

Re-engineering the Copyright dividend in the illegal copyright market: An explorative conversation

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DECLARATION

I declare that the research project, “Re-engineering the copyright dividend in the illegal copyright market: An explorative conversation” is my own work and that each source of information used has been acknowledged by means of a complete reference. This thesis has not been submitted before for any other research project, degree or examination at any university.

.....

Lesley Thulani Luthuli

April 2015

Johannesburg, South Africa

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ABSTRACT

The primary argument and area of interest within this explorative study lies within the domain of copyright law enforcement of the creative industries and argues the deleterious impact that the infringement of copyright has on national and individual balance sheets and the opportunity to re-engineer the copyright dividend.

Globally, creative industries are estimated to account for more than 7% of the world's gross domestic product and are predicted to grow, on average, 10% per year. Digitization and the internet have seen to it that copyright, through *inter alia* the unlimited reproduction capacity of copyrights, brought by digitization and the internet, has seen its importance in the intellectual property bouquet soar. This study endeavours to establish the beginning of a discourse on copyright in which the very survival of the creative industries, galvanized, for more than a century by technology and changes in technology and the security of its consumers, depends on the adopting of improved, far-sighted, equitable, inclusive and stricter measures in order to protect such from both internal and external threats. From a global perspective most copyright owners and nations with few exceptions rich in copyrights, compounded by the presence of unsubstantial collaboration, suffer losses because the protection of their respective intellectual property rights such as copyright, trademarks and patents are not adequately aligned with what may be referred as the technology conversation.

It is imperative that the collaborative copyright alliances develop a strategic agenda that is relevant to the technology conversation in order to re-engineer the copyright dividend where new copyright enforcement mechanisms will be deployed. In as much as this study placed greater emphasis on online infringement, physical piracy is still pervasive and it intensely contributed to the explorative conversation. Piracy effectively relieves copyright authors and the State of the royalty flows that arise from legal and transparent use of copyright. It is these royalty flows that give rise to term "copyright dividend" literally meaning the income arising from the underlying copyright assets. Seeing what is stolen by piracy as the "theft", whether direct or indirect, of copyright dividends, the challenge to address, avert and amend such outcomes is akin to re-engineering the copyright dividend and this meant the examining of the copyright law structures influencing and regulating the trade in copyrights. In this study the focus was initially on understanding the copyright law regimes and the real challenges that influenced their

respective implementations that generated a copyright dividend. Understanding exactly how well such were actually working rested on exploring the lived experiences and perceptions of ten copyright experts across the world from two primary copyright law regimes. Such an exploration was necessary as such provided the requisite insight into *inter alia* the legal framework wherein both the illegal market and the legal market for copyright operated, to the threats faced the copyright dividend.

Five research questions were used in this study. Such served as the discussion points used in the interviews with the ten research participants. These five research questions emerged from the problematization within current , literature and supported by the research data. The obtained data were grouped in relation to the five research questions and filtered to identify commonalities amongst the ten participants. The obtained data were grouped in relation to the five research questions and filtered through a lamination process, which emerged to identify commonalities amongst the ten participants. The global copyright law system and stakeholdership presently lack the necessary strategies, capacities, will and common thought to effectively address infringement. This is the major impediment of technological advancement and thus re-engineering the copyright dividend was critical. To a demonstrable extend it is independent of the progress of governments and other relevant parties affected by infringement. The data also showed that infringement is an eroding threat to intellectual property and that critical knowledge is an urgent necessity to re-install the copyright value in its global ecosystem, which is essentially achieved by diverting the copyright dividends stolen by the illegal copyright market and re-engineering the copyright dividend. The outcome is that copyright law enforcement promotes the returns of dividends and fair trade to the rightful owners in an accountable and sustainable manner, as was and is intended by the global copyright law regimes.

KEYWORDS

Copyright law enforcement; copyright alliances; copyright dividend; illegal market; re-engineering; illegal copyright market; infringement; copyright law; fair trade.

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LIST OF ABBREVIATIONS

AAPA	Audio-visual Anti-Piracy Alliance
AC	Andean Community
ACUM	CMO Israel
AEPI	CMO Greece
ALCAM	Alliance of Latin American Creators of Music
ASCAP	American Society of Composers, Authors and Publishers
AU	African Union
BC	Berne Convention for the Protection of Literary and Artistic Works
BMI	Broadcast Music, Inc.
BPR	Business Process Re-engineering
BTLJ	Berkeley Technology Law Journal
CD	Compact Disc
CDPA	Copyright, Designs and Patents Act 1988
CEO	Chief Executive Officer
CI	Copyright Infringement
CIAM	International Council of Authors and Composers of Music
CISAC	International Confederation of Authors and Composers Societies
CMO	Collective Management Organization
COSOMA	CMO Malawi
COSON	CMO Nigeria
DMCA	Digital Millennium Copyright Act
DRM	Digital Rights Management
DVD	Digital Versatile Disk
EC	European Community
ECJ	European Court of Justice
ECL	Extended Collective Licensing
ECR	European Court of Justice Reporter
ECSA	European Composer and Songwriter Alliance
EIPR	European Intellectual Property Review
EU	European Union
GAO	Government Accountability Office (US)
GCC	Global Copyright Coordinator
GDP	Gross Domestic Product

GEMA	CMO Germany
IFPI	International Federation of the Phonographic Industry
IIC	International Review of Industrial Property and Copyright Law
IP	Intellectual Property
ISP	Internet Service Provider
ISWC code	International Standard Musical Work Code
JIPITEC	Journal of IP, Information Technology and E-Commerce Law
JIPLP	Journal of Intellectual Property Law and Practice
JRE	Judgment Recognition and Enforcement
MCPS	CMO United Kingdom
MPAA	Motion Picture Association of America
MPT	Market Power Theory
NASCAM	CMO Namibia
NCPS	National Cyber Security Protection System (US)
NIR	Nordic Intellectual Property Law Review (<i>Nordiskt Immaterieellt Rättsskydd</i>)
P2P	Peer-to-peer
PACSA	Pan African Composers and Songwriters Alliance
PRS	Performing Rights Society (UK)
RAT	Routine Activity Theory
RIAA	Recording Industry Association of America
RIDA	<i>Revue Internationale du Droit d'Auteur</i>
ROI	Return on Investment
SAMRO	CMO South Africa
SASEM	CMO France
SEACONET	Southern and Eastern African Copyright Network
SGA	Songwriters Guild of America
SIAE	Italian Society of Authors and Publishers
SSRC	Social Science Research Council
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TRIPS	Trade Related Aspects of Intellectual Property Rights
TQM	Total Quality Management
VCR	Video Cassette Recorder
WCS	World Copyright Summit

WCT	WIPO Copyright Treaty
WID	Works Information Database
WIPO	World Intellectual Property Organization
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organization

KEY TERMS

Artistic work: means, irrespective of the artistic quality thereof—

- (a) paintings, sculptures, drawings, engravings and photographs;
- (b) works of architecture, being either buildings or models of buildings; or
- (c) works of craftsmanship not falling within either paragraph (a) or (b).

Author: the use herein pertains to the meaning in most copyright acts being a creator and/or an owner. In the context of a musical and literary works the word applies additionally to composers, arrangers and music publishers

Black IP: intellectual property, copyright in particular, originating from black people, a term herein arising in a South African context

BitTorrent: A protocol supporting the practice of peer-to-peer file sharing that is used to distributing large amounts of data via the Internet.

Cinematographic film rights: The rights arising from the ownership (authorship) of and the exploitation of cinematographic film works.

CIS-Net: A trade name for the technology called “CIS-Net *powered by FastTrack*” which is owned by F.T The Digital Copyright Network, known as FastTrack, and SGAE and based in Paris. CIS-Net addresses the interoperability of the world’s existent copyright databases and is managed to a private community with exclusive access by CISAC’S CIS Supervisory Board.

CMO: A Collective Management Organization administering either performing rights, or mechanical rights or both, in works

Content: subject matter that is eligible for protection by copyright as works

Copyright communities of practice: any Individuals involved in the management of copyright. This include and not limited to content or legal representatives of rights given power of attorney by rights holders for any other purpose of advancing the interest of the rights holder.

Copyright data: the information concerning authorship, ownership, duration and other identifiers of a specific work and its authors that must be submitted by an author to any user and which must be the point of reference for a user when recording use of the specific work

Copyright Law: Laws that regulate copyright in common law, civil law and harmonized copyright law regimes and that function in compliance with either the WIPO Treaties and or the WTO's TRIPS and thus regulate the use of the work of a creator, such as an artist or author and users thereof. This includes copying, distributing, modifying and displaying creative, literary and other types of exploitation.

Copyright dividend: The royalties and receipts that flow from the exercising of the exclusive rights vested in any owner of copyrights, whether such exercising is legal or illegal, direct or indirect.

Copyright patriotism: A nation's loyalty and devotion regarding the protection and application of copyright and legislation.

Copyright stakeholder/stakeholdership: the collective of authors, owners and users in respect of a copyright work

Core copyright industries: Industries wholly engaged in the creation, ownership, servicing and exploitation of copyright.

CISAC: Confédération Internationale des Sociétés d'Auteurs et Compositeurs known in English as The International Confederation of Societies of Authors and Composers.

Designs Act: An element of the global Intellectual Property Law structure implemented on a national level either by separate statute or as part and parcel of the copyright law statutes

Dual-use technology: Devices and services that can be used in either an infringing or non-infringing manner. Examples of dual-use technology include file-sharing services, photocopiers, tape recorders, typewriters, and video-recording devices.

Enterprise Act 2002: The Act prohibits collecting societies from engaging in anti-competitive agreements and practices.

Four major publishers: Warner, Sony/ATV, Universal and Independents.

Free Zone: A designated area where certain taxes or restrictions on business or trade do not apply.

HADOPI Law: The French HADOPI law or Creation and Internet Law (French: *Haute Autorité pour la Diffusion des œuvres et la Protection des droits d'auteur sur Internet*, “Law promoting the distribution and protection of creative works on the Internet”) was introduced during 2009, providing what is known as a graduated response as a means to encourage compliance with copyright law. HADOPI is the acronym of the government agency created to administer it. The HADOPI law was revoked on 8 July 2013 by the French government because the punitive penalties imposed on copyright infringers was considered to be disproportionate.

HbbTV Association: A global initiative dedicated to providing an open standard for the delivery of broadcast and broadband services through connected TVs and set-top boxes.

Illegal copyright market: the piracy market where untaxed and unregulated trade occurs with copyright works outside of the copyright law regimes and statutes, locally and globally.

Intellectual Property and IP: whilst such typically refers to and includes copyright, trademarks, designs, patents, geographical indicators, trade secrets and confidential know-how, in this study, the reference is to copyright and both terms are used, especially arising from the initial research, interchangeably with copyright.

Interdependent copyright industries: Industries engaged in the production, manufacture and sale of equipment of which the function is wholly or primarily to facilitate the creation, production or use of works and other protected subject matter.

Interested party: is a composer, author, arranger or publisher of a copyright work and

is the formal term used by CISAC and the CMO's

ISWC: International Standard Work Code, an ISO standard managed world-wide by CISAC

iTunes: Online store owned by Apple, Inc and based in the tax haven of Luxembourg.

KEA: A Brussels-based consultancy specializing in culture and creative industry issues.

Mechanical rights: The right to reproduce a work eligible for copyright in any media and in any format.

Membership of CMOs: Open to all owners of copyright and related rights, whether authors, composers, publishers, writers, photographers, musicians, or performers. Broadcasting organizations are not included in the list, as they are considered users, even though they have certain rights on their broadcasts.

Metadata: Metadata summarizes basic information about data, which can make finding and working with particular instances of data easier. This is relevant in the event an author, composer to file and to find a work created and date and details modified are very basic document metadata. Having the ability to filter through that metadata makes it much simpler to locate a specific document.

Musical work: means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music.

Napster: A controversial application that has allowed people to share music over the Internet without having to purchase their own copy. After downloading Napster, a user can get access to music recorded in the MP3 format from other users who are online at the same time.

Non-dedicated support industries: Industries in which a portion of the activities is related to facilitating the broadcasting, communication, distribution or sales of works or other protected subject matter of which the activities have not been included in the core copyright industries.

Partial copyright industries: Industries in which a portion of the activities is related to works and other protected subject matter and may involve creation, production and manufacturing, performance, broadcasting, communication and exhibition or distribution and sales.

Partners: All interested parties in the copyright stakeholdership.

Patents Act: An element of the global Intellectual Property Law structure implemented on a national level either by separate statute or as part and parcel of the copyright law statutes.

Pirate: Any person or party that gains monetary value from trading illegally with copyrights and products derived from copyrights of which he or she does not own the copyright and whereby the owner of the product derives no financial gains.

Producers: Sound recording and cinematographic film investors and owners.

Royalty supply chain: the path taken by copyright royalty, from the point of sale, use or purchase as the case may be, back to the copyright stakeholders

Sound recording: means any fixation or storage of sounds, or data or signals representing sounds, capable of being reproduced, but does not include a sound-track associated with a cinematograph film.

Synchronization rights: A rights license granted by the owner of the copyright of a particular composition allowing the licensee to “synchronize” music in timed relation with visual images (film, television shows, advertisements, video games, accompanying website music and movie trailers.).

Test case: In case law, a test case is a legal action of which the purpose is to set a precedent. An example of a test case might be a legal entity that files a lawsuit in order to ascertain if the court considers a certain law or a certain legal precedent applicable in specific circumstances, in order to file similar lawsuits in similar circumstances at a later stage.

Tune Code: one of three musical and literary work identifiers used by CISAC

Universal Copyright Convention: Administered by the United Nations Educational Scientific and Cultural Organization.

WID: the Works Information Database, managed by ASCAP and owned by CISAC that has forty eight country members that access and use the database

Work: means either an authorial work or an entrepreneurial work contemplated in any copyright act that is eligible for protection by copyright including literary works, musical works, dramatic works, artistic works, cinematograph films, sound recordings, broadcasts, programme-carrying signals, published editions and computer programs.

CHAPTER 1: THE RESEARCH CHALLENGE

“Innovation is fostered by information gathered from new connections; from insights gained by journeys into other disciplines or places; from active, collegial networks and fluid, open boundaries. Innovation arises from ongoing circles of exchange, where information is not just accumulated or stored, but created. Knowledge is generated anew from connections that weren’t there before.” (Margaret J. Wheatley)

1.1 Introduction: Copyright investment

To remain competent in an increasingly complex economic environment, it has become necessary for the copyright fraternity to construct new innovative initiatives with diverse stakeholders, including human capital, technology and customers. Social innovation in the domain of copyright law which can be defined as an ongoing complex legislation that propels relevance in the complex copyright law environment (Steyn, 2012). In today’s information economy, knowledge of copyright law has fast become the powerful engine for economic growth. As far back as 2001, the EU recognized this with implementing the Directive 2001/29/EC of the European Parliament and of the Council regarding the harmonization of certain aspects of copyright and related rights in the information society. This has significant implications for trade and development for all countries (Martin-Prat, 2014). For advanced industrial economies, the information economy is already a leading edge from which national wealth flows and a key to improving competitiveness and urgently addressing copyright enforcement.

Globally, creative industries are estimated to account for more than 7% of the world’s gross domestic product and are predicted to grow, on average, 10% per year (Unctad, 2003). The primary area of interest lies with the copyright dividend and the impact of copyright infringement on such copyright dividend. The creative industries play a critical role in the economic progress of a nation and thus attending to the impact of the copyright dividend on the illegal copyright market is imperative. In the USA, as stated by Metalitz and Schlesinger (2011), copyright industries contribute significantly to the overall gross domestic product (GDP). In 2010 the value added by the core copyright industries was \$931.8 billion, or 6.36% of the US economy. The value added by the total copyright industries in 2010 was \$1.627 trillion, or 11.10% of the US GDP.

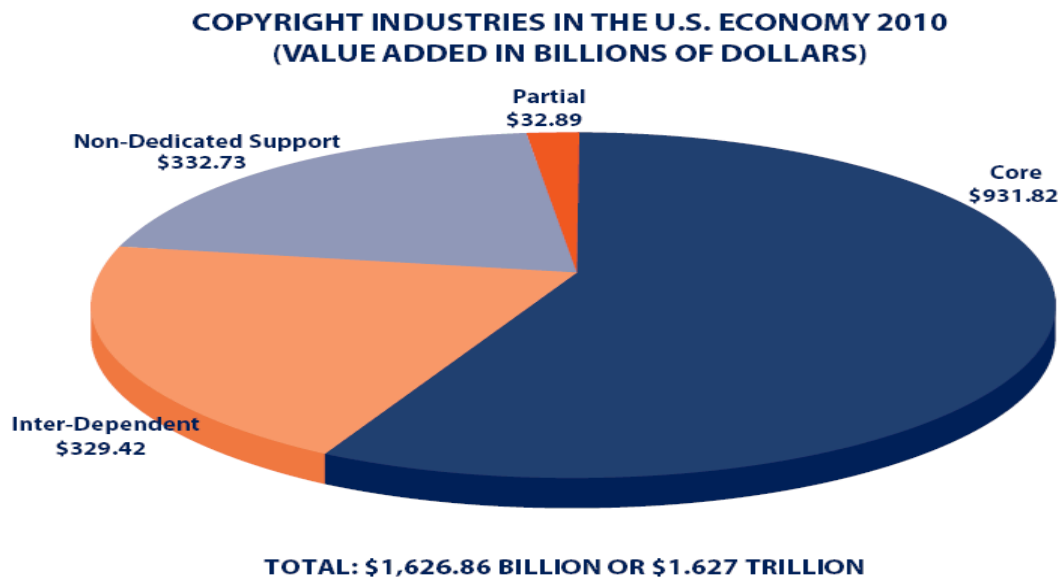


Fig. 1.1: Copyright industries in the US economy 2010

Source: Metalitz and Schlesinger (2011)

According to Metalitz and Schlesinger (2011), despite the difficult recessionary period of 2008-2009, the core copyright industries fared better than the rest of the US economy from 2007 to 2010, growing at an aggregate annual rate of 1.10%. The average annual growth rate of the entire US economy over the same period was only 0.05%. During the same period, the total copyright industries managed to grow at an annual rate of 1.47%. The core copyright industries employed nearly 5.1 million workers in 2010, which represented 3.93% of the entire US workforce and 4.75% of the country's total private employment.

The copyright industry is a great contributor to the overall world economy and is at the same time highly affected by the growth of the illegal copyright market driving the trade of infringed goods and as a result destroying the copyright dividends. This makes strategic intervention towards a consulting framework to deal with the inevitable challenge of copyright enforcement a pivotal urgency in responding with resilient mechanisms to diminish the illegal copyright market. Diverse copyright law frameworks are a key necessity, and can become building blocks for a dynamic industry. In creating an alliance of intellectual perspective on how the industry is driving high performance, it is of key importance to look at the same recession period of 2008 in South Africa. Figure 1.2 illustrates that the activity of the copyright-based industries in South Africa showed positive growth in terms of economic performance.

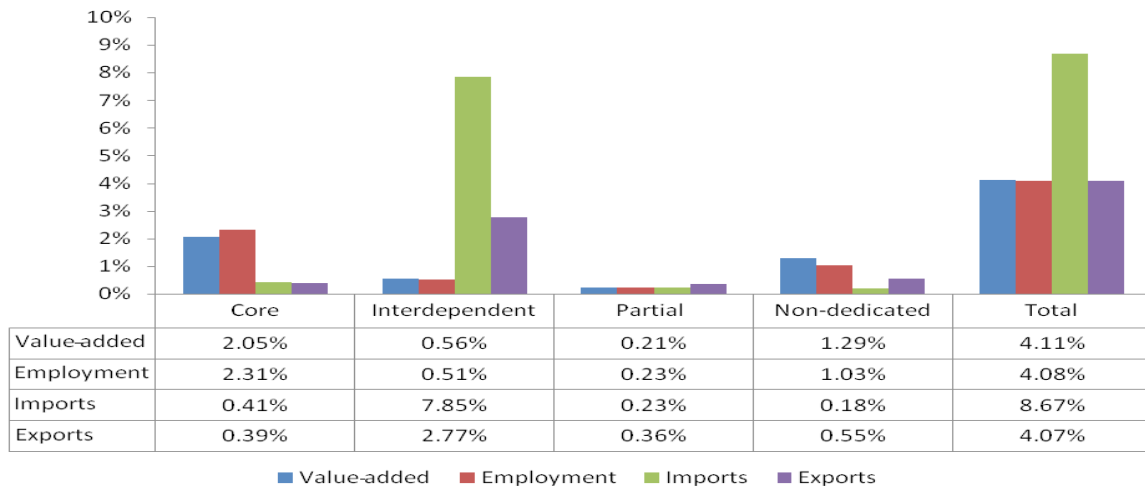


Fig. 1.2: Contribution of copyright based industries to the SA Economy in 2008

Source: Pouris (2011)

The progress of copyright industries can diminish the illegal copyright market, provided that resilient enforcement alliances are coordinated by governments. Pouris (2011), signifying the strength of copyright industries, mentions that during 2008, copyright-based industries in total were responsible for almost 4.11% of the total South African economy, with the core copyright-based industries being the highest contributors (2.05%) and the non-dedicated copyright-based industries following with 1.29%. As far as employment is concerned, during 2008, 4.08% of the workforce was employed by copyright-based industries, the majority of which was employed in the core and non-dedicated copyright-based industries (2.31% and 1.03%). The interdependent copyright-based industries showed a high contribution to exports (2.77%) and an even higher contribution to the total imports (7.85%).

The creative industries have legislative protection through copyright and related rights law. The law protects the rights of authors, performers, producers and broadcasters. These industries contribute to the cultural and economic development of nations. This protection fulfils a decisive role in articulating the contributions and rights of different stakeholders and the relation between them and the public.

The purpose of copyright and related rights law is twofold: firstly to encourage a dynamic creative culture while returning value to creators so that they can lead a dignified economic existence and secondly to provide widespread, affordable access to content for the public (Ficsor, 2002).

Gilfillan (2014) classified creative industries into five broad subsectors which include copyrights, patents, trademarks, designs and geographical indicators,. However, a set of core industries or areas of activity constituting the “creative industries” can be identified as the recording industry, music and theatre production, the motion picture industry, music publishing, book, journal and newspaper publishing, the computer software industry, photography, commercial art and the radio, television and cable broadcasting industries.

1.1.1 Copyright and the infringement challenge

While the economic and employment-generating potential of the copyright industries is vast and many developing and transitional countries have great potential for improvement in this area, most are still marginal players, despite their rich cultural heritage and an inexhaustible pool of talent. This position reflects a combination of domestic policy weaknesses versus global systemic biases (Unctad, 2003). The most evident and inherent problem that can be linked to policy weakness and global systematic biases within the creative industries is the infringement of copyright.

The term most widely used to refer to copyright infringement and the theft of the copyright dividend is piracy, or *piratage* (Meyer, 2012). However, this is not a stand-alone problem and should be viewed according to the structure of the overall industry, namely that (i) copyright is not harmonized; (ii) others have argued that infringement of copyright is seen as a victimless crime and (iii) copyright knowledge does not feature in some police college syllabuses. Law enforcement’s capacity in Africa to fight piracy has thus far been limited to countries where copyright and intellectual property (IP) laws feature in the syllabus of police colleges (Hooijer, 2013).

Taking these challenges into consideration, it means that enforcement by governments is almost impossible, even for those countries that have modernized their copyright laws, because the efficiency of enforcement is dependent on a seamless global and integrative copyright law system. Up until fifteen years ago many African copyright laws were also fairly old. Some African countries such as Swaziland still use the British Imperial Copyright Act of 1916, to date the oldest law. Copyright protection is addressed under four statutes, dated 1912, 1918, 1933 and 1936 (US Department of State, Swaziland, <http://www.state.gov>).

Swaziland inherited its intellectual property rights regime from the colonial era, during which intellectual property was primarily protected by the British Imperial Copyright Act of 1916. Furthermore, according to the Registrar General, Swaziland has not ratified or acceded to the copyright conventions and treaties and thus copyright protection in Swaziland is claimed to be ineffective. The other limitation is that Swaziland does not have a bilateral copyright agreement with the United States.

1.1.2 Copyright infringement in the illegal copyright market

Copyright infringement, in civil and criminal terms, is a crime that allows copyright products to be illegally sold on the black market by a party that illegally appropriates the rights of the copyright sold and a party does not pay any royalties to the rightful owner of the works or taxes to the state. The illegal copyright market is defined by the black market as a white-collar crime. This market is not a physical place, but rather an economic activity in which merchandise or services are bought and sold illegally. Also called the underground market, the black market gets its name from the fact that its activities take place outside the sight of law enforcement (Bahmani-Oskooee, Goswami & Mebratu, 2006).

According to Ranaivoson and Orbach (2008), significant challenges face copyright holders in enforcing their rights against infringers whose actions are theft of the copyright dividend. There are not only a multitude of technological problems, as in the case of locating servers of those who host infringing material, but also a multitude of problems in taking those who run and host the servers to court. A copyright holder may be situated in the United States while the infringer may be located somewhere in Europe or Asia. This raises a choice of copyright law jurisdiction, where the laws of the nation regarding the location of servers may prevail over infringement issues, rather than the copyright laws of the country of origin.

In this study infringement is regarded as a central challenge that affects the proprietors of copyright. The ownership of copyright vests firstly with the creator of the works, with the word 'author' being attributed to all creators of the different works eligible for copyright. The author is defined per copyright work and is always the first owner of the copyright, or the 'proprietor'. In the same way that authors are recognized as creators and first owners of copyrighted works (as many copyright law regimes attest),

performers (also known as artists) are also recognized as creators of related rights works called 'performances'.

Other owners, or proprietors, of copyrighted works are music publishers (musical and literary works and songs) and record companies (sound recordings, cinematographic films and artistic works). Thus, an owner of content is said to include owners of copyright and related rights to the extent that a content owner may in actual fact be an owner of certain rights under copyright, but not of the actual copyrighted work, depending on contractual obligations between the authors and the proprietors, who are collectively referred to as interested parties.

In this study the copyright proprietor refers to the owner, publisher, record label, artist, producer, creator, composer, author, artist, anyone with an economic interest in the copyrighted and related rights works and the parties involved with it, such as the government and anyone being affected by copyright infringement in the illegal copyright market that is prejudicial to their interests and contrary to the normal exploitation of their works. In some events the latter might not necessarily be a copyright proprietor, but this study includes any parties that have a direct interest in the relevant content and works.

1.2 Problem statement

The research problem addresses copyright protection in the domain of intellectual property, which includes copyright, trademarks, designs, patents, geographical indicators, trade secrets and confidential know-how. In this study, the copyright is the emphasis where the explicit exploration is targeted on copyright infringement.

The problem of copyright infringement is elaborated by Darrow and Ferrera (2007), in that consumers increasingly rely on the Internet to obtain access to music, films and television. This leaves content producers with the problem of increasing Internet piracy. In an attempt to protect their content, rights holders police the Internet, searching for unauthorized distribution of their works on websites, such as YouTube, and peer-to-peer (P2P) networks, such as BitTorrent.

When copyright infringement is discovered, formal complaints are issued to network operators which may result in websites being removed from the Internet or home Internet connections being disabled. Although the implications of being accused of copyright infringement are significant, very little is known about the methods used by

enforcement agencies to detect it, particularly in peer-to-peer networks. Creative industries already contribute to employment and export expansion in some leading developing countries, but at present their wider potential is unrealized. Indeed, these industries are too often associated with a precarious form of job security with low value added and limited export earnings. As a result, there is an urgent need to modernize this sector and strengthen local capacities in order to boost their contribution to income generation, thereby contributing to poverty reduction (Unctad, 2003).

The researcher engaged with respondents from South Africa and abroad to obtain their views and experiences on the impact of copyright infringement in their businesses. The targeted respondents were industry leaders and practitioners within the copyright economy. The discussions were structured around unexplored and emerging consulting frameworks that could aid in dealing with the illegal copyright market. In this study, the term 'illegal copyright market' refers to and encompasses copyright infringement on all levels, as stated in section 1.2 of the problem statement.

As stated by Dean (2006), Article 1, section 8, clause 8 of the Constitution of the United States of America empowers Congress to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

This simple clause, to a large extent, summarizes the philosophy and underlying principles of copyright law. Copyright law, like other branches of intellectual property law (for instance the law of patents, trademarks and designs), seeks to create a system whereby creators of original works are afforded a qualified monopoly in the use or exploitation of their works in order to compensate and reward them for the effort, creativity and talent expended and utilized in the creation of their works and to enable them to create more and better works or intellectual products in future.

Affording owners the opportunity to collect all the commercial gain from their works, the copyright dividend as referred to herein, for a limited period, constitutes a reward or incentive. This incentive is succinctly stated in section 45, Effect of a patent, of the South African Patents Act, 1978, and in section 20(1), Effect of registration of design, of the South African Designs Act, 1993, the provisions articulate a principle which is common to all forms of intellectual property law.

The infringement challenge is complex in the sense that the areas where the infringement of copyright occurs are diverse, online, in public venues, or through intentional or unintentional misallocation of royalties. Such misallocations can be effected by publishers, users or collecting societies, resulting in the infringement of the following rights:

- i. Performing rights
- ii. Reproduction rights, often called mechanical rights

The offending result of such unlawful activities is that the owner of the works does not receive any monetary compensation from the proceeds of sales and/or use revenue, generated through either the merchandising of any goods within the illegal copyright market, or any other exploitation of the works. The copyright dividend is thus diverted to the wrong party.

The earnings gained from the illegal copyright market are not accounted for in the tax system and the generated income cannot be determined. So far, the only effort made to counteract the illegal copyright market has been that of law enforcement within the territories with stronger copyright laws, however, the practical solution to this problem is still unknown. The researcher is of the notion to explore a future holistic consulting framework to address these challenges.

1.3 The main goal

This study explores and suggests a new consultation framework to deal with copyright law enforcement which is essentially translated into the re-engineering of the copyright dividend to the legal copyright market and ownership.

The intent of this study is to address copyright law enforcement and to align all the interested parties in copyrights, to, whether utilizing existing technologies or by new methods, arrest illegal copyright market share and divert the copyright dividend arising from the illegal copyright market to the legal copyright market, and in doing so, enhance the equitable trade of copyright. The intent is also seeking to understand the impact of the internet, convergence and digitization on the way copyrights are traded, reproduced and used. Moreover the focus is on how copyright is consumed as well as how the information concerning ownership of copyright is integrated in the trade and consumption.

The proposition of re-engineering the copyright dividend in the illegal copyright market, which was targeted at protecting copyright against rampant infringement, and was principally drawn from the description of Neidhart (1993). Neidhart suggests that re-engineering is the fundamental rethinking and radical redesign of business processes to achieve dramatic improvements in critical, contemporary measures of performance, such as cost, quality, service and speed. The proposed framework would be affected through exercising wide access to the information concerning the trade and consumption of rights already owned by the legal copyright market in order to enable and enhance legal trade in the copyrights.

The structure of the rights (within a single work) under copyright can be owned by various parties, such as the creator of the works and the publisher. This ownership structure can encompass levels of complexity. Firstly, the rights can be given to a foreign partner, like a sub-publisher in a foreign market, to sell and promote the work in a different geographical location or secondly, the creators of the work can have different domicile structures.

Consequently, co-operative strategy becomes critical in managing these diverse interests from a single aligned approach, using a comprehensive copyright management framework. According to Child, Faulkner, and Tallman (2005), co-operative strategy is the attempt by organizations to realize their objectives through cooperation with other organizations, rather than in competition with them. It focuses on the benefits that can be gained through cooperation and how to manage the cooperation so as to realize them. A co-operative strategy can offer significant advantages for companies that are lacking in particular competencies or resources by securing these through links with others possessing complementary skills or assets.

1.4 Sub-objectives

The strategic imperative is the ability to recover and to take direct control of the illegal copyright market and the consequent copyright dividends through various means, including the management of copyright information and the promotion of the given rights of the owner of the product. As defined in chapter 1, sections 9 and 9A of the South African Copyright Act 98 of 1978 (South Africa, 1978) as amended, including the Regulations, and also in chapter 1, section 8 of the South African Copyright Act 98 of 1978 as amended, including the regulations.

The exploration of the five research questions, aimed at being key sub-objectives outlined below (figure 1.3), the questions were; based on the copyright owner gaining possible and direct benefits from the market. The primary goal is to make a positive impact by re-engineering the copyright dividend incurred from the illegal copyright market. The producers of labels and films are the ones who invest, who take the risk, and who have the greatest vested interest in recovering the copyright dividend from the illegal copyright market. The State also has significant interest.

The question of what to invest in remains, and the answer to this question lies in the subject matter that gives rise to the rights exploited, such as sound recordings and cinematographic films, as outlined in the Copyright Act. With the subject matter defined, the economic rights were of priority. The five research questions emerged from a larger body of meta-data which included critical conversations within the copyright domain in reference to copyright law enforcement from the problematisation process.

1.4.1 The five research questions in the study

This study contains five research questions as indicated in figure 1.3.

Question 01: Give your opinions and views, on causes and evidence of copyright infringement within the following domains of copyright stakeholdership:

- Musical works and literary works
- Artistic works
- Sound recordings
- Cinematographic films

Question 02: Which is in your opinion the least appropriate copyright infringement or piracy model causing losses to authors (organization, community and/or economy and view on the value of the losses caused, and how such can be re-engineered through alignment, or by any other means

Question 03: What is in your opinion the most appropriate working model to fight copyright infringement or piracy

Question 04: Give your opinions and perspectives on how to manage copyright infringement by including all interested parties

Question 05: What are the specific actions taken, that proved most successful in a country or in general (legislative, existing law enforcement, education, and other macro and micro conditions).

Fig. 1.3: The five research questions

Source: Own construction (2013)

1.5 Anticipated contributions of the study

The researcher is of the notion to explore copyright protection in order to make a contribution to government policy, corporate strategy and business management in the domain of copyright law. In broad terms, copyright promotes the exclusive right, in relation to work embodying intellectual content, to do or to authorize others to do certain acts in relation to certain types of work, and also outlines which acts represent each type of work in terms of all the manners in which that work can be exploited for personal gain or profit.

The right to control the use and ownership of a work in all manners in which it can be exploited for personal gain or profit is an essential right under the law of copyright and that law does not achieve its objective unless such essential right is granted to the full. This is the function and purpose of the law of copyright (Dean, 2006).

1.6 Strategic contribution

The copyright dividend being disregarded by the copyright infringement problem; this poses a real investment threat to individuals, industries and firms that own the legal rights of products. Copyright infringement also affects government in respect of law enforcement and loss of tax revenue. The illegal copyright markets are not fully accountable to the contribution of taxes due to the nature of their business. New ways of addressing loss of the copyright dividend have not been evident and regardless of the laws that have been implemented the problem continues to affect the creative industries.

1.7 Research design

In this study the research design entails the overall plan to connect the conceptual research problems to the pertinent questions and achievable empirical research results. It articulates what data was required, what methods were used to collect and analyze this data and how all of these answered the research question. Casebeer and Verhoef (1997) state that any study design or combination of research methods selected for use should be responsive to the particular research problem or question.

The research design relates to the criteria that are employed when evaluating the question of copyright law enforcement. This is therefore an exploration towards

generating qualitative evidence of copyright infringement criteria and relates to the five research questions which the investigator is implementing (Bryman & Bell, 2007).

1.7.1 Qualitative research

The focus of this study is on exploring the lived experiences and perceptions of the ten copyright management leaders directing their respective organizations in the creative industry. In this explorative study, the researcher adopted a qualitative research approach, because this approach is used to study, explore, or understand the central phenomenon (Creswell, 2002). Moreover, a qualitative study is useful for studying a limited number of cases in depth (Marshall & Rossman, 1999). Quantitative and qualitative methods differ in their flexibility. The researcher maintains that qualitative methods are typically more flexible in that they allow greater spontaneity and adaptation of the interaction between the researcher and the research participant. For this reason, the use of a quantitative research method in this study would not be effective. The advantage of using qualitative methods is furthermore that the researcher can ask mostly “open-ended” questions that are not necessarily worded in exactly the same way with each participant (Saunders, Lewis, & Thornhill, 2007). Through the use of open-ended questions, participants were free to respond in their own words. Qualitative research does not necessarily deal with cause and effect relationships of independent and dependent variables, but rather with establishing a phenomenon in a credible manner, that is, ‘generative mechanisms’ or ‘causal powers’ (Guba & Lincoln, 1994), which further support the explorative nature of the study.

The researcher qualitatively engaged with the copyright experts to establish their lived experiences and the impact of infringement within their respective global jurisdictions. Proponents of the qualitative method maintain that it is relevant in extracting worldviews in order to develop a deep understanding of a phenomenon of interest (Venkatesh, 2013).

The approach underscores strategic decision-making and adds rigor, which was suited for this study. The inductive approach as a qualitative viewpoint was specifically advantageous in describing the cultural and operational realities of the respondents, as well as the historical results of significant thematically related events that were classified by the researcher, based on spatial, geographic and managerial context, deploying copyright strategic conversations.

1.8 Research strategy

The researcher deployed a grounded theory approach and integrated the thematic analysis and lamination process to enhance the data treatment and execution as the qualitative framework in this study. Grounded theory, as a qualitative method, endeavors to integrate the strengths inherent in quantitative methods with qualitative approaches (Walker and Myrick, 2006). The research problem pertains to improving copyright management practices in the workplace as a significant organizational conversation. This approach was distinct in the procedures used for data collection, interpretation and copyright consultation.

The choice of using the inductive approach is supported by the fact that it is qualitative, in that it commences and develops from the phenomenon that the researcher is seeking to understand (Whitehead, 2009). The purpose of the inductive approach is to produce a description of a universal essence. The aim of research, as stated by Walliman (2011), is to acquire knowledge and develop understanding, collect facts and interpret them to form a picture of the world within and around us.

The copyright infringement inquiry within the inductive context is supported by Hancock (2002), in that qualitative research is concerned with developing explanations of social phenomena. It aims to understand the world in which we live and why things are the way they are. It is concerned with the social aspects of our world and seeks to answer questions about:

- Why people behave the way they do
- How opinions and attitudes are formed
- How people are affected by the events that go on around them
- How cultures have developed in the way they have; and
- The differences between social groups.

The research question, as stated by Saunders et al. (2007), subsequently dictates the choice of research, collection and analysis, procedure strategies, collection techniques and the time horizon over which the project would be undertaken and completed.

1.9 Study population

The most practical and sizable population from which to obtain the study sample was the PACSA, CIAM, ECSA, SGA and ALCAM songwriter association organizations that work with CISAC on a global level. Part of the research was conducted using Skype and the rest in Washington DC, Malawi, Ethiopia, Kenya, Burkina Faso and Johannesburg on a one to one basis. The participants in the study needed to be carefully chosen individuals who all had experienced the phenomenon in question so that the researcher, in the end, could forge a common understanding (Mouton, 2002; Schurink, 2008).

1.10 Sampling method

The researcher used purposive sampling. Purposive or judgmental sampling enabled the researcher to use discretion and judgment in selecting cases that would best answer the research question and meet the study's objectives (Saunders et al., 2007). In the sampling process the researcher searched for individuals who had particular expertise and who were most likely to advance the researcher's interests and potentially advance the conversation with critical copyright infringement lived experiences.

1.11 Final sample characteristics

The researcher extracted a sample of individuals that operated within the copyright collective management domain. The sample characteristics are discussed in detail in chapter four.

1.12 Research procedure

The researcher secured appointments with the participants at selected CISAC copyright conferences. As part of the planning process, the researcher presented the PhD proposal in Costa Rica, San Jose after it had been approved by the North West University in Potchefstroom. The presentation in San Jose took place during a CISAC meeting where ALCAM, SGA, CIAM, PACSA and ECSA members were in attendance. The researcher's goal was to secure research participants for the study from these organizations. The next stage was to secure the other participants from the CISAC African committee meeting in Malawi which was attended by the African collecting societies, SEACONET and WIPO. This process was more strategic in that the right

participants for the study were secured based on the roles they fulfilled in their respective organizations.

1.13 Data collection method

The researcher captured the data from a pool of countries (see figure 1.5), within a diverse cultural context, driven by both civil and common-law rationales in terms of copyright practices. The method used for data collection and the nature of the data collected depended on the research goal, the circumstances in which the study was conducted and the participants as well as community sensitivities (Gibbs et al., 2007). The study's objectives encompassed the five questions that emerged from earlier conversations and the researcher used these questions as the basis for the creation of the research questions.

1.14 Recording

The researcher obtained permission in advance from the research participants to record the interviews.

1.15 Method used for storing of data

The interviews were recorded with a digital tape recorder and computer and transcribed at a later stage. Transcribed interviews and tape recordings were safely stored for future reference.

1.16 Data analysis

Grounded theory uses the constant comparison method of analysis and this particular study nose count was prominent for data funneling and packaging. This analysis is based on asking questions and making theoretical comparisons with the data, which are two essential operations for theory development (Strauss & Corbin, 1998). The coding process in this study followed Strauss and Corbin's (1998) techniques of open coding to discover categories, axial coding to further develop and relate the categories and selective coding to integrate and refine the theory. These three coding techniques were not necessarily sequential analytic steps (Strauss & Corbin, 1998), as the researcher concurrently worked on thematic analysis and laminations for obtaining patterns of meaning in the data.

The rationale for using grounded theory in this study was that it was most appropriate for data analysis because it has a well-defined process that begins with basic description and moves to conceptual ordering and then on to theorizing (Patton, 2002). The integration of the thematic analysis and lamination process as a tool was instrumental in creating a much richer approach of looking at and gaining meaning from the data. The unique aspect of grounded theory was in its pertaining to theory building through an iterative approach by using theoretical coding, focusing particularly on relationships between categories (Urquhart, Lehmann, & Meyers, 2009). These relationships could be of various natures, causal relationships being one of the many options in the structure.

Thematic analysis is a method for identifying, analyzing and reporting patterns and themes within data (Holloway & Todres, 2003) and the use of the term 'lamination' implies that parts are known as local conversations are brought together and layered upon to establish a coherent perspective in an organization (Oswick & Richards, 2004). Both these processes, within the framework of grounded theory, focused on co-construction and it gave priority to the meaning of the participants' views regarding their critical copyright perspectives of the illegal copyright market.

Qualitative data analysis encompasses the inductive approach, interpretation and deduction. Corbin & Strauss (1990) have elaborated that coding is not simply part of data analysis but fundamentally the analytical process used by the researcher. The coding process was instrumental in that as it allowed a comprehensive platform for the researcher to develop patterns of meaning from the transcribed data. Thematic analysis, which researchers regard as a flexible method for analyzing text data (Ryan and Bernard, 2000), it was used as a technique for qualitative research.

The themes were graphically presented with values to indicate the number of times a particular theme was repeated in the ten interviews, which in principle was a "nose count" of issues that worked in qualitative counting to support the sequence of key word repetition (Boden, 1994).

The researcher had practised the one-on-one interviews to prepare verbatim transcripts using the methods, procedures and practices of qualitative analysis described by Moustakas (1994). According to Moustakas (1994) the process of analyzing data, firstly, it entails to transcribe the interviews. Secondly, the expressions relevant to the

experiences of participants are identified by the participants, and it needs to be coded and thirdly, patterns and questions have to be identified. Once these questions are classified, the meanings of the statements need to be identified.

The primary purpose of the inductive approach is to allow research findings to emerge from the frequent, dominant and significant questions inherent in raw data, without the restraints imposed by structured methodologies (Thomas, 2003). The researcher's inductive strategy was part of a stringent qualitative approach. The purpose of qualitative analysis is to interpret the data and the resulting questions to facilitate understanding of the phenomenon being studied (Sargeant, 2012).

The most pertinent issue within the scope of copyright is the adverse effect of the illegal copyright market. This prioritized the five questions as the primary leverage to advance this study by engaging with the research participants to address the problem statement. The researcher developed a research process that followed four phases to execute the main goal of the study. This process is illustrated in figure 1.4. The cultural diversity of the research participants was a necessary catalyst as it introduced multiple perspectives to the study and motivated the qualitative approach. Furthermore, the infringement experiences of the participants were instrumental in motivating the inductive approach as a critical process to extract the most relevant issues that enriched the qualitative paradigm.

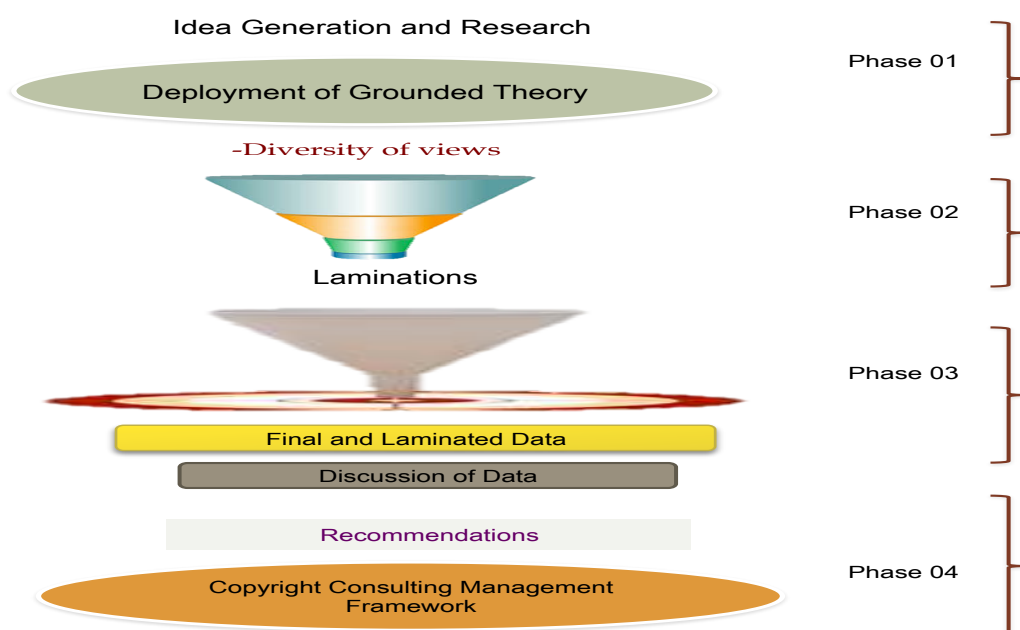


Fig. 1.4: Research method in four phases

Source: Own construction (2013)

The interpretations of the diverse participants' interviews as shown in figure 1.5. the results were valuable in constructing meanings and interpretations that would advance the current copyright condition that was brought about by the illegal copyright market.

The four phases depicted in figure 1.4 had outlined the active process of scrutinizing, reflecting on and interrogating the data, as well as the forming of laminations, which had involved the researcher, the participants and the various actors in the organizational context under scrutiny.

Various organizations from the countries outlined in figure 1.5 were considered owing to the broad scope of infringement. The study provided a set of approaches for organizing, processing and interpreting data. Priority was given to techniques that optimally captured the context through semi-structured and non-directive conversations and interviews and the deployment of participant observation.

1.17 Securing quality of research method and data

Concerning both qualitative and quantitative data and research design in the domain of copyright protection, as underwritten in the problem statement, the researcher scientifically explored methods that were required to guarantee validity and reliability in order to provide valid results and valuable future recommendations. The accuracy and credibility of the information were imperative. The most critical process regarding validity and reliability concerns the quality of this explorative process is promoted by positivist researchers concerning internal validity, in which they seek to ensure that the study measures and tests what is actually intended (Shenton, 2004). Many qualitative researchers avoid the terms validity and reliability when referring to criteria for evaluating the scientific merit of qualitative research and prefer to use terms such as credibility, trustworthiness, truth, value, applicability, consistency and conformability (Zucker, 2001).

Researchers within a constructivist paradigm attempt to reconstruct participants' understanding of the social world (Denzin & Lincoln, 2000). Hence, traditional criteria of internal and external validity are replaced by terms such as trustworthiness and authenticity (Zucker, 2001). The researcher ensured trustworthiness regarding the quality and the confidence in the eventual findings and recommendations by ensuring that laminations (Boden, 1994) are included in the research design.

The researcher ensures that empirical data and epistemological connections among the various constructs and steps in the research process, including the purpose of the study throughout the analysis and interpretation, are achieved (Letts et al., 2007). This study obtains credibility, through the trustworthiness of the research design and data collection methods through an in-depth evaluation and exploration which contributes to the authenticity of the many voices that contribute to this study. Lincoln & Guba (1985) explain that credibility is an evaluation of whether or not the research findings represent a “credible” conceptual interpretation of the information drawn from the participants’ original data. Golafshani (2003) explains that the importance of reliability and validity applies to all types of research studies, because the goal of finding plausible and credible outcomes which is central to research.

1.18 Ethical considerations

The researcher obtained ethical clearance via the research committee of the North West University in Potchefstroom. The researcher presented an edited version of the research proposal with only the background of the study and main goal in Costa Rica at a global CISAC copyright meeting to obtain permission to conduct the interviews. This edited version was constructed with the aim of avoiding any possible bias that might take place once the interviews commenced with the research participants. The researcher explained to the participants what would be expected from them, what amount of time they would have to invest and the value of the study to the future of copyright. The co-operation of the participants was granted as a result of the reciprocal benefit of the study to the global community and with the expectation that the findings would be presented at the next global copyright meeting on completion of the research.

1.19 Study setting

Copyright infringement, the pre-cursor of an illegal copyright dividend, is germane to all copyright law regimes in a similar manner, being that the copyright law in place in any regime is breached. There are essentially two copyright law regimes in the world, namely common law and civil law, with the former represented in the main by the UK’s CDPA 1988 *as amended and the USA’s Copyright Law 1976 and both common and civil law founded in the main by Germany’s and France’s are represented by the Directives and Regulations of the EU (Gilfillan, 2014) to have the moral and economic right intertwined in the same work within the act.

Copyright is subject to an underlying duality, namely moral rights and economic rights, and the copyright law regimes can be identified in accordance with their respective treatment of these two rights. Basically common law copyright regimes favor economic rights (capital) over moral rights (creativity), whilst civil law copyright regimes favor moral rights (creativity) over economic rights (capital) (Martin-Prat, 2014). Economic rights generate extrinsic reward albeit via an indirect channel that may have some ‘crowding-in’ features. Moral rights are almost entirely intrinsic rewards, though they can be used to extract pecuniary (extrinsic) payments by withholding permissions (Towse, 2010). The economic rights are those within the copyright that are entitled to both the publisher and the creator, and the moral rights those entitled to the creator of the work alone.

This study uses the UK’s common law copyright regime on the one hand, and the EU’s directives and regulations on the other hand as the setting, with ten countries all contributing to the study. In its broadest conceptualization, this study intends to address stakeholders of copyright, in respect of their views, in recovering and dealing with copyright infringement.

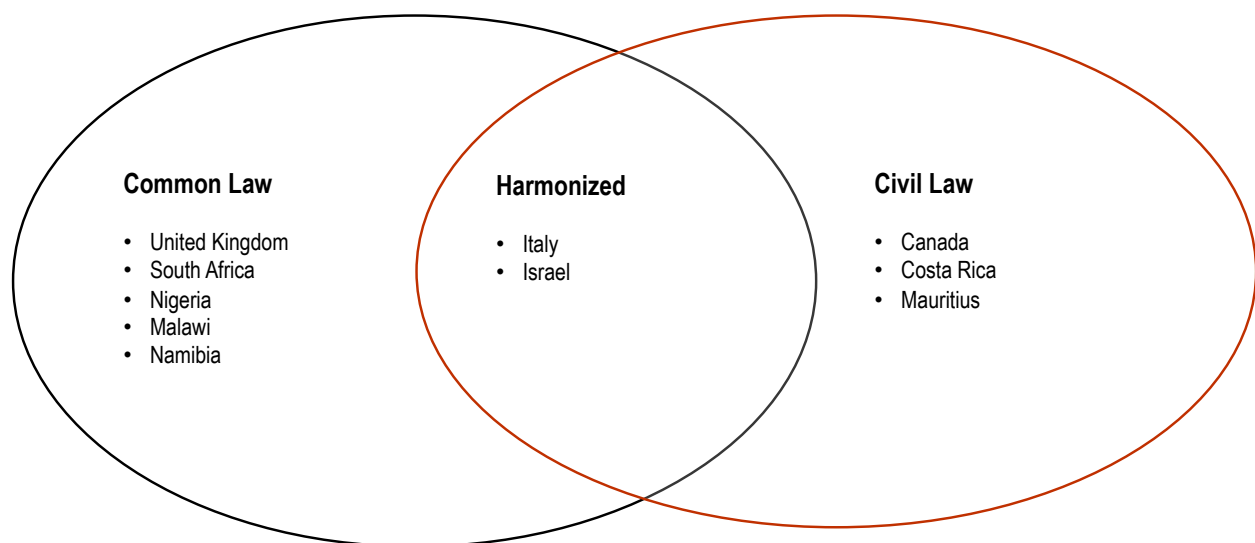


Fig. 1.5: Research targeted regions

Source: Own construction (2014)

The first rationale for such a diverse geographical sample was that the ten countries had to be chosen according to their type of law jurisdiction. It is also important to note that even if there was a diverse geographical sample, there were only two legal systems. In the study sample depicted in figure 1.5, it is indicated that there were only

two legal distinctions made within the sampled countries, namely civil and common law jurisdictions. The harmonized countries indicated are having both civil and common law in their jurisdiction.

The second rationale was that collecting societies around the globe had to have reciprocal agreements in respect of works, whereby a creator can be affected by copyright infringement beyond the original domicile of the created work. Copyright infringement has no geographical restrictions, which in essence validated the diverse communities represented in the study sample.

The third and most important rationale was that these countries had to be members of the PACSA, CIAM, ECSA and ALCAM songwriter associations, which had been working with CISAC on a global level. The CISAC platform therefore provided access to these international communities.

1.20 Scope of the study

Collaborative copyright management enabled platforms are required to initiate copyright based learning and idea sharing, leveraged by synergistic interaction of knowledge workers deploying technology to reach competitive strategic objectives. It has become imperative for leadership to be visibly committed to copyright-enabled learning in order to compete effectively within the new innovation based economy. Furthermore, cross-functional teams have to be incorporated into copyright-enabled forums to facilitate the development of copyright processes needed for expansion and growth.

These forums should, in addition, continuously accommodate and enhance open communication channels to increase the fluidity of copyright based exchanges, as well as the diffusion of strategic knowledge and access by delivering diverse repositories of information. An effective copyright strategy should be based on the collaborative abilities of copyright stakeholder resources, manipulated for strategic competitive advantage. Important drivers are required to accomplish the research objective of copyright-enabled linkages between all functional segments in the copyright economy, integrating a systems approach aligned with organizational strategic intent.

Strategic copyright enablement should systematically co-ordinate human capital and copyright based processes to add value through ensuring best practices, leveraged by knowledge workers' collaborative memory. The geographical demarcation of literature

and data used in this study was not restricted to South Africa, for the reason that some of the collecting societies and production facilities operate on a global platform.

1.21 Limitations of the study

The study was limited to the countries listed in figure 1.5. According to Griffin (2000), the tendency of qualitative research to involve relatively small numbers of participants can be a disadvantage and this is likely to expose the study to more criticism when viewed in relation to quantitative sample size requirement. The researcher's other challenge was that, while qualitative methods can examine social processes at work in particular contexts in considerable depth, the collection, and especially the analysis of the material, was time consuming.

1.22 The layout of the chapters

The layout of the chapters in the study is briefly summarized in figure 1.6 below.

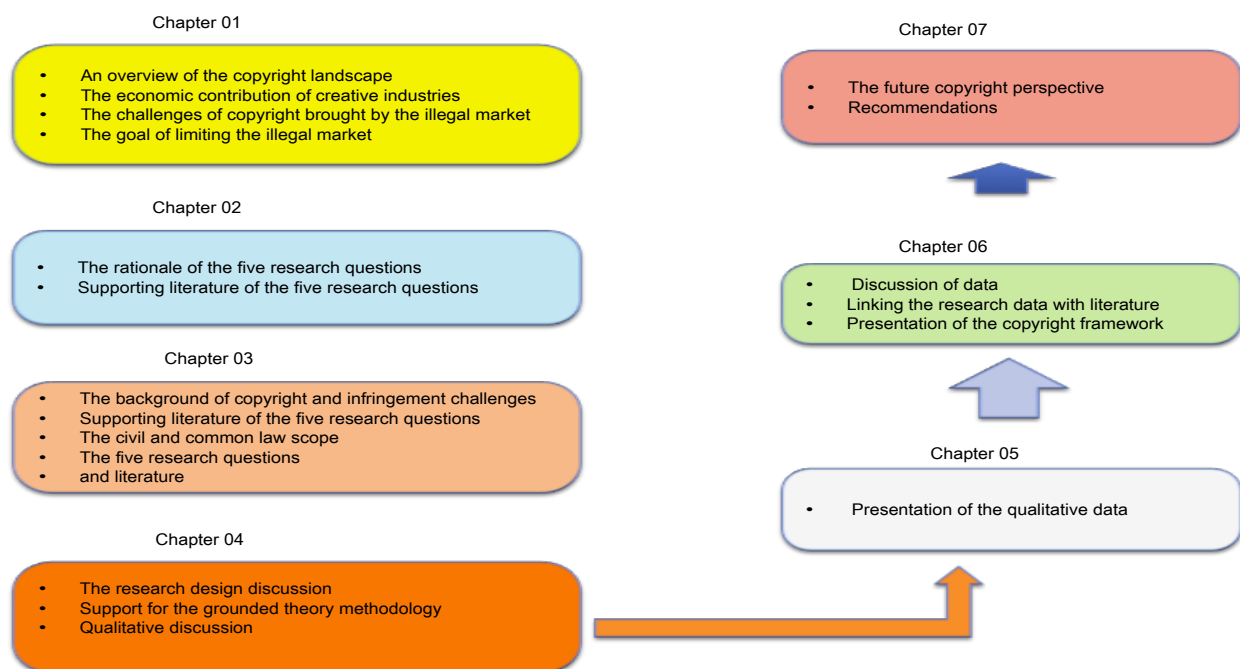


Fig. 1.6: Layout of the chapters in the research report

Source: Own construction (2014)

1.23 Conclusion

This chapter gave an overview of the creative industry's economic contribution and social value. It also outlined the challenges experienced and provided a problem statement highlighting the impact of the copyright infringement question. The anticipated contribution of the study in the relevant fields was indicated. The chapter also gave a brief indication of the research design. In achieving the main goal of the study it was important to indicate the population from which the purposive sample was extracted and the method that was used to achieve the research objectives. Finally, the ethical considerations and limitations of the study were discussed. In the next chapter the rationale of the five questions is discussed, with the relevant supporting literature to validate the questions and to elaborate on the rationale.

