hence, the definition is understood in relation to its
subject matter. The term invention has not been defined clearly rather it is defined in terms of
its technical requirement. It must be non-obvious, industrially applicable and it must be novel
are considered to be technical matters of innovations. Any way, inventions constitute a
technical solution for technical problems. It relates to a product or process of product; when
we say solution, it could take two forms; for example, enabling human to do acts that they
are naturally incapable of doing. For instance, creating the device that help the hum

an to fly
could be regarded as enabling human being to do certain things that they are natura lly devoid
of doing. Second, enabling human to do acts in a better cost effective or safe way. For example, duplication was possible before; but, the creation of the photocopy machines has
definitely made much easier. So, this could be considered as inventions.

Inventions are technology oriented; technicality could be described through inventiveness,
novelty and industrial applicability. Article 4 of the proclamation talks about the non patentability; all inventions are as a rule considered to be patentable but there are some
inventions which are not patentable, please refer to article 4 sub art (1) (a) up to (f) of the
proclamation. For instance, inventions used for castrating human are not patentable. Because,
it contravenes with the public morality; the process of cloning is not also patentable. But, this
is not without exception, for example producing the micro organism in non biological process could be patentable; again, plant breeding can be patentable if it succeed to come
with the new plant variety. This new variety of plants may or may not include the normal
biological process. Methods of conducting business are not also patentable see articl e 4 sub
art (1) (c) of the proclamation. In addition to this discoveries and scientific theories are not
also patentable under Ethiopian law. Accordingly, discoveries, scientific theories and mathematical formula are not patentable under the Ethiopian patent law.The same is also true
for diagnostic therapeutic and surgical methods; this is from the vantage point of public
health. Because, if we are to give monopoly in respect of such important methods it f ollows
that, the public health will be endangered.

Points of attachment;

The concept of independency in the domain of patent;

Patents are essentially territorial because of the fact that, they are administrative grant or a
decision making by individual countries. This means, the grant or denial of patent in on e country
does not affect the grant or denial of patent right in other countries. Because, laws and
administrative procedures of countries are different and its often justifiable to decide on the fate
of patent applications having regard to the fate of that applications in other countries. What does
this tell us? Patent goes through administrative processes therefore, often patent applic ations do
not require a certain attachment with Ethiopian. Because, administrative process it self takes care
of it. So, no separate points ofattachment is needed. Therefore, as a matter of principle,
regardless of who made that invention and regardless of the fields of technology, patents are
going to be processed. Accordingly, what matters in patent is passing through the rigorious
administrative requirements. But, if the foreign nationals wants to apply for patent in Et hiopia
he/she must come by him/her self or must have appointed his/her agents. We can see thi s fact on
article 9 sub art (7) and (8) of the proclamation and article 8 and article 21 sub art (3) of the
regulation.

There are two types of patents: which are patents of invention and patents of introducti on. The
substantive as well as procedural rules are the following. Before dealing with the substa ntive as
well as the procedural requirement, we should have to be clear with what patent of intr oduction
and patent of invention mean;

When we talk about the purpose of patent law, it is clearly stated in the preamble of the

patent
law; the purpose of Ethiopian patent law is to build national technological capability. This should
not be addressed in the short term. So in the mean time, our technology will rely on the foreign
technology. So patent of introduction are instrumental to achieve this purpose. It deals with the
importation of the technology where foreign national come up with new invention to our country
and obtained patent for that invention in the foreign country.

The Ethiopian law facilitates the operating of those inventions to Ethiopians. How? It is through
providing certain incentives schemes and packages for the importers. A patent of invention
normally-normal patent of invention- is given for the inventor or someone or somebody who
obtained consent or authorization from the inventor. Patent of introduction on the other hand, is
granted to anybody who wishes to import a certain invention to Ethiopia.

Mind you! the invention is made by foreigner and patented in the foreign country. Ethiopian law
has in place to encourage other third party other than foreign patenting so that these third parties
import that invention in to Ethiopia and acquire the protection. Patent of introduction is different
from normal patent. Normal patent is given for the inventor or persons who are successors in title
to the inventor. This inventor could be an Ethiopian or the foreigner. In the case if patent of
introduction it is interested third party who could import the invention. Any capable party
wanting to work in Ethiopia can apply not for the normal patent but for patent of introduction.
Then he who applies for the patent of introduction acquires right and duties. The rights and

duties are normally the same with the rights and duties available for the normal patent. This is set
out under article 19 of the patent proclamation, which states that the requirements and conditions
for patent of introduction shall be the same as those prescribed for a patent of invention and shall
subject to the same formalities. So article 3 to 17 of the proclamation shall be applicable for a
patent of introduction. And look also article 28 of the proclamation; it makes cross references a
patent of introduction.