CHAPTER 2: THE RATIONALES FOR THE FIVE RESEARCH QUESTIONS AND PROBLEMATIZATION

“Organizations realize today that future innovations are the core competencies that drive their future value. Communities of practice embody the ability to learn and collaborate. Communities of practice provide an essential platform that fosters learning and collaboration across the organization. Communities function as tangible vessels that enable organizations to meet important challenges presented by the knowledge era.” (Steyn, 2012)

2.1 Introduction

This chapter commences by noting the importance and rationales of the research questions in respect of copyright law enforcement and infringement. The study capitalized on the copyright stakeholders challenges brought by the illegal copyright market, gave the rationales to the five research questions under inquiry and questioned the realities for improving this condition. The availability and abundance of the content has fundamentally changed with the rise of the Internet and new media. This gradually replaces physical products that must be manufactured, transported and marketed by digital products that are easily scaled and instantly distributed (Thibeault, 2012). This transition sets a premise on the discussions of the impact of copyright infringement on the content owner.

The copyright discourse in this study is premised on the progressive coherence of arguments and perspectives from the authors in the literature about the impact of copyright infringement and law enforcement on the creative industry. According to Locke and Golden-Biddle (1997) progressive coherence indicates networks of researchers linked by shared theoretical perspectives and methods working on research discourses that have advanced over time. Thus, two acts pertain to the depiction of cumulative knowledge growth and the construction of consensus among researchers by creating a point to develop and focused lines of inquiry.

In order to encourage an explorative conversation, it was crucial that the rationales of the five research questions to be presented to justify the challenge of copyright infringement experienced within the creative industry through the re-engineering of the copyright dividend in the illegal market. Whilst the aspects proposed by the five research questions contributed towards a point of strategic examination, a pertinent

concern regarding the possibility of integrating all interested parties affected by infringement in the domain of copyright remains unattained. This in itself challenges the gap that is unaddressed by the current copyright law system and simultaneously outlines the adverse impact of technology on the problem statement.

This study provides a shared argument and dialogue concerning copyright law enforcement, and to a large extent the norms of copyright infringement, and reinforces the arguments on the challenges referring to the assumptions underlying the literature about protecting the copyright industries. The problems associated with the critical challenge of copyright infringement offer reference points for addressing the illegal market. The five research questions are foundational towards addressing the problem statement and main goal of the study.

In qualifying the five research questions the researcher emphasized the irregularity question which proposes a copyright management consulting framework. Hollaar (2004) outlined the point that copyright infringement legal actions are less effective when there are a large number of small infringers. The legal process can take an inordinately long time since criminal matters have priority in courts and would be difficult and costly to litigate against many small infringers as opposed to one large infringer. Court cases represent only one component in copyright's legal regime. Some of the law's effect is felt at the *ex ante* incentive level, and much interaction between right holders and users take place through licensing rather than through litigation (Cotropia & Gibson, 2014). To individual, small-business, or non-commercial creators, all of whom are intended beneficiaries of copyright, copyright litigation remains an unaffordable proposition (Balganesh; 2013).

This raises three issues pertaining to this study. Firstly, copyright infringement is not seen as a crime that requires urgent enforcement. The second issue is that the value of the rights given to the owner of the works is not well communicated to all interested parties and thirdly, the legal system overload is clear evidence of the lack of resources in managing the problem within the structure of the copyright stakeholders.

While strategically prioritizing the the concern of copyright infringement, the argument held by Tehranian (2009) is also that the current system privileges the interests of, sophisticated rights holders, often at the expense of smaller, less sophisticated creators. In reflecting on this a qualitative analysis approach that is inductive in the building of

research questions is appropriate, thereby extracting the lived experiences and expert inquiry on copyright infringement (Letts et al., 2007). The research questions are aimed at strategically targeting and addressing the persistent challenge of copyright infringement. The five research questions emanated from both the realities of participants in an inductive approach and the researcher's prior theoretical understanding of the phenomenon under observation and literature (Ryan & Bernard, 2003).

Diverse views will be shaped as an interrogative leverage to re-engineer the copyright dividend in the illegal copyright market. The strategic goal is to leverage the research outcomes by transforming each research question into a specific project that will have integrated deliverables inclusive of all interested parties towards implementation, in order to regain the losses of the current copyright market and to strengthen its future potential.

2.2 Problematization in the copyright infringement conversation

The integral aim of researchers is to produce interesting and influential theories. The dominant view is that a theory becomes influential if it is regarded as true. However, according to Davis (1971) present evidence confirms that what makes a theory notable, and sometimes even prominent (Davis, 1986), is not only that it is seen as true but also, and more important, that it is seen as challenging the current assumptions underlying existing theories in a significant way (Alvesson and Sanderberg, 2011).

The unaddressed and overlooked issue of copyright enforcement is specifically argued within the context of the literature where progressive coherence articulated similar perspectives about copyright infringement from the authors in the literature review. This did not necessarily mean that the literature had a fundamental problem but to simply advance the copyright discourse to accurately making attempts of improving on what was not efficiently addressed. This in essence gave a pathway to look for theoretical opportunities in key areas that would deliver value in the copyright stakeholders.

The evaluation and critique within the progressive coherence of the literature was foundational at developing the five research questions which the researcher argues to be novel in the sense that they were specifically focused on addressing a phenomenon that is instrumental to the progress of the legal copyright market.

Foucault's conceptualization on problematization is a good starting point (Castels, 1994; Deacon, 2000). According to Foucault, problematization is first and foremost an "endeavor to know how and to what extent it might be possible to think differently, instead of what is already known. In this study and literature, copyright infringement in both physical and digital piracy can be argued to be a widespread phenomenon that is already known. However there are challenges in respect of ways in addressing it in terms of maximizing the copyright dividend for the content owner through enforcing copyright law.

In this case, problematization as a methodology for generating research questions is an important aspect of ensuring that novel findings are made in the study by accurately focusing on key areas that the literature did not address (Locke and Golden- Biddle, 1997) to narrow into practical solutions in trading copyright in a renewed strategic approach. The focus of this chapter is to give rationale of the five research questions and emergence as what they sought to address in the research and how the literature related to these questions in terms of the underlying assumptions. The underlying assumptions of the literature was critically important in that, the problematization process spotted gaps that the literature lacked and did not sufficiently address and allowed the five research questions to emerge.

The aim of the problematization methodology proposed in this study was to formulate novel research questions through a dialectical interrogation of the researcher's own familiar position on the copyright infringement challenge by making credible underpinnings of the literature underlying assumptions. A wide range of studies points to important ingredients involved in formulating good research questions (Abbott, 2004; Davis, 1971, 1986; Locke & Golden-Biddle, 1997; Van de Ven, 2007). However, few of these studies have focused specifically on how researchers construct research questions by reviewing and criticizing existing literature (Alvesson and Sanderberg, 2011).

According to Locke & Golden-Biddle (1997) it is not obvious how to arrange and delimit existing studies into a specific domain of literature and then relate that literature to one's own study. The problematization methodology, created opportunities for contribution, originality and the creation of the five research questions by arguing that the existing literature overlooked and did not quiet well address the issue of law enforcement in the copyright illegal market. This problematization of the literature created an opportunity for

gaps that needed to be filled. The areas of law enforcement that are lacking are not confined into its traditional context of physical policing only, but also about the management of information, control and transparency by CMO's, publishers, third parties users and broadcasters. This meant that content owners having access to data that already exists all over the world concerning copyright asset ownership in order to ascertain exploited works in the copyright market for accurate remuneration.

It is also important to be conscious of the risk of perpetual problematization which should avoid over-problematization leading to a sense of fatigue and a deficit of positive results (Alvesson and Sanderberg, 2011). Hence the focus was on copyright enforcement with the aim of developing questions that will draw more detail within the overlooked area within the literature.

Instead of providing different strategies for identifying and constructing gaps in existing literature and then filling them with a pre-packaged problematization to challenge the assumptions of others. This methodology enables the researcher to interrogate and to identify, articulate, and challenge different types of assumptions underlying the existing literature in order to formulate research questions that may facilitate the development of more interesting and influential theories (Locke & Golden-Biddle, 1997).

A unique contribution within the problematization process depended on providing a superior study that was able to address the areas that the existing literature overlooked. In the enforcement spectrum it was also that CMO's publishers, broadcasters and other users of content had to cease the treating of information concerning copyright asset ownership as 'confidential' on a per market basis. Most importantly the literature did not have a perspective on using digitization and the internet and access to global data on copyright works to significantly increase the tracking of sales and use in the copyright market as a whole.

The creative rights approach begins with a re-examination of copyright's origins. The aim is that it promotes the progress of science and the useful arts by securing for limited times to authors and inventors exclusive right to their respective writings and discoveries by recognizing and rewarding contributions of writers and creators by giving them some control over their creations within a capitalist economy (Thibeault, 2012). Within the copyright enforcement perspective, what is not addressed based on the literature, is the ability of content owners to be able to leverage from the advanced

use of digital object identifier and interoperability between databases used by CMO's and publishers and other third parties on technology that is already in existence to track and trace use and thereby increasing the copyright dividend flow into the legal copyright market.

2.2.1 The future copyright market

The five research questions introduce a perspective that relegates both the owner of the works and the user; if an equitable solution is not developed it may result in future creative output ceasing to exist. This underwrites the urgency for exploring the wider influences within current copyright law enforcement realities. Although it is evident that addressing the difficulties of copyright law from the angle of bringing fair trade is not forthcoming, one clear issue is that the relationship between the user and the owner of the works needs restoration. In this discussion, copyright law as is expected, does not achieve the objective of fair exchange. Therefore a copyright management consulting framework becomes an instrumental leverage in addressing the copyright market by ensuring that integration is achieved through reengineering.

Copyright law envisions a decentralized market system, whereby the law grants limited exclusive rights in creative works, with the expectation that such rights will then be voluntarily exchanged in a decentralized market place (Katz, 2012b). Technically decentralization in any area is a response to the problems of centralized systems, which has arguably kept copyright on a dysfunctional platform and reactive to infringement. The process of decentralization is expected to redefine copyright structures, procedures and weak practices of governance through moving closer to the copyright citizenry and raising awareness of the value and benefits of integration.

The key benefit of copyright decentralization is the prevention and reduction of infringement and conflict through managing the actual and perceived inequities between various regions to the benefit of all interested parties. The decentralization process further enhances the democratic voice of copyright regarding the infringement challenge.

Blouin and Serrano (2001) define a decentralized market as an event where buyers and sellers do not meet simultaneously like in a central market – each seller meets one buyer at a time and vice versa, and a bargaining process takes place. The foreign exchange market is a classic example of a decentralized market. If the buyer and seller agree on a price, they transact and leave the market. If they disagree they remain in the

market, but the seller meets another buyer, and the buyer meets another seller. These meetings are random and anonymous.

In qualifying an illegal copyright market and its impact on content owners it is crucial to evaluate what it actually means to be based in a decentralized market. According to Harbaugh and Khemka (2010), the costs of pirated copies were traditionally increased by taxing new reproduction technologies, intercepting and destroying illegal copies, or prosecuting and penalizing distributors of pirated goods. However, the decentralized nature of the Internet has made such methods more difficult, therefore enforcement is often aimed directly at end-users, and in particular at those who are likely to be at the higher end of the demand curve.

In the decentralized model no intermediaries keep track of users and their files. One of the key features of Napster, at the time, and the current generation of decentralized peer-to-peer technology is their use of a virtual name space (GAO: 2004). According to Depoorter, Parisi & Vanneste (2005) decentralized technology, such as P2P file sharing software, significantly reduces the role of commercial intermediaries in copyright offences, necessitating action against private users of peer-to-peer file sharing programs.

As a result of the decentralized model, technological online copyright infringement emerged. This type of infringement outlines an illegal copyright market and despite legal resistance and enforcement efforts, the trade and infringement of IP still represent an active market that is not morally and legally negotiated to comply with copyright laws. The illegal copyright market represents a demand that cannot be captured due to the rapid growth of technology and the disconnection between copyright law and the owner of the works.

The arguments of Katz (2012b) and Stadler (2009) in respect of a market are critical in portraying the view on the limitation of copyright law. No language pertaining to decentralized markets exists in copyright law and as a result, when copyright scholars write and speak about markets, they refer to an opportunity for profit and works that should belong to the copyright owner.

This does not discount the fact that arguments of markets are not pinning the practical reality that exists whereby works are infringed upon, as stated by Liebowitz and Watt (2006), in that the market for sound recordings in this instance is currently in a state of

flux. Some argue that it is in disarray, owing to the ability of the Internet to lower transmission costs for both authorized and unauthorized copies, with copyright enforcement being, at this time, less prevalent.

2.2.2 The Internet and future copyright market

As a global market the Internet is fragmented, with no resilient dominance from any particular company. When it comes to individual country markets, consolidation may be more visible. As a technologically complex environment, it is likely that new technologies will further increase the number of competitors for high-speed Internet connection (www.marketline.com). However, the Internet has undermined the exclusivity of recorded music, movies, books and software by creating intense political, economic and regulatory contention (Mueller, Kuehn, & Santoso, 2012).

In all the arguments that seek to qualify a market in the context of copyright, stakeholders perceive the Internet as a communication and distribution medium, for legal and illegal purposes, although this is not always explicitly mentioned (Meyer, 2012). The popularity of downloading music on the Internet has largely coincided with and is also partly responsible for the widespread popularity of the Internet (Farrand & Carrapico, 2011); however, the extent to which content is being exploited still does not provide the monopoly it should be granted through copyright laws.

The fundamental process of determining the future market of copyright and recommending mechanisms that would deal with infringement should start with addressing the fragmentation and the disharmonized global structure of copyright law. This would allow for planning an integrated copyright management framework, suggesting an ecosystem that will bring forth strategic solutions to managing these rights.

The infringement arguments that were brought forth by Farrand and Carrapico (2011) stated that harmonization measures in the field of copyright at the European level were justified on the basis of ensuring proper functioning of the single market. In common law countries in particular, the act of infringement was a breach of civil and not criminal law whereas under civil law the same act would constitute a criminal liability. As an example, in the US case of *Dowling vs. United States*, 473 US (1985) (Appendix A), it was specified that an infringement of copyright does not constitute theft, but an act of civil infringement in which damages should be awarded.

However, this document effectively marked the commencement of a discourse on copyright in which the very survival of this market, and the security of its consumers, depends on the adopting of stricter measures in order to protect it from both internal and external threats.

The objective of a cohesive single market which constitutes an equal strategic ecosystem reminiscent of the evident reality of the internet, which at this point drives a staggering quantity of copyright infringement, exposed a fundamental limitation of current international copyright law. This is considered to be a primary concern in that a single act of unauthorized uploading of copyrighted material can result in copyright infringements by numerous Internet users in various countries (Fröhlich, 2009). In these arguments one obvious proposition is that the Internet is already that future single market.

The five research questions place a greater emphasis on integration and equally recognize that the law sets the rules and norms to which society should adhere. However, within the cyberspace there are different types of communities, as there is in the physical world, and different cultures that intersect with regulation (Scharf, 2012). Emerging from this, Hugenholtz (2013) mentioned that copyright owners complained that the law left them defenseless against mass-scale infringement over digital networks, and that they called for enhanced copyright enforcement mechanisms.

The re-engineering of the copyright dividend in the illegal copyright market was particularly interested with the process of selecting the right approach, as well as the right tools that will apply to the problem statement. This made the re-engineering process relevant in that it entail the change of existing practices aimed at improving company performance (Dassisti, 2010).

The most popular of these recent approaches are business process re-engineering (BPR), continuous process improvement, total quality management (TQM) (or, later, continuous quality improvement) and organizational transformation (Aguilar-Saven 2004). With the copyright infringement reality it is important to achieve sustainability for the content owners but in order to reach this goal it will require reframing of the current enforcement efforts, which challenges the mind-set and to re-deploy the necessary resources into promoting the value of the copyright market as a re-engineering prerequisite.

The re-engineering goal should be aimed at maintaining organizational competitiveness against external factors that stand to harm the profit position of the organization and performance (Choi 1995; Rijnders and Boer 2004). This study is focused on the copyright stakeholders as the most affected parties since they are trading and are owners of copyright. The financial returns of copyright are affected by the illegal copyright market and this necessitate the re-engineering of the copyright dividend where the existing practices aimed at improving company performance' such as cost, quality, speed and service are improved against the infringement phenomenon.

The rationale of re-engineering the copyright dividend is to essentially create an aligned copyright management system to be used within government and by stakeholders that exploit copyright, including all the local and international CMOs. Critical to this is the clear view that the management of information concerning copyrights, their ownership and use is the issue to consider to re-engineering the copyright dividend.

In the examination of copyright infringement, it became imperative to appreciate that knowledge processing policies that determine the manner in which firms create, share, and apply new knowledge, as well as the extent to which, and how, they share the benefits of their knowledge is becoming a new strategic currency towards an aligned ecosystem (McElroy, 2003). Hence reengineering gained an opportunity amidst Carrier's (2013) statement that copyright law and other government policies often neglect the importance of innovation to the economy. In copyright law, refusing to enact vague laws and eliminating statutory damages and personal liability in the context of secondary liability would enhance innovation.

2.2.3 The rationale of the copyright dividend

Following a discussion held with The Pan African Composer and Songwriter Alliance (PACSA) the copyright dividend became a valuable proposition in addressing infringement and as such intends to serve as a supporting perspective within this study. According to Gilfillan (2014) the copyright dividend entails the royalties and receipts that flow from the exercising of the exclusive rights vested in any owner of copyrights, whether such exercising is legal or illegal, direct or indirect. As part of the researcher's copyright practice, the copyright dividend places greater emphasis on management of and access to copyright asset data, collaboration between owners of databases and a

change in the culture of the copyright stakeholders as a key investment catalyst in challenging the illegal copyright market.

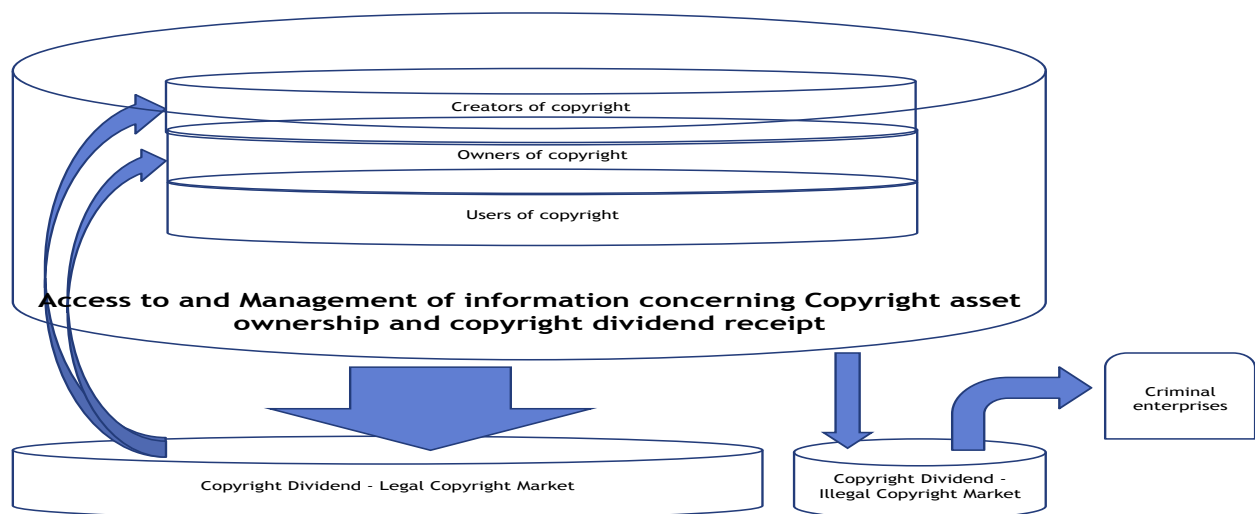


Fig. 2.1: Re-engineering the copyright dividend

Source: Gilfillan (2014)

It is becoming increasingly clear, however, that in the domain of digital copying, copyright is not functioning as well as it once did. The main problem is not so much in the definition of the set of rights to be allocated to creators, but rather with the enforcement within the problematization objective and protection, of these rights. The costs of policing infringing behavior are escalating seeing that anonymous offenders perform copying outside of organized markets, the copied items are almost perfect substitutes for the original goods, and the very act of copying becomes practically costless. In such an environment copyright loses its effectiveness as a property right (Liebowitz & Watt, 2006).

It can be argued that this is perhaps the most important attribute critical to the value of copyright depending on the partner motive. The copyright dividend is aimed at addressing this issue through ensuring that consistencies within the variables are achieved in the stakeholdership. Nevertheless, it is extremely difficult to correctly and convincingly answer the questions that are of interest as far as the relationship between infringement and creation is concerned, and indeed the literature has not yet made any truly rigorous attempt to address these (Liebowitz & Watt, 2006). Therefore the explorative conversation in this study is aimed at advancing the rationale of the

copyright dividend through utilizing the five research questions as leverage against the illegal copyright market.

2.2.4 The current copyright infringement trajectory

Global environments are becoming more unpredictable owing to the rapid growth of technology and this necessitates searching through multiple frameworks to comprehend the true value of copyright. As such organizations need to realize the urgency of improving innovation within the spectrum of creative currencies. The quantum rise of technology should suggest collaborative alliances amongst all interested parties within the domain of copyright. Current efforts to control the unlawful use of copyrighted material have not advanced to the point of reducing the gains from the crime of infringement. At first glance copyright owners were diligent in finding ways to reduce the gains from crime, increase penalties, and optimally enforce violations (Andrews, 2005), but infringement of these rights constantly outlines an unchallenged trajectory into a reality of weak copyright existence.

The five research questions are actual trajectories aimed at contributing innovative mechanisms towards a harmonized copyright system through understanding the different industry impediments as collected from the respondents. The infringement challenge exists in a global copyright market that is not harmonized. Even though this is a macro challenge, it still presents a complex platform to propose progressive processes in dealing with copyright infringement. Despite the architecture illustrated by figure 2.2, the problem statement still gives rise to complex questions of potential copyright infringement, which arguably exceed this study. This study will explore the copyright infringement trajectory from the perspective presented by and limited to the five research questions.

More specifically, the ways in which technology has been adversely exploited is commercially disabling to the creator of the works in that it causes a reputational loss of resilient possible synergies between all interested parties. According to Menell (2012), the principal technology and content sectors are deeply divided on how to address the widespread availability of unauthorized copies of copyrighted works on the Internet in that vertical fragmentation of distribution platforms in the Internet age has created an impediment between platform innovators and creative industries that hinders e-symbiosis. According to Darrow and Ferrera (2007), the copyright infringement

encounter remains and, in the online context, entreats for a rebalancing in that it has been described as a giant photocopier; its ability to make perfect copies has been cited as a reason why the Internet threatens copyright holders on an ongoing basis. In figure 2.2 the five research questions are leveraged as critical pathways of exploration towards copyright protection.

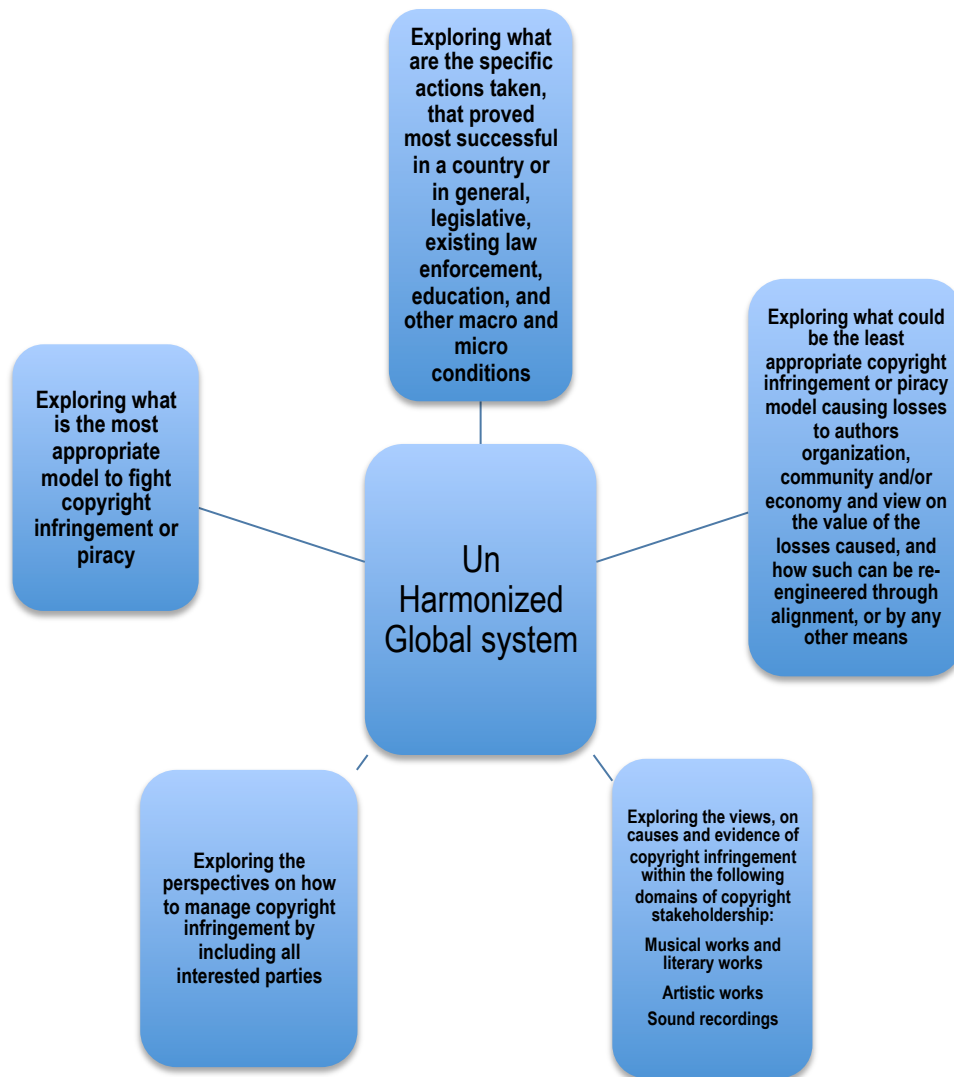


Fig. 2.2: The copyright infringement trajectory

Source: Own construction (2013)

It is evident that contrasting views towards the Internet exist. On the one end, certain creators use the Internet to publicize their work by giving away content as an incentive for consumers to buy legitimate copies, attend concerts or purchase merchandise. However, industry rights holders and trade groups have taken legal action against services that facilitate file sharing by, for example, providing peer-to-peer software or indexing and tracking services (Muir, 2013).

The arguments on the use of the internet for both legal and illegal activities underpinns the significance of and the need for emphasis on structuring a progressive framework on the copyright dividend, in that it recognises that the owners of the works have to benefit financially from any exploitation of their works. Copyright gives creators temporary monopoly rights called economic rights to reproduce, adapt, and make their works available to the public. It also grants creators certain moral and personal rights, such as the right of attribution and to integrity of a work (Meyer, 2012; Park, 2010; Silcock, 2007).

In an attempt to leverage the five research questions as key instruments towards a strategic solution, one possibility to consider would be the following – if the current increase of copyright infringement had to be taken as a contemporary transformation in the digital environment, would it imply that a newly intensive demand has been affecting the way in which the innovation processes are being shaped. As a result, debates about copyright policies should focus not so much on the desirability of strict or lax copyright protection, but on the appropriate design of copyright systems (Park, 2010).

From these arguments it is clear that infringement does represent a form of demand, as in the case with online movie piracy. The reengineering of the copyright dividend in the illegal copyright market would subsequently be focused on converting the infringement challenge into legitimate online media (Jang, Kwak, & Lee, 2012), hence the importance of the reengineering proposition in the problem statement.

Looking at the copyright infringement trajectory, one interesting view raised by Von Lohmann (2008) is that it is often impossible to predict how disruptive innovations will ultimately be or how they will alter existing markets, because some disruptive innovations, even those limited to private copying, could undermine, rather than reinforce, necessary incentives for copyright owners. Many copyright owners point to peer-to-peer file-sharing software as an example of private copying technology rampantly run to benefit the illegal downloading of content.

Moohr (2009) discusses an interesting interpretation in that consumers who want to exercise their traditional rights under copyright law and utilize new technology exert an opposing pressure on lawmakers, as do the manufacturers of devices that deliver information and knowledge.

These challenges raise the question of the trajectory of copyright infringement regarding the need for the development of new and useful ideas, which is critical for human adaptation in complex and dynamic environments whereby creativity may draw from the whole spectrum of affective experiences (Bledow, 2010). Considering the lack of oversight on copyright infringement, competitiveness is being raised on copyright infringement, leading to greater attention to market demand of online content. However, the usefulness of this demand is limited in benefiting the owner of the works.

Commercial proprietors of copyrighted material generally find the Internet threatening to their economic interests in that duplication of a work arguably represents an infringement of copyright for which content providers should receive compensation (Yen, 2000). In this event innovation has become a critical means of competitive advantage for firms in a variety of industries because it allows organizations to diversify, adapt, and even reinvent themselves to match evolving markets and technical conditions (Gibson & Gibb, 2006).

The type of activities taking place on the Internet surpasses enforcement in that counterfeiting and copyright infringement appear to be increasingly linked to organized crime, raising security and safety concerns, and it is also proven to be spreading across the Internet. As such protection of copyrights would require criminal law via a harmonized directive on criminal measures to supplement the enforcement of copyrights through civil law (Farrand & Carrapico, 2011). It is becoming increasingly necessary to advance the cause of the law, because in its current state copyright law can no longer fulfill the actual expectations of creators (Stadler, 2009).

The efforts made by the researcher was motivated by the burning issues leveraging the five research questions as critical instruments aimed at extracting pertinent insight into the domain of copyright. The process involved a detailed probe in seeking an in-depth understanding and description from participants, making use of qualitative research. This involved the exploration of a copyright infringement topic with emphasis on seeking information from people who are have experience of and are involved in the issue (Letts et al., 2007). In resolving the situation it was also important to differentiate between a copyright holder and the actual infringement by ascertaining the type of offence that was committed.

2.2.5 Contributory and vicarious copyright infringement

The law of contributory and vicarious copyright infringement developed through the Sony Betamax, Napster and Grokster cases (see section 2.2.3). The civil and criminal liability of copyright infringement can take two forms – contributory or vicarious. The distinction between these two forms of infringement is clearly stated by Katz (2004) and Lichtman and Landes (2003). Firstly, they explain that contributory infringement applies where one party knowingly induces, causes, or otherwise materially contributes to infringing conduct. Contributory infringement requires knowledge and causation of infringement (Gregorian, 2009).

The advancement of technology introduced new forms of infringement that challenge copyright law. In taking cognisance of the global scope of copyright the US, as a key player in the Copyright Act of 1976, does not explicitly distinguish between direct and indirect liability. However, courts have held third parties liable for copyright infringement under the abovementioned two long-standing common law doctrines of contributory infringement and vicarious liability. Despite such measures it can still be argued that practical solutions that ensure that the financial returns of a creator of works are unaffected by copyright infringement have not emerged.

Consider the following scenario whereby party A manufactures a computer and party B is the buyer and user of the computer. Party B uses the computer to produce DVDs and to sell them to party C. In this event party B uses the computer for various functions such as copying of DVD material and selling it. Party C is affected because he owns the content and his rights have been infringed upon.

From a legal perspective the key question here is whether party A, who is the manufacturer of the equipment, should be held liable to C for purchaser B's infringement of copyright. According to Hogberg (2006), in contrast to vicarious liability, the contributory infringement doctrine originated in tort law as an outgrowth of enterprise liability and embodies the notion that one who directly contributes to another's infringing conduct should be held accountable.

Hogberg (2006) explains that Tort laws are laws that offer remedies to individuals harmed by the unreasonable actions of others. Tort claims usually involve state law and are based on the legal premise that individuals are liable for the consequences of their conduct if it results in injury to others. As with vicarious liability, the dominant mode of

theoretical analysis of enterprise liability has traditionally been economic efficiency rather than fairness. However, contributory infringement has a stronger grounding in the concerns of culpability and fairness than vicarious liability.

The reality of technology and application in relation to the law constantly requires that innovation integrate all interested parties to manage copyright infringement. Moohr (2009) argues that changing technology impels copyright holders to seek more protection from the law for their increasingly valuable products. In an effort to retain control over distribution systems, industries that publish or deliver copyrighted material join in these efforts.

Katz (2004) and Lichtman and Landes (2003) further state that vicarious liability would apply in situations where one party has control over another and also enjoys a direct financial benefit from the other's infringing activities. This basically means that the infringement liability requires that the accused party have means to supervise and control the infringement as well as a financial stake in the infringement (Gregorian, 2009).

A typical case arises where an employer hires an employee for a lawful purpose, but the employee's actions on behalf of the employer lead to copyright infringement. One rationale for imposing liability in this instance is that the employer should be encouraged to exercise care in hiring, supervising, controlling, and monitoring its employees so as to make copyright infringement less likely. Another is that it is usually cheaper for copyright holders to sue one employer rather than multiple infringing employees. According to Hogberg (2006), vicarious liability in the copyright context originated in the common law doctrine of *respondent superior* as a means to hold employers liable for copyright infringement perpetrated by their employees, and was initially limited to employment and independent contracting situations.

The rationales of the five research questions recognized the role of copyright in the global domain and the process whereby works move from the original domicile, being infringed at any given point with very limited legislative control. It is in this respect that the realities of copyright practitioners from different geographical demarcations uncovered lived experiences within the fraternity of copyright infringement.

The causes of copyright infringement affect the globe and should not be viewed in isolation. Even though territories lack interrelationship, the matter should still be

approached from an integrative market perspective. The level of difficulty experienced by content owners in the copyright market is arguably a result of the residual legal protection that firms have in respect of the infringement of products that are launched into the market, as could be seen in the Sony Corp. of America vs. Universal City Studios, Inc. case. In allowing the innovation perspective, a copyright trade exchange between all interested parties becomes an urgent strategic currency to advance reasonable expectations of the copyright ROI.

2.2.6 Sony Corp. of America vs. Universal Studios, Inc. case

Technological change is characterized by a high rate of innovation and an inherently unpredictable outcome. Looking at this issue from a long-term perspective, it is suggested that copyright should be propelled into a leading position where it anticipates future uncertainties that can possibly affect the owner of the works through the violation of rights. At first glance, copyright law appears straightforward; however, it has a role that affects a broad chain in respect of intellectual property where a relationship should be maintained between the manufacturer and the user without violating the rights of the content owner.

In its simplest form copyright contests with the infringing market, that is driven by technology. The case of Sony Corp. of America vs. Universal Studios, Inc. has high relevance to this study because of its critical outcome, the Sony rule, which forms a strategic part of the discussions. In this respect, contributory and vicarious liabilities are the two general types of infringement within the framework of secondary liability.

The researcher negotiated the strategic relevance of the Sony rule through sketching the significance of technology and how it is used by third parties to infringe copyright. The researcher's presentation in figure 2.3 outlines and is an illustration of the infringement levels in relation to the Sony rule. The arguments of contributory and vicarious liability are not complete without mentioning the Sony rule. This further leads to mentioning the inducement theory that is adversely responsible for inducing users to violate the rights of content owners through infringement, which in this study refers to the use of any technology to violate copyright.

On two levels, firstly, the most significant development in secondary liability was the US Supreme Court's first attempt to interpret the 1976 Copyright Act – the Sony Corp. of America vs. Universal Studios, Inc. case. Often referred to as the Betamax case, Sony

raised the question of whether a manufacturer of a VCR could be held liable under the doctrines of 2.3) secondary liability for the infringing actions of the customers who buy the VCR (Peters, 2004). The second critical matter which drives the causes of infringement is illustrated (see illustration below figure through the inducement theory, which lends towards contributory liability; seeing that users are induced to infringe it qualifies as causation (Gregorian, 2009).

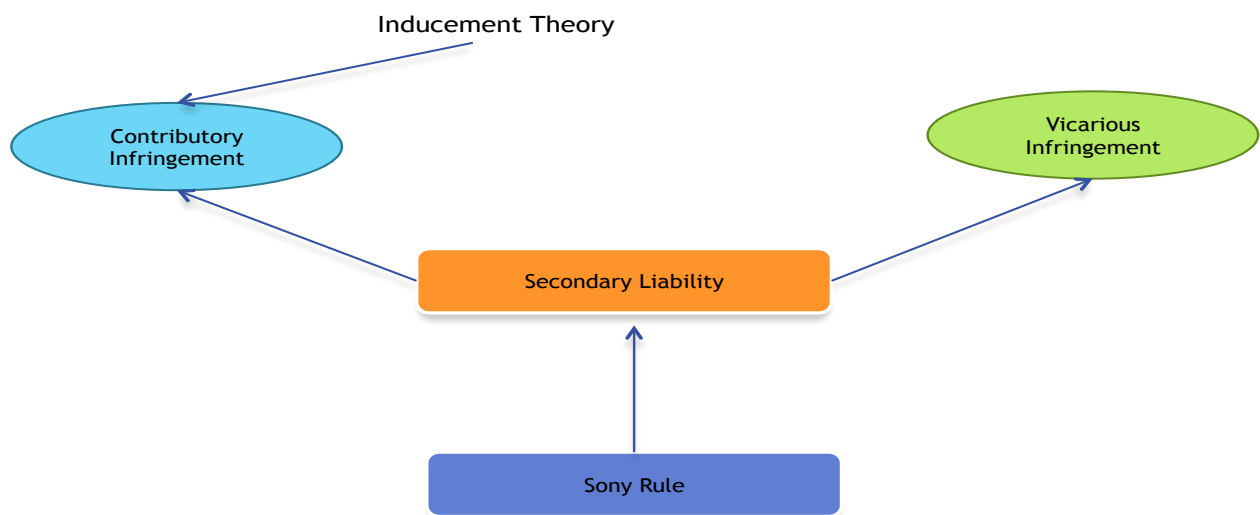


Fig. 2.3: Copyright infringement levels illustration

Source: Own construction (2013)

The legal capacity of litigating in the copyright domain is arguably under resource strain. This makes innovation a necessary catalyst in simplifying and proposing new thinking when drawing the copyright dividend. The global position of the copyright stakeholders requires an innovation-driven culture as a valuable commodity, embedded in sustainability, to drive the relationship amongst copyright alliances to support the achievement of future competitive innovation platforms.

The argument that was made against Sony was that their Betamax was used by its owners to record their favorite television shows and films, whereby Sony induced copyright infringement on the Betamax owners (Litman, 2007).

The notion that technology is used at the discretion of the user primarily serves to argue that infringement can be independent from the manufacturer. This infers that the interests of the user can drive the infringement. According to Peters (2004), the sale of copying equipment, as in the sale of other articles of commerce, does not constitute contributory infringement if the product is widely used for legitimate, unobjectionable

purposes. However, no guarantees are given that this would restrict the user from copyright infringement.

The goal of addressing the issue of infringement rests on both the moral and economic rights within the copyright act. The arguments herein are primarily aimed to be organizational in that the discussion will initially start with business, either formal or informal, by participation in the industry affected by copyright infringement. Whilst having the copyright infringement phenomena as an increasing challenge, the rate of innovation is equally accelerating, whilst inter-firm collaboration plays an increasingly important role in firm innovation.

Many firms are engaged in multiple alliances with different partners, forming portfolios of alliances (Cui & O'Connor, 2012). The structure of alliance innovatively suggests a community of common interests in the exploitation of opportunities. The owners of copyright are fragmented and would lack in the alliance structure, hence the disadvantage of infringement.

2.2.7 Innovation under copyright infringement

There are many lenses through which social innovation can be understood (Mulgan, 2006). Global companies are now routinely trading at levels far beyond their book values, therefore senior managers, accountants, and other business executives have been increasingly focusing on the new field of intellectual capital (McElroy, 2003). Intellectual property is complex in terms of its true value and can only be determined by the owner of the works. The formulation of a copyright management strategy requires many input sources; those involved in implementing the strategy need to encourage inter-firm collaboration, because it plays an increasingly important role in new innovation. This suggests that firms should engage in multiple partnerships, forming portfolios of alliances against copyright infringement. The need for copyright alliances is caused by the lack of resources in executing a practical strategy with the copyright stakeholders (McElroy, 2003).

When looking at copyright infringement it is evident that the most effective method for cultivating social innovation results from the presumption that people are competent interpreters of their own lives and competent solvers of their own problems (Mulgan, 2006). Therefore the need arises for copyright law to be reformed and adapted,

particularly by utilizing the opportunities that are unlocked through digital technology (Ranaivoson & Lorrain, 2012).

New knowledge has high strategic value and because it must be created before it can be used, it is difficult to access (Peterson, 2008). In this regard innovation delivers a powerful framework that encompasses the generation, capture and employment of intellectual property at the firm level (West & Gallagher, 2006). In the economy of knowledge intellectual property moves from being a legal matter to being a strategic issue (Smith & Hansen, 2002).

From the preceding it is clear that it is imperative to leverage innovation by addressing and proposing solutions that will see the copyright infringement challenge as an opportunity rather than an impediment. This can be contradictory in that vague copyright laws harm innovation (Carrier, 2013); however, an innovative approach should attempt to re-align the current disconnection within the copyright environment (West & Gallagher, 2006).

Copyright infringement is both a civil and criminal activity that erodes the wealth of the content owner and the government. The strategic urgency in managing this unlawful activity is impeded by a fragmentation within the entire copyright spectrum. In the current reality it is stated by GAO (2004) that in resource terms copyright holders do not have the legal tools and ability to tackle the organized criminal syndicates.

The sharing of copyright infringement experiences by all interested parties and resources across alliances, whether transferring from one alliance to another or combining what is learned from different alliances within the domain of copyright stakeholdership, may occur through explicit procedures such as transfer of expertise and informal interactions by the affected parties during alliance activities. Copyright stakeholdership in this study refers to the collective of authors, owners and users in respect of a copyright work. However, even if there is access to diverse resources this does not guarantee that synergy will take place due to the different copyright cultures created by the un-harmonized global copyright regime.

In regard to the aim of harmonization the AU is lagging and no actions are visible when compared to its EU counterpart. With the view of establishing a single market, the European Community has taken action in the intellectual property field, mainly to harmonize the existing national laws. EU copyright rules are normally implemented by

member states by making modifications to their own copyright laws. As a result, member states' copyright laws contain a fair amount of commonality even if they also keep some national specificity (Martin-Prat, 2014).

In Africa there are no visible efforts made in this direction; instead a stagnated version of the previous civil and common law systems inherited from Europe is used. This makes the EU more progressive in that a single market objective will be reached whereas Africa remains fragmented. Outdated laws are also used in other regions such as Swaziland, where there Copyright Act of 1915, that has not been revised, is used. The rules concerning distribution rights are different in the EU member states, and they should therefore be harmonized, otherwise there can be no Internal Market for copyrighted works (Von Hielmcrone, 2009). The five research questions (see figure 1.3) are given from section 2.3 to 2.7 as explorative conversations and is also argued in chapter three. In both instance the aim was a basis for the problematization on the issues that affect the copyright stakeholders.

2.3 Rationale for research question one: Exploring the views on causes and evidence of copyright infringement within any one or all the following domains of copyright stakeholdership

- a. Musical works and literary works
- b. Artistic works
- c. Sound recordings
- d. Cinematographic films

The researcher was interested in maximizing the opportunities that technology provides, while simultaneously investigating the harm it brings to the content owner. This was accomplished through an explorative conversation that characterized all the above areas within the copyright act. In considering the management of new technology within the overall framework of copyright, it is important to remember that in financial terms copyright is not drawn into the benefit process of technological advances.

The emergent issue of technology inwardly attracts the attention of the user, creating a demand for content in the absence of paying for exploited works. This challenge confronts the owner of the works in that the reality of copyright infringement diminishes

its future existence. Unless renewed copyright management strategies emerge, owners of works will be subjected to a harmful technology-based demand where royalties are not recognized as a right. In order to address this it must be emphasized that copyright infringement is a global problem that can only be challenged at an international level (Bitton, 2012).

As technology continues to advance, the sensible approach will be to consider a mechanism where copyright owners, organizations representing these rights holders and users collaborate to find a solution (Mendis, 2013). The effects of technology are evident in the process of an individual making files available for others to download. This leads to the cascading distribution of infringed works and due to the uncontrollable quantities of infringement, the rights of the content owner are compromised.

The above could potentially lead to contributory liability for the individuals involved; however, contributory liability requires a showing of direct infringement to which a defendant contributed (Boehm, 2009). The key restriction remains within the prosecutorial part of the process; the necessary resources and copyright knowledge for attending to the matter are limited. This futile copyright infringement trajectory requires a form of re-direction into a more practical and manageable process and modeling should be in place to address the violation.

The evidence that pertinently contributed to the rationale of the five research questions developed from the diverse nature of the reality that content owners are confronted with in respect of copyright infringement. The perspective raised by Samuelson (2010) is vital as it states that copyright law should recognize that the system in which creative activity occurs and in which creative works are circulated is increasingly global; content moves in different geographical demarcations and copyright can be infringed upon in any domicile.

Taking cognisance of the global perspective, the researcher considered Banerjee's (2008) view that in developing countries such as India, copyright infringement at the commercial level can take on one of two forms. The copied product is either an imperfect or a perfect substitute of the original one. In the first situation, the general assumption in the literature on copyright infringement is that the consumer makes a choice regarding whether to buy the original or the copied product. In the second case identical copies of products like audio and visual CDs, that include packaging and

warranty, are sold along legitimate ones in retail stores at the same price to avoid detection.

In responding to such a classical example of copyright infringement as experienced in India, one critical issue to take into consideration is the complexity of enforcing copyright when illegal products are sold alongside genuine ones, because it entails an elaborative process in terms of detection and monitoring.

In the current reality of copyright infringement this challenge is not managed by all interested parties. This study emphasizes the importance of collaboration, but unless an attempt is made to convert tacit copyright knowledge to explicit knowledge, the knowledge cannot be shared by all interested parties. The intellectual infrastructure of a copyright management consulting framework is expected to encourage its individual members to develop new knowledge through new copyright experiences, which will be leveraged as a strategic commodity to advance collective interests. According to Peterson (2008), new knowledge is created by various forms of conversations where tacit knowledge is converted to explicit knowledge through the process of externalization, by taking what is known from practice and experience and making it formal and accessible to others.

The causes of copyright infringement are varied and arguably create a gap in managing the pervasiveness of technological advancement. This gap is evident, as stated by Palfrey (2009), when considering new digital networks which enable users to participate in the consumption, distribution and creation of content in ways that are revolutionary for both culture and industry.

Facilitating constructive conflict between key stakeholders is critical in reaching the level of shared understanding needed to create a copyright enabled environment. In order to achieve such an objective, the infringement patterns gathered from the five research questions in this study, should be allowed to persist around a knowledge-management initiative. This will subsequently reinforce the power of dominant copyright subcultures and performance-improvement ideologies, and reduce the level of infringement.

The inability to stop unauthorized usage is distinctly noticeable in the absence of a constructive framework that is strategically able to advance the interests of the owner of

the works. According to Samuelson (2007), copyright reform may be difficult to achieve, but optimistically it can make a positive contribution to the creative industry if attention is directed towards this adverse phenomena.

The predicament of increased usage in the absence of copyright compliance exacerbates the infringement challenge and impacts adversely on the owners of the works. Although this is not always explicitly mentioned, stakeholders judging the role of the internet perceive it as a communication and distribution medium for legal and illegal purposes that is driving copyright infringement (Meyer, 2012). This creates a premise for leveraging the five research questions towards a congruent copyright currency through the sensitization of strategic innovation.

2.4 Rationale for research question two: Exploring the least appropriate copyright infringement model, process or any other mechanism causing losses to authors and organizations

Conventional copyright infringement models and processes can be traced back to the analogue process, which mainly comprised the duplication of tape. Up to date technology has been the one commonality that analogue and digital infringement has shared. In the digital space the illegal downloading of files and copying remain a clear infringement of copyright. Judging by industry claims of lost revenue, the strategic integration of all the relevant interested parties remains unattained.

The exploration of the least appropriate copyright infringement model, process or mechanism causing losses to content owners will arguably be an extensive exercise. There is, for example, an emergence of content companies shifting their strategy away from litigation and toward lobbying for graduated response laws, while at the same time experimenting with new business models for digital distribution (Swartout, 2011).

According to Swartout (2011) graduated response ,also known as three strikes is a protocol or law, adopted in several countries, targeted at diminishing unlawful file sharing in response to online copyright infringement. The creative industries reliant on copyright advocate a "graduated response" that sees consumers sent a series of notifications, warning them that they are alleged to have infringed copyright, plus additional information on how to secure their Internet connection and details of legal alternatives.

In this enforcement strategy repeat-infringers risk intermediate technical measures such as bandwidth reduction, protocol blocking and, in a worst-case scenario, temporary account suspension. One of the main reactions to the problem of declining profits has been to try to discourage consumers from downloading unlicensed works by litigating against them and against the companies that commit copyright infringement by transferring digital music files. Other efforts aimed at trying to persuade consumers to purchase licensed digital music files and streams, protected under copyright law, instead of downloading music files without paying (Boehm, 2009).

The trend of file sharing emerged as a widespread model affecting the revenue of content owners. This model is more of an intermediary liability regime, which arguably exceeds enforcement capabilities. The conventional analogue system is still prevalent in territories where technology has not advanced substantially and where it still has key relevance in terms of infringement. Having mentioned this, the content industries remain convinced, at least publicly, that file sharing represents an enormous financial loss both to copyright-centric industries as well as to the economy at large (Swartout, 2011). Notwithstanding these legal hurdles, a practical strategy is to source achievable mechanisms within the copyright stakeholdership.

The insight gained through examining mechanisms affecting the content owner reveals the inability of established firms to make necessary changes in order to affect the problem statement positively. The current copyright structural arrangement does not advance beyond the problem statement. It seems that copyright infringement is not impacting on the social and business conscience as a form of crime; had this been the case compliance would have been visible in respect of copyright infringement. This situation requires strategic mechanisms that can re-explain the infringement condition as a threat and whereby sensitization can be renegotiated through progressive, innovative capabilities.

In order to achieve a progressive platform that recognises the rights of the owner, it is imperative that the implications of copyright schemas be extrapolated from the collective insight of industry players that are directly experiencing losses caused by infringement activities. For example, the conventional system of private enforcement against primary infringers proved difficult for rights holders who have sought to enforce their copyright upon a large number of small-scale, geographically scattered individual infringers. In addition, statutory damages have produced highly disproportionate

verdicts against the few defendants who have taken file-sharing suits to trial (Swartout, 2011).

It is becoming increasingly clear that providing copyright and strategic connections to the creative industry outlines an infringement challenge that cannot depend on a single solution. In the case of functional failures there is great inconsistency across control forms in executing copyright law. In a competitive world, without any ownership rights of intellectual property, creative output will cease to exist. Scholars have offered several explanations for this challenge and greater insight into innovation is required to create an equitable business platform that recognises the value of copyright.

The burning issue of this early infringing model, as proposed by the problem statement, is mentioned by Cruz (2000) in that users in the music industry receive the opportunity of sharing music, without charge and with more enthusiasm. Furthermore, these activities take place in a domain that is embedded with rules that can have financial repercussions to owners of content if integrative solutions for the management of works are not enforced.

As technology and infringement continue to expand, both the legislature and courts struggle to maintain the balance between technology and the integrity of artistic works protected under intellectual property laws (Pavlick, 2013). The damaging part is that a growing number of social networking sites allow users to post photos, videos, and other digital files for public viewing, inevitably resulting in their copying and distribution (Darrow & Ferrera, 2007). Those involved in Internet piracy take the form of sellers, buyers, sharers, or downloaders, utilizing everything at their disposal (Andrews, 2005).

According to Rieder and Pappas (1998), for generations, the judicial system has dealt with finding ways to maintain an individual's right to due process when exercising personal jurisdiction. This problem has become even more difficult with the development of the Internet. Samuelson (2010) raised the issue by suggesting that copyright law should limit control over users of creative works by setting boundaries to the rights of copyright owners and to remedies for infringement.

The view of McCourt and Burkart (2012) is that the Internet is frequently depicted as the ultimate arena for unfettered capitalism, erasing geographic boundaries and barriers to entry while providing a plethora of goods and services to consumers. In broad terms copyright infringement systematically takes place within and outside the Internet in that

technology is used to undermine the value of the content owner. The exploratory discussion with the copyright communities of practice was intended to allow the burning issues to emerge as a first tier towards the proposition of an integrative and inclusive model in managing the challenge.

2.5 Rationale for research question three: Exploring the most appropriate working model, process or any other mechanism to eliminate current copyright infringement

One of the reasons this study was undertaken, was the realization that visible results in addressing copyright infringement had not yet emerged and that the entertainment industry was still confronted with the uncertainty of managing copyright infringement, as set forth in the problem statement.

As a result the objective was to ensure that a system came in existence that would create an appropriate exchange platform to advance the interest of all affected parties, through leveraging the monopoly awarded by the copyright act. This platform could essentially comprise any form, provided the objective is consistent with the relevant interests within the copyright stakeholdership. Boehm (2009) in particular, suggested a compulsory licensing system, which can be applicable to individual consumers.

In the diverse pool of solutions, the iTunes Store by Apple emerged as one of the strategic models by offering a legitimate, industry-supported alternative to online music infringement. Through selling a multitude of songs individually, it became the first venue that mainstreamed digital music purchases (Muskus, 2013). Other potential recording industry solutions in the market entailed experiments in selling voluntary collective licenses. However, even though such offers might diminish antitrust concerns, by themselves they are likely to be insufficient. Moreover, Boehm (2009) is of the opinion that the experiments are likely to fail seeing that the current state of the industry does not allow for enough profit to be generated.

In contemplating best processes the challenge of ensuring that earnings are accurately directed towards the owner of the works still exists. In essence this is a durable acid test that can be used to ensure that a model or mechanism is delivering at optimum level. According to Oxenford (2013), deciding how to pay music royalties to the relevant parties has always been difficult; it requires determining what permissions are

necessary, which entity has the right to grant such permission, and how much the rights will cost.

The process that is supposed to ensure that royalties reach the relevant parties can be detrimental if it does not accurately function, that is, if it systematically fails it can amount to infringement, which in turn can lead to litigation. This alone suggests that, at all levels of managing intellectual property rights, innovation remains a critical base for the seamless delivery of value to the content owner.

In as much as the willingness to address the royalty issue exists, a core obstacle in executing such merited efforts appears in the form of restricting intervention through innovation. This precedence is expressed through the persistence of copyright infringement.

The licensing of copyright models as a strategy to consolidate financial interests of users of content in the areas most affected by infringement is crucial. Through the establishment of compulsory licensing for interactive webcasters, music listeners will be able to consume copyrighted recordings in the most beneficial and preferred manner (Tyler, 2013). According to Armstrong (2012), one of the models that can prove successful is that of collective licensing. This proposition is driven by the United Nations, based on the number of Internet users worldwide. As such collective licensing can deliver practical outcomes to the copyright stakeholdership.

Implementing the abovementioned model will require the establishment of strategic alliances in order to justify the proposal of mechanisms that will enforce the rights of the owners of works. The need for a strategic currency in addressing copyright infringement contributes to a compelling trajectory that is expected to align to the interpretations of this study as it will be outlined using the five research questions introduced in the rationales.

A well-functioning copyright law carefully balances the interests of the public who have access to expressive works with the sound advancement of knowledge and technology (Samuelson, 2010). Darrow and Ferrera (2007) recommend that users wishing to upload videos to a video-sharing website, like YouTube, should expressly grant the website a worldwide, non-exclusive, royalty-free, sub-licensable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform

their videos. Copyright infringement of purely user-created videos that are not considered copyrighted works thus becomes a non-issue.

The impact of evolving technology on those who create content and those who use it has also created many interesting copyright-related challenges that legislators, copyright experts, authors, publishers and licensing organizations globally are attempting to address (Armstrong, 2012).

2.6 Rational for research question four: Exploring the perspectives on how to manage copyright infringement by including all interested parties

The researcher's aim was to extract significant copyright information from the participants' key knowledge, which has previously remained tacit. The appreciation of knowledge as a competitive commodity that makes a difference in business is a widely accepted idea (Earl & Scott, 1999; Goh, 2002; Osterloh & Frey, 2000). Competitive advantage is achieved when market knowledge is applied in support of business objectives (Hoe, 2006). This makes the copyright market experience of the participants pivotal and therefore this knowledge should be enabled by making it explicit and accessible.

According to Nonaka and Takeuchi (1995), the SECI model on knowledge management presents a set of four core processes, namely socialization, externalization, combination and internalization. The extraction of the lived copyright experiences from the research participants was extracted through the socialization process that enabled dialogue and storytelling. In the current knowledge economy it is acceptable for scholars to agree that knowledge represents a higher level of understanding than information (Davenport & Volpel, 2001).

In the future technology will be well integrated into the general organs of a well-functioning society. However, for copyright law to protect society against the increasing violation brought about by the illegal copyright market it is imperative that copyright knowledge be made explicit. This can be achieved through understanding and the collective formation of diverse views into coherent mechanisms that will reduce the output of the illegal copyright market. According to Nonaka and Takeuchi (1995), knowledge is about beliefs and commitment as it is a function of a particular perspective. Furthermore, knowledge is about action, that is, knowledge achieves results.

Considering the aim of this study, research question four importance within the study is firstly that, global discussions of copyright infringement have not reached any tangible point whereby it is completely eradicated; secondly, the global flow of copyright is subjected to different regulation regimes and, from a practical point of view, this makes it difficult to manage in terms of infringement. The third issue is that the copyright participants originate from different copyright law regimes and a consolidated view that is representative of their collective views as related to the problem statement of this study does not exist. Knowledge management experts have identified many different ways in which knowledge can be classified (Hoe, 2006). This classification of knowledge is critical in combining the collective experiences of the research participants into a package that can strategically leverage the problem statement.

According to Chua (2002), component knowledge relates to a sub-routine or discrete aspect of an organization's operation such as its resources, skills and technical systems. On the other end, architectural knowledge refers to organization-wide routines and schemes for coordinating the various parts of the organization. Lastly, individual knowledge is concerned with knowledge harbored by an individual in an organization, while collective knowledge is held commonly by a group of organization members and includes routines, practices and relative organizational consensus on past experiences, goals and missions.

The key rationale for research question four critically drew from the participants' involvement in global copyright platforms such as PACSA, CIAM, ALCAM, ECSA and CISAC. This made the categories of knowledge significant in consolidating the collective copyright infringement experiences.

A new copyright driven philosophy could enable a responsive industry provided that all the collective views are reflected through strategic models that fit the problem statement. The rationale of this research question prioritizes the collective views of the participants in addressing the problem statement with a framework that will be completed by the cooperative insight of the participants. This research question is imperative to the outcome of the study in many ways, one of which is the expected design of a copyright management consulting framework. This framework will be superimposed on the collective views of the participants to benchmark its strategic relevance; moreover, its validity will be supported by fact that the participants are actual industry practitioners who are participating in global copyright platforms.

2.7 Rationale for research question five: Exploring which specific actions that were taken proved most successful in a country or in general (legislative, existing law enforcement, education, and other macro and micro conditions)

The enforcement of intellectual property law at a global scale is a continuing, ever growing and challenging task. In response to these challenges, enforcement issues have been raised at both national and international levels. International agreements were introduced over the years to advance minimum international standards in order to assist national governments, *inter alia*, in preventing the widespread infringement challenge (Bitton, 2012). Thus far it has remained an issue that has been left to the discretion of governments. The objective of prioritizing prompt innovative action over slow legal diligence supports the rationale of this study, especially when a well-defined representation is given of the deleterious effect that an un-harmonized global system may have on the owners of works.

The fact that legislative regulation is in place is not a guarantee that the violation of copyright is prevented (Geach, 2009). Copyright law and other government policies often neglect the importance of innovation to the economy (Carrier, 2013). The enforcement effort in this chapter concludes with one congruent view that a need exists to bring forth mechanisms that will equalize, in resource terms, the impact of copyright infringement and that will create balance within the domain of copyright stakeholdership.

It can be argued that a predicament, caused by the social technology platform, exists in choosing the direction enforcement should be taking in addressing copyright infringement; therefore, the question is how law enforcers should take social and personal norms into account (Depoorter et al., 2005).

In discounting innovation Mulgan (2006) argues that where severe innovation deficits exist it becomes evident in crime and punishment. Some countries, including the United Kingdom, show a new trend in which a majority of convicted criminals re-offend within two years of leaving prison – a striking pattern of failure.

The proposition of a copyright consulting framework anticipates what Meyer (2012) states in that control over information is necessary to succeed in the current economy; hence most copyright enforcement efforts aim at regaining control. The enforcement effort contests a challenging reality in that the fundamental principle of criminology is that crime follows opportunity, and opportunities for theft abound in the digital age

(Grabosky, Smith, & Dempsey, 2001). Globally there are very few successful business models for the online distribution of copyright materials (Kretschmer, 2003).

The infringement of copyright, as an outcome of technological advancement, accelerates at a faster pace than the enforcement of copyright law. This introduces the space transition theory, as presented by Jaishankar (2011), namely that people behave differently when they move from one geographical space to another. The theory postulates that persons with repressed criminal behavior (in the physical space) have a propensity to commit crime in cyberspace which, owing to their status and position, they would not otherwise commit in the physical space.

2.8 Conclusion

Considering the dysfunction experienced in the copyright industry, more effective conversations concerning ways to improve copyright law and policies have become an urgent need in the industry. Even though new business models have not always proven successful, the gap between all interest parties should not be allowed to extend beyond the current reality experienced in the industry. Another important consideration is that the absence of visible enforcement efforts exposes clear market gaps that qualify the strategic currency to be offered by this research.

Given the urgency of the study the five research questions were foundational in the process of constructing relevant mechanisms to address the problem statement. These questions are an outcome of the rationale and the literature discussed in both chapter two and three, where aimed at addressing the gaps in the literature. Experience revealed that copyright infringement is not being managed to the satisfaction of content owners; consequently such situations pose an immediate challenge to all interested parties. If this is the case there is every reason to adopt innovative mechanisms that will not only address the challenge, but will adequately motivate the existence and role of copyright in the context of both social and business interests.

Currently communication surrounding the building of a comprehensive copyright ecosystem seems to be inadequate. Innovation should therefore be platformed through a copyright consulting framework that can successfully and holistically commit to addressing the problem statement. Both the accounts of copyright infringement and the lived experiences of the participants rightly propose the importance of intervention

regarding the problem statement. This provides a starting point for innovation in the context of copyright stakeholdership.

CHAPTER THREE: LITERATURE AND THEORETICAL CONTEXT

“Negotiation is a cooperative enterprise; common interests must be sought; negotiation is a behavioral process not a game; in good negotiation, everybody wins something.... there are other advantages to the cooperative approach. Results can be greater, solutions more lasting.” (Nierenberg, 1968)

3.1 Introduction

In the previous chapter the five research questions were presented through rationales whereby the strategic importance of copyright in the global economy and challenges that affect the owners of the works against the intrinsic infringement practices in the illegal copyright market were examined. This chapter focuses on the cooperative contract and cultural value of copyright partners affected by the illegal copyright market. Since the five research questions emerged from problematizing the literature it became important to discuss them in context with the literature in both chapter two and three. The previous chapter focused on the problematization process and rationale of the five research questions and this chapter gives a more detailed inquiry on the literature that lead to the emergence of the five research questions. The five research questions are strategically discussed in order to highlight the role of culture and collaboration amongst the copyright partners. In this study partners would be either a owner of copyright, user, manufacturer, consumer, government or any other third party involved in the use or transaction of copyright forming the copyright stakeholdership.

In this chapter the issue of collaboration within the copyright stakeholdership is of the utmost importance since it seeks to elaborate the strategic importance of the five research questions in respect of an integrated copyright platform, particularly when confronted with the common challenge of infringement. The primary aim of aligning all interested parties represented in respect of copyright infringement is to draw value from a cooperative strategy, in that it attempts to make organizations realize their objectives through cooperation with other organizations rather than competing with them. It focuses on the benefits that can be gained through cooperation and how to manage the cooperation so as to realize them (Child et al., 2005). An explorative conversation with the research participants forms the foundation for integrating partners with the aim of diminishing the illegal copyright market through the re-engineering of the copyright dividend in the illegal market.

From a global perspective US companies, especially in the presence of weak collaboration, suffer losses because their intellectual property rights such as copyright, trademarks and patents are not adequately protected outside their territory (Feinberg & Roussiang, 1990). This is equally prevalent in the regions from which the participants in this study were drawn, as illustrated in figure 1.5. This serves to illustrate, as already indicated, that copyright infringement is not a standalone phenomenon, but a global challenge.

The copyright system was designed to balance the inherent economic characteristic of information in that, it is more costly to create information than it is to reproduce it (Cheverie, 2002). Promoting the proliferation of new works is vital to making progress in knowledge and culture, the underlying goal of copyright and design patent law. Doing so ensures contributions to the fields of painting, music, and design (Fromer & Lemley, 2014). This acknowledges the economic perspective of creativity in that the origination of a copyrighted asset should have a profitable and sustainable return. Moreover, copyright must be treated as an evolving process that provides valuable clues about the way in which policies can be devised to foster cooperative relationships within the copyright stakeholdership structure.

There are many motivating factors behind the formation of strategic copyright alliances that are aimed at maximizing the value of creative inputs. A great deal of this is expected to develop through government intervention. The absence of resilient and collaborative structures that are supposed to have vested copyright interests in opposing the illegal copyright market suggests a need for commitment from partners to collaborate against copyright infringement.

It should be acknowledged that laws do not intend to restrict the growth of technology; however, partnerships need to be formed to protect the copyright industry against possible economic damages that can be caused by technological growth. Technology can undermine norms and laws, but at the same time can also support them (Scharf, 2012). It is imperative that the collaborative copyright alliances develop a strategic agenda that is relevant to the technology conversation. In as much as this study places greater emphasis on online infringement, physical piracy is still pervasive and it will contribute to the explorative conversation.

3.1.1 The violation of copyright through physical piracy

Piracy is a term applied to infringement for commercial gain (Picard, 2004) and will be used in this sense throughout this study. Piracy is jargon for copyright infringement and therefore should not be treated as a new concept in the study. Although the researcher frequently refers to online copyright infringement, the preference is to refer to physical piracy as opposed to physical copyright infringement.

Physical piracy takes place in all countries, but piracy in the third world has become a key issue amongst publishers as the bulk of the world's large scale commercial piracy takes place in the third world (Altbach, 1986). Research conducted by Mattelart (2012) puts the spotlight on the youth selling pirated products on the campus of Cocody, Abidjan. Their activities create the impression that they are being resourceful, which in turn gives shape to a form of entrepreneurship as opposed to copyright infringement. The concept of violating intellectual property is unknown in these environments and presents a basic challenge of poor copyright knowledge and the impact that infringement has on the creator of the works.

The impact of physical piracy on the market can be linked to a lack of copyright knowledge in both the formal and informal segments of the relevant industries, and it can be argued that the illegal copyright market is an evident outcome of this assertion. The challenge in respect of copyright knowledge necessitate the re-engineering of the copyright dividend in the illegal market through deploying relevant resources that will address the infringement challenge. Piracy should be seen as an unrelated whole, where diverse agents with different objectives intervene in a variety of fields, and where amateur practices co-exist with small or medium sized businesses, either local or national, as well as transnational counterfeiting industries (Mattelart, 2012). In determining the economic impact of theft, infringement, or piracy, the effects need to be considered within the context of value chain elements on the supply side, as well as in terms of rivalry amongst consumers, which affects demand and thus price on the demand side (Picard, 2004).

The illegal copyright market implication is that it affects the content owner through both online and physical copyright infringement. It is difficult at this stage to determine the extent of the consumer's awareness of this market in terms of the illegality of supporting it. Piracy incurs production and distribution costs, hence a separate market and demand

function exists for pirated products (Picard, 2004). This is the illegal copyright market that is emphasized in this study. Of importance is that price is one of the key factors in driving the demand of copyright infringement.

On the demand side piracy does not necessarily reduce demand and revenue unless purchasers substitute the original content with the pirated content (Picard, 2004). An important challenge in the copyright industry is the lack of resources and relevant mechanisms to deal with infringement. The five research questions suggest that an explorative conversation is essential, and as such the research questions are foundational to the collective agenda of limiting the illegal copyright market in affecting the copyright dividend (see figure 2.1). On the supply side, the primary difference between physical and digital media is that virtual media products do not require physical manufacturing and production for distributive purposes, thereby reducing the costs of the producing company significantly (Picard, 2004).

Many industry analysts see piracy as one of the key threats to profitability and innovation in that it leads to higher prices for legitimate users, lower profits for firms, and reduced product innovation, and it is also seen as generally harmful to society (Jain, 2008). This asserts the fact that the illegal copyright market adversely sustains itself through offering lower prices for infringed goods, which subsequently creates a price imbalance. Furthermore, the persistence of the illegal copyright market is a reflection of poor copyright law enforcement. The discrimination that arises from such persistence is evident when weak copyright enforcement enables firms to collectively charge higher prices to the segment of consumers that is not guilty of piracy (Jain, 2008).

The enforcement of copyright should be a collective effort and requires the engagement of all government agencies in addressing the infringement challenge, from customs to courts, in order to ensure that protection is maximized. There are visible efforts in this regard as demonstrated by the Audio-visual Anti-Piracy Alliance (AAPA) that was established in the UK as a company limited by guarantee, and that was launched at the HbbTV Symposium in Paris on December 17th, 2012.

The empowerment of law enforcement agencies with knowledge and expertise in addressing infringement is vital (Mann, 2014). This will be a practical step towards re-engineering the copyright dividend in the illegal market. From a public policy perspective, understanding the impact of piracy on social welfare is critical for the

government to develop sound copyright enforcement policies (Jain, 2008). In as much as the copyright act offers the author full monopoly and exclusive rights, governments are still confronted with the challenge of a growing illegal copyright market, which arguably gives value to this study.

3.1.2 The exclusive right of the author against infringement

The adverse and pervasive growth of piracy violates the exclusive rights given to copyright holders. The five research questions were leveraged as instrumental tools to extract collective opinions in respect of this violation of rights, thereby seeking to understand the schema presented by the illegal copyright market. In section 6 of the Copyright Act of South Africa (South Africa, 1978), copyright in a literary or musical work vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic, as stated verbatim:

- a) Reproducing the work in any manner or form;
- b) Publishing the work if it was hitherto unpublished [Para. (b) Substituted by s. 6 of Act No. 125 of 1992];
- c) Performing the work in public;
- d) Broadcasting the work;
- e) Causing the work to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the work, and is operated by the original broadcaster [Para. (e) Substituted by s. 3 (b) of Act No. 56 of 1980];
- f) Making an adaptation of the work;
- g) Doing, in relation to an adaptation of the work, any of the acts specified in relation to the work in paragraphs (a) to (e) inclusive [S. 6 amended by s. 3 (a) of Act No. 56 of 1980]

The Copyright Act, as outlined above, prohibits any third party from infringing the rights of the author. This, in essence, is the basis of this study in that the illegal copyright market is an outcome of violating section 6 of the Copyright Act of South Africa. The illegal copyright market (refer to Appendix B) gives a definite indication that third parties do not recognize these rights and that law enforcement is not resilient to oppose these activities. All the arguments of infringement are premised on this section in claiming that the author's exclusive right is being violated by third parties. In figure 1.5 the civil and

common law jurisdictions of this study's population are outlined. Copyright infringement is a problem experienced collectively in both the civil and common law legal systems.

3.1.3 The civil and common law global system in copyright

Copyright functions in an interdependent international system of intellectual and commercial relations (Altbach, 1986). There are three highly influential legal traditions in the contemporary world; civil law, common law and socialist law (Tetley, 2000). In this study the civil- and common law systems are represented in that the study population is extracted from both these systems (see figure 1.5). The most important factor that encouraged the inclusion of these two legal systems was the awareness that copyright harmonization is a high priority in the global industry. The convergence of the two legal systems is undoubtedly stimulated by the fact that these systems encounter the same difficulties in the global copyright economy (Canivet, 2003).

The key difference between the systems is evident in their influence on copyright. Civil law originates from Roman law and is divided into two streams – codified Roman law as seen in places like continental Europe, Quebec and Louisiana and uncoded Roman law as seen in Scotland and South Africa. Civil law is highly systematized and structured and relies on the declaration of broad, general principles, often ignoring the details (Tetley, 2000). As outlined in figure 1.5, South Africa falls under the common law system. The most important issue is the emphasis that the law system places on the two divisions of copyright, namely moral and economic rights. In the Copyright Act, moral rights relate to the author of the work, while economic rights relate to the publisher or any other party responsible for the financial aspect of the work. In the civil law system the author, represented by moral rights, is favored as opposed to common law where economic rights rank higher.

Common law is the legal tradition which originated and evolved in England from the eleventh century onwards. Common law is usually much more detailed in its prescriptions than civil law. It is also the foundation of private law, not only for England, Wales and Ireland, but also in forty-nine U.S. states, nine Canadian provinces and in most Commonwealth countries (Tetley, 2000).

There is a widely held belief, particularly amongst civil law experts, that the concept of moral rights is a relatively novel intruder in the common law copyright system (Dworkin, 1995). In the common law system the works of the authors are protected by copyright

whereas in the civil law system “authors’ rights” protect them. The various juridical concepts of the two systems affect copyright in that there is no inherent recognition of the moral rights of authors in the common law system, whereas in the civil law system moral rights are part of the general structure of the law (Sterling, 2008).

3.1.3.1 International agreements in the field of copyright

International copyright protection is a recent development and it resulted from technological growth, from the increased international use of languages such as English, French, German and Spanish and from the emergence of international book publishing and scholarship centers (Altbach, 1986). The development of technology enabled copyrighted works to be reproduced and distributed beyond national borders. This made international copyright protection essential for works to retain their value.

The main limitation of international copyright protection is that the copyright laws of each country are concerned only with actions that take place within that country. For example, South African law will apply to copying within South Africa no matter where the work was originally written or published. If, however, the work of a South African author is published by, for instance, an Italian publisher and subsequently copied in Costa Rica, the situation becomes more complex.

Based on these complexities, the international copyright system, through a web of multilateral and bilateral treaties, guarantees copyright protection in certain foreign countries to meet established international standards (Alexander, 2014). These treaties benefit both developed and developing countries and contain numerous provisions that protect creators in both the traditional and the digital environment. They further clarify and strengthen rights in the digital environment, which is especially critical to countries that already make extensive use of digital networks (WIPO, 2003).

Prior to the 19th century, international protection of copyright was rare, and it was possible only through a complex web of bilateral treaties. By the mid-19th century, the web of copyright treaties in Europe was sufficiently confusing that an international conference was called that resulted in the International Convention for the Protection of Literary and Artistic Works, popularly known as the Berne Convention (Altbach, 1986).

3.1.3.2 The Berne convention and TRIPS adoption

The adoption of the Berne Convention was prompted by the need to bring uniformity to the incongruent bilateral treaties that existed in the 19th century. The importance of the convention was increased when the United States of America abandoned the rival Universal Copyright Convention (administered by the United Nations Educational Scientific and Cultural Organization) and joined the Berne Convention (Cole, 2014:01). It was concluded in 1886, and currently has over 100 member countries (Alexander, 2014). One of the advantages of treaties is that they encourage investment in a country, both domestic and foreign, by providing greater certainty to businesses regarding the safe dissemination of their property in that particular country (WIPO, 2003).

Another development that supported the Berne Convention, thereby also stimulating investment, was the signing of the international agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), managed by the World Trade Organization (WTO). Contracting States of the TRIPS Agreement are mandated to implement certain substantive provisions of the convention (Cole, 2014:01). TRIPS require WTO members to grant copyright to content producers including performers, producers of sound recordings and broadcasting organizations. Implementation of the treaties could be beneficial for developing countries in particular in that it encourages outside investment and puts a legal framework in place that will enable them to compete on a level playing field once the threshold of initial access to digital networks is passed (WIPO, 2003).

The main challenge surrounding this agreement, as interpreted by the developed trading partners, and taking into account the additional TRIPS-plus demands, is that it ignores the local needs, national interests, technological capabilities, institutional capacities, and public health conditions of developing countries. It is stated that the less developed countries have expressed great dissatisfaction with the way the agreement has thus far been interpreted and implemented. Another challenge is the ongoing demands made by developed countries for protection in excess of what was determined during the TRIPS negotiations, often initiated by new bilateral and regional trade and investment agreements (Yu, 2009). In as much the preceding is a key contention it is still in principle the goal of international treaties to link various national laws and to compel member countries to grant certain rights, specified on a non-discriminatory basis (WIPO, 2003).

The legal framework within the treaties, as part of the international legal system, provides incentives for local creators, performers and producers, facilitating the capacity building and development of cultural expression. With the support of an adequate system of rights, creators of all varieties can safely release their creations on the Internet and market them to consumers in countries around the world, without the need for or costs of foreign intermediaries, transportation facilities and a physical manufacturing infrastructure (WIPO, 2003). The five research questions developed from an awareness of the inadequacies in both the civil and common law systems that lead to inefficient copyright enforcement and subsequently reduced value to rights holders. In light of this, the copyright dividend (figure 2.1) is leveraged as a basis to advance the interests of the copyright stakeholdership.

3.2 The copyright stakeholdership and the illegal copyright market

The question of how to reengineer the copyright dividend in the illegal copyright market cannot be answered unless the copyright stakeholdership structure is aligned internally. Thus, if the copyright transactions within the stakeholdership continue to discount its actual value as an asset to content owners, the illegal copyright market will persist at the detriment of members.

This study refers to members of the copyright stakeholdership structure. These members are creators of works who are entitled royalties for the work they created if it is exploited in any form or way, and who legally belong to a collecting society. The role of the collecting society is to collect royalties from any other user and to ensure that it is distributed to the relevant member. Throughout this study content owners and members are used interchangeably and refer to owners of copyright, whereas partners are all the participants, who benefit from copyright in any form, excluding the illegal copyright market players.

In this study the illegal copyright market is argued to be the outcome of weak copyright practices and systems amongst partners, resulting in third parties taking advantage of the internal disconnection of the stakeholdership. Technology has created a concrete platform on which the copyright stakeholdership operates. Most observers agree that technological change has sharply reduced the degree of effective protection that copyright can offer (Waldfoegel, 2012). Moreover, the illegal copyright market has

managed to adversely sustain its condition by leveraging these technological advancements.

According to Collins (2014), the Copyright Act contains both criminal and civil provisions for infringement. Civil copyright infringement involves a violation of any of the exclusive rights of the copyright owner, including the right to control the reproduction, distribution, public performance, and display of copyrighted works. Criminal copyright infringement includes the following: pre-release distribution of a copyrighted work over a publicly accessible computer network, copyright infringement for profit, copyright infringement without a profit motive, circumvention of copyright protection systems in violation of the DMCA, bootleg recording of live musical performances, unauthorized recording of motion pictures in a movie theatre (known as “camcording”) and counterfeit or illicit labeling, documentation for and packaging of copyrighted works.

The weak internal integration amongst copyright stakeholdership participants, relates to the lack of copyright efficient mechanisms that are resistant to infringement which greatly necessitate and supports the importance of re-engineering the copyright dividend in the illegal copyright market. Ultimately copyright stakeholdership is aimed at achieving the confluence of a pro-copyright culture and collaboration amongst the relevant partners.

The vagueness of copyright can create demanding and damaging relationships amongst partners when they themselves infringe on intellectual property. The occurrence of systematic inefficiencies presents another challenge in that it can cause legislative contentions. The discussion of the conflict amongst these partners provides a clear account of the causes and existence of the illegal copyright market.

The weak internal integration of stakeholders, is presented by the researcher as a burning issue on the global copyright platform. Therefore, the key agenda with PACSA was to attempt the strengthening of synergy between the partners in the copyright business in an effort to oppose the illegal copyright market. The researcher aligns the discussions of conflict between the partners with the copyright dividend as an urgent goal to be achieved which will require using the framework of the five research questions.

There are several practices that can facilitate the development of copyright to a level where it is treated as a valuable commodity in the market. Ananny and Kreiss (2011)

state that excessive intellectual property claims, repeated extensions of copyright terms, technical regulations and the subsequent declining of the range of presumptive fair uses of content all limit the Internet's promise as a platform for public life and truncate the shared information commons.

Arguably the decline in fair use is not suggestive of copyright progress; rather support for the Internet is being driven without any value placed on the role of creators in that their works are not recognized as assets, but are exploited to advance the interests of other partners in the copyright stakeholdership. From a technological perspective, it is already known that the Internet and mobile technology have brought markets closer to the idealistic state of perfect information by reducing the information asymmetries between sellers and buyers (Granados & Gupta, 2013). That being said, the key concern is that copyright transactions are not necessarily in the best interest of the content owner.

An important condition for continuing success amongst partners is to ensure that they agree on a common interest in copyright. However, no common interest negotiations have progressed at this stage, which is clearly reflected in the current copyright conflicts in the market and the persistence of infringement demonstrated by the illegal copyright market.

Copyright infringement is the single most offending result brought about by a weak relationship amongst partners. Copyright infringement conflict emerges through litigation and diminished returns for content owners. The prevailing copyright conflict amongst stakeholders qualifies the argument of Robbins and Judge (2007) that the conflict process is the presence of conditions that create opportunities for conflict to arise. The researcher has been exploring the copyright field with the understanding that the weak enforcement is the major catalyst creating opportunities for exacerbated infringement for the prevalence of conflict, which also represents the key interest of this study.

3.2.1 Copyright infringement conflict from a manufacturing perspective

The degree of unity and integration amongst partners is weak when argued within the context of manufacturing, therefore copyright law should set a benchmark of compliance pertaining to the exploitation of creative works for financial gain. The conflict surrounding manufacturers has layers of complexity; the first challenge being the illegal

manufacturing of content, while the second challenge refers to the conflict between partners. These matters will be discussed in terms of the partners' copyright role before entering into an explorative conversation by means of the five research questions. An important consideration is that the partners experience the copyright dividend (figure 2.2) differently in terms of its exploitation, which could simultaneously lead to them infringing content.

The copyright disconnect in respect of manufacturers presents itself through the technology they introduce to the market. The extent to which they became used to infringing the rights of content owners led to the emergence of the Sony rule, as outlined earlier in section 2.2.3. This demonstrates that illegal manufacturers' source technology sold in the legal market with no restriction of use to infringe upon, which creates a basis for conflict in the global copyright system.

Copyright conflict relating to the manufacturing of illegal goods impacts the economy in that it thrives on illegal practices, which categorizes it as a platform for organized crime. The growth of international organized crime is facilitated by numerous factors, including the burgeoning global economy and the free movement of goods, services and people, essential to legitimate commerce (IFPI, 2014).

Piracy occurs at the core of the global organized crime system and flourishes in several African countries, including Zimbabwe (92%), Libya (90%), Algeria (84%), Cameroon (83%), Egypt (61%), Ivory Coast (81%), Kenya (78%), Mauritius (57%), Morocco (66%), Senegal (78%), Tunisia (74%) and Zambia (82%), while South Africa, at 35%, presented with the lowest piracy rate (Tade & Akinleye, 2012:1015). The music industry is, to a large extent, engaged in continuing illegal activities, with the primary purpose being the generation of profits (IFPI, 2014).

According to IFPI (2014), the amount of annual pirated sales is approaching two billion units, worth an estimated US \$4 to \$5 billion. Globally, two in five recordings are pirated copies and the total optical disc manufacturing capacity across all formats is approximately 30 billion units. Manufacturing capacity massively exceeds legitimate demand. This creates a business environment conducive to exploitation by criminal syndicates.

The lack of enforcement is partially resource-based, which restricts piracy in richer countries, but not in poorer countries. It is also possible to price discriminate across

countries. Such price discrimination allows the copyright holder to charge a super monopoly price to the captive market and charge a discounted price to the non-captive market (Harbaugh & Khemka, 2010). This allows pirated goods to be sold at lower prices, limiting legitimate products to compete in a normal market. Piracy through illegal manufacturing is greatly affecting the information market, where products such as business and entertainment software applications, sound recordings, movies and books are traded (Tade & Akinleye, 2012).

According to Katz (2012a), copyright infringement traditionally implies an economic loss. The expenses involved in copying a work are much lower than that of creating and developing a work. When copyists undercut copyright owners in pricing, the copyright owners are unable to recuperate their resource investment, leading to a diminished incentive for the creation of original works. Infringement caused by third parties using these methods impacts directly on the royalty revenue of content owners. The result is that the content owner, as a partner in the copyright stakeholdership, is compromised in terms of investment.

A shared expectation amongst partners is extremely critical in ensuring that copyright learning encourages equitable returns for content owners in the strategic alliance. Since the ability to learn is one of the most important intangible assets that a company can possess, its enhancement is frequently the main motive for entering into collaboration with other companies (Child et al., 2005). Because copyright partners are fragmented and their system is not well integrated, copyright learning can be leveraged as a commoditized currency.

3.2.2 The conflict of copyright infringement through broadcasters

The broadcasting industry consists of a number of vertical stages, by means of which television programming is created, packaged and transmitted to viewers, and revenue is generated. Broadcasters are typically vertically integrated, with some outsourcing of programme production (Armstrong & Weeds, 2014). The four main elements of the broadcasting supply chain that can be described as programme production are: (i) making a movie or drama, filming a sports event, and news reporting; (ii) channel packaging, which entails scheduling programmes into channels, packages and pay-per-view offering; (iii) transmission to the viewer via terrestrial, satellite, cable or other platforms; and (iv) revenue generation through license fee collection, subscriptions

and/or the sale of advertising time.

It has been argued that broadcasters exercise unfair practices in terms of tariffs, in that they insist on paying low tariffs regardless of the audience they have at their disposal. While constructive steps are being taken to ensure that an equitable base is set in terms of tariffs, the broadcasting industry's main challenge is still copyright reform, particularly the establishment of a fair and balanced copyright tariff regime that reflects the important contributions of all those who generate success and wealth (Canadian Association of Broadcasters, 2014).

Royalty rates play a crucial role in shaping the music broadcasting industry. If rates are excessively high it affects the ability of broadcasters to provide the public with music. The same applies if the rates are set too low, in that recording artists receive an unfair return in exchange for their work (Villasenor, 2012). In qualifying the copyright dividend (figure 2.1), in principle it is imperative that authors realize a return that reflects the market share of the broadcaster.

In essence the broadcasting industry is characterized by substantial fixed costs while marginal, per-viewer costs are negligible. Programme production costs are independent of the number of viewers and, once transmission and reception capacity are in place, the marginal cost of transmitting the programme to an additional viewer is insignificant (Armstrong & Weeds, 2014). This means that returns can be high once content is developed in that a broadcast can be repeated at no cost, which can be an added advantage if the author's license agreement acknowledges this value.

In terms of conflict with other partners, broadcasting corporations are equally responsible for and subject to copyright infringement. The perception might exist that they are not able to infringe on any rights due to their legal position, but the violation of rights can occur very easily, especially if copyright knowledge is limited within the organization. The core business of a broadcaster is to provide content to the public and this includes the use of radio stations and any other medium responsible for transmitting content to an audience.

In the event that a broadcaster is the owner of a particular product or content, a license agreement is drawn between the interested parties regarding broadcast jurisdiction and the platforms where the program will be broadcasted. This limits the broadcaster to the

agreed jurisdiction and creating any platform outside of the perimeters of the license is illegal and amounts to copyright infringement.

In the case of *ABC v. Aereo Inc.*, as stated by Gatti and Jonelis (2013), the US District Court for the Southern District of New York denied the request of broadcasters and content owners to issue a preliminary injunction requiring Aereo Inc. to immediately stop providing its subscribers with access to copyrighted content over the Internet and from transmitting broadcasters' copyrighted programs to customers without paying any fee to the broadcasters. In this case the broadcaster was liable for infringement, because a larger audience were reached than what was contractually agreed on by Aereo Inc. and ABC. This, in legal terms, carried arguments for both civil and criminal charges under civil law, which qualifies copyright infringement.

Broadcasters make agreements with content owners regarding the broadcasting of their material. Moreover, the Copyright Act is supposed to ensure that all interested parties are financially rewarded according to the number of times the material is broadcasted. A single film, for instance, that is broadcasted will be entitled to different rights under the Copyright Act. According to Dean (2006), the Copyright Act recognises literary works, musical works, artistic works, sound recordings, cinematographic films, sound and television broadcasts, programme-carrying signals, published editions and computer programs as key categories of the Act.

The above presents a cascading infringement continuum which suggests that in the case of *ABC v. Aereo Inc.*, more than one right was violated. The owners of content are supposed to be remunerated according the size of the audience the broadcaster is reaching. The copyright unfairness of *ABC v. Aereo* is that in a single movie the rights of all the copyright partners come into play, including performance and mechanical rights, pertaining to the composer of the soundtrack, and cinematographic rights owned by the production house which are violated in terms of unfair remuneration. The critical and main issue of the *ABC v. Aereo Inc* case is that broadcasters do not necessarily own the content they broadcast and in this event fair and equitable mechanisms should be enforced in ensuring that the audience size impacts directly on the licensing tariff with the content owner.

Brenner and Kay (2012) argues that, because Aereo's retransmitted broadcast programs were free over-the-air, all Aereo was doing was to deliver what was already

license-free. But in reality, ninety per cent of viewers get access to programmes through cable or DBS distributors, not over-the-air, and therefore present-day broadcasters acquire substantial retransmission consent fees from these viewers. From this perspective the Aereo-like delivery of broadcast signals could have major revenue implications. Copyright cases rarely support the seismic revenue shift that Aereo potentially caused.

3.2.3 The collecting societies (CMO) conflict in the copyright stakeholdership

Collective management organizations (CMOs) are independent, private organizations managing copyright (Ficsor, 2002). The principle of collective management is a European invention dating back to the end of the 19th century. It is deeply rooted in national legislation, in particular relating to the management of authors'/ composers' rights (KEA, 2006). Musical authors, lyricists and composers hold the copyright, including public performance rights, to the works they create. Normally they sign the right to manage the copyright on their musical works over to collecting societies, to manage on their behalf. This collection of rights constitutes the repertoire of the collecting society (Andries & Malvy, 2008).

According to Zafeiratou (2005), all collecting societies create reciprocal representation agreements based on a model provided by the European collecting society umbrella organization, the International Confederation of Authors and Composers Societies (CISAC). It is the leading worldwide network of authors' societies, consisting of 227 collective management organizations in 120 countries, protecting the interests of over three million creators and rights holders.

In this system, each collecting society collects royalties as a result of exploitation of the rights in its own country, not only for its own members, but also for the authors and publishers abroad who are members of other collecting societies with which it has established reciprocal representation agreements (Andries & Malvy, 2008). In order to avoid liability for copyright infringement, online content providers must obtain a license from each and every relevant collective management society in each territory of the EU in which the work is accessible (Guibault & Van Gompel, 2006) and (Palfrey, 2009). All the collecting societies developed from the colonial system and are still affected by the changes in the market environment where they operate. In the near future, large Internet platforms may well replace the functions of collecting societies and may even

offer multi-territorial licensing to commercial users worldwide (Thakker, 2009).

The aforementioned can be an outcome of the fact that in the absence of any regulatory control, collecting societies have the capacity to charge exorbitant fees, discriminate unfairly against certain categories of users, or require users to hold licenses for more works than they need. The conflict with collecting societies arises from the premise that they engage in anti-competitive agreements and practices. The European Community (EC) Competition Law addresses the behavior of collecting societies in this respect (Thakker, 2009). Their economic position is usually that of a monopoly regarding the specific rights they manage and the territory of their home country. To that extent, territorial monopoly reflects the territorial nature of intellectual property rights, which is the product of national legislation (Mestmäcker, 2005). In reflecting at the EU, actions have also been taken by other competition authorities, such as the Office of Fair Trading in the U.K., by lobbying for specific legislation, regulation, and empowerment, resulting in the adoption of legislation such as the Enterprise Act 2002, which prohibits collecting societies from engaging in anti-competitive agreements and practices (Thakker, 2009).

Conflict between collecting societies and other stakeholders adversely affects the management of copyright, in the process compromising the rights of members as well as users of content. The researcher outlines the inefficiencies that create systematic contentions as part of the copyright conflict amongst partners. Conflict emerges when copyright is adversely affected by the advancement of poor systematic mechanisms and infringement goals presented by the illegal copyright market.

The conflict between collecting societies within the EU, EC Competition Law and copyright law, as it relates to musical works, has recently become a controversial matter with increasing dominance in legal processes (Thakker, 2009). Traditionally collecting societies would license music in their respective territories, for example Gema being responsible for Germany, or MCPS for the UK; however, with the EU being driven towards a single market and with the rapid growth of the Internet and mobile telephones, the market for legitimate music delivery services has overtaken many traditional collective management business models. Online music services are accessible throughout the European Union (EU), which makes the need for multi-territorial licensing that spans across the European territory more critical than ever before.

In brief, multi-territorial licensing would enable a user of content to obtain a single license from, for example, Gema or MCPS for the entire EU jurisdiction, based on their catalogue size. This can create competition, seeing that the structure and operation of collective management societies have never been harmonized at the European Community level. External control has traditionally been exercised strictly on the basis of the European rules on competition (Guibault & Van Gompel; 2006). In all jurisdictions with competition laws, collecting societies appear to be promising candidates for the full application of the above (Mestmäcker, 2005).

In addressing conflict the first stage would arguably be to create a new regulatory framework with the aim of establishing principles of good governance within collective management societies, as well as creating a uniform external control mechanism to meet the challenge of external market changes (Guibault & Van Gompel, 2006).

It is expected from collecting societies to adhere to the highest ethical standards when administering the royalties and interests of members. Transparency has become an increasingly trying issue for policy makers, with critics of collecting societies describing their handling of revenues as akin to black box collections (Smith, 2012). Every time copyrighted music is performed in public or broadcasted, a royalty is payable (Knobler, 2008) and while this is what is expected in theory, it does not always materialize.

A particular industry challenge that hinders the realization of the abovementioned ideal, is that content users who attempt to clear rights, often have difficulty tracing or identifying the owner of works or other intellectual property due to insufficient information (Castle & Mitchell, 2009). In most cases, this will inadvertently lead to the work being used even though the author details are not available, resulting in “orphan work”, which is generally regarded as a copyrighted work for which the author could not be found, despite a good-faith search of relevant documents (Castle & Mitchell, 2009, Martin-Prat, 2014). Consequently the work will end up in a “black box” within the collecting society.

This “black box” refers to a collection of unclaimed royalties, which may be kept by a collection society, or given to another organization, such as a musicians’ union. The situation poses a challenge to collection societies in maintaining the expected level of transparency. The royalty payments are owed to writers, performers and labels that were named on royalty paperwork by users of content, but that could not be traced

(Cumberland, 2014). The unethical practice surrounding the black box process entails the exploitation of members with insufficient financial and legal backing, by collecting societies that claim that they do not have enough information available to be able to redistribute revenues to the appropriate parties (Smith, 2012).

Regarding market information, the very existence of CIS-Net *powered by FastTrack*, is a breach of Article 101(1) TFEU, and the continued privileged and exclusive access to it and its ownership by a few EU Societies poses a threat to intra-EU trade, as well as to external trade relations (Gilfillan, 2014). Digital I.T. systems do exist, but the fees charged are considerable and the collecting societies are unclear as to how they manage these IT systems (Mendis, 2013). A comprehensive, up-to-date database, that is transparent and will be able to confirm ownership and licensing mandate information for musical work repertoires, is critical to the various players in the industry. It will be an asset to the development of digital music services throughout the world (Nuttall, 2011).

Supporting the above is the concern that Africa is isolated from the privilege of access to the CIS-Net database. This database contains the greater portion of global works and the contention is that some of the works are from Africa. Only five EU collecting societies, expanding later to nine EU societies, have access to the controlling database of all musical and literary work, containing ownership information, which seems like a platform for the private, unregulated exchange of copyrighted works.

According to Gilfillan (2014) the discrepancy in terms of access to information is significant in that 18 other EU societies do not have access to the database, which puts them at an economic and trade disadvantage. Access to CIS-Net by only a few select EU societies amounts to privileged access to information, uneven distribution and conflict of interest in the decentralized market system, as espoused by copyright. Contrary to this, not having access to the CIS-Net database leads to other challenges, like the inability to track a member's works that have been exploited in other territories, eventually resulting in these works becoming orphan works.

Orphan works are defined as the result of market failure, for example when a potential user of a copyrighted work faces insurmountable transaction costs to obtain authorization from the rights holder. Facing the risk of infringement liability, the user foregoes the use, even though a transaction would have taken place had the user been able to locate the copyright owner (Loren, 2012). The challenge with orphan works is

not only that they cannot be used by third parties, but also that royalties are sometimes allocated to the incorrect party, for instance when there is an author with the same name in the system, which results in copyright infringement. The misallocation challenge is not limited to orphan works; it can also apply to other works that bear similar title details in any form.

There are more avenues through which collecting societies can infringe the rights of copyright holders. According to Sundaram (2009), it is common knowledge that some consumers of music, including shops, restaurants, bars and clubs often do not pay to play the music. Knowledge of intellectual property is low amongst these users. In some countries, even television and radio stations do not pay to broadcast music.

The lack of adequate remuneration for music content has legislative and technological issues at its core. In this regard the collecting society is expected to maximize its royalty collection from any party that exploits the repertoire of its members. However, in reality resources are low and weak integration amongst partners limits the collection of royalties. Nevertheless, collective management by collecting societies has the advantage that it is more efficient than individual management of copyrights in the monitoring and enforcement of rights. This applies to the monitoring of licensees as well as to the discovery of infringers. Individual enforcement of copyright in the face of widespread consumption of all kinds of music is next to impossible (Mestmäcker, 2005).

3.2.4 The conflict of record companies within the copyright stakeholdership

The conflict surrounding record companies presents itself on two levels, the first being the use of traditional business models that are not fully aligned with market changes. In this case a business model can be defined as the method by which a firm builds and uses its resources to offer its customers better value than its competitors (Afuah & Tucci, 2003). The second level involves internal conflict between the record company and the artist in terms of accounting practices. Although artists can now record and sell their own music digitally, aspiring musicians still maintain the practices of the traditional music industry (Jakobsen, 2012). This reveals a lack of adoption to change demonstrated by both parties. The emphasis in this section is on the role of record companies in copyright conflict and the potential value of integration amongst partners in resolving the relevant challenges.

The two levels of conflict described above form a basis for the arguments of drivers of copyright infringement and transparency issues. Research has examined the response of major record labels to the pirated culture of music downloading through litigation and digital copyright protection technology (Freedman, 2003). Despite winning lawsuits, as in the case of Napster, the record labels were not able to stop piracy, whether being digital or the physical copying of CDs (Karunaratne, 2012). This study does not discount these responses, but negotiates the alignment and development of new future based business models that are more representative of market changes.

Traditional music stores are experiencing a decline in CD sales; therefore they need to find other sources of income, or risk going out of business (Vaccaro & Cohn, 2014). This has a direct impact on record companies and their financial position. In the traditional context record companies are persistently trying to preserve their current infrastructure and business model while the profitability of their primary product is plummeting. The challenge of record companies is that since the advent of digital downloads and piracy, CD sales have declined significantly. Consumers no longer purchase entire albums, but prefer to select and only pay for their preferred songs by downloading them on computers or other listening devices (Williams, 2010).

The traditional music business model encompasses the history of the industry from the early 20th century to the present (Rivkin & Meier, 2002). The five research questions introduced in this study emerged from current challenges of infringement experienced in the industry. These challenges are not independent from the redundant business models in force and became evident through explorative conversations. The traditional business model in the music industry includes the mass production and distribution of physical goods (Hughes & Lang, 2003). The model includes the record labels that manufacture the product, for instance CDs, and distribute it via bricks-and-mortar stores, direct mail clubs, online e-tailers, as well as artists selling their CDs at concerts (Vaccaro & Cohn, 2014).

The effort of maintaining traditional business models is a catalyst to copyright conflict in that it creates systematic discrepancies with current trends of consumption of content in the market. Since 1999 the Internet has drastically altered the production, distribution, and consumption of music (Molteni & Ordanini, 2003). In 1999 Napster, software created by Shawn Fanning, brought about a major change in the industry. It enabled music files to be shared through the Internet, directly amongst fans, without the need for

any intermediaries such as traditional recording companies to facilitate the connection (Karunaratne, 2012).

During these periods, however, the record industry lacked the adoption of appropriate business models that fit consumers' needs. The delayed response to change became a key driver in conflict amongst partners. In order to meet with change and accommodate the consumer in the market the new business model includes legitimate online digital music services (Vaccaro & Cohn, 2014). The lack of integration and adoption to change over the years led to content owners suing an increasing amount of computer users, accusing them of illegally sharing music over the Internet, with the contention that file sharing damages the industry and reduces artists' income (Karunaratne, 2012).

The second level of internal conflict comprises a trust issue that affects the relationship between the artist, referred to as the member in this study and the record company. According to Blythe and Wright (2008), for more than four decades record companies have been accused of using questionable accounting practices to fraudulently appropriate artists' royalties. One of the classic cases that qualified this type of conflict was the suit against Decca Records by Peggy Lee for fraudulent activities in respect of royalty payment.

The management of copyright has evolved in terms of technological progress, and this presented a new set of questions regarding the distribution of royalty payments. The missing link is the level of transparency within the copyright stakeholdership. According to Laude and Schepers (2009), trusting current and complicated reporting systems has simply proved inadequate, frustrating, misleading, and too frequently, detrimental to the very individuals it was designed to protect. The issue goes beyond the combination of standardized monitoring, disclosure and additional regulation.

Different configurations of ownership in copyright, control, and management of rights appear to be viable under different circumstances. Therefore partner integration becomes critical; even though partners benefit from copyright in different ways, infringement still remains a common point of contention from the view of the content owner. Record companies are also content owners in that they are actual investors in whichever material is released in the market. At the same time, any venue that exploits content for public viewing without paying a license fee is subject to copyright infringement.

3.2.5 The conflict of copyright infringement through consumers

The heavy downloading of free music suggests that the general public has no moral problems with the activity (Anderson; 2010). Given that an illegally copied CD should perform just as well as the original and that making the copy involves only negligible expense (North & Oishi; 2006). Copyright uncertainty brought about by the illegal copyright market introduces new threats to the survival of the music industry. MP3 players, for example, contain 800 illegally copied songs on average (Matthew, 2014). The future application of copyright should promote productivity in the industry by sensitizing consumers regarding the detrimental impact of infringement in the economic context.

The question arises whether copyright infringement slows new products from being brought into the market. If so, and if there is compelling evidence that consumers care about new products, in the longer run, stealing can have a devastating effect on both producers and consumers (Waldfogel, 2012).

The challenge here is that the pricing of content according to income does not mitigate infringement. When copyright enforcement is targeted at high-value buyers, such as corporate and government users, the copyright holder charges super-monopoly prices, thereby encouraging low-value buyers to switch to inferior pirated copies (Harbaugh & Khemka, 2010). Considering what is stated by Mathew (2014), digital music infringement has become a victimless offence for youths in the United States of America, with an estimated 96% of people between the ages of 18 and 24 having illegally copied music in some form during 2008. The main challenge is that it is difficult for copyright holders to enforce their rights in this peer-to-peer setting, in part because of the difficulty of identifying, locating, and suing each individual infringer and in part because the individual users are often judgment-proof and lack the financial resources to compensate for their infringement.

The entertainment industry has taken notice of this practice that has been embraced by consumers on a wide scale. File-sharing technology has been available and popular for about a decade and in 2004, approximately "13 billion songs were available for unauthorized free trading on online swap networks (Miller, 2006).

This means that infringement becomes a social norm that is unaffected by enforcement. The general public does not understand copyright law, nor the rationale for copyright (Anderson, 2010).

Copyright is meant to encourage creativity and provide an incentive to share innovations and discoveries (Kelly, 2011). The incentive that is expected from copyright is subjected to the reality that consumers perceive creative works as a free offering. In a recent report conducted by the SSRC, “Media piracy in emerging economies”, the authors conclude that copyright education campaigns are inadequate because consumers are not ignorant, but in favor of inexpensive infringed copies (Bitton, 2012). To bring about improvement in the copyright stakeholdership the goal would be to assert the value of copyright and its role to the creative output catering for the industry. Conflict still remains a challenge in the way consumers perceive the value of copyright (Kelly, 2011).

Users now have unprecedented opportunities to push the international copyright balance toward freedom of expression through expanding legal notions of the public interest. Copyright holders, meanwhile, are in a complicated position. If they insist on an economic protectionist international copyright regime in the short term, they might ultimately win a copyright balance so devoid of free expression which will stifle creativity and diversity (Peltz; 2009). This strive towards balance of interest between users and copyright holders is an important beginning for advancing and maintaining the value of copyright. This balance should not lead to diminishing any free expression but rather to ensure that the creator of works efforts are not compromised by the infringement actions from the illegal market.

3.2.6 Internet infringement in copyright

The illegal copyright market is an outcome of diverse developments within the technological space and copyright law lags in adjusting to the momentum of this environment. According to Sinha, Machado, and Sellman (2010), technology is a key strategy in preventing copyright infringement through systems such as digital rights management (DRM), which strives to make it difficult, if not impossible, to reproduce and distribute copies of legally purchased digital music.

The Internet created a new globalized virtual space. A vast expanse for communication opened up to its users, one with very few established institutions and controls. That

initial freedom created many benefits, but it also incubated new forms of conflict and crime (Mueller et al., 348). The entertainment industry will not survive unless intellectual property laws are strengthened to meet the threat of new technology and the widespread theft that occurs via the Internet (Depoorter, 2009). Intellectual property is highly valuable in the information-based economy; however, modern information and telecommunication technology make its protection difficult (Meyer; 2012).

The Internet and World Wide Web, in particular, have destabilized many copyright industry sectors as the economics of creating, publishing, and disseminating information-rich works have dramatically changed (Samuelson, 2010). The implications of digitization are of particular interest, as argued by Ranaivoson and Lorrain (2012), in that it takes control from rights holders and gives it to potential counterfeiters. Importantly, it also gives control to citizens, in that digitization makes content more similar to what economists label as “public goods”. Public goods share the properties of non-rivalry and non-excludability.

So far there are clear contradictions in respect of copyright goals, emphasized by the arguments surrounding the encouragement of commons as a platform for exploiting copyright. In the proposition for copyright alliances, it is clearly stated by Child et al. (2005) that for an alliance to realize its full potential, there has to be not only a match between the partners’ strategic objectives and the resources they contribute, but also between their respective cultures and practices regarding copyright protection.

The copyright stakeholders’ key objective would be to establish communication mechanisms that formalize the system of copyright operations on the Internet, by ensuring ongoing collaborative strategies to eliminate infringement through formalized trade platforms. A copyright alliance will inevitably be confronted with the digital reality, in that infringed copies can be made and distributed instantaneously anywhere in the world, at a minimal cost, by any interested party (Haskel, 2008).

3.2.7 The conflict of copyright infringement through publishers

The copyright stakeholders participants, represent all the parties that exploit copyright. The weak integration amongst stakeholders pertains to the poor relationship between all the role players. This weak collaboration contributed to the development of the illegal copyright market. In the Fullscreen case, a group of music publishers took legal action against Fullscreen, a company that supplies videos to YouTube, for

allegedly infringing copyright on popular songs. The claim was that Fullscreen misrepresented itself to YouTube as being licensed and paying royalties to music publishers. They claimed that the company reproduced copyrighted works without authorization, particularly through cover versions. According to the complainants, at the time Fullscreen was valued at \$110 million and one of the largest multi-channel networks; the Internet equivalent of a broadcast television network (managingip.com).

The misrepresentation of Fullscreen emphasizes publisher infringement challenges as well as the issues with record companies, raised in section 3.2.5, in terms of transparent royalty payments to artists. According to Christman (2014), Kobalt, a publisher with a new model for administering royalties, delivers royalty payments with greater transparency and accountability. The firm takes a different approach to royalty collection and accounting. By receiving payments directly from collection societies around the world, Kobalt claims that it halves the traditional two-year time delay in collecting publishing royalties and improves royalty payments to artists by as much as 25%. It also provides unprecedented accounting transparency to songwriters and their managers, with its systems enabling songwriters to see the activity of their copyrighted work around the world on a daily basis, with a weekly report from the firm providing backup.

The Kobalt case marks a new beginning for copyright administration where traditionally the issue of royalty payments created high levels of conflict. This study sought to advance the diverse partner interest to reduce copyright infringement and the illegal copyright market output. The future application of copyright-centric mechanisms is an important challenge for the current copyright stakeholdership.

3.2.8 The conflict of copyright infringement through the government

Much of the responsibility for improving the copyright fit within the partner stakeholdership lies with the role that the government plays from a legislative perspective. The central goal of government policy toward the economy is to deploy a nation's resources, such as labour, to create high and rising levels of productivity (Porter, 1998). Copyright is a movable property asset that requires sustainable enforcement policies in protecting it against infringement, and as such the domicilium of its property rights becomes critical. This issue is further clarified by Liu (2010) that the competitive advantage of domestic producers is supposed to be the low fixed costs of

creation, including labour and infrastructure costs. However, such an advantage disappears when copyright piracy has driven the prices of musical works close to the marginal costs, which are naturally insensitive to the difference in fixed costs and are usually identical for both foreign and domestic works (Liu; 2010).

In this regard, a critical point of contention is stated by Gilfillan (2014) in that creators on the African continent display a weak member commitment towards their local collecting societies. Almost 19,000 of these creators use the French SACEM for the world-wide collection of their performing and mechanical rights income and 11,000 more use the English PRS and MCPS. Some 4,000 to 5,000 of Africa's finest creators use other European countries' CMOs as the world wide domicilium of their works. No figures are available for the USA and Canada.

Creators should by default be registered with their local CMO in order to administer their copyright, as opposed to joining foreign collecting societies. If this is not the case, royalty payments that are supposed to be entering a particular country for works performed in foreign territories end up not reaching their domicilium, but instead get channeled into the foreign collecting society where the creator is registered. The implication is that government loses tax collection from members that are citizens of the particular country and whose physical properties are based in that country. Copyright imperfectly resembles property. Like property, the various rights contained within copyright may be conveyed, separately or together, from one owner to another (Armstrong, 2010). The discrepancy in this issue is that copyright is a movable property, which by virtue of law should attract tax in that it represents income.

According to Palmer (2006), in order to be eligible for copyright protection, a work must meet the following three criteria: (1) originality, (2) nationality of creator/place of publication and (3) fixation. Nationality criteria are met when, at the time of creating the work, the author is a citizen of a country that adheres to the Berne Convention. Fixation implies that the work is expressed in some material form that can be identified and that has more or less permanent endurance.

3.3 The copyright stakeholdership goal

The conversation on the copyright stakeholdership partnership suggested that the critical advancement of a new copyright value proposition, to meet the accelerated pace of change, is indispensable for the successful management of intellectual property. The

preceding is argued from a conflict perspective where integration is to address praxis by providing relevant copyright data that will promote and facilitate the necessary transformation.

So far the collective effort of the partners to collaborate against the illegal copyright market has been slowed down by internal copyright inconsistencies that result in constant litigation and the lack of proper systems to administer this commodity. It has become evident that various partners in the copyright stakeholdership context are under scrutiny for intellectual property violations.

It is imperative to consider that cooperation between all interested parties requires trust in order to succeed. In the copyright business context trust means having sufficient confidence in a partner to commit valuable know-how as well as other resources despite the fact that, in so doing, there is a risk that the partner will take advantage of this commitment (Child et al., 2005). It is therefore expected that the protection given by copyright is aimed at rectifying market failure by providing incentives that encourage the production and dissemination of works. It should also provide a legal means by which those who invest time and labour in producing goods can be confident that they will not only be able to recoup their investment, but also regain a profit proportional to the popularity of their work (Farrand & Carrapico, 2011).

Copyright can be commoditized, provided its stakeholdership aligns into a congruent business platform that has a value based orientation. In the current market, copyright as a strategic commodity is greatly affected by and subjected to the multi-channel digital revolution, coupled with the development of interactive digital technology, virtualization, peer-to-peer networks, cloud computing and Internet services. These and other IT developments are changing the rules of the business in many industries through the disruption of business models (Meyer, 2012). In practice this challenge is evidence of weak copyright business structures. In order to achieve this, an aligned business platform should facilitate cooperation between the asset owner and the market by ensuring that infringement is a mitigated risk.

Most importantly, copyright has multiple attributes and not all attributes of an asset need to be owned by the same person. Copyright law is wide and complex as it covers all aspects of design in media, music, literature, and manufacturing (Eaton, 2013). In its singular form one work can have multiple owners of both its moral and economic rights

with participants being based in different geographical demarcations. This can stretch a single work across different copyright territories. The business party responsible for the work would need strategic flexibility to administer it as a movable property.

3.4 Research Question one: Exploring the views on causes and evidence of copyright infringement

This study's primary focus is to understand copyright infringement in order to develop a framework that will address the difficulties described in the problem statement. Over the years copyright infringement has grown and diversified and in the process a counter-industry emerged, aimed at preventing infringement. The coherence and scope of the copyright industry is relatively new. In previous centuries, certain groups or industries mounted efforts against copyright infringement, but in essence the offences were not as pervasive as today's online rights violations.

This research question is influenced by the fact that the effect of theft on sellers of content depends on its effect on consumers, who differ in their willingness to pay for products (Waldfoegel, 2012). The resistance of consumers to pay is a detrimental culture that drives infringement and these activities offer no monetary returns for the content owner. The challenge is that copyright is infringed in all spectrums. Over the years the copyright industry was monopolized, but with the Internet content became freely available, which challenged the existing monopoly and created a new form of crime in the digital space.

The argument is that if a hypothetical monopolist of a product imposes a small but significant and non-transitory increase in price, while the terms of sale of all other products remained constant, and the price increase causes customers to purchase other products instead, then the product being tested has reasonable substitutes (Stadler, 2009). The logic of substitutes is based on the traditional vertical integration models of record companies, experienced from 1990 onwards, in respect of lagging to adapt to the technological changes in the market. While online file-sharing dates back to the advent of modems, the sharing of copyrighted music reached a new level in 2000 as the music-sharing program Napster gained widespread popularity (Gregorian, 2009).

During the period preceding the 1990s the World Wide Web (www) was introduced. With the advent of the World Wide Web and improved connections and bandwidth, the activities and types of users of the Internet expanded and changed, as is still the case.

During this period of digital development record companies constantly maintained their traditional vertical integration models without adapting to any change. Many individuals now experience the Internet as consumers (Muir, 2013). The Internet poses a major threat to copyright holders as it has introduced the possibility of sharing music globally and in the process programs such as Napster gained popularity, thriving on copyright infringement. This allowed consumers to opt for a substitute in the form of illegally downloaded content, without benefiting the copyright holder.

The World Wide Web introduced a timeless supply and demand concept of content. Unlike any other computer program, Napster allowed its users access to a virtually unlimited catalogue of music whereby they were able to download almost any song they wanted in quality that rivaled CDs, for no cost and at any given time (Gregorian, 2009). The consumers, through this illegal activity, introduced an adverse culture of “free air”. A realistic analysis of the welfare effects of downloading requires information of the distribution of value, in terms of how legal buyers and illegal downloaders may be handicapped by the likelihood of “truth” in relation to admitting to an unlawful activity on the part of downloaders. It is also problematic due to the nature of the content itself and how it is experienced (Scharf, 2012).

Having both legal and illegal downloading as competing forces opens new channels of distribution. It is critical for artists to legally exploit technology to distribute their works, even if this approach is a challenge to the traditional vertically integrated record companies. The greater strategy that is required is to disperse copyright knowledge amongst the partners. Copyright gives a monopoly to its rights holders, depending on the civil and common law jurisdiction.

Artists in this copyright context can exercise the given monopoly by distributing their works directly into the market through technology. In the less developed countries, especially on the African and South American continents, this applies equally to physical piracy in that adopting more direct distribution of content to the market can reduce the dependency of artists on the monopolistic structures of traditional business models.

South Africa, being part of the research sample of this study, is shaped by poverty and social inequality. Although this dynamic is commonplace in low and middle-income countries, piracy in South Africa is also the product of a distinctive history of repression,

political contestation and diplomatic tension, reaching back to the apartheid era (Brown, Haupt, Bosch, & Kariithi, 2014). It can be argued that Africa as a continent carries the overall legacy of colonialism which contributes to the lagging scope of technology and serves as a driver of physical piracy. The real problem in enforcing copyright on the African continent is the proliferation of distribution channels (Brown et al., 2014). The key driver for the preceding is the lack of resources in enforcement and the lack of relevant copyright expertise.

The inquiry on infringement is of particular interest because the violation of copyright is positioned as a victimless offence. The copyright multiplex lenses are projected towards the five research questions to negotiate a premise of explorative conversation on infringement. The research problem pertains to current infringement practices in the illegal copyright market which have not been solved, making it a significant industry imperative in the copyright economy.

Since this study is concerned with both civil and common law (see fig. 1.5) it is of strategic importance to outline the jurisdictions in the global domain affected by copyright infringement. In this aspect, within the civil law jurisdiction, the Motion Picture Association of America (MPAA) estimates that worldwide industry revenue losses due to copyright infringement may exceed US\$3 billion annually. Losses due to infringement are particularly difficult for the film industry to absorb, because this industry has a low average rate of return with an extremely high volatility (Walls & Harvey, 2006).