The rules that we are going to talk subsequently apply for both patent of introduction and patent
of invention. But there are some differences that we will be addressing in the course of the
discussion of the provisions.

There are preconditions that should be fulfilled for an invention to be patentable. First, let us see
substantive requirements of patentability. There are certain substantive conditions; we have
about three substantive preconditions and which are cumulative. If one of them is missing then
the invention is non patentable. These preconditions are provided under article 3 of the
proclamation. Article 3 reads as: patentable invention; 3(1), an invention is patentable if it is
new, involves an inventive step and is industrially applicable. The concept of novelty,
inventiveness or non-obviousness and industrial applicability refer respectively these
preconditions.

Let us see what novelty means: something remarkably new literally. Under the law, the meaning
of novelty is provided in article 3(2) of the proclamation. This sub article states that an invention
shall be considered new if it is not anticipated by prior art. It has to be something unknown to the
public. So the invention that has been introduced for the claim of the patent it is new or known to
the public before. A patent establishes monopoly right, so, we shouldn’t establish this m

onopoly

right or exclusive right for something which is in public knowledge. Thus patent right is given
for something which deserves protection.

In order to understand novelty better, we should discuss the concept of prior art. What is prior
art? Prior art means according to second statement of article 3 sub article 2, it shall consist of
everything disclosed to the public, anywhere in the world, by publication in tangible for m or oral
disclosure, by use or any other way, prior to the filing, where appropriate, the priority d ate, of the
application claiming the invention. It generally refers the status of knowledge or civilization
before the introduction of invention. Anything disclosed could be a product or process. And
disclosure could be any mode of disclosure anywhere in the world-the objective novelty on the
global scale which also called absolute or universal novelty. Disclosure to the public refe rs to the
availability of that knowledge to the members of the public other than family.

In order to determine what the prior art consist of a cutting of time or a point should be set. If the
idea of invention was part of the prior knowledge before the application for patent right then
there will be no grant of patent right. However, there is exception as provided under su b article
three of article three. It states that notwithstanding the provisions of article (2) of this a rticle the
disclosure to the public of the invention shall be not be taken in to consideration if it occurred
within 12 months preceding the filing date or, where applicable, the priority date, of the
application and if it was by reason or in consequence of acts committed by the applicant or its

predecessor in title or an abuse committed by third party with regard to the applicant or his
predecessor in title. Therefore, disclosure preceding 12 months from application for a patent will
not be regarded as prior art so that they will not defeat novelty. Thus, there is 12 months grace
period. Even though the disclosure is to the public it doesn't matter. The grace period operates
regardless of who discloses the invention.

Patent of introduction considers the requirement of novelty in a different way. Let take example,
peter is the inventor of a certain engine for certain purpose. He has applied for patenting in
Canada. Under normal patent rule his application in Canada was May 20, 2014. For the same
invention, if peter applies for patenting in Ethiopia, he will have to apply within 12 months from
the day he applies first. This is by application of grace period. What if the period elapsed? Under
the normal rule, i.e., patent of invention the novelty of the work is over. But if another third
party, after the patent right is given to the inventor peter, apply for the patent of introduction in

Ethiopia he can receive a right over the invention. Here, it is surprising that peter can't receive
such privilege but the other third party. But note that the application of the third party is valid
only if it is made within the time the normal patent gained protection. So article 18 of the
proclamation tells us the difference between patent of introduction and normal patent in respect
of the requirement of novelty. The other difference is with regard to the period of protection.

The other substantive requirement for the patentability of the invention is non-

obviousness.

inventiveness/ non obviousness

The patent proclamation uses the terminology involving inventiveness step, what does it mean?
It means that the invention must not be obvious to the person skilled in the art.

There are two things which determine non-obviousness for patentability:

First you recruit an imaginary person. Who have an ordinary skill in the concerned art.

The determination of art means- an art to the concerned field. For instance, if the issue is related
to electric- we will assign an ordinary electrical engineer. State of the art also will be taken in to
account. State of the art means the most advanced knowledge at a given point in time. While
determining certain knowledge in a certain field we determine it employing the prevailing sate in
the art. it include the recent pace of that field and the trajectory. Who do you think determine the
state of the art? he who determines is the one the state of the art is the one who is skilled in the
field(ordinary skill), a person with a common skill in that field, he is not expected to be a
brilliant one- he just has to be a reasonable skilled person in the field.