In the collective view of both law jurisdictions and regimes, common law regions are not resistant to infringement, as can be seen in Europe. According to Cosovanu (2006), central and eastern European countries have some of the highest software infringement rates of any region in the world. At the same time, many business analyzers have pushed information technology as a field with great potential for growth that could assist developing countries in skipping developmental stages and reduce the current economic gap that separates them from developed countries.

This gives the five research questions the strategic leverage to create an alliance of intellectual perspective which will drive a collective strategy against infringement. To bring about improvement in copyright, reflection on the current infringement practices is required. This process will allow the partners involved in copyright knowledge

production to create an open intellectual property system that will maximize the return of investment of copyright against the hostile illegal copyright market.

The mobility of copyright refers to the fact that the losses incurred due to infringement can occur in any geographic location, which in practical terms means that it can occur within the civil or common law jurisdictions. This extends to areas not protected by any laws, such as countries with no copyright law. In relation to investment this makes copyright a high-risk area owing to the high degree of infringement. Drawing from property law, property owners arguably have their own incentives to voluntarily adopt measures to secure their entitlements in their belongings (Bell & Parchomovsky, 2012).

It is strategically important to recognize that copyright as a movable property would need protection in all the law jurisdictions it reaches through market demand. According to Maughan (2004), the legal taxonomy of property is well established where real property can be defined as land of any tenure in tangible form. The main interest lies within copyright, which is classified as a movable property in intellectual property law.

To illustrate the arguments of copyright infringement from the property aspect it can be argued that violating these rights is not any different from a third party taking illegal occupation of a property. The challenge is that the same scenario from a movable property aspect is perceived as a harmless crime when works are infringed upon. Hence, the property rights systems assign to individuals the authority to select use for a resource, and they give the individuals some protection against other people's use of their resource. This means that while others cannot interfere with the owned resources in a way that affects the physical attributes or use of those resources, the value of the property resource is not immune from others' actions (Costello & Costello, 2005).

The balancing competing interests of rights-holders and users is a dominant concern of modern copyright law and of doctrines that profess to ensure the uninhibited circulation of ideas, knowledge and information which is central to the content owner (Bracha, 2008). The practices of copyright violation brought about by the illegal copyright market create a complex scenario in terms of copyright as a commodity in that the investment risk exposure is high. The music market has experienced a shock with observable effects, namely the weakening of copyright protection, with most observers agreeing that technological change has sharply reduced the effective degree of protection that copyright affords (Waldfoegel, 2012).

The creator of the works is in financial terms the asset owner of the work created under the copyright act, which should translate into capital returns in the event that the work is exploited. Palmer (2006) argues that the difficulty experienced by businesses apply directly to copyright owners, relating to copyright clearance procedures across borders as well as a lack of harmonization of copyright laws. Moreover, where copyright laws do exist, they generally fail to address digital technology and electronic copyright. Consumption habits regarding digital content continue to demonstrate the persistence of copyright infringement, indicating an important disjoint between the existence and operation of copyright and its influence (Scharf, 2012).

The return on investment goal for intellectual property should recognize that copyright is a property right that requires a financial perspective that is well integrated within the relevant stakeholdership to maximize returns. The asset owner may increase the value of the asset for strategic reasons and maximize the returns, but the key challenge is the weak legal infrastructure that is supposed to protect copyright.

Collaboration by partners against infringement will enhance copyright knowledge and the capacity to generate new knowledge relating to hostile technological advancements. In as much as technology poses threats there also appears to be a lack of proper understanding of the nature and potential of peer-to-peer computing technology and the benefits it can offer to the copyright stakeholdership (Pankaj, Hyde, & Rodger, 2012). A strategic outlook of copyright-driven partnerships is vital in promoting learning that is not resistant to change, but rather seeks to establish technological cooperative mechanisms to optimistically exploit the captive peer-to-peer audiences.

Collaboration against infringement cannot be easily achieved if there is a persistence of weak internal relations amongst partners within the copyright stakeholdership as seen in fig 3.1. Weak internal integration amounts to un-resourceful resistance to any technological advancement in which collaboration could have created cooperative dynamics. It is not uncommon for partners to be concerned with how the resources they provide to a strategic alliance are used. They seek to obtain a rate of return from those resources which compares with their alternative applications elsewhere (Child et al., 2005). In practical terms creative works can be copied freely and unauthorized copies drive prices below the levels needed to induce most creators and publishers to create new works (Nadel, 2004).

It is evident that the problems created by digital content and the Internet represent the failure of traditional copyright enforcement mechanisms to adequately address infringement that takes place through online file sharing (Swartout, 2011). The causes of copyright infringement are inseparable from technological growth. With the rise of new technology comes the inevitable increase in the number of legal questions and litigations on copyright infringement (Chapman, 2001). The key disconnect driving infringement is the lack of integration and collaboration of the partners. Even though the power of digital technology poses a threat to the copyright market it can also be leveraged as a source of unprecedented opportunities (Bracha, 2008).

The multiplicity of infringement causes is setting a complex platform whereby consistencies must be established towards practical mechanisms that can safeguard copyright. In terms of a strategic focus innovation is often invoked in copyright policy debates, but it is rarely used to refer to the content of core copyright fields such as books, songs, or movies. More often innovation is used to defend holdings such as the rule of Sony Corp. of America vs. Universal City Studios, Inc., that a person distributing a device that facilitates copying may not be held liable for contributing to copyright infringement so long as the device is capable of substantial non-infringing uses (McGowan, 2009). The inconsistency is evident in discounting other core copyright fields, which amounts to the pervasive copyright infringement challenge.

The evidence of infringement is not difficult to present due to the pervasiveness of copyright violations. According to Hogberg (2006), the widespread copyright infringement that the Internet and personal computers have engendered has led copyright owners to take legal action against software and other service providers as facilitators under theories of secondary liability. According to Miller (2006) secondary liability is liability that is imposed upon a defendant who did not directly commit the offence at issue, but whom the law nonetheless holds responsible for the injuries caused. Peer-to-peer computing burst into prominence with the launch of Napster in 1999 which fell under the secondary liability in that the firm was not directly responsible for infringement, but instead the users exploited content through the use of their software. The following few years branded peer-to-peer computing as the next negative technology to the market (Pankaj et al., 2012).

Copyright holders often attempt to remove dual-use technology from the market by legal and political means when they believe that losses of revenues associated with the

infringing uses of a particular type of technology are greater than the benefits of the non-infringing uses (Orbach, 2008). The most prominent lawsuits have been brought against vendors of peer-to-peer file sharing software such as Napster, Aimster and Grokster, who have all been held liable under the judicial doctrines of vicarious liability and contributory infringement for the copyright violations committed by their users. These litigations mark great copyright conflicts, as it can be contested that they are driven by lack of engagement by partners in respect of the advancement experienced in relevant technologies and its impact on content.

In the timeline of infringement, digital networks amplify the consequences of copyright violations that were previously more tolerable, such as manual copying (Cheverie, 2002). On this very same issue the most controversial topic in copyright law in recent years has been the potential liability of providers of dual-use technologies for copyright infringement by users. According to Orbach (2008), these dual-use technologies are devices and services that are capable of both infringing and non-infringing uses. Examples of dual-use technologies include file-sharing services, photocopiers, tape recorders, typewriters and video-recording devices.

Arguments by Botein and Samuels (2007) in respect of infringement on the Internet through platforms such as peer-to-peer file sharing, emphasize that full copyright liability may be inappropriate in such an environment, since it might inhibit the broad dissemination of creative works promised by the new technology. In fair terms the right of control of dissemination by the intellectual property creator only constitutes one side of the copyright issue. The other side involves the need for members of the public to obtain clearance to utilize the same property (Palmer, 2006). This process may be challenging in that it becomes time and cost prohibitive, encouraging the general acceptance of copyright infringement.

The preceding suggests that copyright control mechanisms are lacking in that the proposed alliance of partners requires efficient skill sets that exceed the current capabilities of the illegal copyright market. According to Reid (2012), the creative industry is predictably known for resisting new entrants via copyright law, repeatedly deploying its formidable copyright resources to restrain competition from emerging new media, so as to maintain its dominant market position in the production and distribution of music, television programs, movies, journals and books.

The persistent violation of copyright affects business models through limited internal legislation, which ultimately erodes the copyright investment. Hence, record companies and publishers suffer the most devastating effects of copyright infringement as their profits continue to decline. Moreover, decreasing annual revenues have also led to less funding and more one-sided record contracts for potential creators (Tyler, 2013).

In its core the purpose of copyright law is to fulfill a constitutional directive to ensure that adequate incentive exists for artistic and scholastic creators (Boehm, 2009). Sustainable copyright practices should support a healthy and vibrant macro economy, ultimately reliant on a sustainable business environment and exchange with the market. The improvement of the copyright fraternity against infringement rests on achieving harmonization as a fundamental rule in that it will allow the transfer of valuable experience of partners to the market environment. The successful implementation of an open system will require a complete cultural transformation amongst partners to promote copyright knowledge sharing and collaborative learning.

The lack of awareness of intellectual property rights protection within the creative industry has led to two problems. Firstly, many users of copyrighted material simply do not realize that they have violated copyright law. The culture of the Internet further adds to copyright protection concerns, with the prevailing attitude amongst Internet users being that anything available on the Internet should be free. The second issue is that, many creators do not know how to protect their own work. In light of these two issues, it is essential that protection awareness be heightened amongst website designers (Cheung; 2012).

3.5 Research question two: Exploring the least appropriate copyright infringement model causing losses to authors and organizations

As mentioned before, the Internet is a tool that can have both negative and positive uses depending on the parties involved and the intention thereof. Anything that pertains to infringement is not independent of financial implications in that the illegal copyright market carriers contain negative systems that accommodate money laundering, tax havens, and the negative demand of infringed goods and services, which are the basis for a culture of non-payment for copyright.

It can be contended that infringement, both through physical piracy and illegal downloading of copyrighted content, is a long-standing culture that completely discounts

the value of copyright. The causes of such are diverse, but central to these illegal activities are adverse business models that advance the goal of interested parties within the illegal copyright market structure. These assertions are critical for the reason that collecting societies are expected to be more proactive in ensuring that all parties involved are collectively engaged in the process of protecting the value of copyright and advancing its premium to meet market changes. The predominance of adverse copyright business models in developing markets, as contested, is largely an outcome of its colonial history, and as such copyright still lags in its full integrative expectation of harmonization. It is acknowledged that this is a lengthy process, but even infinitesimal progress will conclude greater value to copyright's role in the knowledge economy.

The copyright infringement laws in place today are rooted in centuries-old statutes dating back to Britain's 1709 Statute of Anne, which once again emphasizes the colonial history of intellectual property. The first US Federal Copyright Act, enacted in 1790, stated that "any person or persons who shall print or publish any manuscript, without the consent and approbation of the author or proprietor thereof, shall be liable to suffer and pay to the said author or proprietor all damages occasioned by such injury" (Gregorian, 2009:).

Based on the preceding, the Performing Rights Society (PRS), established in 1914, is an example of a collecting society, based in the United Kingdom, whose membership comprises composers and publishers. PRS is the main body that collectively enforces rights, organizes the requisite licensing schemes for different categories of users, and sets rates for the users of content in their respective territory. This accumulation of rights forces users to respect copyright, but has also been perceived to deprive them of the opportunity to object to licensing fees for a single piece of music. It is argued that because a user who believes a fee is too high may choose to play a cheaper work, the user is less likely to contest the rates set by a given collecting society (Thakker, 2009).

The key concern surrounding the colonial track of copyright is that some African countries that operate within the common law system, have works that are still controlled by the PRS, which means that royalty earnings that are accumulated in a local country of origin are repatriated to the UK, which adversely affects the tax system of the local country and its economy. This situation is also prevalent in the civil law jurisdictions of the African continent. The main cause of this is that authors from local

countries are affiliated with foreign collecting societies and bypass the local collecting societies of their respective countries.

This practice, that has implications of bypassing taxes and discounting the growth of a local economy, is motivated by the amount of freedom authors can have in respect of the collecting society they select. Authors should have freedom of choice regarding the management of their rights, and as such should be able to decide which society is entrusted with their rights. They should also be free to move repertoire between societies (ECSA, 2010). As in the benchmark of the EU, societies may not discriminate on grounds of nationality, for instance, by conferring associate status solely on foreign authors. This also implies that all collecting societies must permit other EU nationals to become members (Thakker, 2009).

In legal terms, when composers or songwriters join an authors' rights management society, they assign exclusively to that society the performing rights to all of their compositions (whether already written or written during the period of membership). By virtue of this assignment, the authors' society itself becomes the owner of the performing rights of its members (ECSA, 2010). As the least appropriate infringement model the route takes the contention that the assignment of rights translates into a complex financial implication which means that royalty earnings in a country of origin do not account for the local tax system.

The exclusive assignment gives authors' rights management societies certainty of repertoire; they know that they have the performing right for the entire catalogue of their members' works. This also helps users, who will know exactly for what they are licensed (ECSA, 2010). The main issue with the freedom of selecting a collecting society other than the local one in the country of birth of the author lies with the amount of bargaining power and copyright management skills that the foreign society possesses.

According to Thakker (2009), US collecting societies are permitted to coexist. Although ASCAP and BMI are not directly competing with one another, they have been active in the same market since 1940. In other countries, however, natural monopolies have developed. This is the case in Germany, for example, where collecting societies must seek administrative authorization before commencing operations and are required to accept all rights-holders on a non-discriminatory basis (Thakker, 2009).

The aforementioned implies that authors can join any collecting society in that their structures are at a certain level collaborative, but what it translates to in terms of governments is that their respective tax systems are bypassed by the royalty systems. This creates levels of complexities in the policy structures of profit repatriation and accountability to government by the respective collecting societies.

Based on their association with CISAC, collecting societies have concluded reciprocal representation agreements for the collective management of the public performance rights of the musical works of their rights holders, enabling each collecting society to offer in its domestic territory the repertoire of all the artists represented by the other collecting societies participating in the representation agreements (Andries & Malvy, 2008). The CISAC model contract is not a freely available document and is a contract that is drawn between the collecting society and CISAC only as part of the reciprocal relationship.

Some collecting societies are for-profit corporations, but are often controlled by a not-for-profit foundation, while several are not-for-profit entities. In foreign countries, the situation is similar. While a majority of collective management organizations are not-for-profit entities, it is not always the case. In Europe, only two of the fifteen European Union countries' legislations require a specific legal form for collecting societies. In Italy, SIAE, being the principal collective management organization in the country, is in fact a public authority, while in Greece, AEPI is a commercial for-profit company (Gervais, 2014).

The system through which royalties are paid is subject to governmental engagements; outside of strict regulation it can be exploited as a laundering system. Currently the rights clearance for the exploitation of non-domestic repertoire occurs via a network of reciprocity representation arrangements between collective management societies (Gervais, 2014). However, the copyright reciprocity amongst collecting societies is not aligned with the tax system. This necessitates key integration amongst the partners, in that the disconnection creates conflict in the overall system.

In accordance with what is expected from a royalty system, content owners need to focus on the factors which facilitate and constrain the development of copyright in an attempt to understand infringement. This process of reaching functional autonomy is highly dependent on the relationships amongst partners. From the thematic expansion

of the qualitative conversation, crime emerged as a relevant concept to illuminate infringement. Through the lens of crime, a future perspective for managing copyright as an asset develops. This brings higher levels of understanding, derived from a systematic analysis of the criminal context and infringing technologies.

The music industry is an international market of substantial economic size within the copyright spectrum, and the industry is currently undergoing changes as a result of transformations in its business model (Liebowitz & Watt, 2006). The performance of copyright law is greatly affected by constant technological advancement. Even though copyright law is a custodian of innovation, infringement still contradicts the value that it is supposed to contribute towards protecting the owners of works. Since some of the regions targeted in this study fall under the civil law jurisdiction, as seen in figure 1.5, it is relevant to use the USA for illustrating the explorative copyright conversation. According to Moseley (2010), the Recording Industry Association of America (RIAA) engaged in two major litigation campaigns to challenge the spread of online music infringement, firstly against the companies that facilitated unauthorized online music sharing, and secondly, against individual users who distributed copyrighted music.

Another area where a need for flexibility in copyright is evident is user-generated content (Hugenholtz, 2013). This is a key area that needs laws of engagement in that technology cannot be controlled in the current state of the knowledge based economy. Digital rights are in most cases overlooked by the consumer when using user-generated content. Whereas the social media have in recent years become essential tools of social and cultural communication, copyright law, in most EU Member States, leaves little or no room for sharing user-generated content that builds on pre-existing works (Hugenholtz, 2013).

In the aforementioned, authors are not compensated for the exploitation of works from the user-generated content. The gap is created by the fact that the fair trade goal is leveraged as an equitable platform of exchange. The goal is about embracing fair compensation, partnership, cooperation, fair exchange and transparency within the copyright stakeholdership.

When referring to infringement as a criminal offence, it is imperative to qualify the fact that a certain type of model, process or policy in business is responsible for driving the violation of copyright. In the analogue world, information travels slowly and depends on

physical means of transport and human agents, whereas in the digital world, it moves instantaneously (Alexander, 2010). This advancement accounts for and is representative of an infringing model, in that content is illegally exchanged. The scope of the technological changes suggests that the creative output of the copyright economy is diffused throughout networks, with minimal returns owing to infringement. The adoption of technology brought with it new copyright challenges in respect of models affecting the content owner. A large amount of literature is available on litigation cases regarding a particular model that caused losses to the content owner. Hence, over time content owners have been continuing to take legal action against users of peer-to-peer networks, alleging infringement of their exclusive right to distribute copyrighted works.

The first model driving infringement is peer-to-peer sharing, which interchangeably encourages users to discount the value of copyright. In this study peer-to-peer sharing is classified as being part of a model that is argued to be causing losses to content owners through infringement. Illegal downloading appears to be a marginal topic in mainstream criminology and is considered a rather minor offence (Aaltonena & Salmia, 2013). In the constant resistance against these models and processes copyright law continuously seeks to adapt to technological innovations by harmonizing its interpretation, thereby allowing for the inclusion of these advancements (Pavlick, 2013). The estimated impact of illegal downloading on the entertainment industry remains a somewhat contested topic (Aguilar & Martens, 2013; Liebowitz, 2005), which challenges content owners in terms of models that are not sustainable.

The most interesting factor is that stealing a physical product, such as a DVD, amounts to theft, which can be prosecuted under criminal law, but when the same product is acquired illegally via the Internet, the offence is downgraded to copyright infringement. From a criminal perspective it can be argued that stealing a physical product carries a higher penalty than online illegal downloading. According to Bitton (2012), justification for the use of criminal law varies from one branch of intellectual property law to another because of the differing rationales at the foundation of each branch, as well as the different effects of sanctions in each domain.

The above phenomenon is well articulated by Cohen and Felson (1979) in the Routine Activity Theory (RAT) (presented in appendix C), which points to the opportunity structure that certainly favors downloading music or films from the Internet above stealing these items from a retail store. The probability of getting caught in a retail store

is much higher in that the Internet as a technological vehicle provides motivated offenders easy access to illegal content, with practically no capable custodians to enforce any copyright restriction. Offenders are thus more protected against criminal sanctions when committing online infringement than they are when physically stealing a product.

The increasing infringement of copyrighted products such as music, DVDs and business software has been met with increasingly stringent criminal penalties globally. While the reasons for criminalizing copyright infringement are said to be the protection of financial stability, employment and creative innovation, the trend towards criminalizing infringement has not escaped the critical review. By default copyright law should recognize that new technology might create new opportunities to infringe and transact over copyright and to distribute and use copyrighted works (Samuelson, 2010). Some, but not all, of these opportunities should be subject to content owners' control in order to leverage a copyright ROI.

The extent of copyright infringement practices is broad and is constantly increasing as technology advances. This creates a constant high-risk exposure for content owners and as such an ideal copyright culture for managing this asset is necessary in order to develop and introduce balance to the copyright market.

Copyright violations are inherent in any technological discussion where content is exploited and this subject also finds itself in other areas of crime. In relevance to the technological trajectory copyright, as a custodian of innovation and culture, gets exposed to illegal environments where other unrelated crimes occur.

A second model driving infringement is website subscription based and interchangeably encourages users to discount the value of copyright. In the case against MegaUpload.com, as stated in the Telecommunication Report (2012), MegaUpload Ltd., operator of content-hosting website MegaUpload.com, along with seven of its employees and a holding company used by MegaUpload's founder, were charged with criminal copyright infringement and other related crimes. This led to the seizure of eighteen domain names associated with MegaUpload, which has servers in Ashburn, Virginia and in Washington DC. Law enforcement officials also executed more than twenty search warrants in the United States and eight other countries, seizing approximately \$50 million in assets and targeting sites in the USA, the Netherlands and

Canada. In addition to copyright infringement, charges included engaging in a racketeering conspiracy, conspiring to commit copyright infringement, and conspiring to commit money laundering.

The case of MegaUpload.com is a typical example of infringement featuring within unrelated crimes where copyright is involved. The general orientation of the five research questions is grounded in understanding key drivers of infringement, such as the above, against the backdrop of constructing a framework that will extract copyright from the illegal copyright market and move it into a profitable domain.

In congruence with the technological lens validating infringing platforms, the third model that drives infringement is cloud computing. Wittow (2011). states that cases relevant to cloud computing arise in a variety of areas of law, as cloud computing is a type of business activity, distinct from a unique legal area, where related transactions generate a variety of potential cases such as cybercrime, including potential patent, trademark, and copyright infringement and trade secret misappropriation. The key aspect concerning cloud computing is that users can be legally subscribed to an online music provider but infringe through sharing access with peers by using a common username and password (Pavlick, 2013).

It is evident that content is becoming intangible, which suggests a copyright trajectory that strategically aligns to manage these rights through an integrated systems approach. The degree of unity and integration within copyright depends upon patterns of functional reciprocity, which should be developed through active learning to co-exist with all benefits based functions across industries (Steyn, 2012).

This study recognises that business models in copyright law are both technological and in the form of policies. It is impossible not to recognize that the amount of crime on the Internet is also propelling copyright in the form of infringement; hence, this violation amounts to crime. Much of the responsibility for improving copyright depends of the copyright stakeholdership partnership. There are various areas of contention directly affecting the copyright violation schema. The most urgent quest is to establish a culture where copyright management decision-making is trusted, which includes all levels of direct participants. This is crucial in the sustainable progress of intellectual property rights. The integral explorative conversation questions copyright protection and

maintains that it can be integrated amongst partners in order to be resistant against infringement practices in the illegal copyright market.

The proportionate output of copyright can be regarded as leverage in promoting the acquisition of new information to enable the development of a pro-copyright-driven market which is unaffected by adverse technological platforms. This will realign the broadband networks and digital applications that have been providing unlicensed access to copyrighted content, which resulted in consumer-to-consumer dissemination over file-sharing networks that bypassed the traditional segments of the copyright market (Depoorter, 2009).

According to Smith and Telang (2009), members of the creative industries have indicated that they are unable to compete with free copies of their content made available through new information technology platforms. Modern copyright is also pervaded by a durable expansionist drive motivated by a conviction that the owner is entitled to control an ever-growing sphere of derivative markets. This drive inevitably results in restrictions on consumers' access to information and their ability to use it freely (Bracha, 2008). In reality this restriction delivers the opposite effect and in the process exacerbates copyright infringement. The perceived lack of balance in global policy-making extends beyond substantive norms. Critics also object to the process by which global IP norms are formulated as fundamentally undemocratic, condemning secretive negotiations in which industry insiders enjoy privileged access (Pager, 2012).

3.6 Research question three: Exploring the most appropriate working model to fight copyright infringement

Recognizing the value of copyright involves an ongoing process of strategic negotiation that requires the engagement of all relevant parties. Rights holders put pressure on governments to introduce new statutory measures which will force Internet Service Providers, as the source of connection to the Internet, to play an active role in enforcing copyright (Muir, 2013). This is an action of high relevance and it underlines the premise for the most appropriate working model for the management of copyright. Additionally, it recognises the contribution of intellectual property to the economy.

The preceding research question was concerned with the least appropriate copyright infringing model and outlined the processes where the construct of violation is limiting the growth of intellectual property. The dissemination of the five research questions is

aimed at understanding the various essential elements required for creating the most appropriate working model that will contribute to the development of a progressive copyright market. Therefore it is acknowledged that content industries remain convinced that file-sharing represents an immense financial loss both to copyright-centric industries, as well as to the economy at large (Swartout, 2011). This does not only prescribe, but pertinently underscores the current economy in that it requires organizations to make a mental shift towards an alternative and advanced appreciation of alternate frameworks. In achieving this, these organizations need to become sustainable by using self-organization, action learning to release creativity, sustainable innovation actions and adaptability (Steyn, 2012).

Copyright infringement is an outcome of the fragmentation and lack of collaborative alliances amongst the partners. This does not indicate that best actions and practices are not present. The future of copyright is escalating in value in terms of the global infrastructure expansion and new markets presented through technological advancements. Hence, copyright law demonstrates a need for a new future value proposition that can be attained through maintaining continued support, engaging with the partners in order to remain successful and relevant.

Technology moved on, and the creative industry experienced the development of peer-to-peer services, cloud services, cyberlockers, social media and streaming services, as well as the proliferation of powerful new personal devices. Internet commerce has also grown intensely, with an explosion in the availability of content in a multiplicity of formats. The market has evolved unevenly across different creative sectors, but all are increasingly participating (Perlmutter; 2014). Sustainable copyright requires new directives from partners regarding processes that contribute towards skills and knowledge and that incorporate the importance of knowledge management. Different models and processes have been adopted in an attempt to reduce copyright infringement. The most pertinent ones deriving key interest are licensing, water marking and region code models. Much in the online world has changed.

The use of copyright exchange channels by means of dialogue between partners can improve their shared meaning of creative works as well as their understanding of the impact of infringement, which is crucial to facilitate learning amongst partners. In order to establish a copyright culture, the trading of this commodity should promote fair trade, which continuously negotiates equitable participation of all interested parties. Fair trade

is a process of exchange linking production, distribution and consumption with the aim of promoting solidarity and sustainable development (Fretel & Roca, 2010).

The sustainable development of copyright is currently being protected, and such protection is not limited to licensing, watermarking and region codes. The researcher has limited research question number three to the three model approaches, not discounting the fact that there are more approaches to trading with copyright. With the rapid development of Internet and multimedia technology, copyright protection becomes more and more important. Digital watermarking, which is one kind of information hiding technology, can be used as a tool of protecting digital (Qin, Mao and Zhang, 2010).

Current evidence of a strategic effort to manage copyright is found in licensing models deployed at enabling users to compensate for the exploitation of any works. Within the common law infrastructure, which is consistent with the South African system, intellectual property licensing plays a key role in the Indian economy, which is characterized by progressive trends in industrialization, commercialization, and privatization (see appendix B for the copyright act). This has opened new entrepreneurial avenues for retailers, manufacturers and the owners of IP rights (Koshy, 2012).

As the most appropriate working model, the granting of compulsory licenses offering legal authorization to make copies after payment of a statutory license fee would remain relevant (Nadel, 2004). A contention is still present in the market regarding the licensing model, in that users and consumers accuse the copyright industry of abusing copyright as an instrument to conserve monopoly power and outdated business models (Hugenholtz, 2013). Even if these arguments are held against copyright law, no substitute is offered. Hence, the building of copyright through licensing is promoted by an immediate ROI framework that inhibits the growth of the illegal copyright market. This ultimately sets an improved copyright-based performance culture amongst partners, which is imperative in reinforcing a collaborative experience.

The problem statement pertains to the illegal copyright market in terms of how it affects the monopoly that is supposed to be exercised by the copyright holder. In gaining this monopoly, digital watermarking enforces copyright through an accepted technique for content authentication and forgery prevention, which is viewed as a technological system that protects distributed content from unauthorized reuse, or reuse with

inadequate credit (Kwok, 2001). Digital watermarks of ownership embedded onto digital content offer copyright protection, ownership assertion, and integrity checks for digital content, which can provide evidence of copyright infringement on unauthentic goods.

According to Jiang, Ma, Niu, and Yang (2012), along with the popularization of the Internet and computer technology, the transmission of multimedia products and electronic commerce became much more convenient. It enables replicating and distributing content in an effortless way, which discourages its originality and harms copyright owners' legitimate benefits. As an effective digital copyright management technological system for digital media, watermarking has become highly relevant.

The rapid growth of online copyright infringement still represents a significant challenge to modern copyright owners. In an effort to secure market advantage and to eliminate copyright infringement, content industries want to use technology to create digital fences that will enclose not only their works, but also large portions of the public domain (Cheverie, 2002). The researcher agrees with this notion, but argues a lack of discretion in terms of geographic demarcation in regard to price, which does not contribute value, in that copyright infringement propels based on price advantage. DVD region codes are an example of technological determinism to target regions with different price tariffs.

The region code model's main objective is to attain higher prices in areas that can afford a higher price for a product and drive a lower price in poorer regions. The codes enable distributors to engage in code price discrimination using either geography or temporal delay as a proxy for willingness to pay (Bambauer, 2012). However, region codes are rapidly becoming outmoded which in effect confirms that traditional copyright management is not sufficient to sustain future positioning against the illegal copyright market. Universal principles of meaning should be established in a manner that is consistent with diverse cultures by creating congruent perspectives on the infringement damages brought about by the illegal copyright market.

The consumption of cultural products, such as motion pictures, through physical media is diminishing. Computers have become the mechanism of access, rather than specialized appliances such as the dedicated DVD player. The principle concurs that the greater the challenge presented by technological advancement, the greater the reflection on building a culture, seeking factors that support creativity and providing for the establishment of a reframed view of copyright law management.

3.7 Research question four: Exploring the perspectives on how to manage copyright infringement by including all interested parties

The diverse copyright perspectives are centered on harmonization between the civil and common law system, as stated in section 3.2.3. The two great legal cultures of the world, the common law culture and the civil law culture, refer to two deep conceptions of justice (Canivet, 2003). Within these systems, the scope of copyright law is restricted to protecting works within a given territorial space and limitations (Mlot, 2001). Literature advocates and drives a broader view by envisaging the protection of works in the global copyright market. In essence the territorial limitation of copyright marks a key challenge in the digital domain where content is illegally copied and distributed through technological means.

In the current copyright space the investment of works is a key issue, indicative of its financial performance in the market and emphasizing its value. The phenomenon of third parties acquiring, financing, and investing in private litigation has seen a sharp increase in the last few years (Balganesh, 2013). This is a clear step towards underlining the degree of confidence in copyright litigation in that it carries high returns as a tradable commodity.

The application of the conventional copyright enforcement paradigm to the world of digital content and online file sharing has evidently not delivered the expected outcomes (Swartout, 2011). Considered arguments have been advanced in opposing copyright infringement, which so far have only been limited for not moving into progressive frameworks in respect of intellectual property. Although copyright law is opposing infringement, the illegal copyright market is exposing the weak collaboration of content owners in respect of taking an offensive position in the copyright market.

The illegal copyright market is already argued as an outcome that feeds from the lack of integration amongst partners. Copyright infringement suggested not just a permanent loss of space and corporate markets for the industry, but also a model of dispersal where 'distribution' took on a productive form (Sundaram, 2009). Hence the proliferation of the illegal copyright market.

Illegal downloads and copying through technology is a major threat to the industry as it reduces the commercial exploitation potential of content creators and providers (Geach, 2009). The immediate strategy is to develop the ability to work in teams in that it is

becoming ever more essential, along with the increasing number of specific competencies companies have to bring together, whether through alliances or on their own (Child et al., 2005). The advancement of technology is a key indicator that must be used to inform and promote strategic copyright alliances in enforcing the given copyright monopoly.

In order to achieve the objectives of copyright law the partners need to align their strategic frameworks to the mind-sets of users, as espoused by this study's outcome. Scharf (2012) states that Internet users may value a particular piece of content and also equally appreciate the work and effort that went into its production; however, the user may not necessarily place any value on the distribution of the content, as opposed to its creation. Markets for copyright infringement, like all other black markets, are inherently difficult to study due to the illicit nature of the transactions (Walls & Harvey, 2006); this expresses the concern and purpose of this study's main goal in addressing the problem statement.

In terms of diminishing the illegal copyright market, existing models may not be insistent enough to protect copyright. Even if peer-to-peer file-sharing has a positive effect on legitimate sales, infringement on a massive scale remains a problem for intellectual property law and Internet regulation (Swartout, 2011). Strategic and diverse views would be required from the affected parties in the industry to contribute towards the copyright management consulting framework for two key reasons: firstly the model will be reflective of industry conditions and secondly, it will fit strategically.

The discussions in research question two and three were based on existing models affecting copyright law and the relevant opinions regarding their impact on the industry. In research question four the innovative and collective mind-sets of the participants become more interesting so as to extract key experiences that might prove valuable in constructing the copyright framework.

Tehrani (2009) holds that creators who fail to timely register their copyrighted content, will enjoy lower protection in that they remain susceptible to unauthorized manipulation and appropriation. Yet, even copyrighted works are not protected by the system to an acceptable degree. In brief this does not reflect any progressive solution in that the most protected works are highly infringed upon in the illegal copyright market. It can

even be argued that the most infringed works are the ones that are published and released into the market by the major firms.

Taking the above into account, the shift towards knowledge production for protecting the interests of content owners is crucial and reflective of a strategic transition from closed knowledge. However, this occurs in fragmented structures that are not necessarily resonating collective benefits. Copyright law creates property interests to encourage creators, distributors, and the public to engage in a series of market transactions that will result in the creation and distribution of creative works, as well as wide public access to these works (Von Ljohmann, 2008).

Presently the law is functionally broken. Infringing through file-sharing goes largely undeterred and unpunished, with a few unsuccessful individuals bearing disproportionately high costs for their file-sharing activities (Swartout, 2011). This enforcement imbalance adversely re-enforces the strength of the illegal copyright market and makes the copyright market an unattractive low return environment. Investment in the creation of content and development will not be forthcoming without the incentive that protection provides (Geach, 2009). The key question is why investors should spend large sums of capital to develop content that could be copied freely without recompense.

This is a question that emphasizes the value of copyright investment in that it can only be functional as long as collaborative mechanisms enable the collective interests of partners to sustain creative input. Hogberg (2006) states that the advent of ubiquitous personal computers, including Internet access, has enabled individuals to duplicate inexpensively and widely distribute perfect copies of music, movies and other creative content.

Knowing that technology drives infringement emphasizes the importance of copyright alliances in that it necessitates policies that are representative of the partners' current realities. According to Karunaratne (2012), copyright holders' war against peer-to-peer file-sharing began with the rise of computer programs like Napster. However, it should also be acknowledged that infringement has grown alongside copyright since its inception. The lacking attribute has always been resilient integrative mechanisms that value copyright as an asset with financial returns, provided that enforcement is well implemented.

The improvement of copyright law and its role amongst partners is therefore fundamental to the transfer of valuable experiences. Hence, data, information, knowledge and wisdom are seen as intermediate levels of understanding (Nonaka & Takeuchi, 1995). One conflict case indicator that justifies the value of knowledge sharing, as stated by Von Ljohmann (2008), is the view of performers and musicians that record companies use unfair accounting practices to reduce their royalties. In addressing such conflict, copyright can be leveraged as the integrating process by which action and thought are brought together amongst partners, but a collaborative mechanism is required to allow the realization of this objective.

The above and other conflict drivers necessitate consistent involvement from the partners in conceptualizing market changes by aligning to technological hostilities. The issue of transparency and unclear accounting practices is already portrayed as an outcome of conflict amongst partners, which emphasizes the importance of enforcement in this study. Commitment to the partnership is required to optimize copyright shareholder value amongst partners so as to make the returns more sustainable.

In spite of copyright law protecting the interests of creators and authors, copyright infringement currently occurs at levels that are of extreme concern (Liebowitz & Watt, 2006:518). This study questioned current copyright infringement practices through strategic interactions with research participants affected by such violations. Through these interactions it became very clear that the enforcement of copyright law is not well executed and roles are not clearly designated in regard to responsibility.

The preceding challenge is primarily driven by the scarcity of copyright knowledge within the stakeholdership system. Furthermore, the need to cover enforcement costs raises a question relating to copyright as a movable property (Waldfoegel, 2012:37) in that content is distributed to different territories through various means, such as the Internet. The challenge is that such content is often distributed to jurisdictions where the enforcement of copyright law might not necessarily be a priority.

From the perspective of the current state of global copyright infringement, it is crucial for partners to assume responsibility for and be actively involved in the process of copyright enforcement, especially since legislation in itself is not enough to diminish the illegal copyright market output. Legislation is but one means of addressing problems that cut

across multiple sectors of the society and the economy (Menell, 2012). Copyright law, as such, also provides for a level of enforcement of the established rights, which means it not only defines the right of ownership but it also provides some protection of this right (Liebowitz & Watt, 2006). What is, however, of great concern is that the practical outcome of enforcing these rights is changing as a result of the growing strength of the illegal copyright market. The representatives of copyright-protected industries are understandably concerned about the threat that infringement holds to their revenue (Waldfoegel, 2012). This concern should ideally be reflected in their involvement in the fight against copyright infringement.

The response rate of copyright law to technological infringement is currently of concern. At any given time there are both costs and benefits to changing the law, which presents a challenge to increasing the response rate. Acting too rapidly creates the risk that the new rule will be premature and is likely to increase error costs, as the rules will be ill-suited to govern the future of the developing relationship between technological innovation and copyrighted materials (Depoorter, 2009).

A pro-copyright culture is an important vehicle and should be driven by a sustainable viewpoint shared between all interested parties. The drawback is that the theoretical understanding of the effect of technological changes on copyright law remains relatively undeveloped (Depoorter, 2009). Despite the fact that the Internet offers opportunities for increased exposure and driving revenue, it also poses a threat to the copyright industry (Geach, 2009). Sustainability initiatives which comply with copyright laws and regulations are important to weaken technological threats and increase the confidence of all stakeholders. However, copyright law can no longer satisfy the actual expectations of creators (Stadler, 2009:1060). A major cause of this crisis is the increasing gap between the rules of the law and the social norms that are shaped, at least in part, by the state of technology (Hugenholtz, 2013).

The sustainability initiatives serves as evidence for the need to extract the diverse opinions of partners on practical approaches in addressing copyright infringement. The research problem pertains to addressing current copyright infringement challenges, which is a fundamentally complex problem to address and manage in that the resource responsibility is not well defined. Conventional copyright enforcement relies on private litigation and places the burden of enforcement on rights holders (Swartout, 2011). This disconnect is a symbol of undefined roles brought about by the lack of copyright

knowledge and inefficient role participation in the industry. Hence, the collective approach starts with understanding informal knowledge processes that can enable dialogue.

In the fragmented copyright structure, it is critical to appreciate the relationship between explicit and tacit knowledge, and the processes leading to their conversion (Hoe, 2006). Hence, these highly anticipated conversations are critical to the infringement industry challenge. When technology creates new means of copying or communicating copyrighted works, difficult questions arise about the relationship between existing copyright laws and the use of the copyrighted content made available through the new technology (Depoorter, 2009). Pertinent to this would be to ask whether copyright infringement delays the release of new products to the market. If this is the case, infringement can have a devastating effect on both producers and consumers (Waldfoegel, 2012).

In the context of this research study, integration is measured by the collaborative abilities of the copyright partners. In order to improve the copyright fraternity collective knowledge management and its consolidation is required from participants. The unpredictability of innovation necessitates the deployment of open-ended standards in copyright law (Depoorter, 2009), which will facilitate the alignment of copyright law and the technological space.

The information obtained from the research participants will assist in creating a platform that is reflective of their lived experiences so as to construct a model with high strategic relevance to the problem statement. Legal delay is caused by the dynamic and unpredictable nature of technological innovation. This delay is amplified by the fast-changing technological environment, because uncertainty impedes law-making. Copyright law requires open-ended standards rather than specific rules and as a result, the legal adaptation of copyright law lags behind technological change (Depoorter, 2009).

3.8 Research question five: Exploring the actions taken on macro and micro conditions on copyright infringement

The constructs promoting copyright should be based on dialogue with the interested parties. This must include education at consumer and corporate levels in respect of the value of copyright law. Laws exist that embrace the role of a productive economy, but

these are not complete without the cultural emphasis of intellectual property as a key catalyst to the knowledge economy. There is practically no denying that the copyright market of the future is threatened. There is a need to achieve a balance of interests between encouraging and providing incentives to those who create innovative materials, on the one hand, and the interests of users of copyright materials, on the other hand, in being able to access materials embodying original ideas or information. The question is, how may a balance of competing interests be achieved (Georgiades, 2010).

When it comes to input regarding digital copyright policymaking, the opinions to which policymakers must be attuned include those of technical experts, civil society groups and aggrieved copyright owners (Bridy, 2012). In acknowledging the global network of copyright, emerging technology drives many of the policy questions that affect copyright and intellectual property in Africa. International intellectual property agreements are under constant scrutiny for the way in which they govern matters of ownership and access to digital information (Ricketson, 2003).

In Sub Sahara Africa countries, enforcement of copyright has received little attention. This is due to ineffective enforcement regimes, inadequate funds for enforcement agencies, lack of political will, untrained staff and poor motivation of law enforcement institutions and the lack of intellectual property experts in the judicial sector (Mahama; 2012). The creative industry and law enforcement agencies have a common interest in preventing copyright infringement, in particular pertaining to piracy that is controlled by organized crime. It is essential to strengthen the partnership between the industry and enforcement agencies on all levels. Effective partnership will depend upon recognition of mutual professionalism and commitment (IFPI, 2014).

In order to understand copyright, the market in which content is consumed should be viewed through multiple lenses as it contains both negative and positive drivers that affect content owners. When file-sharers notice that file-sharing is pursued in courts, from a cultural perspective it might not correspond with their worldview, and therefore they might ignore copyright litigation for some time. Despite the obvious self-interested origin of such anti-copyright norms, “people assert that interests have nothing to do with their behavior in following various norms” (Depoorter, 2009).

In the aforementioned context, consumers carry a negative copyright culture that discounts copyright’s value in the mainstream economy. Arguably it is important that

valuable collective input across disciplines of expertise in copyright are presented in order to emphasize the value of intellectual property through education. The negative self-interest of consumers must be converted into a collective copyright interest that is representative of all partners, as outlined. New technological uses of content often develop in settings where there is little to no enforcement of copyright law (Depoorter, 2009). This necessitates a new cultural paradigm, developed through dialogue, which can transform negative consumer perceptions into a pro-copyright culture.

So far it is evident that copyright law is constantly lagging behind technology. This creates a gap for infringement, because often new offences have not yet been clarified by corresponding laws. This makes enforcement difficult in that the probability of enforcing copyright is low. When facing a certain low probability of enforcement, like when downloading music on a peer-to-peer network, legal uncertainty further discounts the initial probability of enforcement, because there is some chance that the alleged illegal activity will in fact not be deemed copyright infringement by courts at a later stage (Depoorter, 2009). It is important that education emphasizes that the knowledge-society's core source of wealth is the recognition of intellectual property. The presence of resilient intellectual property rights spurs innovation leading to higher economic growth and increasing benefits for all (Zirnstein, 2014).

It is a given that technological development has always outpaced the process of law-making (Hugenholtz, 2013). However, this does not mean that the condition should be maintained. Dialogue should be established to bridge this gap by ensuring that technological advancement and copyright are aligned. During the last decade the EU has propelled several directives and proposals in an endeavor to cope with the copyright problems caused by the transition to digital technology, and the creation of the Internal Market (Martin-Prat, 2014). The result has been a substantial strengthening of authors' rights in respect to remuneration for public lending, prolonging of term of protection and legal protection of databases. And, if the proposed directive is accepted, also in respect to the right to remuneration for reproductions, communications to the public rights and distribution rights (Von Hielmcrone, 2009).

The improvement of copyright law is lagging and fundamental to the managing of works in the copyright market. This notion does not discount any current actions against infringement brought about by technology, both at macro and micro level. Examples of such actions are the Digital Millennium Copyright Act (DMCA) and progress on HADOPI.

In order to base any arguments regarding the conflict of the civil and common law platforms in terms of harmonization, it is critical to underline the global progress of copyright law. Hence, SEACONET and the Andean community strategy are discussed to illustrate the activities taking place in the copyright market. It should also be noted that other anti-infringement campaigns exist that are not referred to in this study.

According to Dannenberg and Gerk (2009), digital technology has continued to grow exponentially in importance, complexity, and breadth. With the DMCA coming into place, many countries have amended or added to their body of laws as it relates to digital media, technology and other related issues. The DMCA strengthens the protection of digital information by intellectual property law, focusing on the technical measures used to protect digital information (Bitton, 2011). According to Pike (2002), the DMCA makes it illegal to defeat technological methods that copyright owners might use to protect their works by both preventing unauthorized access to copyrighted materials and banning the manufacturing and selling of devices that are designed to evade copyright protection measures.

The context of the ten countries represented in this study offers a multiplex lens within an autonomous trajectory of infringement in a diverse cultural sphere where common challenges are experienced. Each country depicted in figure 1.5 is representative of a territory that falls within civil or common law jurisdiction. Palmer (2006) articulates the future of intellectual property from a clear perspective in that copyright issues have become a gateway to the information trajectory, making it indispensable for developing countries to examine whether their intellectual property policies support or obstruct economic and technological development.

In respect of policy development, it is critical to learn from the evidence produced through the actions that were taken and to take purposeful steps to diminish the illegal copyright market output. The objective of research question four is to leverage from the actions taken by reducing the current infringement challenges brought about by the illegal copyright market. With technology being a high priority, it is stated by Ranaivoson and Lorrain (2012) that the progressive enforcement process, which is often referred to as the 'three strikes approach' by rights holders, initiated the graduated response procedure by monitoring peer-to-peer networks and sending infringement reports to the HADOPI authority in the event of online infringement committed by third parties.

As the use of digital technology expanded across the globe, fundamental democratic principles of private ownership and public access to digital information came into conflict with a range of national and international laws (Palmer, 2006). Conflict between civil law and common law presents burning problems to jurisdiction. Serious controversies were, for example, raised when a worldwide jurisdiction and judgment convention was negotiated in The Hague in the 1990s. The question arises whether the current copyright stakeholdership is immersed in managing copyright through fragmented structures, which prove to be mechanistic in paradigm, instead of connecting with the true nature of the global perspective and a conscious experience of it, thereby recognizing expansive dimensions as non-separate entities. Current partners could enable the creative industry to foster co-creation of copyright-based learning, creativity, and adaptability into the technological trajectory, by deploying interactive technologies to boost and enable the co-creation process of action learning that will diminish the illegal copyright market by enhancing the copyright market.

The un-harmonized copyright infrastructure in territories such as Africa isolates any strategy that is aimed at diminishing infringement. Creativity-centered copyright culture should be promoted at governmental level through action plans that are informed by the partners. Even those strongly opposed to monopolies accept the premise that protection against copying, provided by the copyright act, is required to stimulate investment in new creative works (Nadel, 2004).

In order to experience the visibility of progressive policy it is critical that a common market be redefined based on past unworkable outcomes. A common market requires removing those legal barriers that block the free movement of copyrighted goods and services, by distorting it, divesting commerce, and affecting fair competition. Requirements of a common market are contingent because they vary depending on the progress of the building and perfecting of the market (Silva, 2012). Hence, the civil and common law arguments are leveraged as evidence for research question four, applying to all the levels of progress in actions taken in the global copyright economy.

Conflict between civil law and common law also creates disputes in cases addressing copyright law (Huang, 2010). For example, under the Brussels convention, or Brussels regulation, most case laws concerning conflict between civil and common law revolves around jurisdiction. In relation to intellectual property this emphasizes the challenge of copyright harmonization.

Levine (2007) correctly points out that continental civil law provided the competing paradigm to that of the common law. Many authors discuss conflict between civil law and common law through procedures, such as inquisitorial and adversarial systems, as well as the way of executing judgments (Huang, 2010).

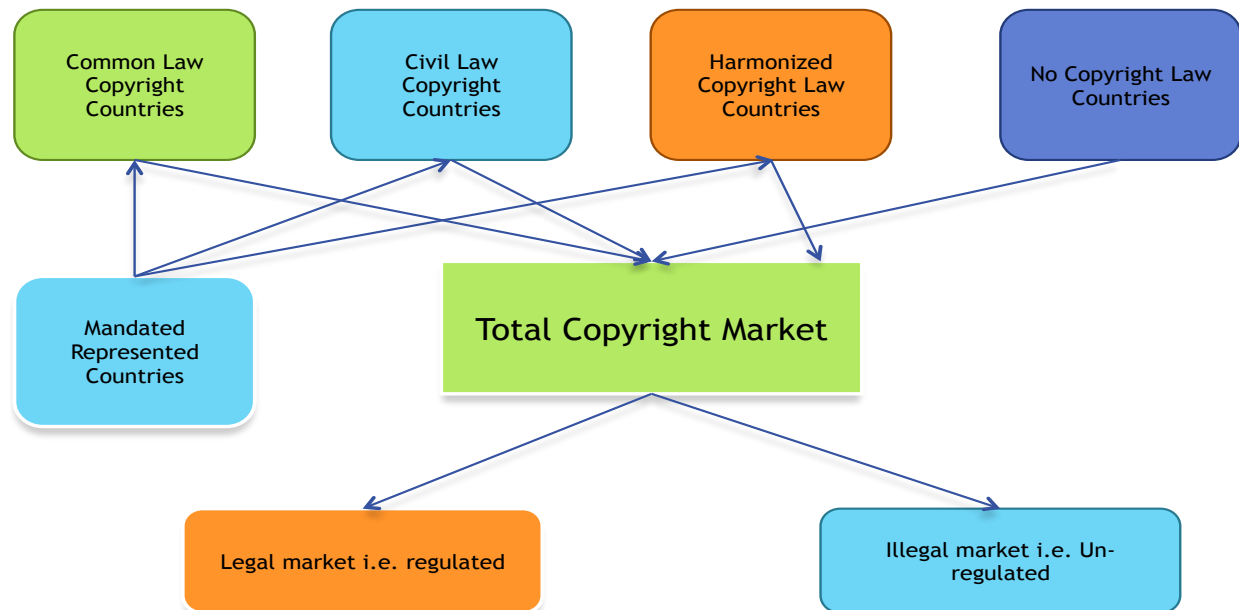


Fig. 3.4: Copyright law context to legal vs. illegal copyright markets

Source: Gilfillan (2014)

The global copyright continuum schema is exhibited in figure 3.4, centralizing the total copyright market as representative of all territories. The legal or regulated market referred to in this study is formal, with all its activities being reported and audited. Every activity is expected to be disclosed when copyright trade is conducted according to, and within the framework of local, national and international copyright law conventions and statutes (Gilfillan, 2014). It is also expected that activities should be measurable, with an identifiable chain of copyright from creation to consumption, where interested parties are accountable to the process of exchange. It is furthermore expected that taxes be paid in relation to the consumption of the copyrighted work that has been exploited in the market with fair to good integration amongst stakeholders.

On the path towards achieving the above, the researcher engaged with SEACONET regarding research question four and copyright progress as part of the common law jurisdiction. According to SEACONET (2014), the regional association comprising National Copyright Offices and collecting societies in Africa is engaging in a model

referred to as model law. This model copyright law is expected to facilitate the harmonization of copyright legislation within the sub-region. It is also a development plan in that countries in the sub-region strive to align their national copyright laws with WTO-TRIPS.

According to Zomo (2014), other important aspects that must be emulated from the SEACONET model law is the provision for copyright protection of derivative works, provision on the subject matter not protected by copyright, provision for waiving any of the moral rights in copyright and provision for compulsory licensing of copyright and other related rights. Countries like Tanzania, Zanzibar, Malawi and Kenya have already applied draft amendments to their copyright laws. These draft amendments borrowed heavily from the provisions of the SEACONET model copyright law.

Costa Rica was included in this study as part of the South American region that falls within the civil law territory. Similar copyright harmonization strategies to those of SEACONET are being executed by the Andean Community, initially known as the Andean Pact. It is an integration process in the Americas that started in 1969 with the signing of the Cartagena Agreement by Bolivia, Colombia, Chile, Ecuador, and Peru.

As part of this intensification, the Andean Community (AC) adopted common regulations in the area of intellectual property (Silva, 2012). The move towards harmonization will promote a multi-disciplinary perspective of the future of copyright. This will create a copyright-centered value system by promoting a new culture amongst partners that will produce exponential sustainability for the life of the stakeholdership, complying with laws and regulations.

According to Silva (2012), in respect of the AC, technological protection measures, also known as effective technological measures, are technical mechanisms used by rights holders in exercising their exclusive right to restrict unauthorized acts, such as DVD regionalization systems. Except for Bolivia, all AC members are party to the 1996 WIPO Internet Treaties and have implemented the commitments into domestic law by adopting peculiar criminal provisions against the circumvention of technological protection measures.

The proportion of copyright output in the overall intellectual property space intensifies the urgency to transform the industry through human capital initiatives amongst partners. Legislation is one means of achieving collective action in addressing problems that cut

across multiple sectors of the society and the economy. Private concerted action offers another and potentially more effective and sustainable pathway toward surmounting Internet governance challenges (Menell, 2012). In order to diminish the output of the illegal copyright market copyright collaboration becomes vital, but would require the development of new capabilities and skills. This will lead to higher levels of understanding derived from technological hostility in the market, so as to systematically deploy combined collaborative copyright strategies against infringement. Control over information is necessary to succeed in today's economy and most copyright enforcement efforts aim at regaining control (Meyer, 2012).

3.8.1 The copyright dividend diffidence

In the global conversation it is expected that partners should challenge the offending causes of copyright infringement through policies that are committed to successful implementation and returns. A restrictive approach to conflict-of-laws issues in copyright law will often prove detrimental for copyright holders as it may prevent them from taking legal steps in certain countries where copyright infringers might be holding the acquired assets (Fröhlich, 2009). Negotiating copyright-centric networks that drive a shared vision and culture will diminish the output of the illegal copyright market. Instead the copyright system battles with its civil and common law differences and conflict remains an organism that feeds from these inconsistencies, leaving the content owner in a predicament within the stakeholdership.

According to Levine (2007), divergent models of administrative governance can be found at the core of the respective regimes. The civil law model relies on centralized, agency-based state administration, aimed at the implementation of regulatory standards through expert legislators and bureaucrats. The common law model on the other hand, fundamentally distrusted bureaucratic administration, and as a consequence, identified courts as the proper locus for administrative governance. This makes the law interpretation complex and jurisdiction issues more relevant to the global reality of technological infringing networks. These contradictions legislatively propose unified copyright laws through reform. However, a copyright reform project would also require significant amounts of time, financial capital and relevant skills (Samuelson, 2007). In terms of civil and common law contradictions, implying that each country is authorized to legislate its own copyright that cannot by definition be applied beyond its borders, is

to negate the existence of private international law, or less drastically, to reduce it to the maxim that all courts should always apply their own law (Fröhlich, 2009).

Even in the current industry structure where copyright laws do exist, they generally fail to address digital technology and electronic copyright (Palmer, 2006). There is practically no evidence of confluence achieved in the industry. In order to decide on a way forward the system must consider not only copyright law, but also conflict-of-laws methods to address the disconnect (Fröhlich, 2009).

It is already of concern that changes in digital technology alter economic incentives for producing and disseminating works of authorship and information, and this could ultimately weaken the advantages of the copyright system (Cheverie, 2002). Moreover, the fragmentation of partners contributes no value to copyright, but instead shifts the focus to the burning issue of a possibly diminishing copyright market, should strategic interventions not be embraced in the immediate future. It is clear that a distinction encountered in many parts of the law of business transactions and in other branches of the law is the distinction between movable and immovable property. In the law of property, the distinction is significant because the rules governing the transfer and hypothecation of movable property differ from those relating to immovable property (Sharrock, 2011). In this respect copyright management requires new ways of thinking.

Two levels that focus on the copyright explorative conversation have been outlined in chapter three, the first being the conflict of partners and the second the arguments delivered through the five research questions. The aim of ascertaining the conflict of partners led to a clear conclusion as to how the copyright dividend (shown in figure 2.1) is negatively affected, in that none of its goals are achieved due to the inconsistencies inherent to the stakeholdership. The other driver is that, from a global perspective, as stated in figure 1.5, the developmental stages of partners are not at the same level. This leads to an automatic diffidence, especially when one partner in an alliance comes from an emerging country and the other from a highly developed one; their configuration of objectives for adopting a cooperative strategy will almost certainly differ from that of two partners who both come from developed countries (Child et al., 2005).

The solution provided by copyright is to award the creator a means of appropriating a sufficient portion of the amount paid by the consumer as an incentive to proceed with the creative process (Liebowitz & Watt, 2006). The Development Agenda of IP in the

global domain espouses the explicit goal of balancing the hitherto uncritical promotion of IP rights through harmonized standards by redirecting the global IP agenda toward more flexible, development-friendly policies (Pager, 2012).

This emphasizes the unachieved copyright dividend objective depicted in figure 2.1. The only evident negative outcome is the types of infringement that are persistence in the industry. In some cases infringement becomes a difficult issue to address. Someone can be an indirect copyright infringer even if it is only by supplying technology that has significant non-infringing uses, or in another example not related to technology, by aiding and abetting the infringement of another, for instance through providing an environment that encourages infringement (Hollaar, 2004).

The progress of what is referred to as best working models, is also not adequate to diminish the illegal copyright market output. The HADOPI Law, for instance, may at first sight be seen as just another step in the global trend towards reinforcement of copyright law, but the graduated response procedure instills ambiguity and uncertainty on the online content market (Orbach, 2008). This illegal copyright market is argued as an outcome of weak internal integration amongst partners. The role of copyright law is to protect the rights of the creator of the works, but according to Hugenholtz (2013), the law of copyright in the EU seems to be constantly experiencing challenges that affect the content owner, in that the law fails to address mass-scale infringement over digital networks.

It is therefore clear that the copyright infringement trajectory shown in figure 2.2 is not at an equally competing level with the illegal copyright market, hence a global un-harmonized system present a bleak future for the envisaged decentralized market system, as espoused by copyright law. All these present a diffidence of paths towards a harmonized infringement-free copyright paradigm opposing the illegal copyright market.

There is a lack of copyright-related resources in offensively driving illegal copyright market players out of their positions. Market power theory (MPT) is concerned with the ways in which firms can improve their competitive success by securing stronger positions in their markets (Child et al., 2005). The copyright stakeholdership power base is not combined due to conflicting goals, which in return negatively empowers the progress of the illegal copyright market.