What does an average person in the aforementioned art would say about the art?

If that average ordinary skilled person is not aware of it, we would say that the element of non-
obviousness is met. If we reach in the conclusion that ordinary skilled person in the said art done
it easily we would say it obvious, hereby patent will be denied.

Hindsight must be removed. Hindsight means; giving judgment after already knowing it, just
looking how it operate and function saying it easy and non-obvious. The ordinary skilled man
was required to present the state of the art available in that field until the date the patent has been

applied. The purpose is to avoid granting monopoly right in respect of something that could be

easily discovered by an ordinary skilled person in the concerned art easily. Monopoly would not be justified for something trivial. Patent is awarded to something new and have significant contribution (not trivial contribution).

Article 3(4): the invention must be removed from the judgment. Just seeing that the state of the art at stake didn't able him/her to reach at the invention is enough. If the steps that are available in the field could led to similar judgment/ conclusion as the one reached by the inventor- we would say it obvious.

Industrial applicability Art. 3(5)

Industry should be broadly construed. it must have not been confined to manufacturing, it must also encompass other fields whereby patentable inventions can be carried out. i.e: handicraft, agriculture, service industry and etc.

Industrial applicability means generally,: applicability in production, application of exploitation.
Applicability not means that usefulness, it rather means technical application, economic viability is not necessarily required. Usefulness in the normal sense of its meaning is not required. Here what is required is that -the invention is capable of being put in to practical production /application. Not necessarily useful in the ordinary use of things, rather it means it is capable of being translated in to practical. Utilitarianism is not that much important here.

Minor inventions in respect of which utility models are applied- are required not only to be industrially applicable, but also utilitarian (usefulness is required)

Applicability is what makes a difference between inventions and mere mathematical formulas.
Mathematical formulas do not be patentable because they lack industrial applicability, as they
are. The application of industrial applicability does not exclude art which are not economically
viable/ harmful- we exclude them by the application of article 4, if they are really have no any
economic viability to the public.

Novelty, inventiveness as well as industrial applicability are three cumulative substantive
requirements for the patentability of a certain invention.

Novelty Vs Non-obviousness

Novelty is just being new. Inventiveness: though new it could not be obvious that an ordinary
skilled person in the art reached upon by applying the state of the art. All inventions tha t satisfy
the criteria of inventiveness are novel by definition. All inventions that satisfy the criteria of
novelty are not necessarily inventive. Inventiveness requires something bigger than novelty-
including novelty itself. It could be new but it could still be obvious to a person who is s killed on
the art. We take in to account the state of the art prior to the date of application for pat ent.

Formal requirements

Independent of patent – a patent which is a product of an administrative process in one country
shall not result any effect in the processing of a patent in another country which follows unique
administrative procedure. The laws and administrative practice of countries is different due to
this it is not justifiable to determine the fate of one application having regard to: factors

in
another country. All in all, the refusal or grant of patent in one country does not led to refusal/grant in another country. Patents are independently processed in specific admini strative
proceedings of individual countries. As we have put it earlier the first step is application the
second is examination as to substance and form. After examination there could be refusal or
grant. After grant certification issuance comes, then registration.

Application-examination-grant/refusal/- certification- registration.

A patent is a step by step process. A patent is granted through passing rigorous procedures
handled by concerned administrative body individual country. E.g Ethiopia- EIPO. For entertaining all cases relating to patent EIPO is a responsible body. Applications are made in
writing and addressed to EIPO there is a payment of fees. The payment is fixed in $(see Art.
19(2)).

Who is entitled to make the application (see Art. 7)?

Invention created on contract of service/employment- the person who is commissioned/' the
employer are entitled to make the application (7(3)). Inventions without any service from the
employer/ without using the resources of the employer are governed under Art. 7 (4), in favor of
the inventor. Contrary agreement is possible.

Art. 7(5)- personal contributions of the employee using the resource of the employer ; in this
case, absence contrary agreement the entitlement is going to be shared equally.

Art.8- this article is about naming of the inventor in the application and grant of patent. Some
systems enforce naming of the inventor in the application by court action but in most in stances

the administrative process itself should take care of it. Therefore the enforcement of thi s right is
through administrative process. In our case EIPO should check whether or not there is a name of
the inventor hereby, the administrative process itself protects this right. An inventor ma y not be
patentee, somebody else can also be a patentee when an application is lodged we said t hat only
one patent be granted at a time for a single invention. A patent right exclude even independent
inventors (devisers of an idea). If it is so there could only one application, what if different
applications are lodged, which application be selected? Only one person can enjoy exclusive
right over a certain invention. Due to all these factors the concept of the so called priori ty comes
in to the picture.

Probably you could have multiple applications for a single invention but, patent is grant ed for a
single application, how this single application could be selected is an issue to be dealt w ith in the
forthcoming section? Especially in a foreign country an inventor who lodged and grante d with a
patent right in another countries may come to Ethiopia and apply for the grant of patent right for
the same invention; this person needs time to apply in Ethiopia. In between another per son may
apply for it, which is possible. Rules of priority of applications give a relief for such ques tions.
The rule is that first come is first served- how is the rule of first come first served be det ermined ,
it is determined by having regard to the filling date of application(therefore the rule be come first
to file rule) see Art.12 and 11 of the proclamation. On the other hand some countries uses first
top invent rule, this requires rigorous examination of facts this is not feasible for developing

countries like that of our beloved country Ethiopia. USA adopts first to invent rule. First to file
rule has also drawbacks- we will dealt upon it later.

First to file- there is 12 month grace period, if an invention is disclosed within 12 month prior to
the date of application, it is not regarded as destroying novelty of the invention.

If a foreigner applies in a foreign country and wants to apply on the same invention in Ethiopia,
this patent in a foreign country shall not work in Ethiopia because of independence of patens; he

will be given a prerequisite to the maximum grace period of 12 month. Application for patent
was made in June 2015 in South Korea by foreigner now he want to get patent in Ethiopia after 9
months to the date of his first application in South Korea, in the meantime, just before the
coming of the foreigner an Ethiopian apply for the same invention. Who do you think will
receive the patent? The foreigner will get it, because as it has shown above he come to Ethiopia
and lodged how application within 12 months period. This has an important benefit for foreign
applicants, it exclude intervening applications, prior to the lapse the grace period. However, he
should come within 12 month his application will be entertained if and only if come within 12
months. Acts of disclosure within 12 month prior to the date of application will not destroy
novelty. What does date of filing mean? What of an application is lodged to EIPO, without
fulfilling the requisite requirements. What if the received application does not contain the
important information,. For example, name of the inventor, address. The filing date is accorded if

the application contains basic information. The filing date is counted to the duly filed applications 9(read Art. 12 (2)) in case of the absence of basic information's the date of application will be the date whereby the application is lodged after correction.

After is once duly filed, what if it is withdrawn, amended or rejected? Amendment, with drawal
and rejection of a duly filed application do not destroy priority date. The priority date m aintains
regardless of the subsequent fate of the duly lodged application. A certain application may be
rejected due to insufficiency of disclosure. If this is the case priority right will not cease, but it
will maintain.

Let's make some conclusions; the rule is the first filing; one patent can only be granted to one
person. So if that is the case then we should have a rule for entertaining to or more application
for the same patent or invention. The Ethiopia law say that the first to file rule even if the late
comers independently apply for the same invention they will not receive patent protecti on. Only
those persons who come first are those who entitled to patent. This filing rule also sugg est that
foreign application in respect of which the applicant makes application in Ethiopia within 12
months after prior application will have as its date of filing the prior application. The date of
foreign application is considered as the date of filing. This is called a priority right. A person
who files an application for a patent in foreign country and applies in Ethiopia for the same
invention also will have right of priority.

When the right of priority is based on the foreign application the subsequent application must
related to the same invention in respect of which foreign application is made. So when

we accord
priority right to a foreign application, we are according that right to only in respective of applications which related to same invention. If the invention is different the right of priority
does not operate. So the right of priority concerns the same invention. In case the inventor
applied for the same invention in more than one foreign country, the first application in foreign
country shall be taken as the first filing to establish priority right. if we take the last application
for priority right we are enabling them to receive advantage by extending considerably the
duration of protection. So the priority right works in respect of the first filing.

The other thing we have to consider in respect of priority right is that it could be exercised by
successor in title. It may be transferred to successor in title even though the original foreign
application is not transferrable.

Withdrawal, amendment and abandonment of the first application- The applicant can withdraw
the application at any time before granted. The applicant may also wish to amend his application.
He may also for that matter abandon the application. The question is whether the priority right
exists up on these circumstances? The answer is “yes”. So the making of making of amended
application will not destroy the priority right enjoyed by the first application. Making of the
subsequent application after the first the application is abandoned, or withdrawn or amended will
not destroy the priority date enjoyed by the first application of course if the application is related
to the same invention. The same is true for the rejection of the application as far as it the same
invention.