In this study relational contracting refers to a long-term investment in building relationships between the parties (Child et al., 2005). This is essential in the progress of partners but thus far no evidence of such an effort is present in the industry. The copyright stakeholders' relations are fragmented and the goals are not aligned towards the reduction of copyright infringement. Relational contracting within the copyright stakeholdership should generate mutual dependence between partners and reduce the overall inefficiencies in dealing with infringement.

There is no evident cooperative copyright culture amongst the partners that embraces the value of copyright. Taking into account that all the partners form an organizational paradigm proposed as a strategic copyright alliance, such a cooperative culture needs to be installed. Furthermore, the importance of harmony between a service organization's culture and the culture of its customers suggests that the optimum organizational culture in one nation may be different from the optimum organizational culture in another nation with different cultural values (Webster & White, 2010). From a global perspective it is critically important to recognize that the harmonization of copyright law creates a foundation for the strategic alliance efficiency proposition.

Copyright experience is a vital commodity that will reveal new competencies not currently shared amongst partners. The copyright market's risk exposure to criminal activities of concern and it needs to be acknowledged that this phenomenon is an outcome of the weak collaboration within the stakeholdership. It is of strategic importance to increase the absorptive knowledge capacity of partners regarding effective copyright culture collaborations to leverage robustness against infringement.

3.9 Conclusion

Considering the copyright pathway discourse regarding infringement through the illegal copyright market, copyright based initiatives become strategic leverages that can be attained. This is highly depended on the provided five research questions that emerged from problematizing the literature. These five research questions problematized copyright enforcement as a key issue that was overlooked in the literature and that needed more attention. The inefficiencies of outdated copyright strategies are the result of a lack of networking and exchanging of key copyright knowledge. Becoming globally competitive requires dynamic copyright actions that necessitate searching through multiple frameworks to realize value within the copyright stakeholdership.

In the effort of undercutting infringement it is clear that the illegal copyright market is a representation of the overall disconnect of policies and the un-harmonized system of the copyright economy. Approaches to reducing copyright infringement conflict amongst partners require constant processes that enable learning as a key orientation. These activities commence with an ongoing performance appraisal targeted at partners' abilities in reducing copyright infringement in their respective territories. The level of protection afforded to content owners has been found to vary significantly between countries due to the un-harmonized nature of copyright. Invariably content owners cannot take offensive market positions against the illegal copyright market. The collaborative copyright conversation is vital and should be based on the sharing of infringement experiences and the support of legal systems that will bridge the common and civil law disconnect.

Very little literature exists concerning conflict between civil law and common law and the requirements for judgment recognition and enforcement (JRE) (Huang, 2010), which constitutes the very crux of the disconnect conversation. The actions taken in copyright enforcement can leverage from the five questions by underlining the systematic copyright infringement challenges.

Unfortunately the DMCA law harms fair use doctrines in that it does not require the design of technical measures to enable fair use. This makes the DMCA a significant threat to the public domain (Bitton, 2011). The progress of copyright law is consistently hindered by an inherent disconnect amongst partners, preventing the achievement of strategic balance. The emerging patterns amongst the range of copyright management constructs, being investigated through the five questions in the meta-data, suggest an urgent need for cross-functional teams, utilizing appropriate human capital to steer a copyright strategy into new markets.

All the constructs of copyright trade are directly related to infringement and the questions provide the evidence of copyright violation. The mission to build core competencies and strategic alliances is crucial to the life of the copyright market. Current partners require copyright-based skills to remain globally competitive. Progress can be achieved through reframing to reach a competitive stage consistent with the collaborative goals of the partners. A collaborative culture is absent which contributes to the sustainability of the illegal copyright market. This can be mitigated through introducing and actively promoting cultural exchanges amongst partners. Sustainable

development is a desired outcome, which purely depends on removing negative policies and targeting enforcement strategies that appreciate in value with technological advancements.

The preceding is relevant in informing policy and at the same time guides the enforcement strategies. It is imperative to ensure that the established policy is representative of collective perspectives within the copyright stakeholdership partnership. The emerging copyright-driven economy challenges organizations to establish essential value creation networks to support the design thinking potential of partners as active participants in the industry.

CHAPTER FOUR: EMPIRICAL STUDY

"The organizations of the future will increasingly depend on the creativity of their members to survive. Great Groups offer a new model in which the leader is an equal among Titans. In a truly creative collaboration, work is pleasure, and the only rules and procedures are those that advance the common cause." (Warren Bennis)

4.1 Introduction: The grounded theory in the copyright practice

In the previous chapter the future of copyright was viewed through the infringement lens, using the five research questions (figure 1.3) to bring the need for intervention in the illegal copyright market to the attention of the copyright holders. The study adopted grounded theory as a research strategy. Grounded theory is a method of explication and emergence. The method takes a systematic inductive, comparative, and interactive approach to inquiry and offers several open-ended strategies for conducting emergent inquiry (Strauss & Corbin, 1998; Charmaz, 2006).

In this chapter, the research design is structured by means of an exploratory and qualitative approach which outlines the rationale for deploying the laminations that are presented in this study. The research entailed describing what the participants had in common as they experienced a phenomenon and describing the meaning of the lived experiences of a concept and a phenomenon for several individuals. A Grounded Theory study begins with a general opening of a subject area as in the case of the copyright illegal market inquiry. As stated by Dey (1999), the researcher will usually start with a "general subject and problem conceived only in terms of a general disciplinary perspective. From this initial opening, the study becomes continually focused towards an area of social concern.

The purpose of this qualitative research study was to explore the views and lived experiences of a purposive sample of copyright experts through semi-structured, taped and transcribed interviews. The sample used in this study was selected from the population within the creative industry. According to Bryman and Bell (2007), a population is the universe of units from which the sample is to be selected. Within this qualitative study design, key features of grounded theory were purposive sampling, within directive systems of analysis. This iterative study design entailed phases of simultaneous data collection and analysis, where analysis informed data collection. The sampling method that was most appropriate for this study was purposive sampling,

because it targets participants with experience in a particular area of interest (Trochim & Donnelly, 2008).

4.2 Research design

The research design is seen as an overall plan of the researcher's intention on how to conduct the research (Mouton, 2002; Schurink, 2008). It directs the kind of data needed, where data will be gathered from, how it must be gathered and most importantly how it will be analyzed (Schurink, 2008). The research question and research design ultimately provide guidance on how the research participants are constructed (Onwuegbuzie, Dickson, Leech, & Zoran, 2009). A qualitative research method by means of interviews was used in this study, because the aim was to determine how the participants feel, view, and understand copyright infringement and impact of the illegal copyright market to the copyright dividend.

4.2.1 Qualitative research

The qualitative method was the most appropriate design for this exploratory study, being the more effective option as opposed to quantitative research. Qualitative studies differ from quantitative studies in that they are inductive rather than deductive, and they consider experiences within context rather than controlling for variables, as is done in an experiment (Lietz & Zayas, 2010). Beer (1988) explains that qualitative research, based on a well-defined methodology, can provide the means to scientifically answer broader questions that can provide new insight.

In this study the focus was on exploring the lived experiences and perceptions of ten copyright experts in the creative industry. Such an exploration was necessary, to find possible ways of dealing with copyright infringement. Qualitative research seeks to deal with human experiences and as such is more concerned with transferability as a way of validating findings (Higgs, 1997). Qualitative research is also holistic, because it attempts to provide a contextual understanding of the complex interrelationships of causes and consequences that affect human behavior (Utne, 2014).

Hence, qualitative research is used to study, explore, or understand the central phenomenon (Creswell, 2002). In sum, qualitative methods are able to assess the personal meaning of events and stressors and they offer adequate means to seek and reconstruct meaning in life (Kitzinger, 1995). In a qualitative inquiry, initial curiosities for

research often come from real world observations, emerging from the interplay of the researcher's direct experience and interests in practice (Marshall & Rossman, 1999).

The inductive process allowed for explorative conversation to take precedence, thereby facilitating the emergence of the five research questions. This proved qualitative research to be extremely useful in obtaining insight into regular and problematic experiences of selected individuals and the meaning attached to these experiences (Leech & Onwuegbuzie, 2007). The underlying purpose of a general inductive approach is to establish clear links between the research objectives, in this case the five research questions and the summary findings derived from the raw data, and to ensure that these links are both transparent and defensible given the objectives of the research (Thomas, 2003).

The expansive dialogue-driven nature of the global copyright platform became a key rationale for adopting an inductive approach as opposed to the positivist view, which would have quantitatively sought to obtain the idea generation information through questionnaires in order to construct the five research questions. This further illustrated why the qualitative research approach was appropriate, in that it was aimed at understanding the perspectives of participants and exploring the meaning they attach to phenomena (Quinn & Cochran, 2002) as in copyright infringement. Furthermore, the flexibility of qualitative research can be contrasted with the inflexibility of traditional sampling strategies that pre-establish the individuals, groups, organizations, and communities to be included based on accepted theory (Egan, 2002).

4.3 Research strategy

In this study the researcher adopted grounded theory from an interpretivist perspective as opposed to the objectivism paradigm. The key rationale for this research perspective is that interpretivists believe that the subject matter of social sciences is fundamentally different from that of the natural sciences. This research strategy is supported by both grounded theory and the saturations process (Strauss & Corbin, 1998, Boden, 1994).

According to de Vos, Strydom, Fouché and Delport (2011) this means that, a different methodology is required to reach an interpretative understanding and explanation that will enable the social researcher to appreciate the subjective meaning of social action. The assumption is thus made that reality should be interpreted through the meaning that research participants give to their life world.

Grounded theory became critical at constructing meanings and interpretations as an active process. This process required scrutiny, reflections, laminations, and interrogation of the data, which involved the researcher, the participants, and the copyright stakeholders under examination. This process meant that grounded theory and the laminations had to focus on co-construction, by giving priority to the meanings of the participants over the critical copyright perspectives, including copyright law enforcement creating rigor, which involved engaging in efforts that increased confidence to ensure that the findings represented holistic interpretations in the copyright conversations.

The aim of targeting the ten countries was based on having representatives of both the civil and common law jurisdictions within the songwriters alliances and collecting societies involved in the lobbying of copyright matters affecting the creative industry. The researcher's interpretive perspective is also based on the experience of the research participants where they are located within a particular historical, and values standpoints in terms of opinions on copyright infringement in that the researcher does not start with concepts determined a priori but rather seeks to allow these to emerge from encounters in the field through conversation and exploration.

Since the participants are experts in the copyright field it made the interpretive perspective important in that it focused on understanding the way the participants interpreted and made sense of their copyright infringement experiences and the copyright illegal market. This meaning can only be discovered through language which is relevant to this study. Paradigms associated with interpretivism include symbolic interactionism, analytic induction and grounded theory (Schwandt, 2007). Whereas the objectivism approach is based on the belief that there is an external reality that can be studied objectively.

Objectivity in this sense refers to the ability to know things as they really are. This perspective is predominant in the quantitative paradigm (De Vos et al., 2011). The objectivism perspective would also be relevant within the qualitative approach where the methodology is ethnography and phenomenology. It is also that the epistemology of this perspective allows interpretation to emerge from the observation of the researcher to gain meaning of phenomenon.

4.4 Research perspective in aligning with copyright law

Within the qualitative research paradigm Creswell (2002) distinguishes a number of qualitative strategies or designs, such as narrative biography, phenomenology, grounded theory, ethnography and case studies. The most important factor is that qualitative designs differs inherently from the quantitative one in that it does not usually provide the researcher with a step by step plan and a fixed plan to follow. In quantitative research the design determines the researcher's choices and actions, while in qualitative research the researcher's choices and actions will determine the design or strategy (De Vos et al., 2011).

Due to the nature of the study where participants were sourced from diverse backgrounds and jurisdictions made the case study methodology not appropriate for the reason that it specifically looks at a particular case whereby it has to be ring fenced and be probed. Moreover the limitation of case study method is its dependency on a single case exploration making it difficult to reach a generalizing conclusion (Tellis, 1997). In this rationale, Yin (1994) considered case methodology 'microscopic' because of the limited sampling cases.

Since this study targeted experts in the copyright law and management it was important to ensure that the level of knowledge and experience could be leveraged for a competitive gain towards a framework that will address the problem statement which made the narrative biography not suitable for the study. Participants in narrative biography construct stories that support their interpretation of themselves, excluding experiences and events that undermine the identities they currently claim. Whether or not they believe the stories they tell is relatively unimportant because the inquiry goes beyond the specific stories to explore the assumptions inherent in the shaping of those stories (Connelly & Clandinin, 1999).

A similar enquiry was given to ethnography in that it was not suitable because its main focus is on observation usually as a field study from a particular setting so that the result might only be applicable for that single setting. Therefore, it is difficult to generalize the findings of the ethnographic research (Smith, 2001). Unlike other research approaches that require researcher to specify the research question, ethnography calls for a general statement. Thus, the research question in ethnographic is lack of specificity (Millen, 2000).

In reflection of this research paradigm, the grounded theory approach was adopted. As indicated in chapter one, a grounded theory strategy was followed as methodology of choice. According to Glaser and Strauss (1967) grounded theory represent an effort to bridge 'the gap between theory and empirical research' by providing practical guidelines that would enable the rigorous construction of theories relating to social processes from raw data. In this study ,the grounded theory strategy was deployed as a key process that presented the research data in a workable format. This allowed the researcher to document the emergence of new themes and also to identify perspectives that may otherwise be overlooked (Sargeant, 2012). The outcome of the filtration process resulted in the final laminated data. In essence the research perspective underwrites grounded theory and the lamination process as an integrated approach at extracting meanings from the data and effectively completing the data analysis process.

Grounded theory research, often referred to, as the constant comparative method is a qualitative tradition built on compared concepts. Proponents of the constant comparative method suggest that similar data are grouped and conceptually labeled. Then concepts are categorized. Categories are linked and organized by relationship, conditions and dimensions are developed, and finally a theory emerges (Strauss & Corbin, 1990a).

In considering a specific method for engaging relational questions in constant comparison, grounded theory was used toward increasing the understanding of the implications of copyright infringement in the industry. The dual grand question pertained to how the participants related to copyright infringement based on the deep, rich, lived experiences in the industry. The strength with grounded theory is that it allows coding to be executed reflectively where the researcher acts as an investigator through asking the questions, what, when, where, why, how, and with what result or consequence (Strauss & Corbin, 1998). Answering these questions weaves the loose array of concepts and categories that the researcher unraveled and sorted in open coding back together into a pattern.

In the ten participants, the researcher was interested with what was the central issue that explains how copyright infringement affect the progress of content owners and its impact on their lived experience. This study involved a theoretical sampling of ten participants from ten countries involved in the CISAC platform and they where purposefully selected for harmonized delimiting criteria. The pursuit had to be

personally compelling, a self- selected endeavor, changing the individual's life direction on how copyright can be re-looked into the future where the research enterprise become an inductive theory building platform (Gilmore & Carson, 1996).

This inductive inquiry was essential for this study because of the diversity of views introduced by the different research participants. As such, the researcher considered not only the voice and perspective of the participants and the interaction between the relevant groups of participants, but also the context in which these perspectives and behavior developed (Wilding & Whiteford, 2005).

For example, research undertaken to describe creators' experience in living with constant losses brought about by copyright infringement could be placed in both factual and interpretative categories (Zucker, 2001). In this study, the researcher's actions included recording, constructing and presenting, and producing a chronicle, profile of facts. Furthermore the researcher was construing, synthesizing and clarifying, and produced a history, meanings and understandings.

4.5 Study population

In this study, the research participants were extracted from the ten countries shown in figure 1.3, consisting of copyright experts from the respective countries. In some instances they represented their own local organizations in their respective countries. A qualitative sample should represent the diversity of the phenomenon under study within the target population (Jansen, 2010).

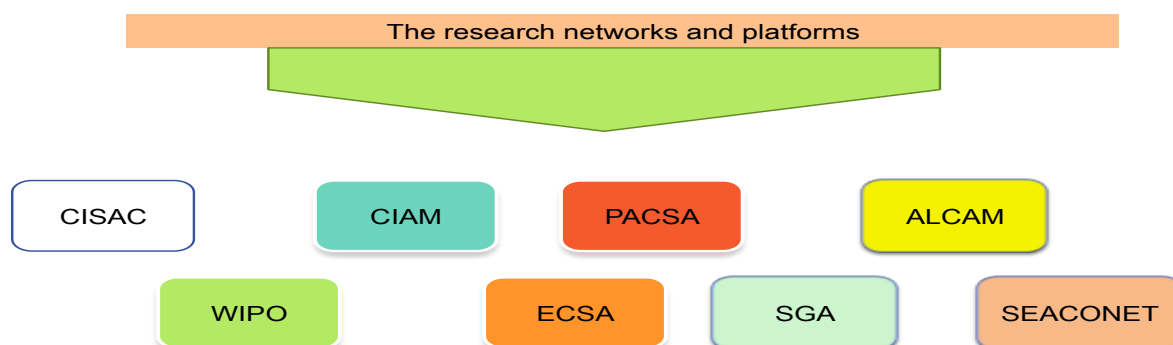


Fig. 4.1: The research networks and platforms

Source: Own construction (2013)

The sample comprised a total of ten participants with one from each respective country (table 4.1). The rationale of the sample size drew from the fact that research projects

using qualitative measures have smaller sample sizes than quantitative studies (Plummer, 1995). The participants were also affiliated with CISAC through their respective organizations where they participated as keynote speakers on the CISAC platform. This selection criterion accommodates the PACSA objective, in alliance with CISAC, of addressing copyright infringement through lobbying with all interested parties.

Table 4.1: Characteristics of participants

No	Job title	Organization	Active role	Country	Age	Gender	Years of experience	Qualifications	Biography
1	Copyright Law Specialist	NISA	Business affairs, royalty supply chain management, royalty audits, forensics, corporatization and commercial contracts	South Africa	53	Male	25	MA (Copyright Law – UK, EC and US)	See Appendix E
2	President	ACUM	Composer/arranger, performer and lobbyist for copyright with government	Israel	58	Male	40		See Appendix E
3	President	Songwriters Association of Canada	Composer/arranger, performer and lobbyist for copyright with government	Canada	64		50		See Appendix E
4	CEO	COSON		Nigeria	45	Male	16	MBA	
5	CEO	NASCAM	Collective management and lobbyist for copyright with government	Namibia	48	Male	16	Global Economics in Copyright Management (GEMCM) Bachelor of Business Administration	
6	President	SEACONET	Collective management and lobbyist for copyright with government	Malawi	66	Male	31	Bachelor of Social Sciences University of Malawi, Diploma in Archives Administration University College London, Masters in Arts Administration City University London	See Appendix E
7	President	Mauritius Rights Management Society (MRS)	Composer/arranger, performer and lobbyist for copyright with government	Mauritius	49	Male	15	Diploma Communication Studies, Diploma Education Science, Double degree Bachelor of Arts in French/Sociology	
8	President	ACAM	Composer/arranger, pianist, lecturer and lobbyist for copyright	Costa Rica	54	Male	34		See Appendix E
9	IP Consultant	Independent practice	Contracts, forensic reviews of music and audio-visual rights and revenues and global restructuring of rights in the creative industry	United Kingdom	55	Female	28	LLB Hons	See Appendix E
10	President	CIAM	Composer/arranger, lobbyist for copyright with government and event organizer	Italy	64	Male	41		See Appendix E

4.6 Sampling method

The overall purpose of the use of the relevant sampling techniques in qualitative research is to collect the richest data. Rich data, ideally reflects, a wide and diverse range of information collected over a relatively prolonged period of time. The various types of non-probability sampling include, purposive, theoretical, sequential, snowball and deviant case sampling. Since this study's topic was specific to copyright law and management it required that, the type of participants that will be interviewed had to be practically involved in the management of collecting societies and also be part of the global copyright platforms where the lobbying for new laws in copyright spectrum is conducted. Grinnell and Unrau (2014) add that in a non-probability paradigm each unit in a sampling frame does not have an equal chance of being selected for a particular study.

Based on the copyright expert knowledge of the participants, purposive sampling proved to be more appropriate. Purposive sampling involves the assembling of a sample of persons with known or demonstrated experience and expertise in a particular area of interest (Trochim & Donnelly, 2008). Marshall, Cardon, Poddar, & Fontenot (2013) explain that the most critical task in the research design is obtaining an adequate sample. The researcher's conceptual framework for the study and existing literature on the topic guided the initial sample selection, but this sampling strategy was constantly reconsidered (Gibbs et al., 2007) in order to obtain the most relevant research participants that are practically involved in the management of copyright.

As indicated, samples for qualitative studies are commonly much smaller than those used in quantitative studies. As the study progresses, the qualitative sample diminishes; more data does not necessarily lead to more information (Mason, 2010). Qualitative research emerges from a paradigm of emergent design with a disinclination to estimate sample size at the early and undefined initial stages of research (Marshall et al., 2013). The subjects sampled must be able to inform important facets and perspectives related to the phenomenon being studied (Sargeant, 2012). Sampling decisions are made for the explicit objective of obtaining the richest possible source of information to answer the research questions (Ploeg, 2014).

4.7 Final sample characteristics

In this study the sample contained nine males, mainly presidents and CEOs (chief operating officers) with one copyright law specialist, as well as one female IP consultant. In terms of sample characteristics, the participants were all copyright experts within the creative industry, with their overall experience being in collective management. The presidents, as depicted in table 4.1, are all authors and creators of works who were nominated into the respective boards of collective management organizations by creators and authors' associations to represent their rights.

4.8 Research procedure

Preparation of the research participants in advance is as important as the discussion itself and adequate planning for the individual discussions is crucial for a successful result (Sagoe, 2012). Securing research participants was a very crucial stage in the research early planning. Part of the PhD proposal was presented in San Jose, Costa Rica after it had been approved by the North West University in Potchefstroom, South Africa to lobby for copyright experts in the field from the CISAC platform to participate in the study.

Since bias is inherent with purposive sampling the researcher had to ensure that only a brief outline of the topic extracted from the PhD proposal was presented without any research questions whatsoever but only the broad overview and background of the study. The strategic intent of only presenting a short overview of the research study primarily rested on the fact that bias could take place and affect the research outcome. The other critical issue of only giving a brief outline of the proposal was not to give any indications on the problematization of the study but only to motivate the value and relevance of the study to the creative industry, government and CISAC.

Unlike random sampling, non-probability methods such as purposive sampling are not free from bias (Bernard, 2002). Hence it was important for the researcher to ensure that any bias should be avoided in advance and make the declaration for such possibility in the study. Creswell and Miller (2000) note the importance of researchers' acknowledging their beliefs and biases early in the research process to allow readers to understand their positions, and then 'bracket or suspend those researcher biases as the study proceeds.

Bias can occur in the planning, data collection, analysis, and publication phases of research. Selection bias may occur during identification of the study population (Bernard, 2002). This type of challenge was noted especially with the purposive sample that was selected from the CISAC platform which primarily aimed at obtaining research participants with copyright knowledge and its management. The presentation in San Jose took place during a CISAC meeting and the researcher's goal was to secure research participants for the study who are experts in the copyright topic. The CISAC copyright conferences offered an instrumental platform to draw a sample of which the conversational engagement had high relevance to the problem statement.

In qualitative research, one does not only sample people but also settings, events and processes. (Maxwell, 2008) states that sampling means selecting groups on the basis of its relevancy to the specific research question, the theoretical position and the explanation that are emerging in the research process.

As part of the research plan, during the early research stage, the researcher managed to prepare the participants in advance by outlining the goals of the study at the copyright meetings in South America and North America. Some of the participants were subsequently interviewed from their respective countries through Skype and others through one-to-one interviews in the countries mentioned earlier. The participants were comfortable with the interview schedules determined in Costa Rica and the arrangement was the most appropriate owing to their diverse geographical spread, as outlined in figure 1.5. All the schedules were done on a one-to-one basis with the participants based on each person's availability at the time they have returned to their respective home countries Skype meeting the means of communication for conducting the research.

As part of the qualitative path the researcher selected individual interviews with the methodological advantage of collecting detailed accounts of the participants' thoughts, attitudes, beliefs and knowledge pertaining to a given phenomenon (Fielding, 1994; Loiselle, Profetto McGrath, Polit, & Beck, 2007; Speziale & Carpenter, 2003). Merton, Fiske, & Kendall (1990) and others argue that the semi-structured interview method should obtain redundancy or topical saturation, which means that the research objective should be studied to the point that conducting additional research will not produce significant new findings. This study's approach was based on the assumption that if

questions are formulated correctly, the participants' expressions of their experiences would reflect their reality (Macdonald, 2006; Morse, 2000; Sandelowski, 2002).

4.9 Data collection method

Data collection techniques usually include minimally to moderately structured, open-ended individual interviews (Sandelowski, 2000). While assumed to be a 'standard' data collection method, individual interviews come in a variety of forms, such as structured and semi-structured (Bernard, 2002). This study was executed through semi-structured interviews. The benefit of using individual interviews is that they elicit information in a way which allows researchers to find out why an issue is salient, as well as what is salient about it (Morgan, 1997).

The initial stage of data collection was planned around the global copyright meetings that took place in South America in 2012 and at the World Copyright Summit (WCS) conference in Washington D.C. in 2013. The research was also conducted at meetings in Kenya, Malawi, Ethiopia, Niger, Burkina Faso, Washington D.C and South Africa on a one-to-one basis with the participants. The final data collection phase occurred at a PACSA meeting in Burkina Faso in December 2013 where the researcher also conducted one-to-one interviews. This data collection was very cost efficient because the researcher had the privilege of meeting different people from different countries at a single location at that particular moment and conduct the one-to-one interviews with the participants.

The most important issue that the researcher had to take cognisance of was the possible pitfalls that could be experienced during the data collection phase. De Vos et al. (2011) mentions that premature use of reflecting and summarizing can inhibit the interview. It is easier for the participant to agree with the researcher than to explain how it really is. Analysis too early invites premature closure of the topic and precludes in-depth enquiry. This type of pitfall was avoided and since the participants were experts in the field allowed the researcher to explore more detail of the copyright infringement lived experiences to obtain rich layers of data.

Subsequent to the CISAC meeting, before conducting the interviews, the researcher sent each participant the research questionnaire with a brief outline of the study via electronic mail (see appendix D), as well as a cover letter that explained the interviewing process. Preliminary Skype discussions were also held with the

participants. The researcher scheduled and planned for ten interviews with the participants from the selected countries. Since the time differences have been a critical issue, especially concerning Costa Rica and Canada, the researcher endeavored to accommodate the schedules of the participants.

Tongco (2007) explains that data collection strategies can include the use of one-to-one question-and-answer sessions, where the researcher may use a variety of techniques, with the interviews averaging thirty to forty-five minutes per person. At the early stages of securing the participants the researcher established a connection with each participant by dedicating a few minutes for a conversation pertaining to the purpose of the study and explaining how the interview will be executed.

At the CISAC meeting the researcher explained to the participants that the interview will be recorded for the purposes of accuracy and later transcription. It is valuable to have the full transcripts available to analyze the discussions, so wherever possible a tape recorder is considered the best tool in the research process (Quinn & Cochran, 2002). Interview questions and responses are typically tape-recorded and then transcribed verbatim before analysis (Marlow, 1993). Transcribing the discussion in full is a major task (Knodel, 1995). In this study, the process entailed the transcription of the ten interviews obtained from the selected countries and the researcher pre-set a project timeframe to ensure the timeous completion of the process.

Data gathering is crucial in research, as the data is meant to contribute to a better understanding of a theoretical framework (Tongco, 2007). This provided the rationale for the type of research participants the study required in order to extract richer data that will have theoretical quality in terms of construct and contribution. In the case of this research study, the captured data were extracted from authentically lived experiences of respondents, embedded within their copyright management work. The selection criteria required the participants to be copyright management practitioners that met the following prerequisites within the intellectual property domain:

- Be directly involved with copyright infringement cases
- Have knowledge about collective management organizations and operations
- Be exposed to the global copyright platform
- Be creators of content or manage it through publishing and licensing
- Be at senior management or board level within the respective practice

Since this study adopted purposive sampling it was appropriate to limit the sampling size to ten countries. This allowed the researcher to explore and probe explanations from the lived experiences of the participants.

4.10 Recording

As stated in chapter one, the researcher managed to obtain permission in advance from the research participants to record the interviews. These preliminary arrangements were made at the global copyright conferences.

4.11 Method used for storing of data

As already indicated in chapter one, all the research data were recorded digitally through a computer and recorder and stored in external drives as backup and for future reference.

4.12 Data analysis

Data analysis in qualitative research manages words, language, and the meanings these imply (Miles & Huberman, 1994a). In this study the research problem pertains to the illegal copyright market and infringement practices in the industry, which made it practical to deploy qualitative research, which is exploratory in nature and investigates infringement experienced from the copyright illegal market. This embraced the grounded theory and the lamination process as an appropriate methodology, which aimed to generate theories regarding copyright practices specifically related to the five research questions.

In grounded theory, data analysis has a well-defined process that begins with basic description and moves to conceptual ordering and then on to theorizing (Patton, 2002). In order to develop deepened levels of understanding derived from a systematic analysis, grounded theory was appropriate and informed copyright business interactions and experiences whilst searching for new processes to sensitize the objectives under scrutiny. The data analysis was accomplished through an elaborate set of coding processes. Coding was arguably the main element, allowing identification of the raw conceptual elements of potential theories.

The coding process is the process that will migrate the data into theory. Strauss (1987) divides the coding process into three phases and labels them open, axial, and selective

coding. Strauss and Corbin (1990) have insisted on the use of the constant comparative method. In grounded theory, its level of development and specificity clearly distinguish it from other qualitative methods. Coding is not simply part of data analysis; it is the “fundamental analytic process used by the researcher” (Corbin & Strauss, 1990). The interview transcripts were used on an on-going basis throughout the study to pursue emergent themes in data collection through theoretical, purposive sampling.

This qualitative study design entailed phases of simultaneous data collection and analysis. The researcher kept with the qualitative design, and the sampling process on theoretical grounds. Participants were selected on the grounds of their capability as experts to confirm and challenge emerging theories and framework building (Argyris & Schön, 1996).

Utilizing a team approach involving several researchers when analyzing research data can contribute to the reliability of the interpretation. The process consists of team members independently reading the transcripts and then comparing their impressions (Knodel, 1995). Coding is a key instrument used in qualitative studies. Coding sample text, checking coding consistency, and revising coding rules is an iterative process and should continue until sufficient coding consistency is achieved (Weber, 1990). The data gathered from the interview examination process were expansive in that its coding allowed an emergence of burning issues that pertinently integrated into the main goal of the study.

Coding proceeded while new data continued to be collected, whereby new themes emerged that were added to the coding manual (Zhang & Wildemuth, 2013). In phase one, as stated in figure 1.4, the research data gathered from the purposive sample were transcribed so as to allow a vigorous examination process, transforming the data into strategic information. Central to an analysis of qualitative data, such as one-to-one interview transcripts, is the process of coding the text into analytically distinct segments, which can then be examined together when drawing conclusions concerning one or more of the topics and related concepts under investigation (Knodel, 1995).

In the coding process key words were extracted through the same lens to negotiate relevance to the problem statement. In order to maintain neutrality an independent coder was presented with the research objectives and some of the raw text from which the categories were developed and was asked to create categories from the raw text

(Thomas, 2003). Coding may be performed in several cycles with repetitions of upward and downward coding.

The ruling principle is to create a consistent, well-defined and well-ordered scheme of objects, dimensions and categories, which should all be legitimated by their relationship to the research goals. The process may be structured along the lines of open, axial or selective coding according to the rule of constant comparison in qualitative studies (Jansen, 2010). Having followed the inductive approach in this study, mind maps were deemed suitable for presenting the data (see Appendix F) with the aim of underscoring the interrelationships of the themes.

Tony and Barry Buzan developed the concept of mind maps during the late 1960s and early 1970s. A mind map (see Appendix F) has four main characteristics (Buzan and Buzan 1993, 2006):

- The establishment of the subject of the mind map as a central image word or phrase.
- Main themes related to the subject radiate from the central image as branches.
- Branches consist of important words or images located on the lines that radiate from the central image (lesser themes are represented as branches that radiate from the higher level branches).
- Branches form a connected 'nodal' structure.

According to Whiting and Sine (2012) mind maps are used as a way of graphically representing ideas, concepts and sub-concepts, classifying and organizing a large number of items around a central concept; they also build and visually link relationships within and between concepts.

The researcher used mind maps to conceptualize and to find key traces of relationships and meaning from the data. The mind maps are instrumental at establishing a visual hierarchy representing the importance of the categories and sub-categories in a framework (Whiting and Sine, 2012). Buzan and Buzan (2006) argued that mind maps offer a way of systematically organizing research data, providing a structure and sense of direction in a dataset, and 'a powerful graphical technique (see Appendix F) which can be applied to every aspect of life where improved learning and clearer thinking will enhance human performance.

It is important to clarify what a data-set is and firstly it is that a data *corpus* refers to *all*

data collected for a particular research project, while data *set* refers to all the data from the corpus that is being used for a particular analysis (Braun and Clarke, 2006). The researcher extracted the themes and categories from the data set.

After the data corpus have been collected the researcher began the process of coding, which also entailed categorizing the data to reflect the various issues represented (Jones and Alony, 2011). This analysis was congruent with the proponents of grounded theory through deploying the three phases of coding by Strauss and Corbin (1990) which begins with open coding, axial coding and ending the coding process with selective coding. This process drove the analysis of data whilst prompting progressive theory development towards the copyright management consulting framework.

4.12.1 Phase 1: Open coding

Upon the completion of the ten interviews the transcription and coding process began. With both Glaser (1978) and Strauss and Corbin (1990), open coding is the initial step into the coding process. For Glaser (1978), open coding is the first part of substantive coding. This qualitative study adopts the Strauss and Corbin (1990) approach whereby open coding, is simply the first of the three phases.

It is important to begin this parallel task of collection and coding in a timely and synchronous manner to ensure a structured discovery of data, which more easily illuminates emerging themes, and potential areas of enquiry (Backman & Kyngäs, 1999). At this stage, the raw data from the transcripts obtained from the ten research participants were initially examined and coded through a process, which fractures the interview into discrete threads of datum. These data are collated and accrue to form categories of similar phenomena (Jones and Alony, 2011).

In this phase the analysis was conducted through identifying phenomena found in the text and naming the codes. In order to code each research theme, the abbreviations were created (see Appendix F) onto mind maps. The mind maps contained keywords and themes. These mind maps were put on paper where the researcher could see direct, indirect, and dual and reversal relationships of each notion to another and to the whole theme.

The data from the ten interviews was consolidated per the five research questions where it has been put verbatim so that each research theme contained ten

conversations. The similarities and the differences were found in each research question. The key words were identified which became the basis for finding the relationship internally and visualized through the mind maps.

The data were coded following the prescribed process of open coding. This involved systematically reading and considering every comment made by each participant in the copyright conversation in an effort to find similarities between concepts. Then, these concepts were coded according to their meaning and relevance to the study. The main interest was on what all the respondents had to say, and as a consequence the entire transcripts were coded (Strauss and Corbin, 1990).

Walker and Myrick (2006) mention that in this process categories have to be constructed. In open coding, analysts are immersed in the data through line-by-line analysis, coding the data in as many ways as possible and writing memos about the conceptual and theoretical ideas that emerge during the course of analysis.

Because of the complexity of the infringement and illegal copyright market data obtained, open coding is complete when the analyst begins to see the possibility of a theory that can embrace all of the data. Then, within the larger context of the data developed in open coding, it is appropriate to delimit one's coding efforts and begin selectively coding for a core variable (Walker and Myrick, 2006).

4.12.2 Constant comparison

Open coding utilizes a process of constant comparison (Glaser & Strauss, 1967). Constant comparison is a simultaneous and concurrent process of coding and analysis (Partington, 2000). This process of constant comparison was employed throughout the analysis process from initial open coding until the literature was integrated at the stage of theoretical development. In the case of the ten interviews, the data was compared during the process of coding within interviews and between interviews. The goal was firstly to compare selections of data to each other to gauge their similarities and dissimilarities. The next step was to compare them to existing categories to look for fit and whether the data were confirming or disconfirming the existing data.

Conceptualizing textual acts directed the process to further examine the transcripts for rhetorical practices that might be relevant and related to those acts. The related acts and their practices were grouped into categories. The purpose is to delineate and

extricate relationships on which the axis of the category is being focused (Strauss, 1987). In this process the codes were related in terms of the category they are most suitable to stand by fitting codes into a basic frame of generic relationships. The constant comparative method is designed to aid the analyst in generating a theory that is integrated, consistent, plausible and close to the data (Glaser & Strauss, 1967).

Whilst making the constant comparisons the researcher stringently wrote and kept memos in the opening coding process. Glaser refers to memoing as “the *core stage* in the process of generating theory, the bedrock of theory generation” (Glaser, 1978). Memos have four basic goals: they should develop ideas and codes; these ideas should develop freely, should be stored centrally, and should be sortable (Glaser, 1978).

According to Jones and Alony (2011) when recording memos, researchers should reflect on the data but should not limit their reflection to just the data. Everything in the treatment of this data formed an important part of reflection. The rule is to write down everything no matter how bizarre or nonsensical and to interrogate the researcher’s feelings and thoughts constantly (Jones and Alony, 2011). Martin and Turner (1986) describe this style of writing as a free-flowing writing style which excludes from any self-editing.

As data began to accumulate into categories, it was critical to reflect on what was emerging. This process of reflection was greatly enhanced through the use of memos. As the categories filled through constant comparison and constant reflection, the memos started to become rich and reflective. Memos are an important part of the grounded theory process. In the process of coding the ten interviews the memos enabled the task to become reflective very early in the data analysis.

In the illegal copyright market conversation the researcher questioned what the participants were telling through the interview to gain deeper clarity in the conversation. This meant that the analysis process had to allow for commenting on inconsistencies and discrepancies and noted when the participants were more, or less, passionate in their narratives.

At the same time, all of the memos, which had been written through processes of abstraction and reflection, along with the major categories that had emerged, were printed out. The researcher cut them up and scattered them on the floor. These were compared and assessed to ensure that the theoretical development was aligned with

the data and that there were no areas where the interpretation of categories could not easily be traced back to the data. This exercise of physically printing the memos and categories and arranging them on the floor was instrumental in ensuring that categories linked together meaningfully.

4.12.3 Phase 2: Axial coding

Axial coding is the second of Strauss and Corbin's (1990) three-phase method. During axial coding, the researcher works to understand categories in relationship to other categories and their sub-categories. The researcher paid attention to participants' use of language in terms of copyright was also a valuable analytic tool used during open and axial coding to develop categories. Particular attention was paid to the symbolic meanings and metaphors that participants used in their language to interpret and describe their experience of the copyright illegal market. This process was done on the fractured coded data with the intention of reconstructing it into categories and sub-categories.

The purpose of axial coding, according to Strauss and Corbin (1990), is to put the fractured data back together in new ways by making connections between a category and its sub-category. In placing the coded data together, a preliminary data filtration took place through the creation of laminations, where the key words and key phrases were identified and broken down further within the categories. Strauss and Corbin (1994) define axial coding as a way of specifying the dimensions of a category, relating categories to sub-categories, delineating relationships between them, and bringing the data back together into a coherent whole after having fractured them during the initial coding.

4.12.4 Phase 3: Selective coding

The third stage, selective coding, is reached when core categories become apparent. Selective coding, according to Strauss and Corbin (1998), is the process of integrating and refining the theory. To accomplish this final task, the analyst selects a core category and then relates all other categories to the core as well as to the other categories (Walker and Myrick, 2006).

In the copyright illegal market conversation, the core category had been abstracted from various sub-categories to form one core. That core in this study was the construct of

laminations. Which means that a lamination contained categories and sub-categories. All of the participants who had been interviewed to this point had expressed concerns, which related to this core concept and were grouped into this categories that formed the six laminations.

Through the concurrent process of data collection, analysis and writing the storyline, categories and sub-categories were developed, refined and interrelated by systematically integrating concepts through statements of relationship anchored on six laminations. The first step in integration was deciding on a core category, that is, a central concept.

The central concept was labeled as unfair copyright trade and responding to infringement. Recognizing and responding to infringement was a conceptualization process that fit the data and offered a logical interpretation of what the research was about. The central concept has analytic power in its ability to capture the data completely, under which all the other categories could be subsumed to form an explanatory whole (Strauss & Corbin, 1998).

It was relevant and appropriate to assume that the core category was empirically mature (Glaser & Strauss, 1967). To ensure that this was the case and that the categories were wide enough to encompass all relevant phenomena, the researcher linked the data to copyright literature for interpretation. Selective coding is similar to axial coding, in which the categories are developed in terms of their properties, dimensions, and relationships, except that the integration occurs at more abstract level of analysis (Strauss & Corbin, 1990b).

Labeling the core category under fair trade facilitated integration as it enabled the researcher to think in terms of process. Techniques used to facilitate the process of integrating findings included diagramming, memoing, and writing and rewriting the storyline. For instance, diagramming was a useful tool in considering the logic of relationships. Refining the theory involved reviewing the scheme for internal consistency and gaps in logic and validating the scheme against incoming data (Strauss & Corbin, 1998). This connecting is accomplished through the use of a coding paradigm, which focuses on three aspects of the phenomenon: the conditions or situations in which phenomenon occurs; the actions or interactions of the people in response to what is happening in the situations; and, the consequences or results of the action taken or

inaction (Strauss & Corbin, 1998).

Through coding the researcher managed to accumulate data into laminations, which contained categories, which were most relevant to the study. The selective coding meant that during coding only relevant data be picked out from the transcripts and only added these to the core category where they added value. As a result, many of the categories building the core category became saturated meaning the additional data collected from the ten interviews yielded no new insights and phenomena to the infringement conversation.

It is this degree of saturation in both breadth and depth, which led to the fair trade selection, which constitutes a novel finding in the data, is central to channeling all themes, sub-themes and categories into a relevant perspective of the study's main goal. An issue, which was repeatedly mentioned, emphasized, and related to by the participants was that of the lack of copyright knowledge and the necessity of its education with all interested parties. This was portrayed as being crucial for the success of the industry. Emerging sub-categories included the different factors, situations, and conditions impacting on the fair trade and the importance of it to be negotiated through copyright education.

4.13 Deploying laminations as a qualitative strategy

As a qualitative objective of this study, the deployment of laminations was instrumental to the analysis and consolidation of copyright conversations from the research participants, leading towards a congruent process. The lamination process extracted some wider meanings from Boden's metaphor of lamination, which argues for intent rather than casualness in the use of the metaphor and discusses its power (Richards, 2004). During the research phase, the relationship between local conversations and wider organizational perspectives were also explored and critiqued through an examination of organizational-wide conversational laminations of copyright stakeholder data (Boden, 1990).

Boden (1994) states that the lamination process is constructed from local conversations, "piece by piece, moment by moment, stage by stage and level by level", whereby decisions are discussed, debated, diffused and ultimately resolved. Within the context of organizational conversations, it should be clarified that Boden's deployment of the term 'lamination' should not be interpreted literally, because it is a borrowed concept

and, as such, is used metaphorically (Oswick & Richards, 2004).

The researcher deployed the lamination process, which was also related to copyright conversations to further explore alternative views in search of core areas of improvement based on the impact of the illegal copyright market. The Laminations integrated parts of local conversations and obscure observations and formed relatively coherent patterns through meta organizational examination (Boden 1990; Baumann, 2000).

The primary source of data in a qualitative study is the life-world of the individual being studied. In-depth interviews are the most common means of data collection. Furthermore, emerging themes were frequently validated with participants, because the meanings they attach to their lived experiences are central to a qualitative study (Ploeg, 2014).

The researcher drew from the strength of the laminations by using them as key instruments in connecting the relevant themes to form a strategic framework. Boden (1994) explains that the interpretation of the relationship between talk and structure is the most prominent, enduring attempt to link aspects of social interaction, like workplace talk and conversations, with institutional phenomena pertaining to organizational structures, practices, and meta-discourses.

The preceding was achieved through strategic conversations layered on top of each other to extract relevant laminations for the purpose of addressing the main goal of the study. Boden's work on the notion of lamination is set in a context that demonstrates it as an appropriate and understandable part of ethnomethodology (Richards, 2004). As such, a qualitative study has the power to extract key cultural and diverse voices linked to the main goal of the study.

The process of extracting laminations is based on keyword and key phrase identification; through this process, each statement of an interview participant is given a value which should thoroughly correspond with key words and key phrases used to answer questions. The dissimilarity of the lamination concept in the context of physical materials that are bonded together into the final laminated product become concrete entities, whereas conversations are relatively illusive and intangible phenomena that, perhaps, cannot be bound together (Oswick & Richards, 2004). The thematic analysis (TAs) (shown in figure 4.2), was specifically devised to avoid discarding any information

and to allow more cohesive conversations to emerge from the laminations.

As indicated earlier the thematic analysis was used as a method for identifying, analyzing, and reporting patterns (themes) within data. This process was critical at organizing and describing the data set in (rich) detail. The researcher used thematic analysis to interpret various aspects of the research topic contained within the five research questions. Thematic analysis is not joined to any pre-existing theoretical framework, and so it can be used within different theoretical frameworks although not all, and can be used to do different things within them (Antaki, Billig, Edwards, & Potter, 2002).

Ryan and Bernard (2000) locate thematic analysis coding as a process performed within analytic traditions as in phenomenology and works consistently well with grounded theory, rather than a specific approach in its own right. Through its theoretical freedom, thematic analysis provides a flexible and useful research tool, which can potentially provide a rich and detailed, yet complex account of data (Holloway & Todres, 2003). One of the benefits of thematic analysis in this study was its flexibility in treating the data. The thematic analysis involved searching across a data set of ten interviews to find repeated patterns of meaning within the copyright conversation in the text.

The process of coding is part of analysis (Miles & Huberman, 1994b), where the data is organized into meaningful groups (Tuckett, 2005). However, the coded data differs from the units of analysis, which are the themes derived from the thematic analysis, which are often broader. The themes, which are only developed in the next phase, forms that part where the interpretative analysis of the data occurs, and in relation to which arguments about the phenomenon being examined are made (Tuckett, 2005).

In the process of executing the thematic maps, the codes were combined according to meaning to form themes. The first part of forming these themes as indicated earlier (see Appendix F) was through making use of visual representations as in mind-maps to sort the different codes into themes. The thematic analysis process was deployed concurrent with the coding phase and the researcher managed to obtain candidate themes, and it involved the refinement of those themes. During this phase, it became evident that some candidate themes did not qualify as themes in that they did not contain enough data to support them and in other instances the data was too diverse.

In this process it also happens that other themes might need to be broken down into

separate themes (Patton, 1990). During the thematic analysis process the other themes collapsed into each other with separate themes forming one theme. The researcher safeguarded that the data within themes should cohere together meaningfully, while maintaining a clear and identifiable distinction between the themes. This phase involved two levels of reviewing and refining the themes with one involving reviewing at the level of the coded data extracts. The researcher had to read all the collated extracts for each theme, and consider whether they appear to form a coherent pattern.

It is important to ensure that if the candidate themes do not fit, need to consider whether the theme itself is problematic, or whether some of the data extracts within it simply do not fit in the theme, in which case, the approach would be to rework the theme by creating a new theme (Ryan and Bernard, 2000). The researcher coded additional data within themes that has been missed in earlier coding stages. The need for re-coding from the data set had to be expected, as coding is an ongoing organic process.

In so doing, it is possible that new potential themes can be identified and that further coding might need to be conducted as well (Tuckett, 2005). In the process of the thematic analysis the researcher managed to identify, what the different themes are, how they fit together, and the overall story they were telling about the data.

It is important not to try and get a theme to do too much, or to be too diverse and complex. In the process the collated data extracts for each theme was organized, into a coherent and internally consistent account, with accompanying narrative (Antaki et al., 2002). The researcher also paraphrased the content of the data extracts presented, and identified what was interesting about them and why. The relevant issues were also contained within the theme and restricted them in being too diverse and complex so as to have more thematic accuracy to fit into the relevant categories that eventually form the six laminations.

As part of the refinement, the themes were checked if they contained any sub-themes. Sub-themes are essentially themes-within-a-theme. They can be useful for giving structure to a particularly large and complex theme, and also for demonstrating the hierarchy of meaning within the data (Holloway & Todres, 2003).

Thematic analysis is widely used, but there is no clear agreement about what thematic analysis is and how it can be deployed (Attride-Stirling, 2001; Boyatzis, 1998; Tuckett, 2005). The researcher presented the themes graphically with values to indicate the

number of times a theme was repeated in the ten interviews which in essence was a “nose count” of issues (see chapter five section 5.2.1 to 5.7.7.) that worked in qualitative counting to underwrite the sequence of key word repetition (Boden, 1994). The main aim of the graphical representation was to inform the researcher about the popularity of a theme in comparison to the other themes. In essence the graphical representation is for comparative view purposes for the researcher to understand the influence of a theme and repartition in the explorative conversation.

Whilst these themes were graphically represented it proved the, thematic analysis to be a further enhancement with grounded theory to treat the data. Themes and patterns within data can be identified in one of two primary ways in thematic analysis: in an inductive or ‘bottom up’ way (Frith & Gleeson, 2004), or in a theoretical or deductive or ‘top down’ way (Boyatzis, 1998; Hayes, 1997). An inductive approach means the themes identified are strongly linked to the data themselves as such; this form of thematic analysis fits and enhances the grounded theory in the study (Patton, 1990).

In thematic interpretational analysis theory, a dynamic perspective toward motivation is taken instead of the standard static one and the main issues concern the change of behavior and the influence of behavior on underlying tendencies (Tuerlinckx, De Boeck, & Lens., 2000). Thematic analysis was used for identifying, analyzing, reporting patterns and themes within data. It minimally organized and described the data set in rich detail. It also interpreted various aspects of the research topic (Boyatzis, 1998).

The conversational bonding was executed through the thematic analysis process, which aimed to connect the dots without discarding any data. Thematic analysis involves the searching across a data set, be that a number of interviews or focus groups, or a range of texts in order to find repeated patterns of meaning (Antaki et al., 2002). The process of reaching this goal involved an examination of the concept of conversational lamination (Boden, 1994).

While all conversations require the use of context to make communication meaningful, one interactant always has the potential of depriving another of this communicative resource (Molotch & Boden, 1985). In achieving communication consistency within the data, the explorative conversation in this study adopted the lamination design, as outlined in figure 4.2.

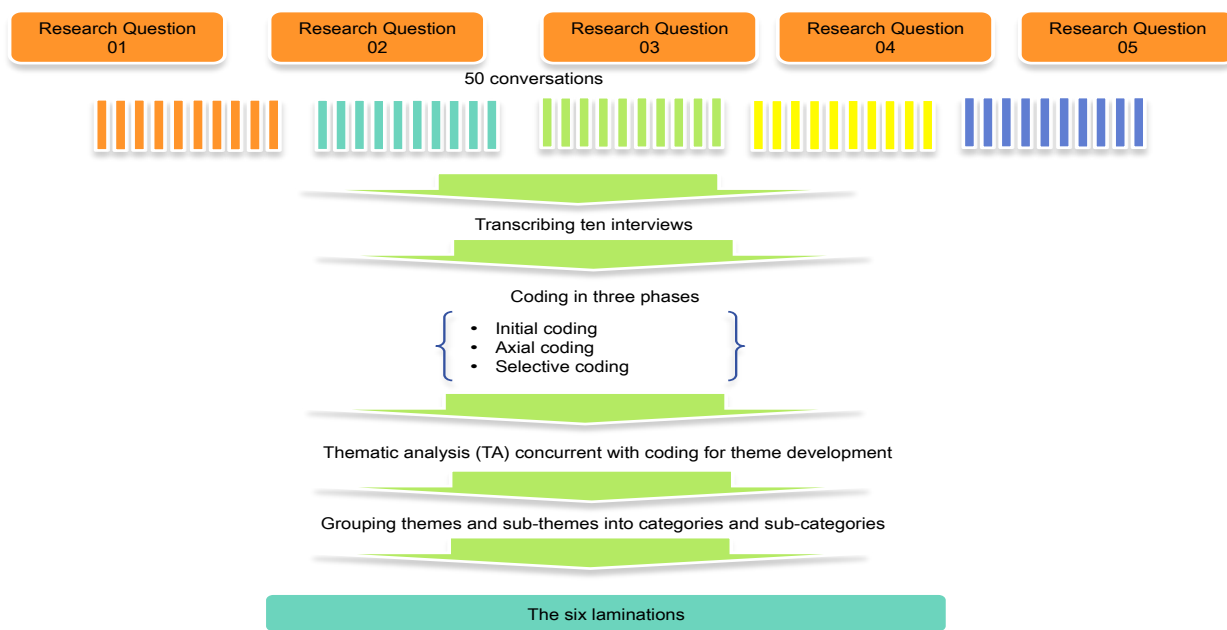


Fig. 4.2: The lamination design

Source: Own construction (2014)

This study contained five research questions (appendix D) and, as seen in figure 4.2, each question comprises ten conversations. A recursive process thematic analysis was conducted, based on the guidelines provided by Braun and Clarke (2006). An all-inclusive method of enquiry was adopted with prominence given to the interdependence of factors in the data (Barber, 2006). This interdependence was common in the themes that emerged from the conversations of the participants. Care was taken to ensure that themes interlink in that they emerge from a common copyright context.

The number of conversations in each research question was determined by the number of participating countries, namely ten, resulting in a total number of fifty conversations. Since an inductive research approach was used, the researcher employed a theoretical thematic analysis using the lamination process. In Boden's case the everyday notion of lamination, as a process of bonding layers of material together to create a unified and more vigorous object, is used to represent the more abstract process by which local conversations collectively constitute a whole organization (Oswick & Richards, 2004).

The macro proposition of the lamination process is that it allows micro conversations, aggregated to form univocal coherence (Boden, 1994). The civil and common law outlay, shown in figure 3.4, represent the macro framework which motivated the conversations with participants from within the micro context of their different

geographical demarcations. The distinct epistemological assumptions concerning the lamination process and its strategic ability were expounded by (Oswick & Richards, 2004:108). In that the critical aspect of laminations is gained through micro conversations; they create and can be aligned to broader bi-vocal competition of interests and positions.

According to Broekstra (1998) and Byrne (1998), micro-conversations stimulate multi-vocal unpredictability in which certain interactions have a disproportionate macro-organizational impact. It is argued by Oswick and Richards (2004:109) that Boden's adoption of the lamination metaphor brings with it potential errors of omission and commission when it is employed in analyzing every day and mundane organizational conversations.

In figure 4.2 the six laminations contained the key categories and sub-category with the themes from the thematic analysis. It is also that the researcher's mitigation data strategy against any errors and omissions which could be experienced through the lamination process made grounded theory and the thematic analysis process to be of greater support to maximize the accuracy of the six laminations in terms of what they represented. This interdependence of methodology maximized the empirical and richness of data by ensuring that key patterns of meaning are discovered from the data set which worked as a key construct for the six laminations. The six laminations formed resilient pillars for the theoretical formulation as a result of the accurate treatment of data from the grounded theory and thematic analysis with made it possible to establish accurate categories that represented the data.

4.14 Securing quality

As indicated in chapter one, both the qualitative and quantitative approaches are required to be scientifically valid and reliable. Gilmore and Carson (1996) and Hirschman (1986) explain that researchers demonstrate validity by gathering data from multiple sources in order to confirm their conclusions. According to Hakim (1987), the great strength of qualitative research lies in the validity of data obtained, because individuals are interviewed in sufficient detail for the results to be taken as true and correct, providing believable reports of their views and experiences. Patton (2002) explains that validity and reliability are two factors which any qualitative researcher

should be concerned about while designing a study, analyzing results and judging the quality of the study.

Reliability focuses on whether the process of the study is consistent and reasonably stable over time and across researchers and methods (Miles & Huberman, 1994c). In a quantitative study reliability is a concept which evaluates quality, while the quality concept in a qualitative study has the purpose of generating understanding (Golafshani, 2003). To ensure reliability in qualitative research, examination of trustworthiness is crucial (Bashir, Afzal, & Azeem, 2008) and should be exercised rigorously in the post qualitative phase.

In contrast to quantitative research, qualitative researchers use different terminology when discussing concepts such as reliability and validity. When determining the rigor of a qualitative study, the main concept that is considered is trustworthiness (Letts et al., 2007). In the inductive context others have argued that the concept of reliability offers only a weak contribution to the qualitative paradigm, and is therefore more valuable in quantitative studies. The inductive drive of this study, rather than attempting to prove something, was to engage in explorative conversations that were specifically concerned with the participants' lived experiences.

According to Sykes (1990), in the context of qualitative research, reliability is concerned with two questions; firstly, whether the findings would be the same if the research study is conducted by a different researcher, and secondly, whether a repetition of the study, using the same researcher and respondents, would produce the same results. Creswel (1998) explains that the problem with reliability in qualitative research is that differences between replicated studies using different researchers are to be expected. Nevertheless, controlling for reliability can still be relevant. In order to ensure reliability, the researcher followed the following process:

- The connection with each participant at the CISAC conference was established by describing the nature of the study. Participants were asked to provide their personal perceptions and feelings regarding the phenomenon.
- Since the study was explorative, each participant was advised that there are no incorrect answers to the interview questions and that the best answers would be the participants' honest feelings about the respective topics.

Patton (2002) explains that credibility in quantitative research depends on instrument construction whereas in qualitative research, “the researcher is the instrument”. Thus, it seems that from a quantitative researcher’s perspective, credibility refers to the validity and reliability of the research while the credibility of qualitative research is determined by the ability and effort of the researcher (Golafshani, 2003).

Credibility enables the researcher to convey the actual situations that have been investigated and, to an extent, the contexts that surround them (Shenton, 2004). The most crucial issue to the credibility of qualitative research is the ability of participants to recognize their experiences in the research findings (Krefting, 1991), as is also the case in the constructivist paradigm. The preceding requirement was critical to this study because of the diversity of the research participants in terms of their cultural originations and opinions on the common challenge of copyright infringement.

Golafshani (2003) explains that although reliability and validity are treated separately in quantitative studies, these terms are not viewed separately in qualitative research. Instead, terminology that encompasses both, such as credibility, transferability, and trustworthiness is used.

4.15 Ethical considerations

The researcher must anticipate any ethical issues that may occur during the qualitative research process (Creswell, 2002). Research encompasses collecting data from people, about people (Punch, 2005). Researchers need to protect their research participants by developing trust with them, promoting the integrity of the research, guarding against misconduct and any impropriety that might reflect on their organizations or institutions, and cope with new challenging problems (Creswell, 2002). Most importantly, the researcher has an obligation to respect the rights, needs, values, and desires of the participants.