The other thing related to priority right is “divisional application”. Divisional application refers

to there may be principal application which might be made in foreign country (comprehensive
application which may include both product and process), now may be that person subs equently
come to Ethiopia and wishes to make an application, let instead of repeating the applica tion he
wishes to apply for the product only. This is called a divisional application because the
application which was made in foreign country now only part of it is claimed in Ethiopia . In such
case the foreign application is considered as the first application. So the making of divisional
application also gives right to the right of priority of the foreign application. The revers e is also

true as far as the application is made within 12 months. Therefore, multiple priorities can be
claimed.

Mind you! The priority right only works only after the application is duly filed as per article
12(1) and (2) of the proclamation. If the EIPO finds that the application did not, at the time of
receipt, fulfill the requirement referred to in sub-article (1), here in above it shall invite the
applicant to file the required correction, but if no correction is made, the application shall be
treated as if it had not been filed. What is provided under article 12(1) is the content of
application. The application contains an express or implicit indication that the granting of patent
is sought; indication allowing the identity of the applicant to be established; a part whic h, on the
face of it, appears to be a description of an invention. If the application fulfills these
requirements it will considered as a duly filed. And the filing date would help us in esta blishing
the priority right.

Some country follows the first to invent rule to establish the priority right rather than th

e filing
date. In trademarks there is also first to use principle. Applicants will have right of priority if
they proof that they proof that they were the first to use. In the patent it is the first to in vent rule
or the first to file. European countries and many developing countries including Ethiopi a rely on
the first to file. The first to invest rule require tiresome investigation of fact in order to i dentify
the actual inventor. USA rely on the first to invest rule which would pretty much work fo r them
since they have capability to conduct investigation on rigorous fact to identify who real i nventor
is which is burdensome for countries like Ethiopia. The first to file shifts that burden the
inventor. But the first to file has some disadvantage on its side. There will be race to file. And
this could destroy the novelty requirement. So care should be undertaken in order to avoid this
problem. So from the administrative point of view this rule advisable but for the genuine
application of the patent the first to invent rule is workable because it involve rigorous
investigation of facts. So the rule is the first to file the first served.

Unity of invention: refers to application relate to one invention only as per article 9(2) of the
proclamation. Why this?-Because if the application is related to more than one invention it
would be difficult for us to identify the claims and its definition. So the drafting as well as the
processing of the application would be overcomplicated. So it would be better to grant easy of
administration. The other justification is to generate administrative fees. So for these re asons the

law requires the unity of invention. There is an exception to this article. Look at article 17 of the
regulation. It says two or more inventions belonging to a single general concept, for inst ance, the

combination of process and product each are independently invention but belong to a single
general concept, may be filed as one application.

Content of patent application:

The contents of application are normally request, description of the invention, one or more
claims, abstract and drawings. These are the contents of application. Drawings are optional in
sense that they are required when deemed necessary for the understanding of the invention and
may be used to interpret the 9claims.

Request: look at article 9(4) (a) of the proclamation together with article 10 of the regul ation. It
refers the petition to grant of patent; the name of and other prescribed date concerning the
applicant, the inventor and the agent, and if any, and the title of the invention. Where the
applicant is not the inventor, the application shall contain statement justifying the applicant's
right to the patent and other things provided under the regulation.

Description: is very important. 9(4)(b) of the proclamation and 11 of the regulation. We have
said that patent is given for the disclosed technical information. The disclosure on the other
hands, materialize with description. And we have also said that drafting patent is very t echnical
affair. The description must clearly disclose all the fact of knowhow. The disclosure shou ld have
to enable the person skilled on that art to know the fact. So the applicant must exercise care not
over disclose the know and also describe it complete and sufficient so that the person sk illed in
that can carry out. This is pretty much similar with inventiveness or non-obviousness. The
difference is that in inventiveness, normally the judgment of ordinary person skilled in t hat does

not include the invention but here the ordinary person skilled in that has not only about the
knowledge but also about the invention.

Because of time constraint, I couldn’t manage to cover the class lecture note given by instructor
Addise shiferraw. Therefore,This would be thelast page as far as my short note is concerned.

On this last page of my lecture note, I have something to say for the users of this material,if you
are of a personswho believesin chance, “BEST OF LUCK”

DEJENE SOLOMON URGESSA. Year, 2007 E.C.