In this study ,the researcher obtained ethical clearance via the research committee of the Potchefstroom Business School (PBS). The researcher furthermore used the CISAC platform to obtain agreement from the research participants to participate in voluntary interviews, and their permission to use the findings for research purposes. Participation in the research proved to provide the respondents with reciprocal gain in that the study’s objectives were in line with the collective and overall priorities of the copyright platforms they represented.

Confidentiality and anonymity were not necessarily sensitive issues in that, at the time, all the participants were active agents in managing the copyright infringement challenge and in addition, no sensitive issues were raised that could affect the wellbeing of the research participants.

The main request from the participants was to be presented with the research findings in order to implement the recommendations of the researcher. Electronic copies of audiotapes and transcripts were stored on the researcher's main computer as well as on external devices and are accessible to the relevant parties on request.

4.16 Conclusion

The researcher interpreted grounded theory to present unique characteristics of the philosophy, which is beneficial to theory building and based on the real lived experiences of the participants. Grounded theory and the lamination process proved to be a methodology particularly suited to this examination with vast interactional and opinions of the participants about the illegal copyright market and reaching more richer levels of conversation and data beyond the research question.

In this chapter, the approach to qualitative research was described by means of the research strategy that outlined the grounded theory and thematic analysis strategies. It was important to emphasize that the proposed grounded theory methodology was instrumental towards dissecting the data obtained from the research and worked coherently with the thematic analysis approach towards creating the six laminations. Another important factor in this chapter was the planning process to data collection, which meant that the research had to attend the global conferences so as to obtain the purposive sample from the CISAC platform.

CHAPTER 5: PRESENTATION OF QUALITATIVE DATA

“Creative thinking is not a talent; it is a skill that can be learnt. It empowers people by adding strength to their natural abilities which improves teamwork, productivity and where appropriate profits.” (Edward de Bono)

5.1 Introduction

In the previous chapter the research design was created in the context that most appropriately accommodated the nature of this study. In this chapter the research data are presented with key responses from the participants to support evidence within the qualitative research conversation. The emergent themes are packaged into Fifty-one categories which are presented in section 5.2.1 to 5.7.7. The categories are grouped and layered into six laminations according to Boden (1994).

In each graph the themes are graphically represented and listed on the Y axis and the repartition “count” on the X axis. The researcher presented the themes values to indicate the number of times a theme was repeated in the ten interviews which in essence was a “nose count” of issues in the qualitative conversation. This was purely to allow the researcher to visually understand the level of repartition and influence of the themes in relation to the other themes in order to refine them towards a theoretical outcome. The conversational statement are presented.

The five research questions in figure 1.3 served as discussion points that were used in the interviews with the ten research participants. The obtained data were grouped in relation to the five research questions and filtered to obtain commonalities amongst the ten participants. The researcher created lamination six from the data obtained from the five research questions. This data was in principle additional and was more appropriate to be presented as an independent lamination in that it was suggestive of CMO copyright data and technology transparency integration with external oversight.

Following the qualitative methodology, key words were extracted and data schematically represented. The results of the interviews were organized into six phases, which formed the basis for six laminations (represented in figure 5.46) to validate and improve the reliability of the study. In table 4.1 the process of creating qualitative laminations was outlined; fifty conversations were combined and filtered through the thematic analysis.

5.2 Lamination one: Data management and tracking as critical tools for copyright compliance and enforcement

This lamination emerged from exploring the views on causes and evidence of copyright infringement within any or all of the following domains of copyright stakeholdership:

5.2.1 Illegal actions affecting copyright progress

This section contains four themes, namely, fields of infringement, infringement due to a fragmentation in the industry, intellectual property theft and illegal download. These themes encompass the causes and evidence of infringement regarding both digital and physical piracy that emerged from the research participants.

Fields of infringement

The ‘fields of infringement’ theme contains twenty-two key words and concepts derived from the research participants and the researcher identified the commonalities amongst the various areas of copyright infringement.

The combined twenty-two key words and concepts that emerged from the responses are as follows: fields of infringement; film; musical works; literary works; eBooks; photography; brand related artwork; peer-to-peer sharing; sound recording; websites; university share music; free downloading; broadband; YouTube; broadcast piracy; illegal radio stations’ ‘frequency module’; peer-to-peer model is a small issue; foreign works; put a sound on top in one of the local languages; create own dialogue; unique infringement to Malawi; peer-to-peer in the USA and UK.

- *“So concerning musical works, there is the very first, especially, when **Internet** began to be used by American students back in the 90s and that **musical works** started to be shared to an extent that could be called piracy. I mean **peer-to-peer** and other models of exchange. The same could be said about **sound recordings** separate from regular CD publishing, it came later with **YouTube** and other things concerning, also copyright infringement of **cinematographic field**.”*
- *“Let’s say about ten years later from the beginning of Internet; the **broadband** came later of course, where you can **download** cinematographic films.”*
- *“Historically, **literary works** are in danger, because literary works are available in the form of **eBooks** and of course a copy of an eBook is exactly the same as the original,*

and while in former times you had to photocopy and Xerox a book, and it was not the same as your original, it was not bound.”

- *“I think most times we look at piracy as the **illegal reproduction** of physical products, piracy has gone beyond that, there is physical piracy, there is **broadcast piracy**, there is **online piracy** so when you look at piracy from those angles.”*
- *“I worked at those FM stations, they call them **frequency modules**, but then true sense of it, there are no frequency modules, there are **free music stations**, that’s why it’s called FM, so the point is a lot of them before then, they didn’t think it was right to license for the works they use.”*
- *“I believe that the **peer-to-peer** exchange is by the way not so popular anymore, basically, it’s not the worst copyright infringement, because people who exchange the files are not making money from it.”*
- *“People at home they will take a film they don’t understand the language, but they will put **the sound on top of it in the local language.**”*
- *“**They create their own dialogue – this is a unique infringement to Malawi.**”*
- *“**Peer-to-peer** infringement is mainly **in the USA and UK**, but Malawi is rural place with 70% rural and the 30% is in the city where the receptive audience is and they do appreciate that.”*

Infringement due to fragmentation in the industry

The ‘infringement due to fragmentation in the industry’ issue contains twenty key words and concepts derived from the research participants and the researcher identified the commonalities amongst the various areas that cause industry fragmentation.

The combined twenty key words and concepts are as follows: no industry per se; no representation of the Big Five international labels; no agents per country; lack of commitment; no big players – producers; demand is not satisfied; small producers release small amounts; no timeous supply; IP owner does not collaborate with others to release the music; no clear distribution channel for artist to get to the market; parallel market; anybody can bring infringed goods; fragmentation; impatience of consumer; role of the producer is not defined; can reproduce it without a license off his computer; takes advantage; film industry is small, but has the same copyright infringement (CI) and channels.

- *“One of the biggest problems we have is that we **don’t have an industry per se**, we don’t have a big company that produce enough to satisfy the market, and we do **not have the Big Five international labels and no agents per country.**”*
- *“We **do not have big players – producers and demand is not satisfied as small producers can only release small amounts.**”*
- *“**There is a lack of commitment** from them (producers) and there is **no timeous supply.**”*
- ***Intellectual property owners do not collaborate with others to release the music.**”*
- *“The most important thing came out on the **fragmentation** is that you are mentioning and also speed to market, as products are not coming fast enough into the market.”*
- *“**There are no clear distribution channel for the artist to get to the market.**”*
- *“**The parallel market** is very strong in Namibia and **anybody can bring infringed goods** into the country.”*
- *“If the product doesn’t reach in time **the consumer** becomes very **impatient** and then opt for the infringed product.”*
- *“**The role of the producer is not defined; he can produce the material without a license, off his computer. He clearly takes advantage of the artist.**”*
- *“**The film industry in Malawi is small, but the copyright infringement is getting through the same channels.**”*
- The issue of fragmentation in the industry is one of the issues that prompt copyright infringement because the **absence of the international labels** in some African countries including Malawi **allows the pirates to control the illegal market** without any oversight and enforcement **interest from the content owner and government.**

Intellectual property theft

The ‘intellectual property theft’ issue contains six key words and concepts derived from the research participants and the researcher identified the commonalities amongst the various areas that are lacking in the industry, resulting in intellectual theft.

The six combined key words and concepts are as follows: dialogue with creators – in Italy consumer organizations have dialogue with creators; providers are making money for themselves; do not pay to the authors; theft; theft of money through advertising or direct payment; theft of good faith of the consumer.

- “This is the duty of **the creators to have dialogue** with the consumer associations where we have to sit with them, listen to them. **In Italy consumer organizations have dialogue with creators.**”
- “Reason one is that they (website developers) **don’t give the money to the copyright owners.**”
- “**They kept the money to themselves**, but their users believe it was absolutely legal.”
- “Providers of content who make money for themselves and do not pay the copyright owners, because in this case **this theft** is more clear than **the theft of money through advertisement or direct payment** and is **also theft of good faith of the consumer.**”

Illegal download

The ‘illegal download’ issue contains three key words and concepts derived from the research participants and the researcher identified the commonalities amongst the drivers of illegal downloads.

The combined three key words and concepts are as follows: download; buy for less than the original; authors are not remunerated.

- “The main infringement is when people **download** or **buy for less** than the analogue copy of copyright protected material and therefore they deprive **the copyright owners of their fair remuneration.**”

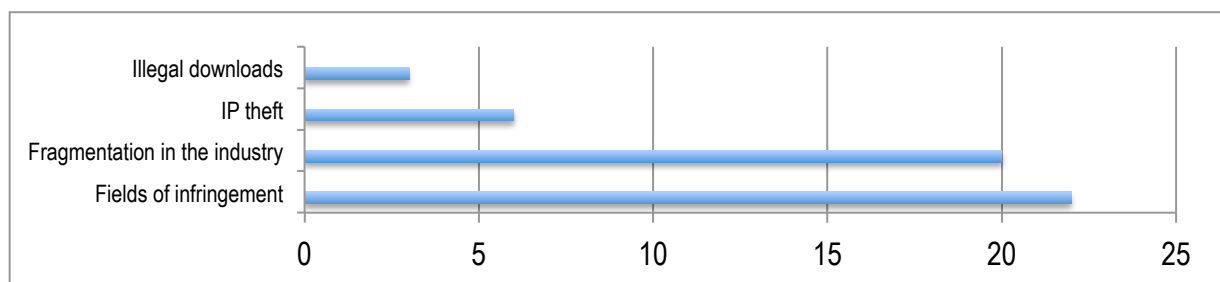


Fig. 5.1: Illegal actions affecting copyright progress

5.3 Financial mismanagement through database inefficiencies

This section contains five themes, namely, misallocation of funds through non-unified identifiers and databases, licensing themes, data filtering, current money abuse by CMO and collection and distribution. They are specific to the database fragmentation

within collecting societies, broadcasters, record companies and film houses. The data that emerged out of these discussions present concerns on the financial abuse that results from these non-unified systems.

Misallocation of funds through non-unified identifiers and databases

The 'misallocation of funds through non-unified identifiers and databases' theme contains seventeen key words and concepts that are derived from the research participants. The researcher identified the commonalities amongst the various areas of database inconsistencies.

The seventeen key words and concepts are as follows: database unification; different databases do not speak to each other; primary databases are ISWC, ISAN and ISRC; ISWC has less than 50% of works allocated; GRD global representative database automatically pays to the performer; GRD and ISWC are not talking to each other; misallocation of funds; international standard database is not aligned; Hollywood and BBC have its own numbering; majors have their own identifier; ISAN is compulsory in France and Spain; broadcasters use it automatically, paid for re-transmission on audio-visual works; collecting societies have its own codes; barcodes/ labeling systems/ identifiers for music works, video and sound recordings – three different numbers.

- *“One of the elements of it was that **ISWC** numbers would also **link to ISAN numbers**, so part of the WIPO project was that we rationalize it as a **recording database** at the same time **and it could speak to each other.**”*
- *“They picked the project the ICE and GRD project and it can’t speak to the ISAN; so the **GRD works codes**, the Global Repertoire Database does not link to recorders.”*
- *“**GRD global representative database automatically pays to the performer.**”*
- *“**Primary databases are ISWC, ISRC and ISAN, and ISWC database has less than 50% of works allocated.**”*
- ***International standard databases are not aligned.**”*
- *“Instead of using the global identity numbers, **Hollywood and BBC decided to have their own systems.**”*
- *“Majors have their own codes.”*
- *“Look, in **France and Spain** they are numbering every single film, and a broadcaster is automatically using it; because you get paid per re-transmission on audio-visual works.”*

- *“Collecting societies have their own codes.”*
- *“Barcodes, labeling systems and identifiers for music works, video and sound recordings are three different numbers.”*
- *“You have 95% of the world using ISWC code and the four major publishers have separate codes, and this is a recipe for **misallocation of funds**.”*

Licensing issues

Licensing issues theme contain eleven key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various areas of licensing practices in collective management.

The combined eleven key words and concepts are as follows: direct licenses from majors; to improve system; get higher rate; get better matching; CMO infringement; direct licensing gets different pricing; affecting public and public policy; publisher can refuse to give a direct license; affecting copyright policy; it is an outcome of the industry's inefficiency and greed.

- *“There are music services which are getting **direct licensing from majors**. Direct licensing gives **higher rates** to artists and **better matching**.”*
- *“Actually, **it's differential pricing, it's even less money**.”*
- *“The one who has a direct license get a different price for the same song that actually runs counter – **public and public policy** and also **publishers can refuse to give a license**, and that runs counter to a copyright policy.”*
- *“Direct licensing is an **outcome of the industry inefficiency and greed referring to the collecting society and infringement**.”*

Data filtering

The 'data-filtering' theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities amongst the challenges of CMOs in managing data filtering.

The combined six key words and concepts are as follows: data filtering; one can filter audience; who is listening; what; how long; CMO has no capacity to work it out and process it.

- *“The other problem is a **data filtering** problem, as it is perfectly possible to work out who is listening to what and for how long; and the **collecting societies do not have the data capacity to process that, nor are the majors.**”*

Current money abuse by CMOs

The ‘current money abuse by CMOs’ theme contains thirteen key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various areas relating to money abuse.

The combined thirteen key words and concepts are as follows: slow response on the CI; do CI; UK-PRS takes a big portion of money; infringing performance rights; largest single area of piracy; infringement of the IP by manipulation of existing rights; substantial abuse of money split by CMO historical legacy; massive extraction of capital via CMO; money misallocation; laundering; venture capitalists invest in the CMO; CMO runs as a company paying shareholders first.

- *“There is a **substantial abuse of money** what is called **Split** between collecting societies **historically** represented in Africa, PRS and SASEM.”*
- *“Well, I think that there is a **massive extraction of capital** exercise going on via the collecting societies.”*
- *“This disconnect between these systems of **funds misallocation** would it define itself as something to do with **laundering**.”*
- *“I start to tell them about **venture capitalist investment** in SESTEC (the third collecting society in America), and then I say that they have sold half of their shares to Golden Sachs.”*
- *“**The collecting societies**’ first obligation to their members, but not to the shareholders, as now **collecting societies are run as a company**, and the company’s first obligation is to pay to their shareholders.”*

Collection and distribution

The ‘collection and distribution’ theme contains eleven key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various notions of collective management.

The combined eleven key words and concepts are as follows: need for more information on newest technologies; how to manage them locally; educating publishers on how to collect money; use law enforcement; CMO has knowledge on collection; distribute to publishers; distribute to authors; CMO needs to control the work loaded online via notifications; how much is going to be collected and distributed to the author; tariffs harmonization; authors pay some portion of royalties to the management.

- *“We are consulting on more information and **trying to get it on the technological world and more orientation on how to manage or cope with it locally, in Costa Roca.**”*
- *“**Collecting societies have knowledge on how to collect royalties and distribute it to publishers, distribute it to the authors.**”*
- *“**Collecting societies need to control the work loaded online via the online notifications and in this way it will be known how much is going to be collected and distributed to the author.**”*
- *“There are commercial, public and then community radio stations, but when you look at the content they’re using is music and it is the same, but when it comes to compensation, the **tariffs** are not the same, they need **harmonization.**”*
- *“Because we have the knowledge on how to collect, **authors pay some portion of their royalties to us (management) to control the collection.**”*

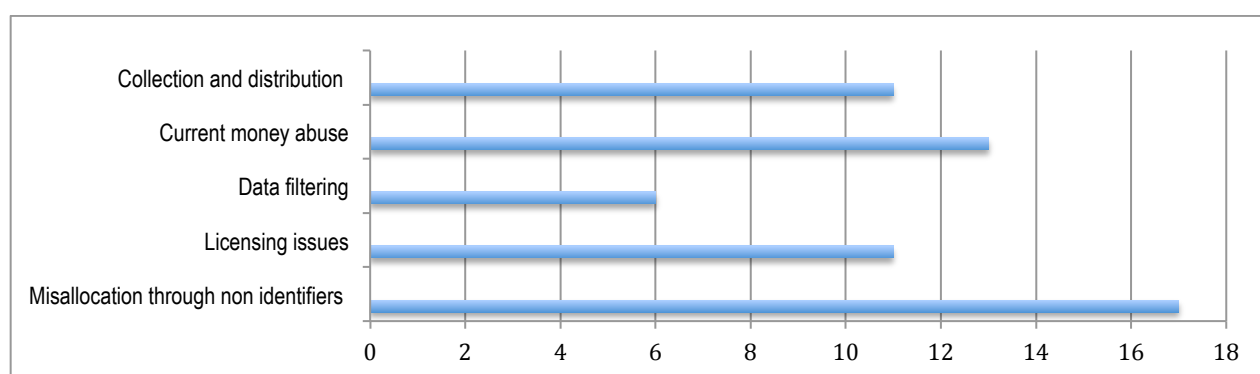


Fig. 5.2: Financial mismanagement through database inefficiencies

5.3.1 Limited intellectual property knowledge impact on revenues

This section contains three themes, namely, losses via lack of understanding of copyright law, economic model on compensation and domicilium of an artist. These issues emerged from the research participants, which highlighted the malpractices of content users and the impact of weak copyright knowledge on the industry.

Losses via lack of understanding of copyright law

The theme on ‘losses via lack of understanding of copyright law’ contains thirteen key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various areas that cause revenue losses to the copyright proprietors due to a lack of compliance.

The combined thirteen key words and concepts are as follows: lack of understanding of a copyright owner’s side; sixty per cent of all ringtones do not have mechanical license; money has to go to the label who recorded music, not the telecoms; lack of understanding of a Copyright Act; retailer decides to hold the money of one’s product; pay to somebody else; value proposition did not go to the rights owner; they are not compliant with King III, corporate governance principles; JSE listing and new companies act; shareholders are at risk; infringement; one gets R5,00 for a three months license; no revenue for a year.

- *“Vodacom and MTN are **not compliant with King III at the moment, they are not compliant with the JSE listings, and with new companies act**; in truth, they each put **their shareholders at risk**.”*
- *“You get your **R5,00 for a three months license**, and because there is no more downloads, but only an accounting debit for the new license, **no revenue flows again**.”*
- *“**Sixty per cent of ringtones** which you buy on MTN and Vodacom **have no mechanical license in place**, because there is a **lack of understanding of a copyright owner’s side as the money has to go to the record label who recorded the music, not to the telecoms**; so retailers like MTN and Vodacom decides to hold the money of the product and pay to somebody else instead of the copyright holder – **infringement**.”*
- *“It is the outcome of technology, the **lack of understanding of a Copyright Act** means that the **value proposition of the IP has not gone to the rights owner**.”*

Economic model on compensation

The ‘economic model on compensation’ theme contains eight key words and concepts that are derived from the research participants. The researcher identified the

commonalities amongst the various areas of weak transparency of royalty distribution to music creators.

The combined eight key words and concepts are as follows: music creator no fair compensation; Internet streaming rate; no fair compensation to the creator; record label; no fair compensation to the creator; music business; very little compensation to the creator; getting revenues for themselves.

- *“The challenge we have as music creators that they pay us so little money, **we are not fairly compensated**, and that money is almost indistinguishable from piracy for returns to a music creator.”*
- *“I just got a statement out of Sportify, for example, and my **streaming rate** was 0.00002 cents.”*
- *“**The music creators are not compensated for their work fairly; you are a record label and not paying me too.**”*
- *“**Music business** is not transparent, signing off revenues for their own purposes and own profits, **getting revenues for themselves.**”*

Domicilium of an artist

The ‘domicilium of an artist’ theme contains four key words and concepts derived from the research participants and the researcher identified the commonalities amongst the various areas of the value of an artist domicilium in respect of the revenues earned, and where and how the royalties are accounted for in the home country of the artist.

Whilst citizenship is country specific and one simply transfer one’s citizenship, domicilium can be transferred and even purpose created. Any African country citizen who was also a songwriter and who visited the PRS in London, UK, would be offered membership at the PRS and if taken, such allow the PRS from then forth to license and collect that African songwriter’s performing right royalties on a worldwide basis, without the country that the writer was a citizen of, ever knowing.

The combined four key words and concepts are as follows: view on a domicilium of the artist; copyright is not automatic; issues of subsistence are to be from a qualified country.

- ***“View on a domicile of the artist is that copyright is not automatic, it has to subsist; one of the issues of subsistence is to be from a qualified country.”***

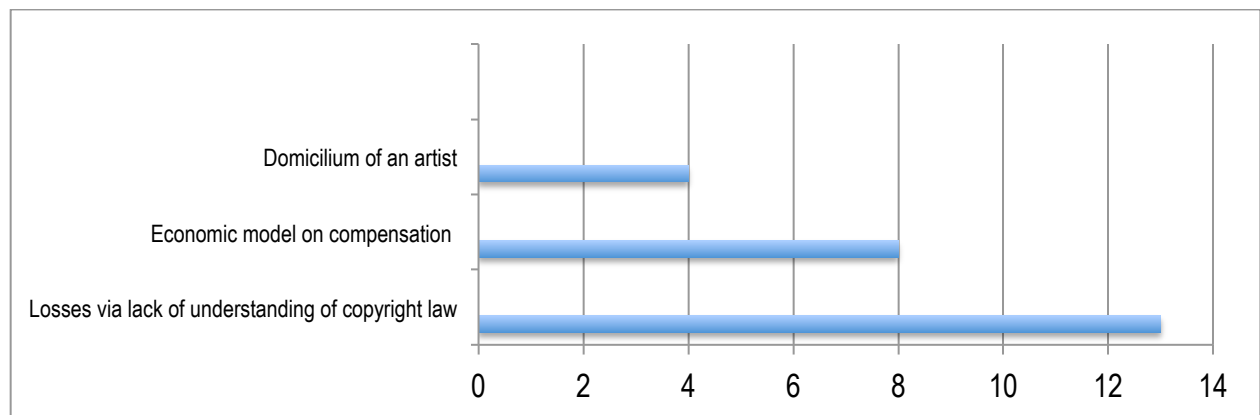


Fig. 5.3: Limited intellectual property knowledge impact on revenues

5.3.2 Copyright limitations on broadcaster revenue generation

This section contains eight themes, namely, discrimination model across broadcasters, radio station infringement, equal rights, Internet, violation of mechanical rights, non-licensed broadcasters, tariff adjustment and FM stations with illegal content. All these were consolidated through discussions with the research participants relating to broadcasters in respect of business models that affect the content owner.

Discrimination model across broadcasters

The ‘discrimination model across broadcasters’ theme contains thirteen key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various areas of imbalance of tariff distribution between commercial and community radio stations.

The combined thirteen key words and concepts are as follows: different tariffs by different broadcasters; community radio cannot generate extra money collection; license, size of the audience, advert places; size of the audience at public and commercial broadcaster is the same; gives losses; religious broadcasters have the same issues; do not earn extra income via restrictions on ads; music volume is the same; tariffs are low; limits earnings; integration of the audience size; discrimination model; restricted to increase the audience size.

- *“These three pillars are community radio station, commercial and then public broadcaster **have different tariffs** and the other one **is restricted to actually increase its audience base.**”*
- *“**The community radio** is only paying little money because according their license they are **not allowed to generate extra money collection.**”*
- *“It is obviously gives loss, because a number of people, the size of the audience at the public and commercial stations is the same; religious broadcasters have the same issue, these stations cannot advertise things like cigarette and alcohol and cannot earn extra income via restrictions on ads. **Music volume** is the same, but tariffs are lower for the copyright owner. There is a **limit on earnings** for a copyright owner at these stations – it is a **discrimination model** of some sort. It is also a legislative issue as these stations have a **restriction to increase the audience size.**”*

Radio station infringement

The ‘radio station infringement theme’ contains five key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various areas that lead to mechanical and reproductive rights infringement.

The five key words and concepts are as follows: radio stations go digital; no more actual products; loading music on the radio station system; affecting the mechanical rights; reproductive rights.

- *“All the **radio stations** now they are **going digital** and then they do not have **the actual product** or they are **loading the music into their own system** which is **affecting mechanical rights and reproductive rights.**”*

Equal rights

The ‘equal rights theme’ contains four key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various areas of users’ opinions on access to content.

The combined four key words and concepts are as follows: public vs. private airwaves; equal treatment; broadcasting code of Nigeria; constitutional right.

- *“The rule says that you must give everyone **equal treatment**, as a part of **the broadcast code of Nigeria**.”*
- *“One thing people forget a lot of times is the **airwaves**, whether it is **public or private**, belongs to all of us; I think because people don’t understand this, first and foremost it is a **constitutional right**, like a freedom of speech.”*

Internet

The ‘Internet’ theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various areas of content demand on the Internet.

The combined three key words and concepts are as follows: Internet; quick demand driven; finding content.

- *“The **Internet** is driven by the **quick demand driven** and to **finding any content** is easy.”*

Violation of mechanical rights

The ‘violation of mechanical rights’ theme contains two key words and concepts derived from the research participants. The researcher identified the commonalities of the copyright violation of copying music from the radio.

The combined two key words and concepts are as follows: rip off the music from radio; mechanical rights are violated.

- *“To rip off music from the radio is a violation of the mechanical rights of the content owner.”*

Non-licensed broadcasters

The theme of ‘non-licensed broadcasters’ contains three key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various areas of copyright infringement through unlicensed broadcasters.

The combined three key words and concepts are as follows: lots of broadcasters are not licensed; to license content to a broadcaster; artist has to demand payment from a broadcaster.

- *“Lots of broadcasters in Nigeria are **not licensed**, the **artist has to demand payment from a broadcaster**, but the station has to have a license.”*
- *“**To license a content to a broadcaster** will guarantee a pay for an artist, as the artist is not protected.”*

Tariffs adjustment

The ‘tariffs adjustment’ theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities of the difference in tariffs between radio and television.

The combined three key words and concepts are as follows: getting to radio-prestige; different tariffs from TV, radio; royalty contribution is different.

- *“For an artist **getting to the radio is a prestige** already, even if the **tariffs from TV and radio are different** and it affects the **royalty contribution**, so it is different.”*

FM stations with illegal content Nigeria

This issue is only presented as a single statement.

- *“In Nigeria there are a lot of stations with illegal content.”*

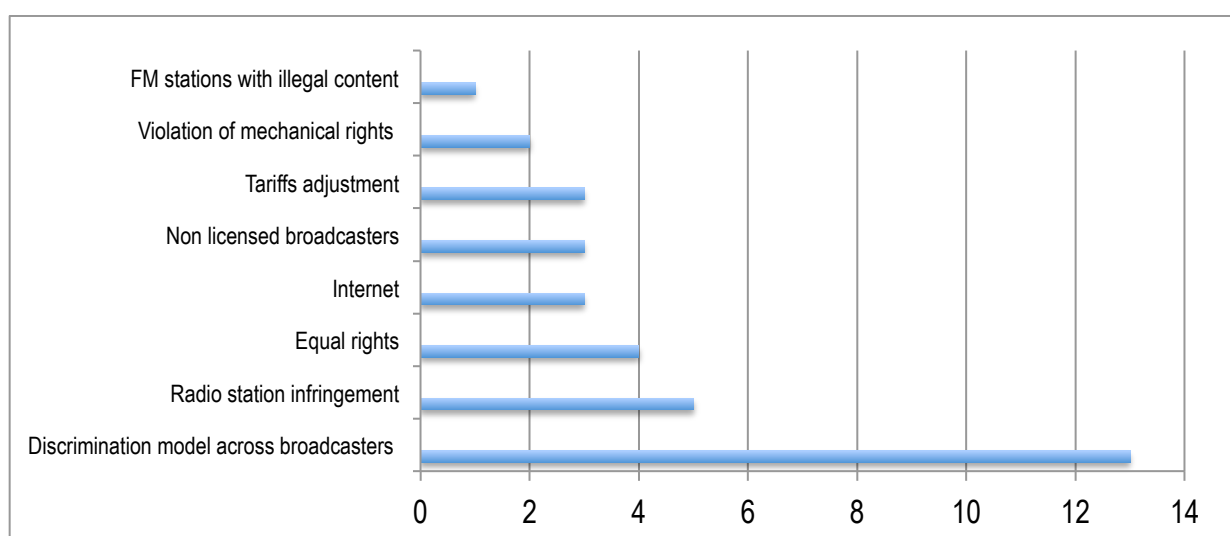


Fig. 5.4: Copyright limitations on broadcaster revenue generation

5.3.3 The ethical imperative of intellectual property

This section contains five themes, namely, fair trade platform, fair trade goal, parties for the fair trade platform, remuneration and fair trade principles used in agriculture. These issues emerged from the research participants regarding the importance of the fair trade of copyright to all users of content.

Fair trade platform

The 'fair-trade platform' theme contains ten key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various notions of fair trade.

The combined ten key words and concepts are as follows: producers, copyright owners and consumers have shared interests; fair trade music principles to help sustain the music creator; it is a system which involves all parties; ISP; digital stores; iTunes; streaming services; music publishers; performing rights societies; mechanical rights societies.

- *“Fair trade platform is not only informs consumers through fair trade music, but also inform music creators, and you also have to have a dialogue on what is a fair trade with **Internet streaming services, with digital stores, like iTunes, you got Skype of the world, and iTunes of the world, you’ve got the music publishers, the performing rights societies, mechanical rights societies that they would all have to conform to the fair trade transparent criteria.**”*
- *“Fair trade principles **help to sustain the music creator**, as it is a system which **involves all parties, producers, copyright owners, and consumers as they all have shared interest.**”*

Fair trade goal

The 'fair trade goal' theme contains eight key words and concepts derived from the research participants. The researcher identified the goals of fair trade.

The combined eight key words and concepts are as follows: education; fair consumption; transparency; fair compensation; recapturing of copyright; economic impact; independent music creator organizations; freedom of speech.

- *“The **fair trade goal** is transparency, fair consumption, and recapture of copyright, economic impact and freedom of speech.”*
- *“Education on this topic needs to be done by the international platforms and independent music creator organizations.”*

Parties for the fair trade platform

The ‘parties for the fair trade platform’ theme contains ten key words and concepts derived from the research participants. The researcher identified the existing and planned actions of fair trade.

The combined ten key words and concepts are as follows: fair trade music project; fair trade music principles to help sustain the music creator; a system which involves all parties; ISP; digital stores; iTunes; streaming services; music publishers; performing rights societies; mechanical rights societies.

- *“We were looking at doing a pilot **project on fair trade music**, and you can look at the performing rights society as one pilot project for having no control, but monetising the activities.”*
- *“Fair trade platform is not only informs consumers through fair trade music, but also inform music creators, and you also have to have a dialogue on what is a fair trade with **Internet streaming services, with digital stores, like iTunes, you got Skype of the world, and iTunes of the world, you’ve got the music publishers, the performing rights societies, mechanical rights societies that they would all have to conform to the fair trade transparent criteria.**”*

Remuneration

The ‘remuneration’ theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities of the challenges artists experience in respect of payment.

The combined three key words and concepts are as follows: do not pay artist; writer; creator.

- *“They do not pay to the artist, to the writer and to the creator.”*

Fair trade principles used in agriculture

The fair trade principle is a single statement derived from the research.

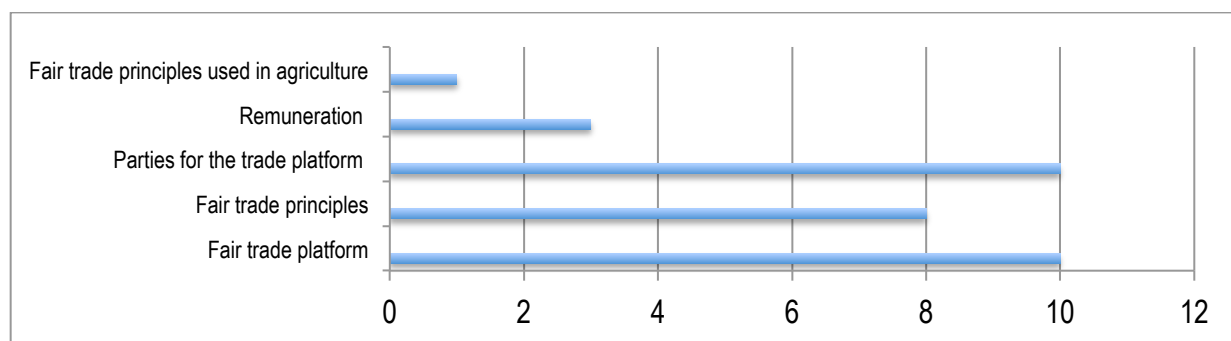


Fig. 5.5: The ethical imperative of copyright as intellectual property

5.3.4 The dialogue imperative to the intellectual property spectrum

This section contains seven theme, namely, monetising on behavior of consumers, monetising on customers' activities, dialogue with consumers, collaborate with users, stakeholders in the creative world, dialogue between consumers, providers and authors, knowledge of copyright owners and users. These issues are anchored in the necessity of dialogue in order to efficiently monetize on copyright.

Monetising on behavior of consumers

The 'monetising on behavior of consumers' theme contains sixteen key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various areas that can generate revenue for copyright holders.

The combined sixteen key words and concepts are as follows: intellectual property holders try to change consumer behavior in ways that are acceptable when using the Internet; consumers cannot be controlled on the Internet; stakeholders need to learn how to monetize on its activities; music industry has easy access to customers; control over customers is lost; rise of social media; one link distributes the music to millions of people; push brands to consumer; link the brand to the performance; to monetize on social media; ownership and customer relationship; they will buy your music if you own them; viral media; if an author would not give a free digital copy he cannot sell a 'hard' copy.

- *“Intellectual property holders try to change consumer behavior in ways that are “ok” to use Internet.”*
- *“Consumer cannot be controlled on the Internet that is why stakeholders need to learn how to monetize on its activities.”*
- *“Music industry has an easy access to customers, but control over consumers is lost.”*
- *“What people recognize is the technology, they have seen the play, people have moved to push the brand, and **link the brand to the performance** and connection, and they **started to monetize on social media. The social media is on a rise, one link distributes the music to millions of people.**”*
- *“It is important to recognize ownership and customer relationship: they will buy your music, if you own them.”*
- *“How is your **social media** doing, how is your **viral** going, are people interested in you, people are not interested in your music anymore, but what clothes you wear and so on.”*
- *“If an author would not give a free digital copy he cannot sell a ‘hard’ copy.”*

Monetising on customers’ activities

The theme on ‘monetising on customers’ activities’ contains two key words and concepts derived from the research participants and the researcher identified the Internet as a key area of interest to generate revenues.

The combined two key words and concepts are as follows: monetize activities of customers; need to find successful model.

- *“We need to find a successful model to monetize activities of consumers on the Internet.”*

Dialogue with consumers

The theme on ‘dialogue with consumers’ contains ten key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various areas pertaining to dialogue as a valuable currency.

The combined ten key words and concepts are as follows: to sit around the table with consumer representatives; representatives of industry and creators; ‘fair’ for all; consumer association needs to sit with creators; listen to concerns, how infringement

can be stopped without infringing consumers' rights; dialogue; one side has to give up something; creators have to be more flexible and friendly; constitutional rights of consumers have to be observed.

- *“We need to sit around the table – sit with **the representatives of the consumers, the representatives of the industry and representatives of creators** and see what can be done, what **everybody considers fair.**”*
- *“Consumers association needs to sit with creators and listen to their concerns on how infringement can be stopped without infringing consumers' rights. We need to create a dialogue.”*
- *“In the dialogue, one side has to give up something, and creators have to be more flexible and friendly. Constitutional rights of consumers have to be observed.”*

Collaborate with users; Stakeholders in creative world); Dialogue consumers, providers and authors; Knowledge of copyright owners and users

These four themes were consolidated are promoting collaboration within the copyright stakeholdership with dialogue as a key driver. They are a set of statements from the responses which are treated as both key words and concepts.

- *“Knowledge on a copyright has to be increased with the copyright owners and users. Stakeholders in a creative world need to collaborate with users. Dialogue between consumers, ISP providers and authors are necessary to identify what is fair.”*

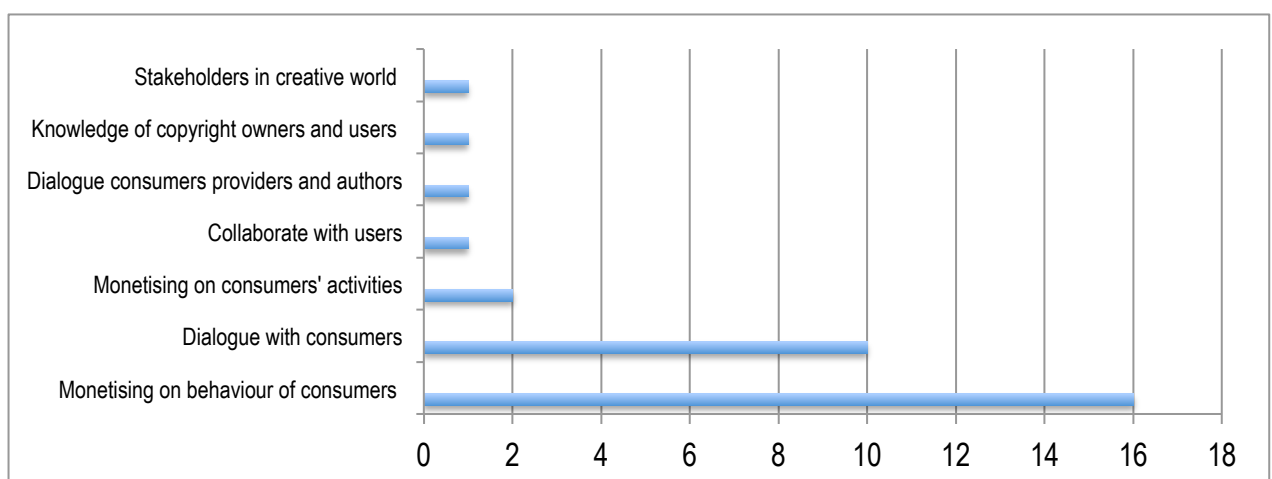


Fig. 5.6: The dialogue imperative to the copyright spectrum

5.3.5 The corporate memory of copyright in the industry

This section contains seven themes, namely, situation in 90s, license structure, illegal way of accessing the music, industry state, infringement on tax, pharmaceutical companies put the IP in the same box and tech start-ups got money from the government for businesses like Google, Apple and Yahoo. These issues represent the history of the music industry, which led to the current position in respect of its weak response to copyright infringement.

Situation in 90s

The theme regarding the 'situation in the 90s' in the music business contains fifteen key words and concepts derived from the research participants. The researcher identified the commonalities amongst the various aspects of the music industry culture of the 90s.

The combined fifteen key words and concepts are as follows: four major publishers; had vertically integrated system; owned studios; production; pressing plants; artist; distribution chain; executives are close to retirement age; the Internet was too complicated for them; majors were very slow in response to the Internet and emerging business models; they did not understand the Internet; did not adopt online shops on time; threat to the vertical model.

- *"In the 90s, the music industry was very busy fighting itself, four major publishers had different licensing structure, the senior executives were approaching retirement age, and the Internet was too difficult and too complicated for them. They did not understand the Internet and did not adopt online shops on time; they could have had www.warner.com, which they got only now."*
- *"Majors were very slow in response on Internet and emerging business model."*
- *"The major labels had very well vertically integrated system with own studios, production and pressing plants. They owned the distribution chain and artists."*

License structure

The 'license structure' theme contains two key words and concepts derived from the research participants. The researcher identified the commonalities of the notions of mechanical rights management practices by publishers in the 90s.

The combined two key words and concepts are as follows: publishers had different licensing structures; transportation fee on mechanical rights (before).

- *“Publishers had different licensing structures, such as the transportation fee for mechanical rights in the 90s.”*

Illegal way of accessing the music

The theme regarding the ‘illegal way of accessing the music’ contains two key words and concepts derived from the research participants. The researcher identified the commonalities in the weaknesses of the music industry in protecting content.

The combined two keywords and concepts are as follows: there was no legitimate way to access music; piracy filled the gap.

- *“There was no legitimate way to access music and the piracy filled up the gap.”*

Industry state

The ‘industry state’ theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities of poor competition in the music industry before the year 2000.

The combined four key words and concepts are as follows: no real competition; prices of CDs are high; compilations were only introduced after the year 2000; peer-to-peer via university websites.

- *“There was no real competition in the industry, prices on the CD were high and CD compilations were created only after the year 2000.”*
- *“At the beginning of 90s the internet was not wide spread and was not available at home, so it was available in the universities and this how university students started to share files via the university websites; peer-to-peer model was created.”*

Infringement on tax

The theme on ‘infringement on tax’ contains four key words and concepts derived from the research participants. The researcher identified the commonalities of tax matters that emerged from the conversations.

The combined four key words and concepts are as follows: the four majors are not domicile in the UK for tax purposes; tax is paid by employees only, not by corporations; direct licensing; corporations produce a lump sum of money diverting revenue from people who are entitled to it.

- *“Currently four groups – Warner Chappell, Sony/ATV, Universal and Independents– none of them domicile in the UK for the tax purposes, tax is only paid by the employees of these corporations, but not the corporations.”*
- *“Point number three on infringement was about **direct licensing** and how it unable corporations to **produce lump sum of money and divert the revenues from people who were entitled to it.**”*

Pharmaceutical companies put the intellectual property in the same box; Tech start-ups got money from the government for businesses like Google, Apple and Yahoo

The two themes independently represent separate conversations and are unrelated to the problem statement, but are relevant because of the IP matter.

- *“Pharmaceutical companies put the intellectual property in the same box.”*
- *“In the 90s tech start-ups like Google, Apple, Yahoo got money from the government for business.”*

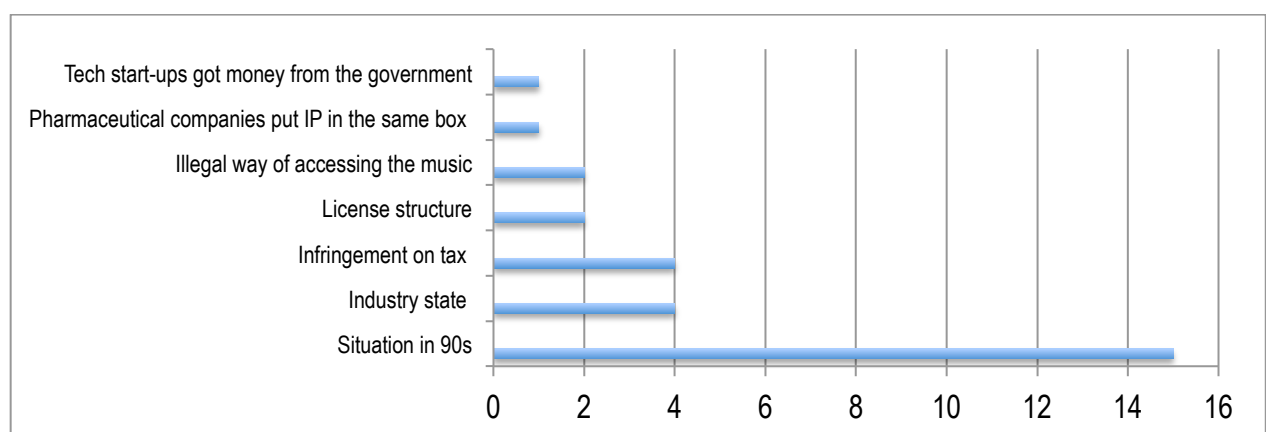


Fig. 5.7: The corporate memory of copyright in the industry

5.3.6 Copyright infringement as a catalyst for unlawful business platforms

This section contains six themes, namely, counterfeit goods, physical piracy being the alternative source of music, strategy of a pirate, reasons for physical piracy, pirated

goods and illegal goods model. These issues present data on counterfeit goods on the global market affecting the copyright holder.

Counterfeit goods

The 'counterfeit goods' theme contains fourteen key words and concepts derived from the research participants. The researcher identified the commonalities amongst notions pertaining to counterfeit goods.

The combined fourteen key words and concepts are as follows: counterfeit goods; brands; discounted goods; cassettes, tapes, CDs/DVDs; counterfeit goods; children's toys; CDs; DVDs; perfume; branded goods; drugs; local and foreign content; any kind of IP.

- *"There is a large industry of **counterfeit of everything** – from perfume to Rolex watches to clothing, brand names – everything is being copied and sealed and sold at a **discount**, pretending to be what it is not. Children's toys, CD, DVD, perfumes, drugs."*
- *"CD/DVD with local and foreign content are copied and sold as the counterfeit with any kind of IP."*

Physical piracy is the alternative source of music

The theme of 'physical piracy as the alternative source of music' contains nine key words and concepts derived from the research participants. The researcher identified the commonalities in the music industry regarding the slow response to digital technology.

The combined nine key words and concepts are as follows: physical piracy – music business is booming; slow response of the industry; no timeless release; distribution network for the industry is weak; pirates fill up that space; they became main distributors; music is available much quicker; alternative service; even illegal with a good income.

- *"They felt that the **music business is booming**, partly it's the industry that has to be blamed, because when the transition from the different recording models happened, when the market was moving away from vinyl record, the big black record, when the*

*market was moving away from that and going into cassettes, the **music industry in Nigeria was slow in respond** to those changes.”*

- *“Even when they were going from cassettes to CDs, **the industry was slow to respond**. And because of the slow pace in adapting to the new technology, the industry created vacuum, created gaps, so the pirates who were there, gaps that needed to be filled, so they **filled those gaps**.”*
- *“There are no timeous releases of music and distribution network for the industry is weak, so pirates became main distributors.”*
- *“Now the music is available much quicker via the alternative service, even illegal service, but giving a good income to pirates.”*

Strategy of a pirate

The ‘strategy of a pirate’ theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities of the pirates’ unfair competitive advantage.

The combined six key words and concepts are as follows: advanced hardware; own production plant; reproduction of the artist’s work; selling CDs/DVDs; physical and digital distribution; no royalty payment to artists.

- *“The pirates have a very advanced hardware and the own production and reproduction of the artist work. It is called ‘cottage industry’ in Malawi selling CD and DVD it from home.”*
- *“Pirates took the advantage of the technology and created physical and digital distribution, and there is no royalty payment is done to the artists.”*

Reasons for physical piracy

The ‘reasons for physical piracy’ theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities within ‘pricing of goods’ conversations regarding infringement growth.

The combined six key words and concepts are as follows: price per country; taking market into account; parallel market; importing; product positioning according to living standards; licensing.

- *“They completely failed to **take a market into account**; ok, you got rules about **parallel market, the importing and licensing**, but you can actually stop somebody who is bringing something what is pressed in Malawi to the US and sell it for \$1.50; **but if they positioned pricing on their product according to the standard of living in the country** which it was sold, they might not have this problem.”*
- *“He talks about how the record industry did not introduce differential pricing for territories and countries.”*

Pirated goods

The pirated goods theme contains five key words and concepts derived from the research participants. The researcher identified the commonalities amongst notions of the percentage of structures of pirated goods.

The combined five key words and concepts are as follows: economic model; Namibians sell illegal goods for percentage earned; illegal goods are produced locally; reproduction of goods; imitate original music CD; sold for less than original CD.

- *“The economic model of piracy is that Namibians sell illegal goods for percentage earned, and illegal goods are produced and reproduced locally, imitating the original music CD and selling it for less than the original CD.”*

Illegal goods model

The ‘illegal goods model’ theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities in the risk of keeping pirated goods.

The combined six key words and concepts are as follows: risk to keep pirated goods in stores; prosecution; illegal music works; cinematographic films; come from abroad.

- *“There is a risk to keep a pirated product in store; a shop owner can be prosecuted.”*
- *“Illegal music works before was coming from abroad, but now also produced locally.”*
- *“The collecting society in Nigeria is dealing with cinematographic issue in cinematographic films.”*

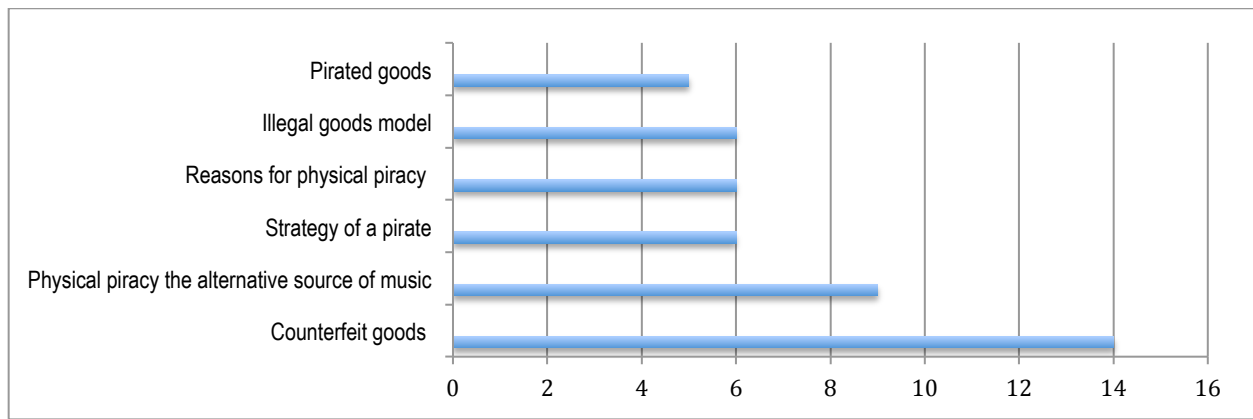


Fig. 5.8: Copyright infringement as a catalyst for unlawful business platforms

5.3.7 Artist exploitation through technology and lack of copyright compliance

This section contains six themes, namely, market reality, right vs. might, infringement of majors to get a 'fan base', infringement towards the artist, product is a piece of art – involves emotions and ISP legitimate pirates use semi-legitimate way. These issues emerged from the discussions with the research participants on the reduction of earnings from royalties and weak compliance of ISPs.

Market reality

The 'market reality' theme contains eleven key words and concepts derived from the research participants. The researcher identified the commonalities of mechanical rights challenges due to infringement.

The combined eleven key words and concepts are as follows: mechanical royalties; do not compensate authors by stream rate; almost indistinguishable from piracy; does economic education; shares artistic royalty; artist must be empowered on royalty distribution of his own work; market of music works; earnings through performing music have collapsed; performing rights society has no control over who performs music, how often, what piece, what song; gets paid for performance; in 2012 performance society made \$10 billion.

- *“Certainly the **mechanical royalties** have become **very much smaller** and the **digital royalties**, as they may be increasing, do not in any way compensate, they are just too small! They do not compensate authors by stream rate; it is so little that it is almost indistinguishable from piracy.”*

- *“Collecting society in Namibia does economic education of the authors, as the artist must be empowered on royalty distribution from his own work. The collecting society shares artistic royalties as a part of the management fee”.*
- *“The earnings of the performing music are collapsed.”*
- *“Take the performing rights society, they have very useful model, but they **have no control over who performs music**, whether it is a terrestrial broadcaster or satellite radio or concert halls, or church basements, **so they have no control who uses the music how often, what pieces of music, what songs** – but they are very successful model which in **2012 passed \$10 billion globally**, and the reason they are successful because they monetize the activity. They do not control they just get paid for it.”*

Right vs. might

The ‘right vs. might’ theme contains seven key words and concepts derived from the research participants. The researcher identified the commonalities amongst the challenges of law enforcement in copyright.

The combined seven key words and concepts are as follows: no law enforcement; have no right; have the might; no money, cannot litigate; who has the rights has revenue.

- *There is no successful model on the law enforcement. People who have no right have the “might”. In other words, people with rights cannot litigate because they have no money. It has to be that who has the rights has revenue.”*

Infringement of majors to get a ‘fan base’

The ‘infringement of majors to get a fan base’ theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities amongst the challenges of attracting and managing a fan base.

The combined three key words and concepts are as follows: customer base; majors connect with their ‘fan base’ without paying the writer; another rotten mouth to feed via direct line.

- *“It’s very hard for the artists and song writers to attack the majors, to convince **the customer base**, that they should pay royalty, they say if a **writer does not get any***

*money, and they can better connect via Internet with **their fans**, customers will have more direct line, but it becomes **another rotten mouth to feed on the food chain.***

Infringement towards the artist

The theme regarding 'infringement towards the artist' contains four key words and concepts derived from the research participants. The researcher identified the commonalities amongst the challenges of setting the correct price and how it affects the artist.

The combined four key words and concepts are as follows: selling price of music is high; artists not getting the money; one wants to sell one's music at a lower price to get more consumers; higher prices lead to more infringement.

- *"Selling price of the music is high in Mauritius; producer wants to sell artist's music at a lower price to get more customers, without artist getting paid. Higher the price for the music, more infringement towards the artist."*

Product is a piece of art involves emotions

The theme regarding a 'product is a piece of art which involves emotions' was a odd theme that only featured in one conversation and not supported in the other conversations.

- *"Product is a piece of art and evolves emotions."*

ISP legitimate pirates use a semi-legitimate way

The theme regarding 'the ISP legitimate pirates using a semi-legitimate way' was a odd theme that only featured in one conversation and not supported in the other conversations. This issue's main relevance is that it mentions the illegal practice of exploiting content by ISP; however, it did not have dominance within the ten conversations.

The theme emerged from the research and it also forms a key concept and a key word.

- *"Internet Service Providers are legitimate pirates, and use semi-legitimate way to sell a product without paying to the copyright holder."*

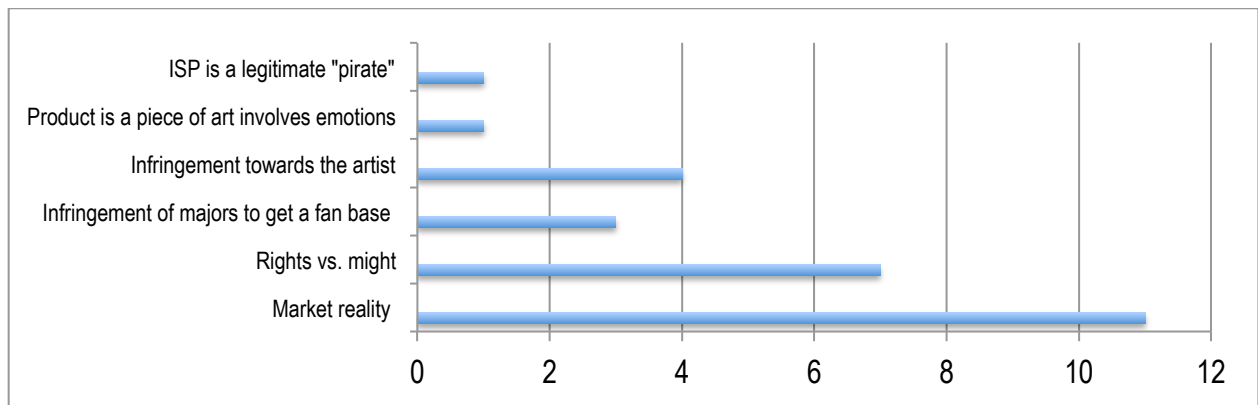


Fig. 5.9: Artist exploitation through technology and lack of copyright law compliance

5.3.8 Leveraging technology as a revenue advocate

This section contains seven themes, namely, Internet based infringement, digital IP, peer-to-peer sharing, infringement via technology, technology-related IP infringement, technology is not the enemy and online piracy does not have a solution. These issues cluster discussions on infringement on content brought about by technology.

Internet based infringement

The 'Internet based infringement' theme contains eleven key words and concepts derived from the research participants. The researcher identified the commonalities amongst notions regarding the online environment and how content is exploited.

The eleven key words and concepts are as follows: Internet based; access to content for free; generic 'search results' of content; websites to stream content for free; a small monthly fee; website where one believes that the content is original and copyrighted; online space no control; online environment has grown; many ways to buy music; ways of listening to it; to be consumed.

- *"Internet based infringement is about access to the content for free, without compensating the copyright holder."*
- *"The latest development of Internet is when you have several models of giving access to **content for free** or **for a small monthly fee**, where the money do not go to the copyright owner. You have files during **the generic "search results" of a content**, where you encounter an advertisement; this advertisement does not pay*

the copyright owner, but to the facilitators of the website. One makes you believe that the content is original and copyrighted.”

- *“Online space has no control.”*
- *“The online environment has grown and there are many ways how to buy music, ways of listening it and consume it.”*

Digital IP

The ‘digital IP’ theme contains ten key words and concepts derived from the research participants. The researcher identified the commonalities amongst notions of the digital rights impact on the content owner.

The ten key words and concepts are as follows: digital rights to be finalized; digital piracy no protection mechanisms; violation of the digital IP; ISP and telecoms no digital license; YouTube one million songs illegally uploaded every year; exploitation without gain; does not know how it works; no catalogue number; no owning rights; no knowledge on how to be compensated.

- *“Digital piracy in many countries has no protection mechanisms; digital rights have to be finalized in a new copyright act.”*
- *“Violation of the digital intellectual property is a lot happening online.”*
- *“In 2009 in Washington conference, the YouTube had announced that one million songs was uploaded illegally without knowing where songs came from.”*
- *“Exploitation of artists without gains is a very common factor.”*
- *“Now, to load your music on YouTube without having a catalogue number, then it makes it very difficult to be identified, which is owning the rights of that particular work and if someone wants it, how the authors should be compensated. Artists do not know how it works.”*

Peer-to-peer sharing

The ‘peer-to-peer sharing’ theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the digital environment conversations.

The combined six key words and concepts are as follows: dealing with peer-to-peer sharing; board of directors have consultations; less response from CMOs

internationally; gives losses to state protected shareholders; international support; no professional studies on losses.

- *“Because of the low access to the Internet, **peer-to-peer** is not so strong piracy in the South American countries, even in Argentina or Chilli, where access to the Internet is 80-88% high.”*
- *“As for the **peer-to-peer piracy** you need your equipment; however it becomes an issue for us too, at **the board of directors** have consultation on how to deal with what is happening currently.”*
- *“There is less response from the CMOs internationally on the physical piracy, as it also gives losses to state protected shareholders.”*
- *“We have lots of support on the digital piracy internationally.”*
- *“No professional studies were done on losses from the digital piracy.”*

Infringement via technology

The theme regarding ‘infringement via technology’ contains eleven key words and concepts derived from the research participants. The researcher identified the commonalities amongst notions of mechanical rights management practices by publishers in the 90s.

The combined eleven key words and concepts are as follows: technology related; seamless world; Bluetooth; bandwidth ‘pipes’; gaming on the network; free websites to download; free streaming; free file sharing platforms; access to free ‘pipes’; broadband; speed.

- *“Technology related infringements are all about speed, bandwidth pipes, access to free pipes, broadband.”*
- *“Seamless world of infringement via Bluetooth, free streaming from the Internet, to download from the website for free.”*
- *“Gaming on the network is only possible if you have access to pipes and access to download which used to take hours, now can take quicker because of the bandwidth.”*

Technology related IP infringement

The theme on ‘technology related IP infringement’ contains seven key words and concepts derived from the research participants. The researcher identified the

commonalities regarding the importance of copyright in maintaining the momentum of technology.

The combined seven key words and concepts are as follows: technology driven; speed of technology changes; copyright law does not reflect these changes; music industry is driven by technology; infringement and technology go 'hand in hand'; digitalization increased transactions; explosion of the digital product.

- *“Technology driven intellectual property infringement go ‘hand in hand’ with new developments of technology, speed of technological changes.”*
- *“The copyright law does not reflect these changes.”*
- *“Explosion of the digital product on the Internet increased supply and decreased the value of a product. Music industry is driven by technology.”*

Technology is not the enemy

The theme of 'technology not being the enemy' contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of embracing technology.

The combined four key words and concepts are as follows: technology cannot be controlled; can only work with creators and copyright owners; content industry; technology is not the enemy.

- *“In the content industry the technology is not the enemy.”*
- *“Technology cannot be controlled and only the dialogue involving a creator, the copyright owner and consumers can work to the advantage of all.”*

Online piracy does not have a solution

The theme regarding 'online piracy not having a solution' was a odd theme that only featured in one conversation and not supported in the other conversations. and is not mentioned any further in the conversations.

- *“Online piracy does not have a solution.”*

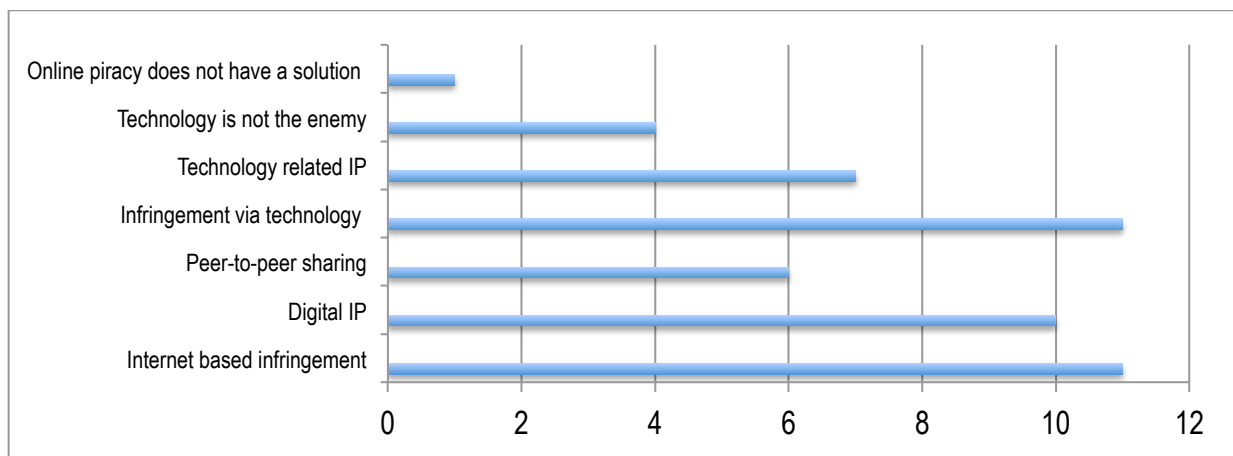


Fig. 5.10: Leveraging technology as a revenue advocate

5.4 Lamination two: Culture and copyright law knowledge as key compliance drivers

This lamination emerged from exploring copyright infringement model, process and/ or any other mechanism inadequacies causing losses to authors and organizations is.

5.4.1 Culture as an equitable copyright exchange

This section contains three themes, namely, infringement via culture, IP culture and culture-driven copyright infringement. These issues underline the pervasive infringement culture accelerated by digital platforms.

Infringement via culture

The 'infringement via culture' theme contains ten key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of the negative culture of illegal copying.

The combined ten key words and concepts are as follows: culture of copying; no moral codes; kids are asked to copy; impurity; ignorance; IT corporations breaking rules; if someone is caught, he can get away with it; cocoon of a bad culture; employees copy for each other; objections to pay for 'air'.

- *"The worst copyright infringement or piracy model is the **culture of copying** in the digital world; the fact that air and legality and **morality do not have relationship**; a priest **can ask a child to copy things for him**, because a priest does not know from*

a moral perspective if it is ok and if it is legal and he needs to pay for air as he has objections on it.”

- *“The culture of infringement is a culture of impunity.”*
- *“Staff culture at big and small corporations allows for illegal copying and employees and management alike behave very ignorantly if someone is caught doing it. He can get away with it, as the rest of employees will protect him. This is a cocoon of a bad culture and employees copy for each other the latest track or movie and it runs from the top to the bottom.”*

IP culture

The ‘IP culture’ theme contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of copyright patriotism.

The combined five key words and concepts are as follows: not enough IP culture; no concern about population; no concern about business; not the IP producers; not a lot of patrimonial goods to protect.

- *“There is no concern about population and the future of the IP, no concern about the business. There is not enough of the IP culture.”*
- *“We are not the IP producers, as much as the industrialized nations; we do not have a lot of patrimonial goods to protect.”*

Culture-driven copyright infringement

The theme on ‘culture-driven copyright infringement’ contains two key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of morality.

The combined two key words and concepts are as follows: culture-driven; moral rights.

- *“Culture-driven copyright infringement has no moral rights.”*

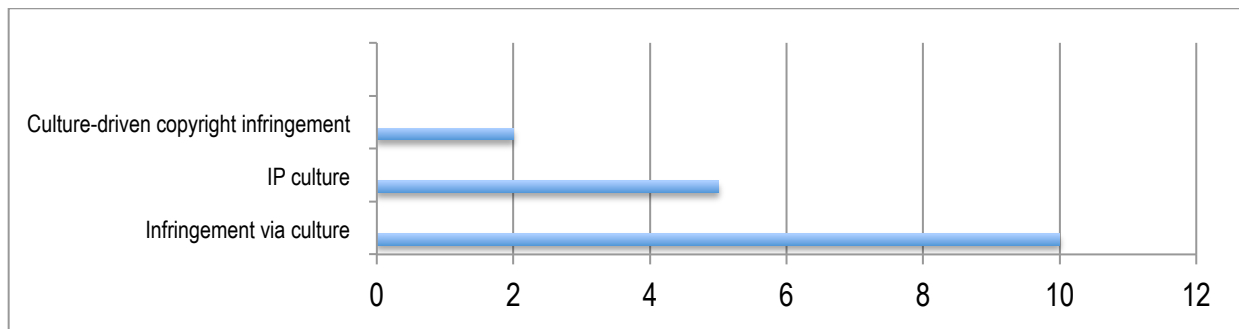


Fig. 5.11: Culture as an equitable copyright exchange

5.4.2 Driving compliance in the copyright spectrum

This section contains three themes, namely, rules of engagement of the legal music-sharing providers, legal vs. illegal music on the Internet and transactions value. These issues emerged from the research participants in respect of crimes of copyright and the absence of specific rules of engagement in addressing infringement.

Rules of engagement of the legal music-sharing providers

The theme on the 'rules of engagement of the legal music-sharing providers' contains ten key words and concepts derived from the research participants. The researcher identified the commonalities amongst notions of an undefined and invisible set of rules for trade copyright.

The combined ten key words and concepts are as follows: streaming service by subscription; subscription-driven online business; do not feed the supply side; flow of supply and demand not circulating properly; Spotify return value is not enough to make one song; no clarification on rules of engagement; iTunes kills the music business; 'sucking out' money for the shareholders; tax dodge haven; give me just enough in one deal.

- *"Currently there is no clarification on rules of engagement in the online space. There are subscription-driven online businesses with a streaming rate per subscription; however, for the artist a streaming service like Spotify does not generate return value, it is not enough to make one song."*
- *"We can now compute out and there is a huge fight looming in so-called "sexy" for a customer services which do **not feed the supply side**; here is the truth of any*

industry, if a flow of supply and demand side cannot circulate properly, then how can supply benefit for the demand.”

- *“iTunes kills music businesses. They only dodge taxes, as it says in the agreement that they do not pay taxes, and that they are based in Luxemburg. In truth the iTunes is just a tax dodge and sucking out money for the shareholders.”*
- *“I do not have time to chase all this pay you, pay you, pay you – give me just everything in one deal.”*

Legal vs. illegal music on the Internet

The theme on ‘legal vs. illegal music on the Internet’ contains nine key words and concepts derived from the research participants and the researcher identified the commonalities within the notion of peer-to-peer conversations.

The combined nine key words and concepts are as follows: Internet no control; ; legal vs. illegal alternative for music; free music file sharing; Bit Torrent; peer-to-peer; streaming services; iTunes, Sportify, Apple radio; pay little to the creator; Sportify-streaming rate is very low.

- *“Internet has no control over legal vs. illegal alternative for music.”*
- *“Bit Torrent, peer-to-peer service used to allow to share music files for free.”*
- *“Streaming services such as iTunes, Sportify, Apple radio pay very little to the creators. Sportify’s streaming rate is very low and it is not enough to create one song.”*

Transactions value

The ‘transactions value’ theme contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of rights manipulation.

The combined five key words and concepts are as follows: organized crime; large scale; via organized crime the music industry loses value per transaction; performing rights; number of transactions do not justify a value.

- *“What the performing society in the UK has done, they have changed the definitions in their articles in terms of the **performing rights** and they have made them to include a new phrase, which is called an ‘online right’ and they have given a*

definition to the online right, which allows them to copy – that is what you can call a ‘back door entrance’ into the process.”

- *“There is a large scale of organized crime going on the Internet via organized crime; the music industry loses value per transaction, and a number of transactions do not justify the value per song.”*

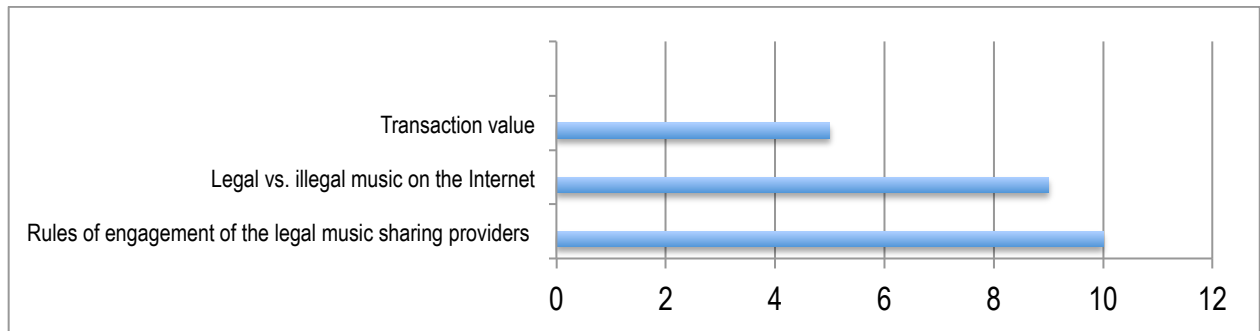


Fig. 5.12: Driving compliance in the copyright spectrum

5.4.3 Supply and demand implications on the technological platform

This section contains four themes, namely, infringement ‘supply-demand’ related, ‘supply-demand’ related, accessibility and availability. These issues pertain to the uncontrollable access of content on the Internet and challenges of not receiving any royalties through the exploitation of works.

Infringement supply-demand related

The ‘infringement supply-demand related’ theme contains nine key words and concepts derived from the research participants. The researcher identified the commonalities amongst the notions of supply and demand in the digital environment.

The combined nine key words and concepts are as follows: supply-demand; Internet – unlimited supply; money related; reproduction has no control; Internet demand met instantly; no money related; demand is constant; if flattened, demand can be met constantly by supply, copyright infringement is reduced; supply-demand cycle.

- *“On the Internet, “supply-demand” works in such a way that there is unlimited supply of anything.”*
- *“First instance on the supply side, **its money related**, somebody is going to copy my work; in the demand side, the cultural aspect perceived as **not money related**; it’s*

air! Reproduction has no control, on the Internet, the demand is met instantly and it is constant.”

- *“If flattened, demand can be met constantly by supply and copyright infringement is going to be reduced – supply demand cycle.”*

Supply-demand related

The ‘supply-demand related’ theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of unlimited supply challenge of content in the digital environment.

The combined six key words and concepts are as follows: divert illegal copyright market in digital space into legal market income; supply-demand; quick manufacturing digitally; oversupply; free choice for anyone; want to have a value proposition anytime.

- *“The **supply and demand introduces another issue** which is technology; technology with a rise of Internet and the digital space, has given a rise to three things: uncontrollable reproduction, or copy, which led to unlimited supply and **zeroing out of price.**”*
- *“We try to divert illegal copyright market in digital space into legal market income. Quick manufacturing digitally gives free choice for anyone and anytime. A value proposition has dropped low, but we want to have a value proposition every time.”*

Accessibility

The ‘accessibility’ theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of accessing content online.

The combined four key words and concepts are as follows: content easily accessible; easy to grab; use it without payment, free; unable to purchase IP.

- *“Intellectual property in the form of content is easily accessible on the Internet, anyone can grab it and use content without payment for it, use it for free.”*
- *“In some countries certain content is not available, and one is unable to purchase the content, the piracy fills in the gap.”*

Availability

The ‘availability’ theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of buying content online.

The combined four key words and concepts are as follows: difficulty to access; only hear it but not have it; agent helps to increase visibility of one’s work, distribution, availability of one’s work; no royalty payment to the artist.

- *“Some content is difficult to access online, people only can hear it, but do not have it.”*
- *“By putting an artistic work on the website, the agent helps to increase visibility of one’s work, distribution and availability of one’s work. Unfortunately, no royalty payment to the artist.”*

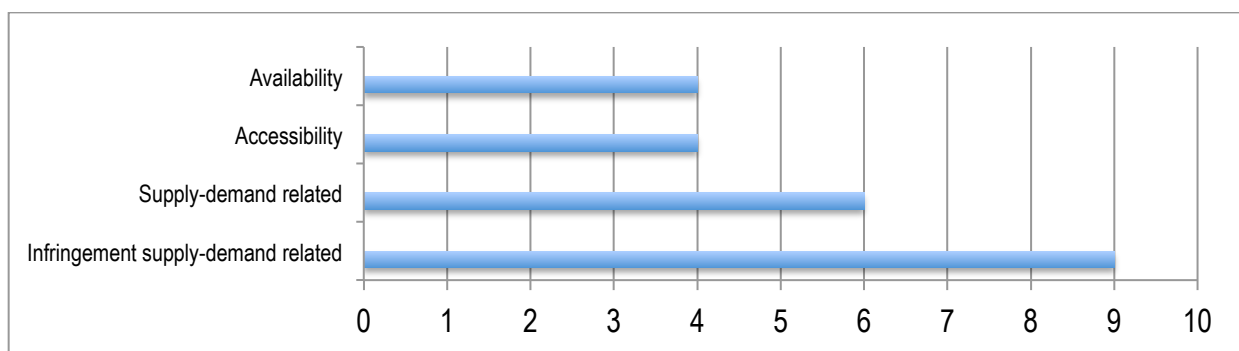


Fig. 5.13: Supply and demand implications on the technological platform

5.4.4 Royalty discrepancies and violations

This section contains three themes, namely, infringement on content, content exploitation and compensating the author. These issues focus on the infringement experienced in the industry and the negative impact of a master copy that can produce unlimited copies on the digital platform.

Infringement on content

The ‘infringement on content’ theme contains nine key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of the digital threat to content.

The combined nine key words and concepts are as follows: content related; no master copy is needed; no studio is needed; no overheads; user generated 'creative commons' – no license; non-compliance; 'chop and cut'; viral videos; illegal sales generated R3 million after the viral video.

- *“**Content related** infringements, with the music industry of digitization have made it easiest to copy physically, you **do not have to hold the master copy** with you anymore, no studios are needed, no overheads.”*
- *“**Creative Commons** is a **user generated platform**, and the fact that you do not need to have **a license**, so you are persuaded that you have given the license to the western world for nothing, for free forever – it is called copy left – which is a jargon for **non-compliance**.”*
- *“M-Net people for instance, they “**chop and cut**” here and they make it on DSTV story, and one collage of pieces chopped; whether they have rights to that, is probably NO, whether people just turn the “blind eye” on the issue is probably YES.”*
- *“A couple of years ago there was a very popular release in the country called “**Sista Bethina**”; it was an art ball, if you like, was recorded with one microphone in the club, he was drunk, he was dancing on the bar, and a music which has been played is a pick-up. This guy was out of tune and they recorded this thing, it was before the real digital age, **but it went viral and the country went mad**. So, the legal sales of that song were of 150,000 units; the illegal sales was in a region of **1 million**.”*

Content exploitation

The 'content exploitation' theme contains two key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of payment for the exploitation of content.

The combined two key words and concepts are as follows: content is exploited without paying the copyright owner; telecoms make millions but do not pay the copyright owners.

- *“**ISPs** are exploiting the content without paying to the copyright owner. Telecoms make millions but do not pay to the copyright owners. For instance in SA, the mechanical rights situation has fallen like ten years, unpaid for; right now 60% of ringtones, which you buy on MTN and Vodacom, have no mechanical license in place, and enough money fly.”*

Compensating the author

The theme on ‘compensating the author’ contains two key words and concepts derived from the research participants and the researcher identified the commonalities within the notion of compensation to the author.

The combined two key words and concepts are as follows: if author is not compensated; how to control a situation.

- *“The author is not compensated, how to control a situation.”*

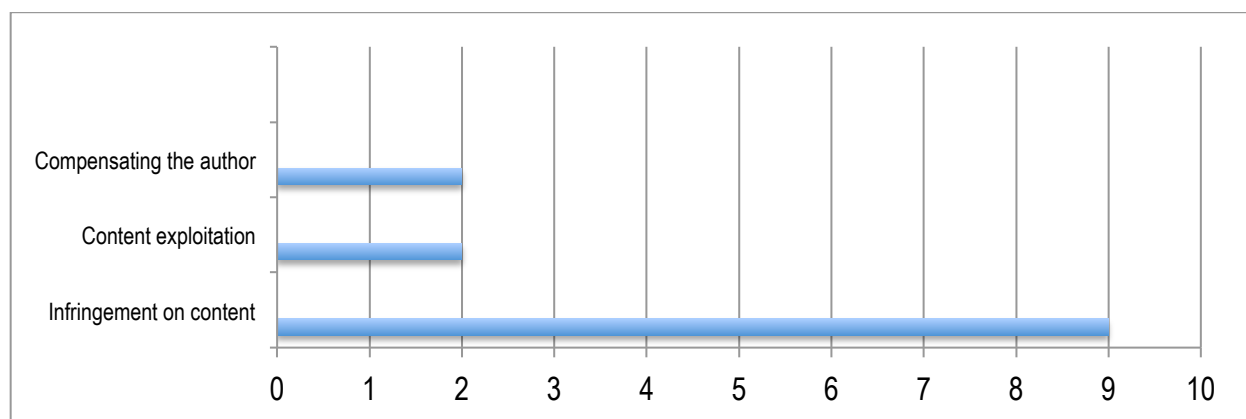


Fig. 5.14: Royalty discrepancies and violations

5.4.5 Proposition for rules and regulations in the intellectual property spectrum

This section contains six themes, namely, harmonization of the rules of engagement, all parties to get involved, official platforms to take more active role, unified channel CMO, compensation and education and law differences on piracy. These issues focus on the importance of collaboration and copyright education with all parties to address infringement.

Harmonization of the rules of engagement

The theme on the ‘harmonization of the rules of engagement’ contains seven key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of copyright education.

The combined seven key words and concepts are as follows: fair trade music project; education; Internet is a jungle; to harmonies rules and regulations; currently no rules

agreed upon; CI is an economic emergency; at this rate, soon no more products to consume.

- *“Everybody talks about it, but very little has been done on **education** because the Internet **is like a jungle**, everybody thinks they can do whatever they want.”*
- *“The rules and regulations have to be harmonized, as currently there are no rules agreed upon.”*
- *“Copyright infringement is an economical emergency, because if copyright infringement goes at the rate it’s going, there will be no more products left for the consumers to consume.”*
- *“The fair trade music project CISAC is doing with the ALCAM and SGA.”*

All parties to get involved

Regarding the theme of ‘all parties to get involved’, the six key words and concepts derived from the research participants set forth the commonalities within the notion of copyright cultural collaboration.

The six key words and concepts derived from the research are as follows: benefit of all interested parties; to identify rights and duties of interested parties; to access culture; the right to be remunerated; the right to develop culture; constitutional law has the balance of rights.

- *“To control the copyright infringement gives benefit to all interested parties. We have to identify the rights and duties of all interested parties: consumers have the right to access the culture; creators have the right of being remunerated and the right to develop the culture. Constitutional law has the balance of rights.”*

Official platforms to take more active role

With the theme of the ‘official platforms having to take a more active role’, the five key words and concepts derived from the research participants set forth the commonalities within the notion of copyright alliances.

The five key words and concepts derived from the research participants are as follows: the most advanced nations have problems with copyright ownership; CISAC needs to

take steps to remodel; to take more active role; India, Singapore, Australia need to join; entire globe to deal with issues aggressively.

- *“The most advanced nations have problems on the copyright ownership. CISAC needs to take steps to remodel and take more active role in that process. India, Singapore, Australia need to join the global alliances that the entire globe can deal with copyright infringement issues aggressively.”*

Unified channel CMO

The ‘unified channel CMO’ theme contains combined five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of cost-effective copyright management.

The combined five key words and concepts are as follows: unified channel is required; takes situation over; responsibility of managers; built-in interest; cost-effective way.

- *“Unified channel is required to take over the situation, to give more responsibility of managers of the collecting societies, as we all have the built-in interest to fight the copyright infringement in a cost-effective way.”*

Compensation and education

The ‘compensation and education’ theme contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting equitable copyright exchanges.

The combined five key words and concepts are as follows: fair trade music platform; stamp of approval; a producer has not been properly compensated; via fair trade creators are properly compensated; this is a very powerful tool to educate consumers and music creators.

- *“Fair trade music platform gives an automatic stamp of approval as via the fair trade creators are properly compensated; this is a very powerful tool to educate consumer and music creator.”*
- *“A producer has not been properly compensated.”*

Law differences on piracy

The ‘law differences on piracy’ theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion underlining the lack of copyright skills.

The combined three key words and concepts are as follows: lack of skills; lack of service options; opportunities for practitioners in copyright law.

- *“I have to say that a **lack of skills** in copyright law and a **lack of service option**, or service delivery, or **opportunity for practitioners in copyright law** has a direct impact on infringement from a cultural point of view.”*

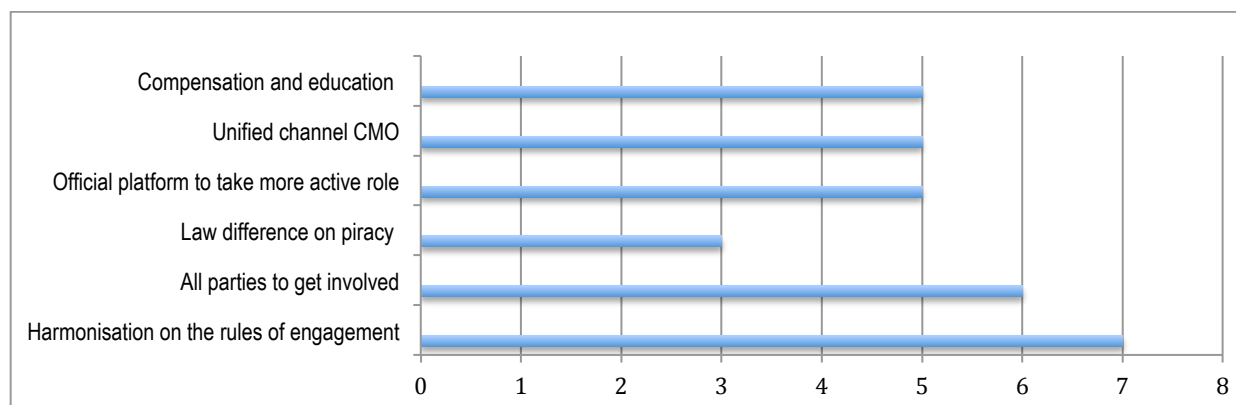


Fig. 5.15: Proposition for rules and regulations in the IP spectrum

5.4.6 Distribution implications on the technological platform

This section contains two themes, namely, cinematographic films and cinematographic issues. These issues present the challenge of infringement on films and actions taken in addressing the violation of cinematographic rights.

Cinematographic films

The ‘cinematographic films’ theme contains eight key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of film piracy.

The combined eight key words and concepts are as follows: downloading cinematographic films; demand-driven industry; not available in the country; demand

driven CI; a product to be available; when you want it; timeous availability; limitations per country.

- *“One can download cinematographic films from the beginning of the Internet, but with a broadband issue it can be done faster.”*
- *“This is a demand-driven industry and if a movie is not available in the country, a product needs to be available in the country, and you do not want to wait, pirates fill the gap.”*
- *“Timeous availability can diminish demand-driven copyright infringement.”*
- *“Limitations of releases per country contribute to the high copyright infringement.”*

Cinematographic issues

‘Cinematographic issues theme ’ contain three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting coalitions against infringement.

The combined three key words and concepts are as follows: the coalition is setting up a Nigerian departmental license; a combination of Nollywood and music industry; helps to deal with cinematographic issues.

- *“What we did, was to bring the different parties in the industry together and to form what we call the **Nigerian music industry coalition**, so this coalition is setting up a Nigerian departmental license.”*
- *“Coalition also helps to deal with cinematographic issues.”*
- *“We are trying to set up something called the Nigerian departmental license, which is a combination of the Nollywood and the music industry.”*

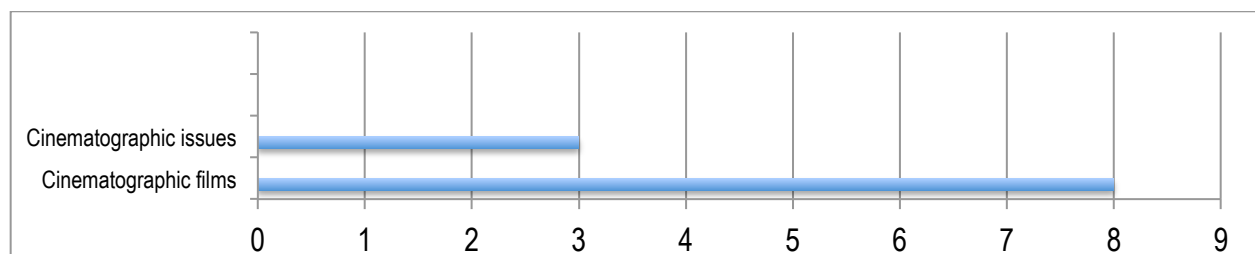


Fig. 5.16: Distribution implications on the technological platform

5.4.7 Direct licensing as a new competing strategic enterprise

This section contains two themes, namely, direct licensing of content and the Pandora case.

Direct license with publishers

The 'direct license with publishers' theme contains eight key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of new models of licensing.

The combined eight key words and concepts are as follows: some music start-ups in the UK have direct licensing with publishers; publishers give mechanical licenses and performing licenses; they can get these licenses from the CMO; the CMO still keeps some risks; they negotiate with a publisher who will keep a big chunk of money for themselves; infringement; a publisher pays a share to the author; charges three times more than CMO for the same rights.

- *"Some music start-up in the UK have direct licensing with publishers, who give them mechanical license and performing license. So the start-ups can get these licenses from the CMO, where the CMO still keeps some risks. However, the start-ups negotiate with a publisher who will keep a big chunk of money for himself or herself, and it is an infringement, and a publisher pays a share to the artist. The charges are at least three times more than CMO would charge for the same rights."*

Pandora vs. American majors

The 'Pandora vs. American majors' theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of direct licensing as a new model of copyright exchange.

The combined four key words and concepts are as follows: case study Pandora vs. American major; they can't take a direct license from the majors until 2015; they had to go with the ASCAP license; they can't do it directly.

- *"It's a part of DMX problem is, interesting to see that Pandora won against majors in America today, **they can't take direct license from the majors until the 2015, they had to go with the ASCAP licenses**; the majors have been charging them slightly*

*more but they have been told that **they can't do it directly**; that gives collecting societies two years to get their act together, to improve the systems and get a higher rate and to get better matching."*

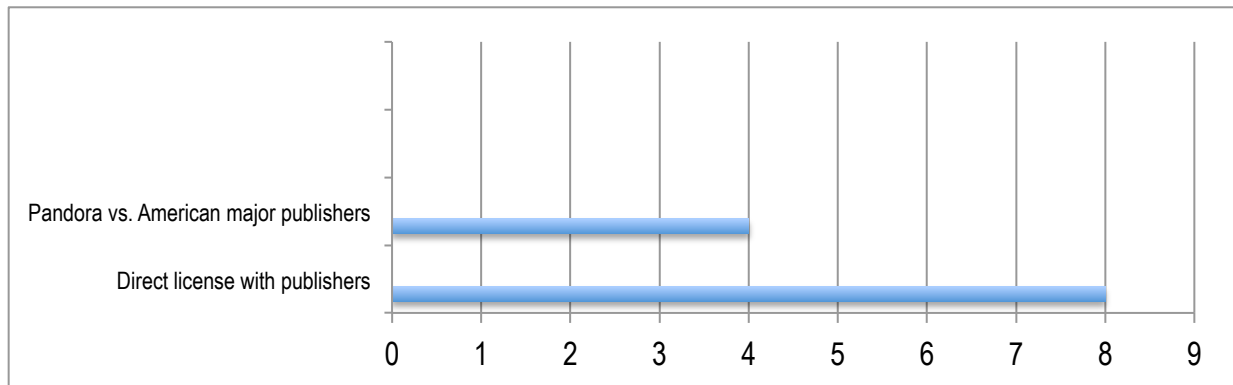


Fig. 5.17: Distribution implications on the technological platform

5.4.8 The weak adoption of intellectual property in the industry

This section contains four themes, namely, lack of understanding of IP, IP is collective trade knowledge, value of IP to all players and lack of a 'copyright hub' in SA. These issues emphasize the value of intellectual property to the industry.

Lack of understanding of IP

The 'lack of understanding of IP' theme contains seven key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of copyright information.

The combined seven key words and concepts are as follows: lack of understanding of IP; lack of legal framework for IP; Copyright Act is outdated; info is not reaching the end-user/customer; lack of education on copyright law; lack of information; lack of knowledge.

- *"There is a lack of understanding of the intellectual property, information is not reaching the end user, customer. The lack of education on the copyright law and lack of necessary information results in a lack of knowledge."*
- *"Lack of legal framework for the intellectual property is a result of the Copyright Act is being outdated. The new crime cannot be prosecuted with this act."*

Intellectual property is collective trade knowledge

The theme regarding 'IP is collective trade knowledge' contains seven key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of negative infringing culture.

The combined seven key words and concepts are as follows: culture driven; English language driven; collective trade knowledge; involves all parties to recover a market share; IP failed its value proposition; people with no rights got it; recording industry lost it.

- *"They have taken **collective trade knowledge**, and you stir it."*
- *"Culture-driven infringement, English language-driven infringement, it involves all parties to recover a market share lost, as the IP failed its value proposition. People who had no rights got it and the recording industry lost it."*

Value of IP to all players

The 'value of IP to all players' theme contains nine key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting a copyright hub.

The combined nine key words and concepts are as follows: a copyright hub; with the UK government who set it up; info about copyright, a URL on the Internet; has all players; rights; different societies; licensing offices; definitions of the Copyright Act; valuable for the economy.

- *"In the UK, they put together something quite interesting, it is a pilot program called a "copyright hub"; it is a nub net, the URL on the Internet, which contains information about a copyright; who the players are, the rights, all the different societies, different licensing offices, definitions on the Copyright Act and which forms will you use, and this has been set up by the UK government."*

Lack of a copyright hub in SA

The 'lack of a copyright hub in SA' theme contains two key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting a copyright hub to the government.

The combined two key words and concepts are as follows: SA should recreate the ‘copyright hub’ of the UK; the DTI should understand the importance of the international relationship.

- *“South Africa should recreate the “copyright hub” of the UK, and the DTI should understand the importance of it and the international relationship.”*

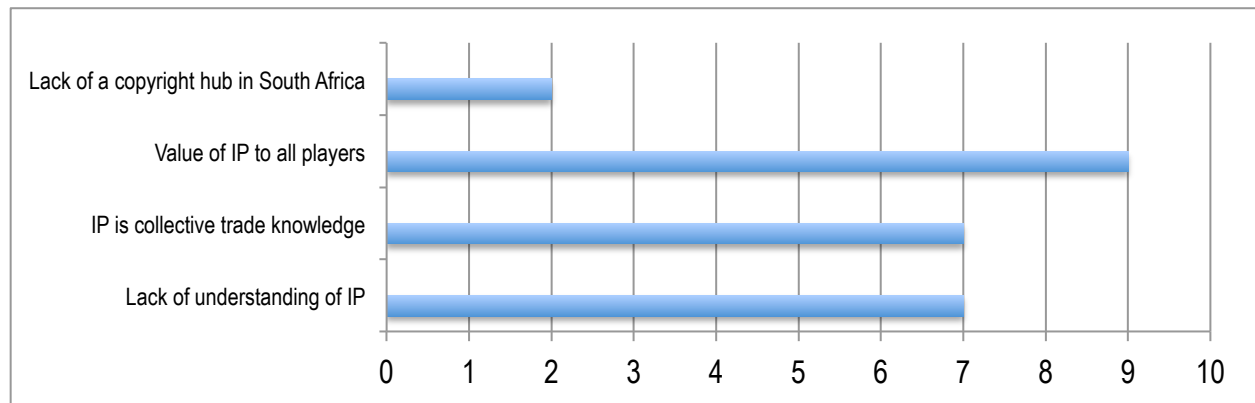


Fig. 5.18: The weak adoption of intellectual property in the industry

5.4.9 The copyright knowledge deficiency in the creative industries

This section contains four themes, namely, lack of understanding of copyright law, value proposition of copyright law, lack of copyright knowledge and understanding of copyright. These issues highlight the significance of copyright law and the role of government in the industry.

Lack of understanding of copyright law

The ‘lack of understanding of copyright law’ theme contains seven key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of copyright law practice challenges.

The combined seven key words and concepts are as follows: do not understand it; disregard it; do not know; dismiss it; too academic; too abstract; too theoretical.

- *“They do not understand the copyright law, disregard it, do not know it. They say it’s too academic, too abstract and too theoretical.”*

Value proposition of copyright law

The 'value proposition of copyright law' theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of service options in copyright law.

The combined six key words and concepts are as follows: mixed in the curriculum with patent and design; no value proposition in teaching law; has a direct impact on infringement; lack of opportunity for practitioners of copyright law; the result is the impact on infringement; lack of service options.

“At the moment, the copyright law is mixed in a curriculum with patent and design. There is no value proposition in teaching the copyright law. This definitely has a direct impact on the infringement.”

- *“Lack of opportunities for practitioners in copyright law resulting in the impact of infringement and the lack of service options.”*

Lack of copyright knowledge

The 'lack of copyright knowledge' theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of poor human capital in copyright.

The combined six key words and concepts are as follows: no academic knowledge on copyright law; challenges the local government; arguments on dip level; lack of qualified people; huge errors of judgment; making mistakes of law.

- *“There is no academic knowledge on the copyright law. It challenges the local government. The arguments are given on the diplomatic level too.”*
- *“There is a lack of qualified people; people make huge errors of judgment and making all kinds of mistakes without knowledge of copyright.”*

Understanding of copyright

The 'understanding of copyright' theme contains six key words and concepts derived from the research participants and the researcher identified the commonalities within the notion of the government's level of involvement in the copyright discourse.

The combined six key words and concepts are as follows: Government's ability to understand the law; Reserve Bank regulations on the IP; ministry of economic affairs has a special bureau; CMO and IP office and bureau are working together; Costa Rican congress re-engineers the IP Law based on the international treaty with the USA and Canada; Government is not active on this issue.

- *“Government ability to understand the copyright law is very low. The Reserve Bank regulations on IP are very vague in South Africa.”*
- *“There is a specific bureau, which belongs to the Ministry of Economy in Costa Rica, and some of these people were very sincerely about the copyright law.”*
- *“The collecting society, the IP office and this bureau working together on the copyright issue. Costa Rican congress re-engineers the Intellectual Property Law based on the international treaty with the USA and Canada. But Government is not very active on this issue.”*

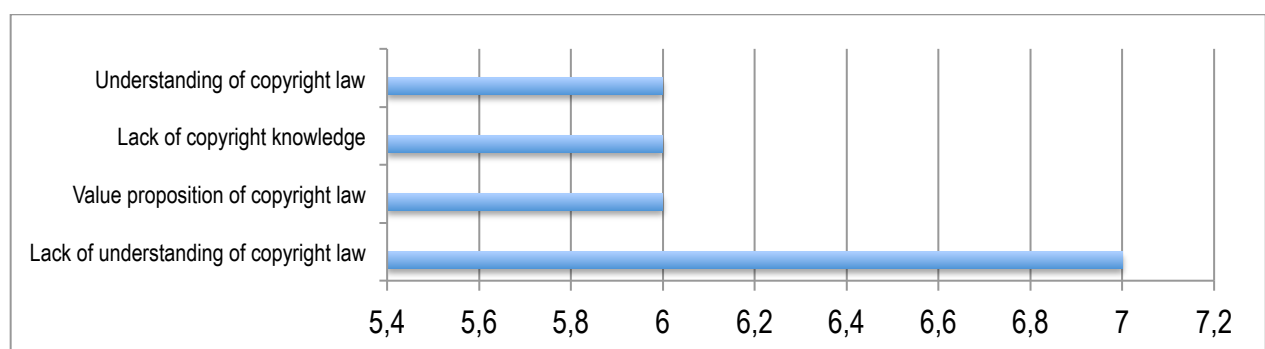


Fig. 5.19: The copyright knowledge deficiency in the creative industries

5.4.10 Levels of infringement within copyright

This section comprises six themes, namely, literary works and music works, analogue copy, copying without reproductive rights, licenses, publishing organizations have a monopoly and literary rights organization has been established in Namibia. These issues focus on joint infringement of rights in that one item, for example a movie, contains both music and visuals which need different levels of copyright protection.

Literary works and music works

The ‘literary works and music works’ theme contains seven key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of joint infringement.

The combined seven key words and concepts are as follows: infringement in the last ten years of music works; literary works; sound recordings; jointly infringed; sound recording in films; a song imbedded in a film; literary works and music infringement.

- *“In the last ten years music works was infringed, literary works, sound recordings are all jointly infringed. Sound recording in films, it’s a song imbedded inside of the film, go hand in hand with literary works and music infringement.”*

Analogue copy

The ‘analogue copy’ theme contains two key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of analogue-related infringement still being prevalent.

The combined two key words and concepts are as follows: analogue vs. digital copy; recorded concert on CDs.

- *“Recorded concerts on CD can become a digital copy or an analogue one. One should not underestimate that there is still to a certain extent copyright infringement in analogue copying.”*

Copying without reproductive rights

The theme on ‘copying without reproductive rights’ contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of IP violation in universities.

The combined five key words and concepts are as follows: copying without reproductive license; photocopying; music books; publishers not original IP owners; published printed music.

- *“Photocopying of music books without reproductive license becomes a copyright infringement. Especially publishing of copied books where publisher is not the original IP owner is a crime. A professor in one of the universities in Italy distributed published printed music contributing to the copyright infringement.”*

Licenses

The ‘licenses’ theme contains two key words and concepts derived from the research participants. The researcher identified the commonalities amongst the notions of IP violation in universities and progress in engaging these institutions.

The combined two key words and concepts are as follows: Reproduction Rights Act is in progress; reach agreement with universities on licensing matter.

- *“Reproduction Rights Act is in progress in Malawi, we have reached agreement with universities on the licensing matter.”*

Publishing organizations have a monopoly

The theme on ‘publishing organizations having a monopoly’ contains one issue and highlights the monopolistic issue within the industry.

- *“Publishing organizations still have a monopoly.”*

Literary rights organization has been established (in Namibia – NAMRO)

The theme on the ‘establishment of a literary rights organization’ contains one issue and is promotional to the adoption of copyright.

- *“Literary rights organization has been established in Namibia and it is called NAMRO.”*

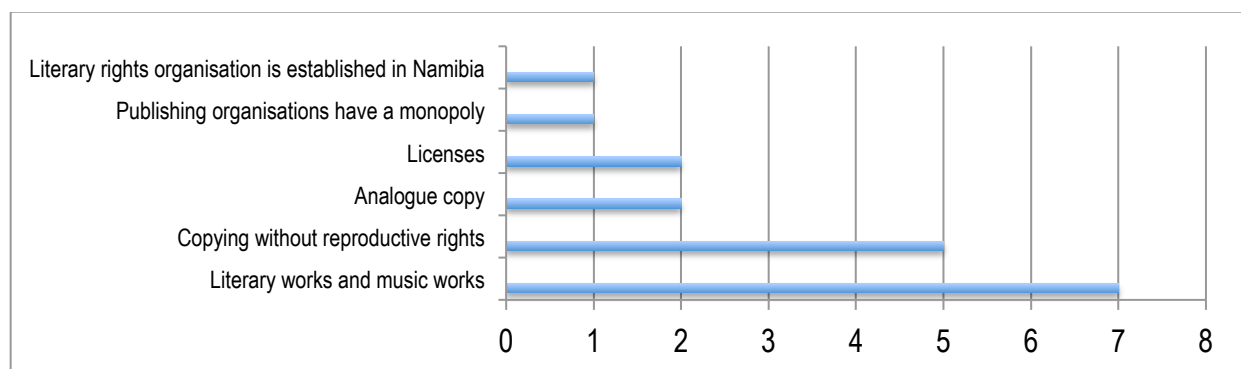


Fig. 5.20: Levels of infringement within copyright

5.5 Lamination three: Prioritizing strategic alliances to manage and educate copyright

This lamination emerged from exploring the most appropriate working model, process or any other mechanism to eliminate current copyright infringement. It promotes international copyright alliances and the value of law enforcement to protect copyright against infringement.

5.5.1 Negotiating copyright strategic alliances

This section contains eleven themes, namely, all parties together to form international alliance, law enforcement and dialogue, international platforms for fair trade, lack of considering the future of IP, evidence collection, all parties involved, state intervention, law enforcement, legislation issues, law protecting courses to be updated and stakeholder involvement.

All parties together to form international alliance

The theme of ‘copyright stakeholders together to form international alliance’ contains seven key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of the formation of strategic copyright alliances.

The combined seven key words and concepts are as follows: to build a worldwide network of people and databases against copyright infringement; international alliances; platforms to address copyright infringement as a global issue; to identify markets of producers; to identify products of the industrialized nations; to protect society with well-compensated IP; social and economic platform have to work together.

- *“International alliances are platforms to address copyright infringement as a global issue. To build a worldwide network of people against copyright infringement is the matter of protecting society. To protect society with a well-compensated IP laws, the social and economic platforms have to work together.”*
- *“We have to identify markets of the IP producers and to identify products of industrialized nations.”*

Law enforcement and dialogue

The 'law enforcement and dialogue' theme contains seven key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting copyright law enforcement through dialogue.

The combined seven key words and concepts are as follows: law enforcement; to use existing laws rather than making new ones; result of a dialogue with consumers; can bring a legislative change in copyright law; law enforcement is more successful now; dialogue between interested parties; tracking and tracing copyright as tools for an equitable future; education on copyright law; opening up and speeding up access of copyright stakeholders to copyright databases.

- *“Law enforcement is necessary to fight the copyright infringement, but we better use existing laws than making new ones. Law enforcement can be as a result of a dialogue with consumers, it can bring legislative change in a copyright law.”*
- *“Law enforcement is more successful now as it is a result of a dialogue between interested parties.”*
- *“tracking and tracing copyright use cannot be ignored as tools for a more equitable future”*
- *“Education on the copyright law is a necessity.”*
- *“opening up access to copyright stakeholder databases to all interested parties will open and speed up the flow and exchange of real information thereby decreasing the opportunities for copyright infringement*

International platform for fair trade

The 'international platform for fair trade' theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting copyright law through collaboration.

The combined six key words and concepts are as follows: fair use/fair trade; user generated content; to use access to international platforms to improve fair use; something needs to be given up to get something in return; all people in the jungle need to be converted from 'hunters' to 'rangers'; big communication step.

- *“All the people in the “jungle” included need to be convinced from the “hunters” to be converted into “rangers”, there’s a big communication step needs to be done.”*
- *“Fair trade can be become a part of the international platforms.”*
- *“Young people become very clever on finding user generated content on the internet.”*
- *“In a dialogue between creators, owners and consumers something needs to be given up for something getting in return. But it should not be given too soon; otherwise it will be taken for granted.”*
- *“Access to data concerning authorship, ownership and use of copyright is extremely limited. Making such information a ‘secret’ as it is now... is a contributory factor to both copyright infringement and the culture of copyright infringement”*
- *“fair trade can only improve with international access to platforms and databases”*

Lack of considering the future of IP

The theme on the ‘lack of considering the future of IP’ contains two key words and concepts derived from the research participants and the researcher identified the commonalities within the notion of preserving copyright.

The combined two key words and concepts are as follows: management of IP no concern for tomorrow; only think “now”, but can be robbed later.

*“Collecting societies doing management of the IP, as there is no concern of the IP of tomorrow, they sell it to the public, but somehow they are selling it without the concern of tomorrow as they only thinking about **now**, you eat “now” but lately they might be somehow robbed.”*

- *“I would not ever know if my copyrights were infringed and if the society knew I am not sure they would ever tell me”*

Evidence collection

The theme on ‘evidence collection’ contains two key words and concepts derived from the research participants and the researcher identified the commonalities within the notion of copyright litigation case building.

The combined key words and concepts are as follows: collecting evidence; using private investigators, qualified litigators and lawyers.

“In Israel we are collecting evidence of the copyright infringement by using private investigators, qualified litigators and lawyers.”

All parties involved

In the theme of ‘all parties involved’, two key words and concepts derived from the research participants were identified and the researcher classified the commonalities within the notion of cooperation.

The combined two key words and concepts are as follows: partnership between consumer, artist, ISP, importer, manufacturer, judge and police; all authors of the world should be put together to reflect, unite and fight.

- *“Partnership between consumer, artist, ISP, importer, manufacturer, judge and police is necessary.”*
- *“All authors of the world should be put together to reflect, to unite and fight against the copyright infringement.”*

State intervention

The ‘state intervention’ theme contains two key words and concepts derived from the research participants and the researcher identified the commonalities within the notion of promoting law enforcement through government involvement.

The combined two key words and concepts are as follows: state intervention; police, customs, arts and culture and the DTI, success to copyright owner information, *intervention by the State*.

- *“State intervention is necessary in the form of police, customs, arts and culture, and the DTI.”*
- *“Without access to copyright owner information intervention by the State are hindered to the point of being ineffective”*

Law enforcement

The ‘law enforcement’ theme contains two key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of

adopting stricter enforcement mechanisms and improving assistance to law enforcement in respect of copyright law and copyright infringement training.

The combined two key words and concepts are as follows: law enforcement; lobbyists want to adopt a punishment model, *Law enforcement need a lot of assistance, no training on the subject at Police Colleges.*

- *“Lobbyists want to adopt a punishment model as a law enforcement mechanism.”*
- *“Law enforcement need a lot of assistance when it comes to copyright infringement – there is no training on the subject at Police Colleges”*

Legislation issues

‘Legislation issues theme’ contain two key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of attending to the current copyright laws.

The combined two key words and concepts are as follows: legislation needs to be revised; alignment between copyright stakeholders, *keeping national copyright laws up to date, international copyright treaty commitments importance of copyright law qualifications.*

- *“Legislation needs to be revised and the alignment between copyright stakeholders is necessary.”*
- *“keeping national copyright laws up to date with international copyright treaty commitments is a challenge with a number of developing countries”*
- *“Few States recognize the importance of copyright law qualifications when deploying personnel to address copyright law legislation”*

Law protecting courses to be updated

The theme on ‘law protecting courses to be updated’ is a single statement derived from the research and the researcher identified the notion of promoting copyright law to meet market changes.

- *“Law protecting courses to be updated in Malawi.”*

Stakeholdership involvement

The theme on ‘stakeholdership involvement’ is a single statement derived from the research and the researcher identified the notion of promoting collaborative initiatives amongst copyright stakeholders and improved data access and exchange.

- “*Stakeholdership involvement.*”

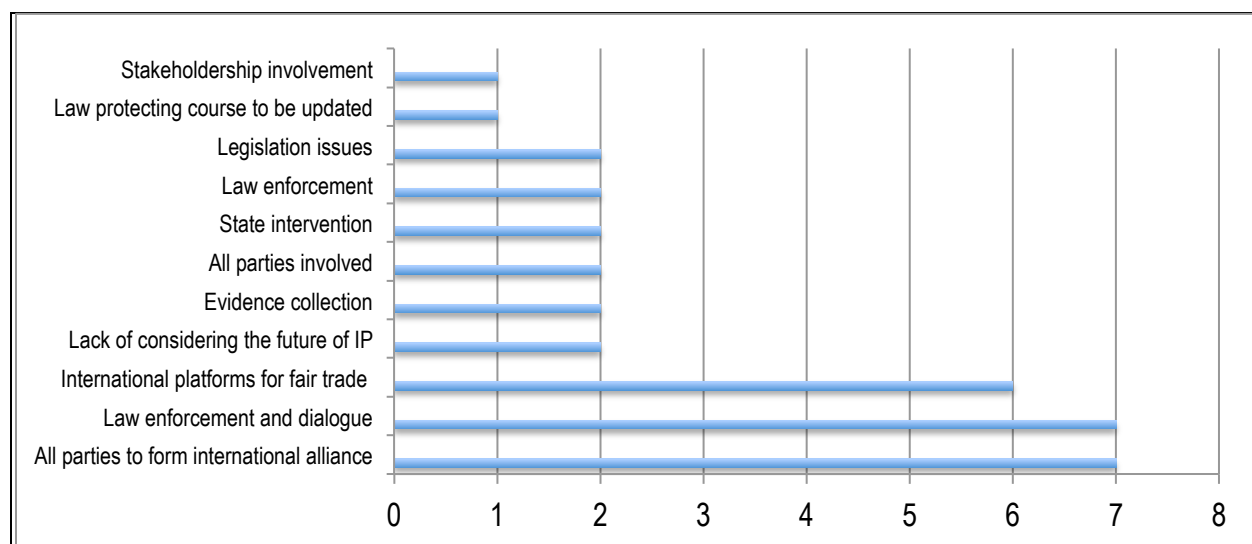


Fig. 5.21: Negotiating copyright strategic alliances

5.5.2 Mismanagement of copyright

This section contains six themes, namely, manipulation of rights, rights and revenues, CMO status abuse, IP owner, artist’s challenges to exist and right is revenue. The focus is on copyright malpractices and negative impact on the copyright owner.

Manipulation of rights

The ‘manipulation of rights’ theme contains seven key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of weak adherence to copyright.

The combined seven key words and concepts are as follows: manipulate the existing rights to accommodate new activities; PRS collects money for ‘online’ ring tones; PRS issues a license for permanent downloads to TESCO; under CDPA sound rights should be issued; PRS changes a definition in their articles to include ‘online’ right; allows to copy a ringtone without creating right; ‘back door’ entrance.

- *“PRS in the UK collects money on what is called ‘online ring tones’, and when you unpack it, they issue a license for permanent downloads to TESCO’s and others. When you ask yourself, how do you get the right society to make right copies, because this is the issue, you find that they do not have the right, that under CDPA rights to make a copy, they need to have ‘reproduction rights’ which as a performing right society they do not have. What the performing rights society has done, is that they have amended the definitions in their articles, to include a new terms, such as ‘an online right’ and they have given a definition to the on-line right, which allows them, as a performing rights society to license reproduction rights – that is what you can call a ‘back door entrance’ into the process.”*

Rights and revenues

The ‘rights and revenues’ theme contains seven key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of asserting the value of copyright.

The combined seven key words and concepts are as follows: mechanical rights; synchronization rights; performing rights; education on copyright; digital use; so-called digital rights; *reproduction rights*; right equals revenue.

- *“It’s not a sound recording; so the song which you work on is embodied inside of that film; so we can look at this way as **rights equal revenue**.”*
- *“Collecting societies are managing the mechanical rights, performing rights, and synchronization rights of a writer. Lately there is also so-called digital rights which reproduction rights and are very important to manage.”*
- *“Collecting societies in Malawi and Namibia educate on copyright all stakeholders.”*
- *“Today a master is any digital copy, which can be used digitally, where there is a ‘zillion’ master copies flying around.”*

CMO status abuse

The ‘CMO status abuse’ theme contains seven key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of the expected appropriate copyright management practice.

The combined seven key words and concepts are as follows: CMO is limited by guarantee, a non-profit organization; cannot get outside investment for a 'state of the art' IT system; investment is needed; 75% of the cost is paid by the writers; publishers are paid first on every territory; this is infringement; technically it is 'data migration'.

- *"The other problem is that collecting societies are limited by guarantee, so to get your computer systems in absolute state of the art, you have to have investment; and then not constituted in a way where they can get outside investment – capital investment; they are prohibited by the way they are structured; so it's always the members who have to pay for it; and because you know that publishers get paid on every territory first, it's always the writers who pay 75% of the costs. The thing is, technically do I call it infringement or we say fine, they are migrating data from the old system to the new one."*

IP owner

The 'IP owner' theme contains five key words and concepts derived from the research participants and the researcher identified the commonalities within the notion of institutional copyright importance.

The combined five key words and concepts are as follows: individual nature of rights; for a sound recording; right is revenue; driven by institutional knowledge; need for copyright knowledge, *extremely disadvantaged and prejudiced by a lack of copyright knowledge, rights a copyright owners owns, maximize copyright revenue.*

- *"The IP rights have an individual nature of rights. Right is revenue for a sound recording."*
- *"The management of copyright against infringement is very much **driven by the institutional knowledge** and the **need for copyright knowledge**; nobody will understand a value of it if they do not understand it."*
- *"The copyright owner is extremely disadvantaged and prejudiced by a lack of copyright knowledge"*
- *"Without understanding the rights a copyright owners owns, the copyright owner cannot maximize copyright revenue for either themselves or their writers"*

Artist's challenges to exist

The theme on 'the artist's challenges to exist' contains seven key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of artist challenges in managing copyright.

The combined seven key words and concepts are as follows: artist equals money; artist puts own investment in recording; selling own recording; copying CDs and tapes; to return own investment; not paying attention to number of copies sold; profit marginal.

- *"In Mauritius, artist always equals money. Artist puts his own investment in recording, selling own recording, copying CDs and tapes to return own investment. He is not paying attention to a number of copies sold."*
- *"But at that time, piracy was something marginal, and people were selling quite an interesting number of tapes and CDs and they were over their investments."*

Right is revenue

The 'right is revenue' theme contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of publisher presence.

The combined five key words and concepts are as follows: only one active distributor; Gallo music; no consent of the IP owner; no monetary terms; IP owner does not exploit his work.

- *"The only one active distributor in the country is Gallo music production in Namibia."*
- *"With putting a video on YouTube, there is no consent of the IP owner, no monetary terms discussed and the IP owner does not exploit his work without gaining anything."*

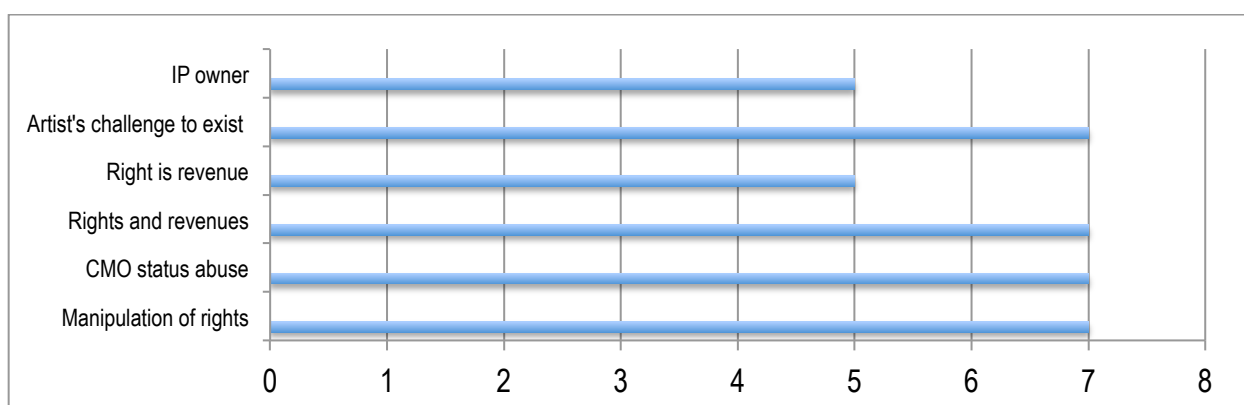


Fig. 5.22: Mismanagement of copyright

5.5.3 Endorsing intellectual property in the education system

This section contains three themes, namely, education on IP at schools, conversations/ consultations with Government/ Ministry of Education to get IP into school/ high school curriculum and IP subjects at the university. These issues promote intellectual property education in schools and dialogue with all stakeholders.

Education on IP at schools

The theme on ‘education on IP at schools’ contains eight key words and concepts derived from the research participants and the researcher identified the commonality value of copyright education and culture from an early age.

The combined eight key words and concepts are as follows: education – IP should be taught at school; teachers do not know how to teach it; government in the UK put it in the curriculum; children do not understand IP and do not know it; IP can become the elective at school; do not have the capability to administer it; Department of Education needs to be engaged; to write a syllabus for schools.

- *“IP should be taught at schools, as kids do not understand the IP and do not know it. It has been added to the national curriculum. Part of it is that schoolteachers do not know how to teach it, **but the government put it on the national curriculum.** IP can become an elective at school, but schools at the moment have no capabilities to administer it. Department of Education needs to be engaged to write a syllabus for schools.”*
- *“early ages exposure to copyright and the cultures influencing the use of copyright make a big difference”*

Conversations/ consultations with Government/ Ministry of Education to get IP into school/ high school curriculum

This theme is promoting the adoption of the intellectual property curriculum in schools.

- *“There are consultations with Government and the Ministry of Education to get IP to school, in a high school curriculum.”*

IP subjects at the university

This theme only featured in one conversation and mentions that IP is taught at some universities.

- *“IP subjects are taught at the university.”*

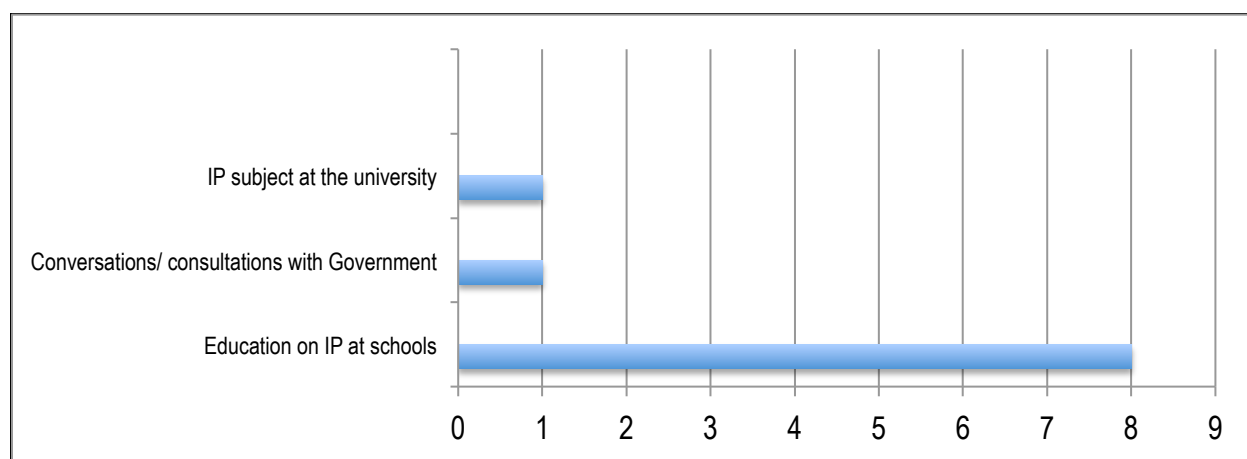


Fig. 5.23: Endorsing intellectual property in the education system

5.5.4 Prioritizing intellectual property as a high return asset

This section contains four themes, namely, priority allocation to the IP issues, government and IP issues, law enforcement via CMO, and individual punishment on copyright infringement. The focus of the issues is on the enforcement of copyright on infringers. The other theme is the challenge of maintaining copyright laws for purposes of consistency with opposition parties coming into power in government.

Priority allocation to IP issues

The theme on ‘giving priority to IP’ contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of copyright priority within the government.

The combined six key words and concepts are as follows: there are more burning issues (than IP); the IP issue is not a priority for the government to deal with; even performer has more burning issues than piracy; law enforcement participates, but agencies will not go out of their way to catch an infringer; tax subsidizes law enforcement; the IP issue is a minor thing for them.

- *“There are more burning issues to deal with than the IP in Israel. The IP is not a priority for the government to deal with; even performers have more burning issues than piracy. Law enforcement participates, but agencies will not go out of their way to catch an infringer. Taxpayers subsidize law enforcement. The IP is a minor thing for them.”*

Government and IP issues

The ‘government and IP’ theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of consistency in managing copyright and the importance of Government’s role.

The combined six key words and concepts are as follows: every new government brings new law enforcement on IP; current government no law enforcement on the IP and no back up; pressure of the bus sector; pressure of international markets; capitalization on the market enforcement; artist pays for lobbying on IP in the congress.

- *“Every new government brings new law enforcement on the IP in Costa Rica. Current government did not bring the law enforcement on the IP and no backup on the existing ones. Business sector puts the pressure on the government; the pressure of the international markets also exists. Artist pays for lobbying on the IP in the congress in Costa Rica, instead of the government. Capitalization on the market enforcement depending on the dividends in their own field and Government expects regular standards.”*
- *“Government alone has the final say in IP law matters”*

Law enforcement via CMO

The theme on ‘law enforcement via CMO’ contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of the legal power of the CMO.

The combined six key words and concepts are as follows: law enforcement; CMO has a mandate to collect on behalf of members; CMO can approach an infringer through the court; penalties are high; infringement has the highest punishment; infringers make money and pay their way out to continue working.

- *“Collecting society has a mandate to collect on behalf of members. Collecting society can approach an infringer through the court as a part of the law enforcement mechanism. The penalties are high; actually infringement has the highest punishment. Infringers make money and pay the penalties to continue working.”*

Individual punishment on copyright infringement

The theme on ‘individual punishment on copyright infringement’ contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of highlighting enforcement actions.

The combined five key words and concepts are as follows: USA – individual punishment on copyright and file sharing; small people are smacked on their heads; control mechanism; claims and statutory damages against individual customers; the way of finding an attractive and affordable model for customers.

- *“In the USA the individual punishment on copyright and file sharing becomes a part of the control mechanism. Small people are smacked on their heads! Claims and statutory damages against individual customers are the way of finding attractive and affordable model for customers to fight a copyright infringement.”*

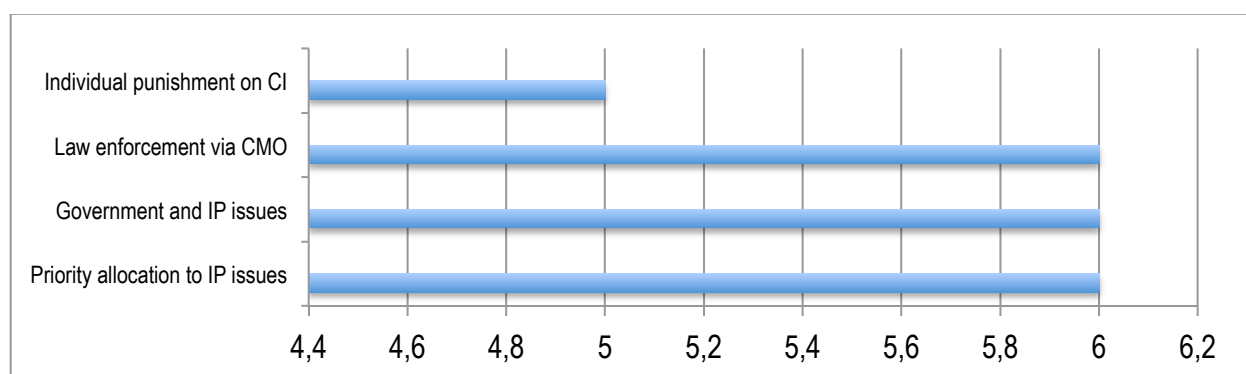


Fig. 5.24: Prioritizing intellectual property as a high return asset

5.5.5 Promoting a new copyright culture

This section contains six themes that clustered culture in the copyright conversation against infringement.

Online piracy and culture sharing

The 'online piracy and culture sharing' theme contains six key words derived from the research participants and the researcher identified the commonalities within the notion of promoting culture in the copyright conversation.

The combined six key words and concepts are as follows: online piracy is a moral issue; sharing is not illegal; right of a private user; basic rights share knowledge; to share culture; to have access to culture and content.

- *“Online piracy is a moral issue, sharing with your friend is not illegal. Everyone has a right; it is a right of a private user as the basic rights to share knowledge and to share culture. To have access to culture and content is a constitutional right.”*

Music is culture

The 'music is culture' theme contains four key words derived from the research participants and the researcher identified the commonality of the importance of culture in the copyright conversation beyond where one associates culture as a form of behavior and approach towards not infringing copyright.

The combined four key words and concepts are as follows: music is a part of culture; music is shared but not sold; music for weddings, funerals and so on; word “piracy” is foreign.

- *“Music is a part of the culture, especially in Africa. Music shared here but not sold. Every big event in life has special music: weddings, funerals, and so on, so the word “piracy” is foreign to us.”*
- *“music is a central aspect to our culture, along with our customs, cooking and dress”*

Culture related infringement

The theme on 'culture related infringement' contains three key words derived from the research participants and the researcher identified the commonalities within the notion of the negative infringing culture.

The combined three key words and concepts are as follows: culture-driven infringement; no moral codes; this provides an opportunity for people to gain commercially, knowing that it is copyright infringement.

- *“Culture-related copyright infringement has no moral codes; this provides the opportunity for people to gain commercially, knowing that it is a copyright infringement.”*

Culture-driven infringement

The theme on ‘culture-driven infringement’ contains two key words derived from the research participants and the researcher identified the commonalities within the notion of understanding the infringing culture.

The combined two key words and concepts are as follows: culture-driven; air and legality no moral relationship.

- *“Copyright infringement is a culture-driven infringement, and there is no moral relationship between ‘air’ and ‘legality’.”*

Infringement within a country

The ‘infringement within a country’ theme contains two key words derived from the research participants and the researcher identified the commonalities within the notion of containing the spread of infringement.

The combined two key words and concepts are as follows: to manage infringements within respective countries; done in France, Italy, Germany and the USA.

- *“It is very important to manage infringements within respective country; it is done in France, Germany, Italy and the USA.”*

Illegal downloading used as a marketing tool

The theme on ‘illegal downloading as a marketing tool’ contains two key words derived from the research participants and the researcher identified the commonalities within the notion of leveraging infringement for competitive gain.

The combined two key words and concepts are as follows: scale of the piracy is the issue in the last twenty years; illegal downloading is working as a marketing tool for the legal copy.

- *“Scale of the piracy became a big issue in the last twenty years.”*
- *“Illegal downloading is working as a marketing tool for the legal copy.”*

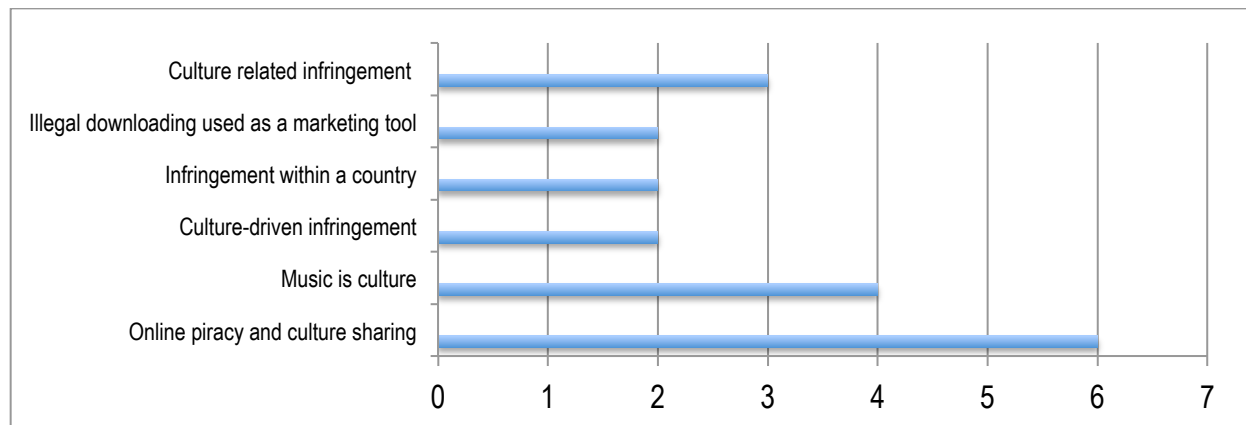


Fig. 5.25: Promoting a new copyright culture

5.5.6 Law enforcement deployment in copyright

This section contains four themes, namely, law enforcement in first world countries, NCPS enforcement against physical piracy, IRRA deals with physical piracy and ‘sits uncomfortably with copyright’; they focus on the level of copyright enforcement in first world countries.

Law enforcement in first world countries

The theme on ‘law enforcement in first world countries’ contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of progressive copyright law enforcement.

The combined six key words and concepts are as follows: well-organized police force; training extended officers; under control in the first world countries; go to people’s houses; smash doors; infringers can be sent to jail.

- *“In the first world countries there is a well-organized police force consisting out of the training extended officers to fight physical piracy. They are allowed to go to people’s houses, to smash doors if needed and to send infringers to jail. Physical piracy is under good control in the first world countries.”*

NCPS enforcement against physical piracy; IRRA deals with physical piracy

These two themes only featured in one conversation derived from the research participants and the researcher identified the commonalities of actions taken to address infringement.

- *“In Britain they have the NCPS enforcement and trading standards become very engaged in physical counterfeiting and piracy. IRRA is the similar agency in the USA.”*

Sits uncomfortably with copyright

This theme only featured in one conversation from the research participants in respect of the pharmaceutical industry and copyright.

- *“Pharmaceutical industry sits uncomfortably with the copyright.”*

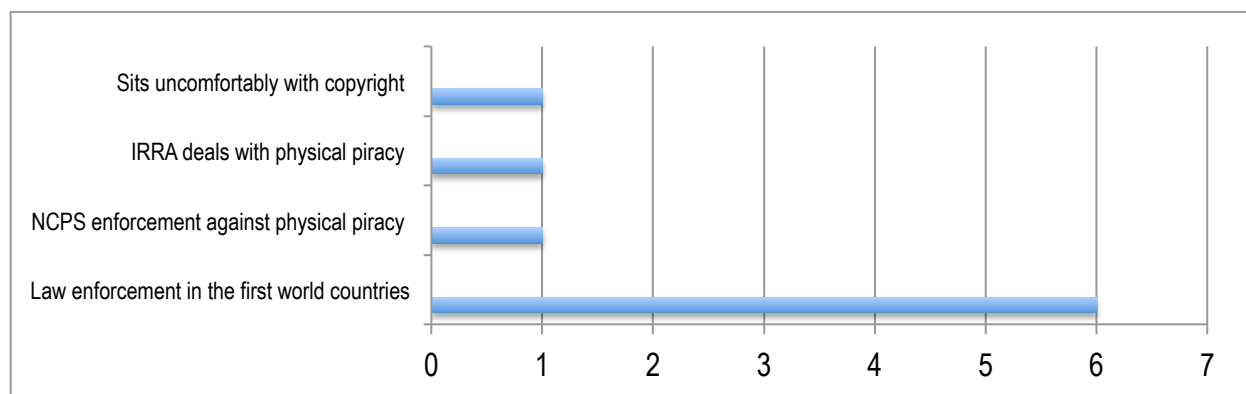


Fig. 5.26: Law enforcement deployment in copyright

5.5.7 The producer's incentive in the exploitation of content

This section contains two themes that emerged from the research participants about the role of a producer in the copyright infringement conversation.

What a producer does

The theme on 'what a producer does' contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of understanding the role of the producer.

The combined six key words and concepts are as follows: pays to a director; to editor; to cinematographer; to a visual designer; to an actor; to a writer.

- *“The producer pays to a director, to the editor, to cinematographer, to a visual designer, to an actor and to a writer.”*

ROI for producer

The theme on the ‘return on investment (ROI) for the producer’ contains five key words and concepts derived from the research participants. The researcher identified the commonalities of the involvement of the producer in developing the project.

The combined five key words and concepts are as follows: covers costs for artist; return on investment; produces CD/DVD; sells CD/DVD; distributes artistic works to the markets.

- *“The producer covers costs for artist, produces CDs and DVDs, sells them in order to get his return on investment. The producer distributes the artistic works to the market.”*

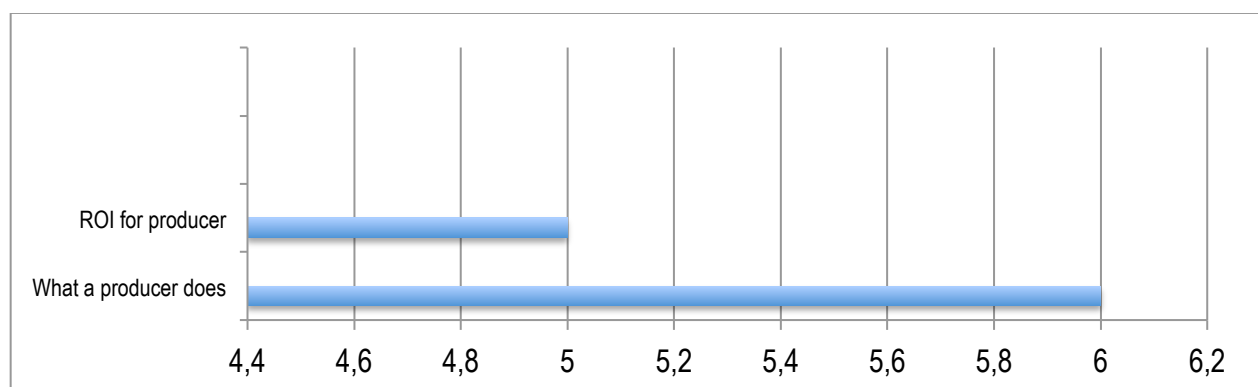


Fig. 5.27: The producer’s incentive in the exploitation of content

5.6 Lamination four: Copyright law and enforcement sensitization through education

This lamination emerged from exploring the perspectives on how to manage copyright infringement by including all interested parties, particularly in the exchange of and access to data.

5.6.1 Enhancing the value of copyright

This section contains four themes, namely, lack of understanding of copyright infringement, lack of information on IP, lack of knowledge on IP and no right

qualifications. These issues focus on weak copyright knowledge in the industry conversation.

Lack of understanding of copyright infringement

The theme on the 'lack of understanding of copyright infringement' contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting the copyright conversation amongst all the interested parties.

The combined five key words and concepts are as follows: the music industry is a copyright and neighboring rights industry; no education on copyright law; do not understand copyright infringement; line between private copying and copying for commercial use; copyright is only based on conventions, has no regulations; becomes more valuable with the Internet and digitalization.

- *“The music industry is a copyright industry whose essential products are copyrights.....sound recording, cinematographic film, literary work, musical work and artistic work rights, and neighboring rights.....performances, performers and personality rights.”*
- *“There is no education on the copyright law and the result is that people do not understand the copyright infringement. There is a fine line between private copying for friends and copying for a commercial use.”*
- *“The copyright law is based on conventions and has no regulations. The IP becomes more valuable with the Internet and digitalization.”*

Lack of information on IP

The theme on the 'lack of information on IP' contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting progressive copyright platforms.

The combined five key words and concepts are as follows: information sharing; lacking information on copyright; finding and accessing information, creating platforms to bring information across regarding current events; reporting every three months on copyright infringement; databases not accessible or available; IP day.

- *“We artists have to create platforms to bring information across on what is currently happening. There is a lack of information copyright and a lack of information sharing platforms regarding works. We need to report every three months on the copyright infringement as a part of the information sharing.”*
- *“When I want to check a work’s metadata, finding and accessing such information is nigh to impossible. The databases showing who claims on a work is information currently not accessible or available”*
- *“We need to establish the IP day as a national day to celebrate the IP.”*

Lack of knowledge on IP

The theme on the ‘lack of knowledge on IP’ contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of the copyright legacy as well as the impact a lack of IP knowledge and skills has.

The combined four key words and concepts are as follows: lack of knowledge on IP/ copyright law; copyright lives beyond this life; education; legacy issues; lack of copyright law qualifications.

- *“Copyright will live beyond this life; through education the legacy issues will be omitted. Lack of the knowledge on the copyright law provokes legacy issues.”*
- *“most lawyers and attorneys are not qualified in copyright law to the extent that asking a lawyer or attorney to address copyright law is akin to a GP medical doctor addressing heart surgery”*

Have no right qualifications

The theme of ‘no right qualifications’ only featured in one conversation derived from a research participant and the researcher identified its conversational value in terms of the skill importance in the industry.

- *“There are plenty of people working for the collecting societies with no right qualifications.”*

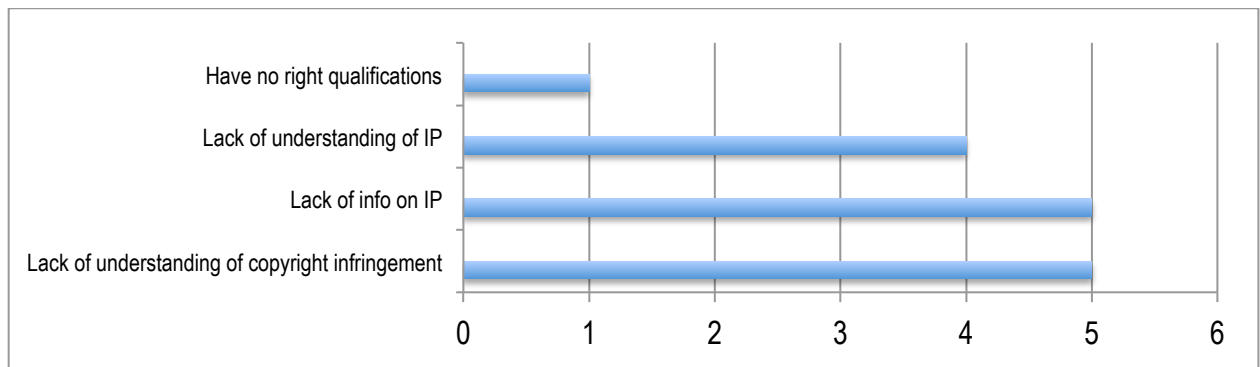


Fig. 5.28: Enhancing the value of copyright

5.6.2 Enforcing copyright and the judiciary

This section contains two themes, namely, copyright regime in Canada and strong regulatory platform to succeed. These issues focus on the progress made in engaging the judiciary in the copyright platform.

Copyright regime in Canada

The theme of the 'copyright regime' in Canada contains six key words and concepts derived from the research participants and the researcher identified the commonalities within the notion of visible actions in managing copyright.

The combined six key words and concepts are as follows: Canada has a very well-regulated copyright regime; very strong knowledge; copyright board; good balancing of various interests of shareholders; copyright board has five judges specializing in the field; they educate themselves on the issue.

- *"Canada has a very well-regulated copyright regime. There is a copyright board with very strong knowledge on the subject. The board gives good balancing of various interests of shareholders. The copyright board has five judges specializing in the field; they educate themselves on the issue instantly."*

Strong regulatory platform to succeed

The theme on the 'strong regulatory platform to succeed' contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion and role of information in f continuously promoting collaboration in advancing copyright.

The combined six key words and concepts are as follows: there should be a very strong regulatory framework; fairly regulated with a court of appeal; this body has to listen to consumers, music creators; access to information regarding copyright, both legal and in terms of ownership; transparent way; fair trade music; collaboration of consumer groups to discuss what is ‘fair’.

“There should be a very strong regulatory framework, fairly regulated with a court of appeal.”

- *“a strong platform should offer access to information regarding copyright, both legal and in terms of ownership”*
- *“Fair trade music project is a collaboration of consumer groups to discuss what is ‘fair’. This body has to listen to consumers and music creators. The way the body is operating is a transparent way.”*

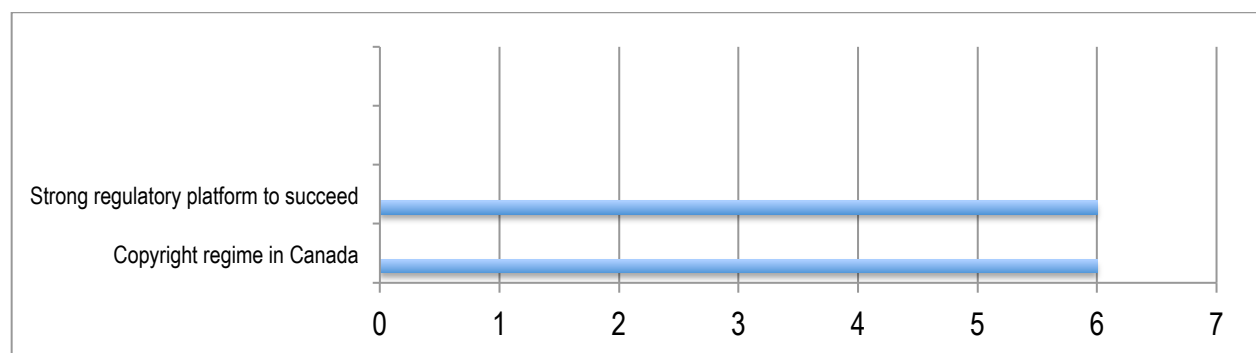


Fig. 5.29: Enforcing copyright and the judiciary

5.6.3 Addressing conflict of interest in copyright management

This section contains two themes, namely, government and creative community and ISP and the conflict of interest. The focus is on the conflicting challenges experienced regarding government and telecommunications companies in the exploitation of content without compensating the copyright holder.

Government and creative community

The ‘government and creative community’ theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities of strengthening collective management.

The combined six key words and concepts are as follows: education members of the creative community; government; to formulate claims into legal jobs; CMO currently breaks motivation to formalize the movement; to take care of performing rights; stop 'dividing and ruling' the market.

- *“The collecting society educate members of the creative community on the copyright, it also educates the government and to formulate claims into the legal jobs.”*
- *“Some collecting societies, for example in Mauritius, currently break the motivation to formalize the movement against the copyright infringement and to take care of the performing rights, stop ‘divide and rule’ the market.”*

ISP and the conflict of interest

The 'ISP and the conflict of interest' theme contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of adhering to well-defined governance structures.

The combined five key words and concepts are as follows: government; ripping off profit and collecting tax (Mauritius); an investor in telecoms' conflict of interests; telecoms are state owned organizations, but have partially private investors.

- *“In Mauritius, the government is ripping off the profit from the telecom as it is one of the investors, and collecting tax at the same time – there is a clear conflict of interests. Telecoms are state owned organizations but have partially private investors, and the government is one of them.”*

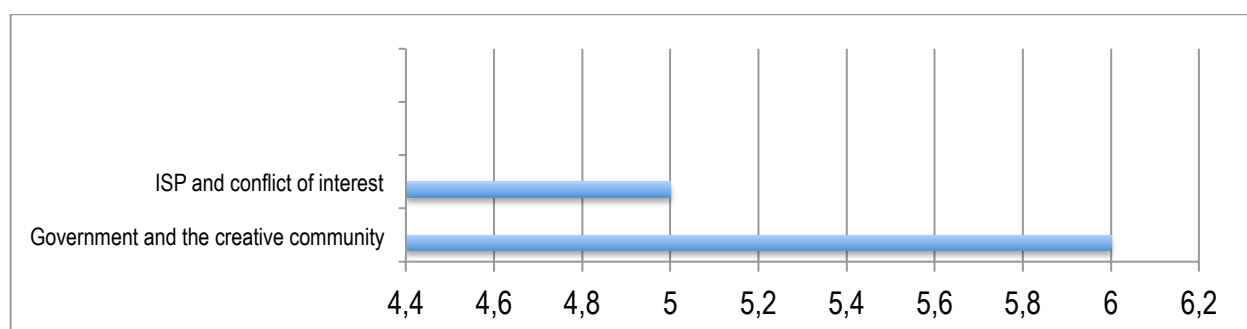


Fig. 5.30: Addressing conflict of interest in copyright management

5.6.4 The education imperative in promoting copyright

This section contains five themes, namely, training and education, role of CMO, education on IP across the board, education on IP matters in Malawi, training and education in Namibia. These issues are clustered according to actions taken in educating law enforcement agencies on copyright.

Training and education

The ‘training and education’ theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of adopting IP knowledge in all the relevant government structures.

The combined six key words and concepts are as follows: educating websites; educating police/intelligence; conferences, including law enforcement; papers are written; debates; workshops on contracts.

- *“Collecting society in Namibia educating police and intelligence on the copyright issues. Via the educational website and conferences with the law enforcement different members of the society are getting knowledge on copyright. Papers are written on this subject and workshops on contracts are taking place for members of the collecting society. Debates with public on copyright issues.”*

Role of CMO

The ‘role of CMO theme’ contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of losses brought about by infringement.

The combined four key words and concepts are as follows: CMO is prosecuting infringements; verdicts are in favor of CMO; huge loss on royalty; big impact on the industry.

- *“Collecting society in Namibia is prosecuting infringement; the verdicts are in favor of the collecting society. However, there is a huge royalty loss due to the copyright infringement, which has a big impact on the industry.”*

Education on IP across the board

The theme on ‘driving education on IP across the board’ contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of copyright importance to the creative industries.

The combined four key words and concepts are as follows: education related to IP; not infringed knowledge of music; to provide information on IP; governmental officers, lawyers on IP and authors.

- *“Education related to the IP is very poor, no knowledge on the copyright infringement. In order to provide information on the IP government officers, layers on the IP and the authors have to work together.”*

Education on IP matters Malawi

The theme on ‘education on IP matters in Malawi’ contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of awareness of the value of the copyright conversation.

The combined four key words and concepts are as follows: education needs to be improved on IP matters; people are broadcasting from home; they are arrested instead of promoted for using technology; no latest figures on IP contribution to the economy.

- *“Education on the IP matters needs to be improved in Malawi. People are broadcasting from home; they are arrested instead of being promoted for using technology. There are no latest figures on the IP contribution to the economy of Malawi.”*

Training and education Namibia

The ‘training and education in Namibia’ theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of enforcing copyright education.

The combined three key words and concepts are as follows: training sessions; starting with a college media course; educating on IP issues.

- *“Training sessions on the IP have started as a part of a ‘media course’, educating young people on the IP issues in Namibia.”*

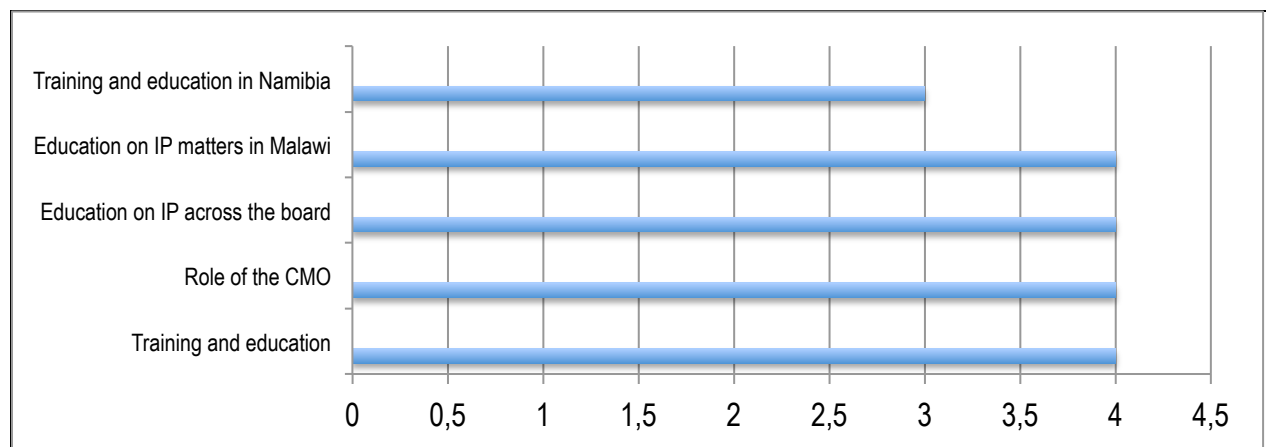


Fig. 5.31: The education imperative in promoting copyright

5.6.5 Re-aligning copyright to market changes

This section contains three themes, namely, outdated copyright law, aligning the technology act with a current Copyright Act and law and the type of infringement. These issues emphasize the importance of aligning copyright to technological changes.

Outdated copyright law

The theme on ‘outdated copyright law’ contains six key words and concepts derived from the research participants. The researcher identified the commonalities of the importance of government understanding the music industry.

The combined six key words and concepts are as follows: government has a bad intelligence sector; no understanding of the industry; dysfunctional to make decision; IP Law not updated since 1996; no updates on treaties; legislation of a common law.

- *“Government has a bad intelligence sector and no understanding of the music industry. They are dysfunctional to make a decision. In South Africa, the IP Law was not updated since 1996, no updates on treaties and legislation of a common law.”*

Aligning the Technology Act with the current Copyright Act

The theme on ‘aligning the Technology Act with the current Copyright Act’ contains five key words and concepts derived from the research participants. The researcher

identified the commonalities of the importance of constantly reviewing the Copyright Act with rapid technological changes.

The combined five key words and concepts are as follows: review of Nigerian Copyright Act in 2004; to align technology with the right owners; NCC is helping to review; copyright law is good, but implementing is a problem; no structural body to join hands with government.

- *“Review of a Copyright Act was done in 2004 in Nigeria in order to align the technology and the right owner. NCC (Nigerian Copyright Committee) is helping to review the law currently, as the copyright law is good, but implementing it is a problem. No structural body in Nigeria to join hands with the government, currently collecting society is helping on it.”*

Law and the type of infringement

The theme on ‘law and the type of infringement’ contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of addressing outdated copyright laws.

The combined five key words and concepts are as follows: law is outdated; 1989 before the Internet; needs to be revised; new crime cannot be prosecuted with the old law; digital piracy.

- *“Copyright law in Malawi is outdated, last time it was updated in 1989 before the Internet. It needs to be revised as the new crime cannot be prosecuted with the old law on digital piracy.”*

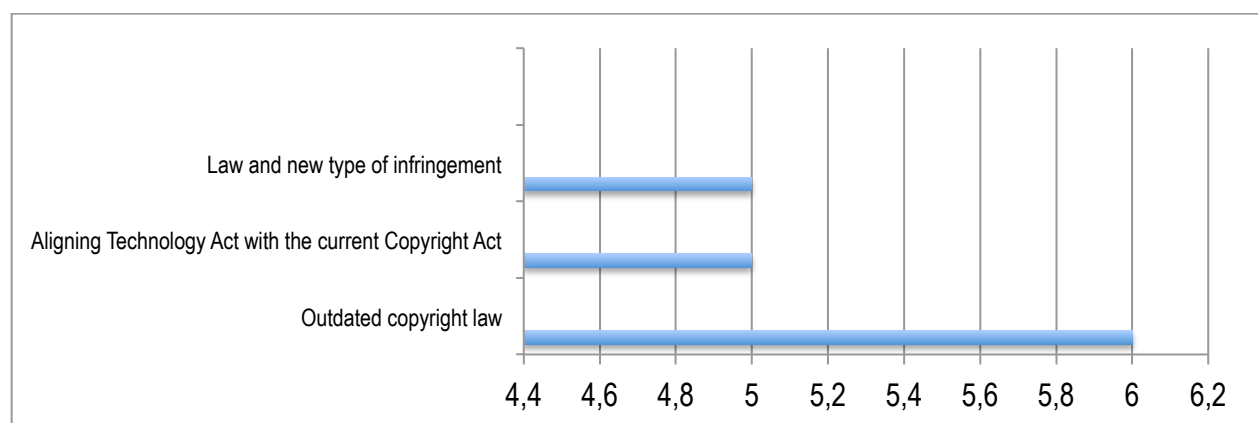


Fig. 5.32: Re-aligning copyright to market changes

5.6.6 Integrating the consumer into a new copyright culture

This section contains four themes, namely, technology vs. consumers, impact of peer-to-peer, behavior driven infringement and France cut off Internet access to individuals. These issues focus on the consumer and technology and the impact on copyright in terms of content exploitation.

Technology vs. consumers

The theme on 'technology vs. consumers' contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion highlighting the visible enforcement actions taken against infringement.

The combined five key words and concepts are as follows: to sue a website; to cut access to the website; to access a consumer organization; consumers have solidarity in fighting copyright infringement if a model is lucrative; if is not lucrative, consumers express 'freedom of culture' approach.

- *"The American judge ruled in the favor of the Organization of American Film Producers to sue the website which was distributing the infringed content. The evidence have been brought that the site didn't pay any penny to the copyright owners and kept the money to themselves."*
- *"In the United States another judge ruled **to cut access to the website** with illegal content, and also in Italy there was also another case where the website based in China was cut the access to. One cannot access it from Italy."*
- *"Consumers have solidarity in fighting the copyright infringement, if a model is lucrative. If is it not lucrative, consumers express 'freedom of culture' approach; you cannot go to the source without access to consumer organizations."*

Impact of peer-to-peer

The theme on the 'impact of peer-to-peer' contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of the future of mechanical rights.

The combined five key words and concepts are as follows: radio stations go digital; no more actual product; loading music on the radio station system; affecting the mechanical rights; also reproductive rights.

- *“Radio stations go digital, no more actual product is involved; they load music on the radio station system directly. By this, the station affects the mechanical rights of a copyright owner and also reproductive rights. The station infringes all the way.”*

Behavior-driven infringement

The theme on ‘behavior-driven infringement’ contains five key words and concepts derived from the research participants. The researcher identified the commonalities in the notion of consumers’ poor loyalty to copyright as a culture.

The combined five key words and concepts are as follows: no recovery on loss; adapt to technology; interfere where infringement occurs; does not care who distributes a song on the market; people want access to music.

- *“People want access to music and they do not care who distributes a song on the market. The digital piracy adapted to technology and there is no recovery on loss via digital infringement.”*

France cut off Internet access to individuals

The theme on ‘France cutting off Internet access to individuals’ only featured in one conversation and serves as evidence of actions taken against infringement.

- *“In France they used to cut off the Internet access for individuals who was downloading illegal content on their personal computers.”*

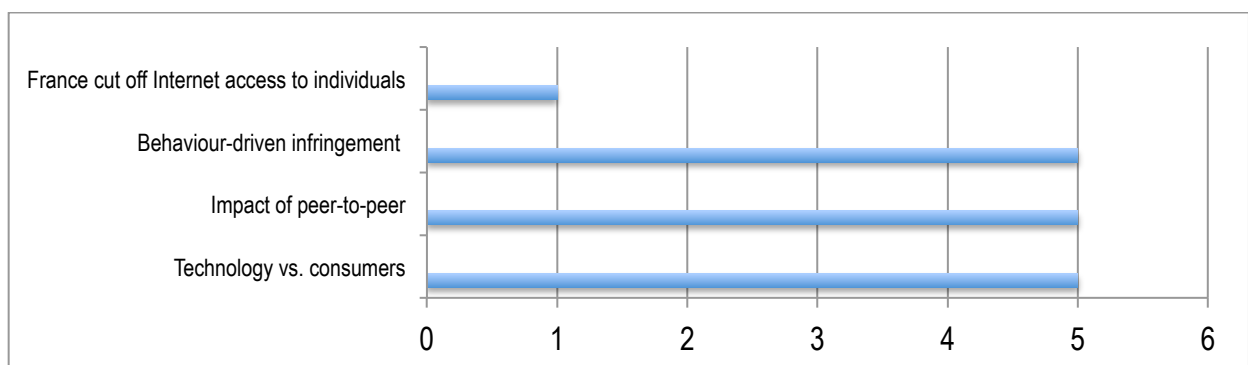


Fig. 5.33: Integrating the consumer into a new copyright culture

5.6.7 Advancing copyright into the future

This section contains two themes, namely, IP environment and copyright law and IP value. It focuses on the necessary enforcement actions and the benefit of a strong copyright environment.

IP environment

The theme on the 'IP environment' contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of a need for strong legislation in copyright.

The combined six key words and concepts are as follows: stronger copyright environment; stronger legislation; stronger punishment model; to review a copyright act on digital environment; government must continue to do raids.

- *“With a stronger copyright environment, there is stronger legislation and stronger the punishment model. Currently, a Copyright Act is under renewal to add points on digital environment. Our government must continue to do raids in Namibia together with a help of the collecting society.”*

Copyright law and IP value

The theme on 'copyright law and IP value' contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of government getting involved in the copyright agenda.

The combined five key words and concepts are as follows: IP enforcement in the White House; America took a lead on IP issues; the UK did the same; IP enforcement with three portfolios – copyright, trademark patents; gives a very strong signal about the IP value in the UK.

- *“The IP enforcement in the White House is done under the Obama administration. America took a lead on the IP issues. The UK did the same and introduced the IP committee, with the enforcement of three portfolios: copyright, trademark, and patents. This gives a very strong signal about the IP value in the UK society.”*

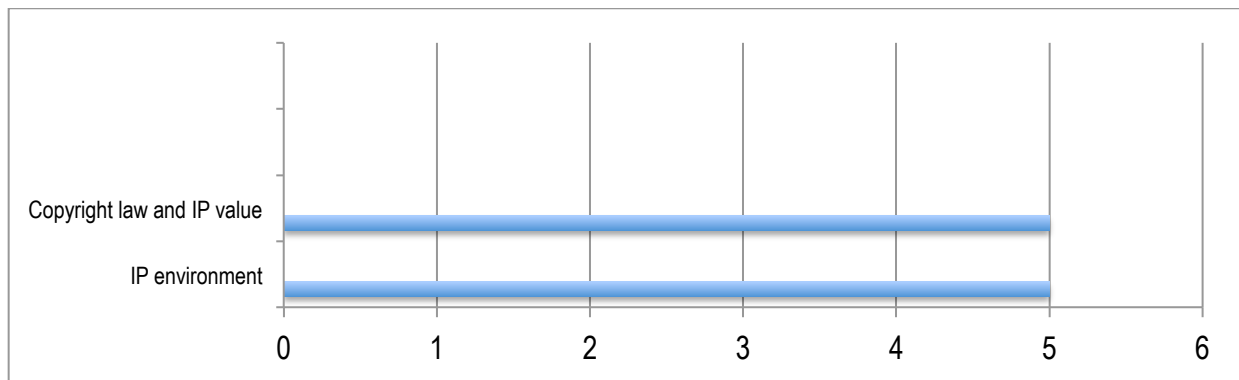


Fig. 5.34: Advancing copyright into the future

5.6.8 The alliance-value to global copyright management

This section contains three themes, namely, collecting culture, digital rights and copyright infringement. The focus is on the collecting societies' need for a sustainable royalty collection culture and the promotion of continuous enforcement actions against copyright infringement.

Collecting culture

The 'collecting culture' theme contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting proper standards of collective management.

The combined five key words and concepts are as follows: small countries need standards on collecting culture; needs are not covered; more digital piracy is happening; forces have to be joined; not possible to win a battle on its own.

- *"Small countries need standards on collecting culture, needs of collecting societies are not covered. More digital piracy is happening and forces have to be joined internationally as it is not possible to win a battle on its own."*

Digital rights

The 'digital rights' theme contains four key words and concepts derived from the research participants and the researcher identified the commonalities within the notion of maximizing royalty collection avenues.

The combined four key words and concepts are as follows: collecting royalties; using ringtones by telecoms and ISPs; IP is unidentified by law; no digital rights.

- *“To collect royalties for using ringtones by telecoms and Internet Service Providers is very challenging as the IP and digital rights are undefined by law.”*

Copyright infringement

The ‘copyright infringement’ theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of enforcement efforts in addressing infringement.

The combined four key words and concepts are as follows: lawsuit; negative press; strikes; law enforcement.

- *“We tried everything to fight the copyright infringement: lawsuits, negative press, and strikes. The law enforcement fails on this one.”*

The Internet issue

The ‘Internet’ theme is derived from a research participant and only featured in one conversation and the researcher has identified the commonality of the notion of content access via the Internet.

- *“In South America, there is 75% people have the Internet in Costa Rica and 80 to 88% of people in other countries of the region, like Panama or Nicaragua.”*

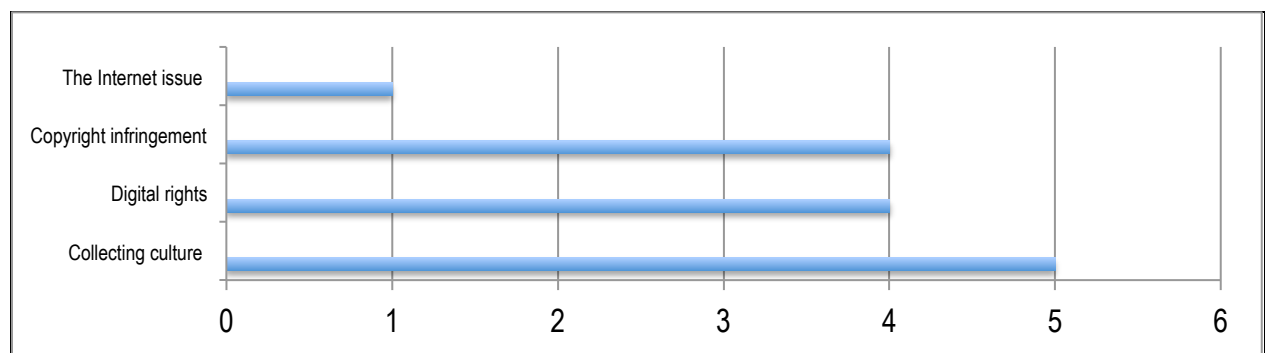


Fig. 5.35: The alliance-value to global copyright management

5.6.9 The illegal copyright market and royalty earnings

This section contains thirteen themes, namely, demand of illegal copyright market, economic model of the illegal copyright market, relations to illegal sale, market demand, survival, conversion of ‘pirates’, recovering the illegal copyright market, partial measures on piracy, recover illegal copyright market income, physical piracy, good

quality affordable licensed products, special places in South America and characters are celebrities. These issues are centered on protecting copyright. It also mentions illegal goods that drive the illegal copyright market where infringers treat infringement as an opportunity rather than the violation of copyright.

Demand of illegal copyright market

The 'demand of the illegal copyright market' theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of price.

The combined four key words and concepts are as follows: demand for cheaper goods; price per product is four times lower; losses on the original sales; illegal money cannot be recovered.

- *“There is a demand for cheaper goods around the world; price per infringed goods is four times lower. It brings losses on the original sales and illegal money cannot be recovered.”*

Economic model of the illegal copyright market

The 'economic model of the illegal copyright market' theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of negative market gaps.

The combined four key words and concepts are as follows: human nature sees opportunities; way of survival in easy economic climate; way to make a living; opening on the market, gap is filled.

- *“Human nature sees opportunities in copyright infringement; it is a way of survival in easy economic climate, and the way to make a living. Every opening on the market and the gap is filled with pirated goods.”*

Relations to illegal sale

The 'relations to the illegal sale' theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of leveraging copyright infringement.

The combined four key words and concepts are as follows: performer compensates with illegal sale; more attendance to the concert; performer will not discourage illegal sales because of this; pirated performer gets more popularity.

- *“Performer compensates with illegal sale by more attendance to the concert in Israel. A performer will not discourage illegal sales because of this. Pirated performer gets more popularity.”*

Market demand

The ‘market demand’ theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities amongst the notions of pricing and demand.

The combined four key words and concepts are as follows: prices are too high; demand for low price goods; demand for low quality products, IP related; demand for low quality branded goods.

- *“There is a demand for a lower price on goods, as prices are too high on the original CDs and DVDs. There is a demand for low quality products IP related, and a demand for low quality branded goods. Physical piracy fills up this gap.”*

Survival

The ‘survival’ theme contains two key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of poverty.

The combined two key words and concepts are as follows: poverty; survival.

“Copyright infringed goods are survival against poverty in many countries of the third world.”

Conversion of pirates

The ‘conversion of pirates’ theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities of transformation.

The combined three key words and concepts are as follows: policing; ex-pirates become the ‘eyes’ of those who are infringing on the market; law enforcement.

- *“In Namibia, ex-pirates become the ‘eyes’ of who is infringing the market, they become a part of the law enforcement and ‘policing’ the illegal sales.”*

Recovering the illegal copyright market

The recovering of the illegal copyright market theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities of transformation and market re-engineering.

The combined three key words and concepts are as follows: to recover illegal copyright market; to find arrangement with pirates; dialogue and unity.

- *“In order to recover the illegal copyright market we need to find arrangement with pirates. We need to create dialogue and unity between all interested parties.”*

Partial measures on piracy

The theme on ‘partial measures on piracy’ contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of suitable tariffs for a region.

The combined three key words and concepts are as follows: inventor needs to pay \$400 to register an invention; does not cater for local needs; stamps were introduced on everything to fight physical piracy in Malawi.

- *“In Malawi, an inventor needs to pay \$400 to register an invention. These high fees do not cater for local needs. In Malawi we have introduced holograms, the stamps on everything what can be infringed, only to fight the physical piracy.”*

The five themes below contains the specific argument regarding physical piracy and its negative price advantage on legal goods. They all underscore the illegal copyright market of physical goods which is still prevalent in third world countries.

Recover illegal copyright market income

- *“We need to recover illegal copyright market income.”*

Physical piracy

- *“The physical piracy is a reality of the third world countries.”*

Good quality affordable licensed products

- *“There is a need for good quality affordable licensed products.”*

Special places in South America

- *“There are special places in South America where we sell pirated goods.”*

Characters are celebrities

- *“In Israel, the characters from the children’s videos are celebrities.”*

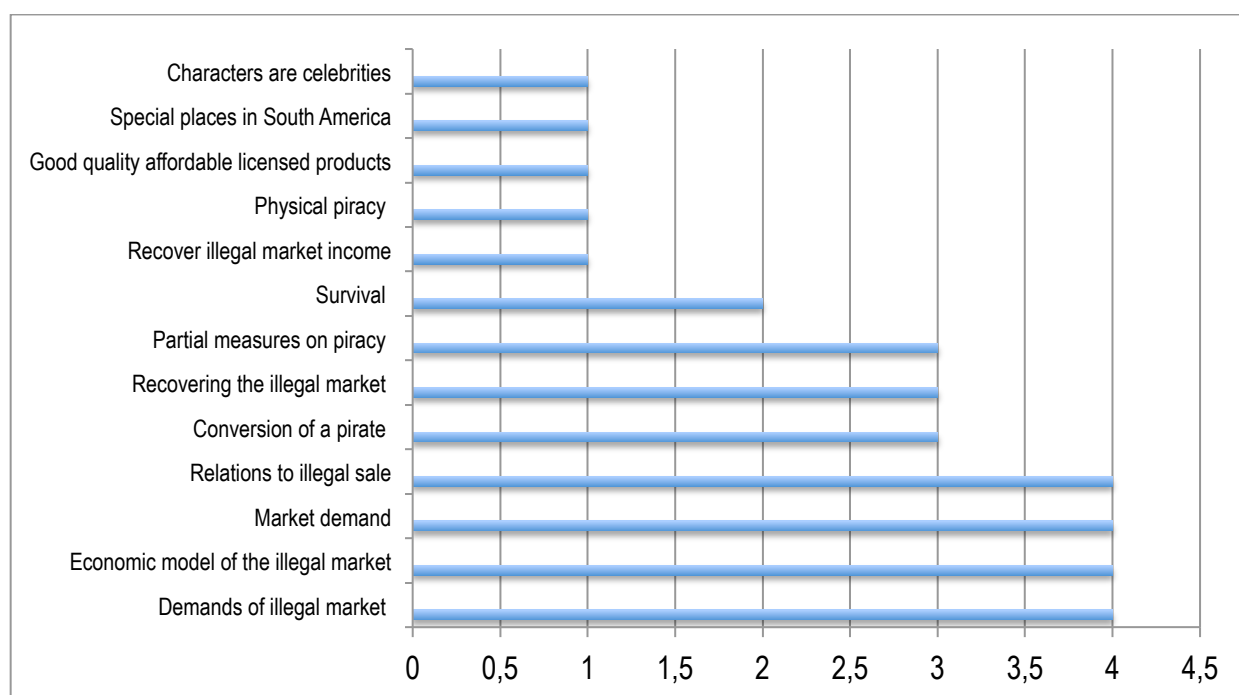


Fig. 5.36: The illegal copyright market and royalty earnings

5.7 Lamination five: Data entry compliance

This lamination emerged from exploring the specific actions taken against copyright infringement that proved most successful in a country or in general (legislative, existing law enforcement, education, and other macro and micro conditions).

5.7.1 Black IP and the new opportunity for copyright consumption

This section contains three themes, namely, legacy of black IP, languages in SA and 'no idea about history'. The focus is on the legacy of intellectual property and the lack of government involvement in the copyright discourse.

Legacy of black IP

The 'legacy of black IP' theme contains five key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting indigenous works.

The five key words and concepts are as follows: historically 'blacks' never seen to have the IP; legacy issue; Government is not interested in investing; is not based on supply-demand; potentially contributes to job creation and building industry; buy 90% local music and local movies.

- *"Historically 'blacks' never seen to have the IP, it is the legacy issue. The government is not interested in investing in it."*
- *"The IP is not based on the supply-demand issue"*
- *"It potentially contributes to the job creation and building local industry, for instance to buy 90% local music and local movies to contribute to the local economy."*

Languages in SA

The theme on the 'languages in SA' contains two key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of common law opinions.

The combined two key words and concepts are as follows: English language (common law problem); local/ vernacular language.

- *"for the majority of South Africans English is a second language, not first"*
- *"English language is the Common Law countries' problem versus the local/ vernacular language."*

No idea about history

This theme, as emerged from a research participant, only featured in one conversation and is an outlier in the copyright conversation.

- *“Young people have no idea about history.”*

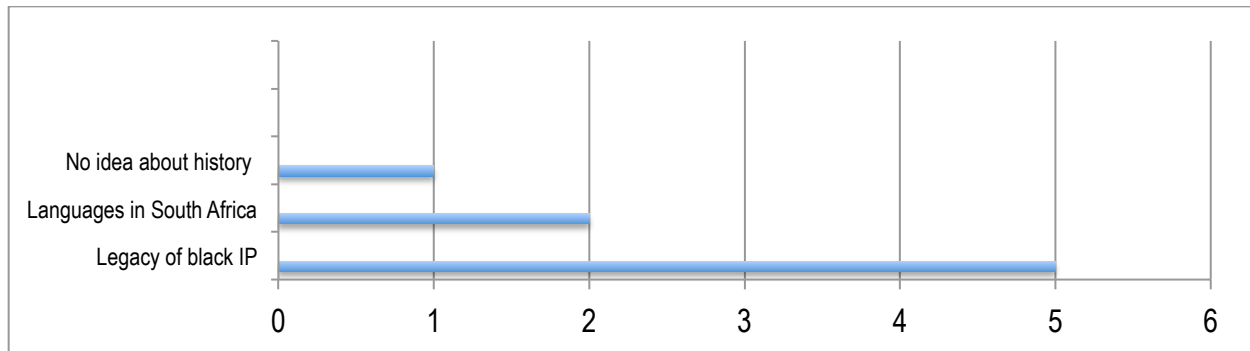


Fig. 5.37: Black IP and the new opportunity for copyright consumption

5.7.2 The levy issue in copyright and technology

This section contains six themes, namely, law enforcement, ways to fight infringement, Internet monitoring, levies, courts and strong entity required. These issues proactively promote the adoption of levies on all devices that have copying capabilities in order to compensate the copyright owner for any content exploited on these devices.

Law enforcement

The ‘law enforcement’ theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting enforcement.

The combined four key words and concepts are as follows: law enforcement; to fight user; to go after user who downloads illegally; works in Russia, privacy issue.

- *“Some measures of the law enforcement is to fight the user, to go after the user who downloads illegally; however, so far it works only in Russia as there is a privacy issue is involved and Russia does not pay too much attention to it.”*

Ways to fight infringement

The theme on 'ways to fight infringement' contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting the law to address the challenge.

The combined four key words and concepts are as follows: law enforcement; legislation; litigation, change copyright culture.

- *"Ways to fight infringement are law enforcement, to improve legislation and to do litigation and to change copyright culture."*

Internet monitoring

The 'Internet monitoring' theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of Internet policing.

The combined six key words and concepts are as follows: monitoring office; privacy issue only works in Russia; a copyright law is weak there; Improvements in digital scanning, tracking and tracing.

- *"There are monitoring offices, which monitor activity of individual users in Russia. A copyright law is weak there and the privacy issue does not concern the law enforcement."*
- *"Improvements in digital scanning, tracking and tracing that have changed many other industries should be felt in the copyright industries"*

Levies

The 'levies' theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting levies as an instrument to maximize royalty earnings on exploited content.

The combined three key words and concepts are as follows: ISP to pay levy; importers to pay levy; manufacturers to pay levy.

“Levies should be paid by the ISPs, by importers and manufacturers. If one wants to use new technology or new trendy gadgets, one should pay levies on it.”

Courts

The ‘courts’ theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of the value of a strong legal system.

The combined three key words and concepts are as follows: legislation; litigation; courts do not want to hold platform carriers responsible.

- *“Courts do not want to hold platform carriers responsible for the copyright infringement. One needs to litigate through the strong legislation on the copyright law.”*

Strong entity required

The theme regarding the ‘need for a strong entity’ contains two key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting the value of progressive copyright platforms.

The combined two key words and concepts are as follows: all content creators have to be formalized via international platforms; there should be a strong entity first.

- *“All content creators have to be formalized via international platforms and there should be a strong entity first to control the progress.”*

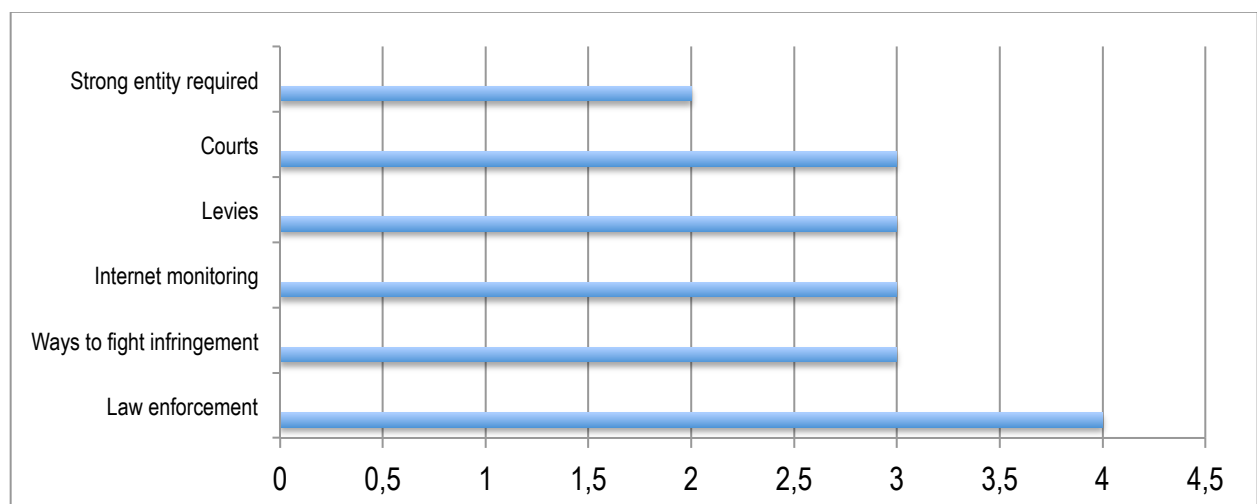


Fig. 5.38: The levy issue in copyright and technology

5.7.3 Tax and copyright

This section contains three themes, namely, value of copyright, taxes on IP in Malawi and IP value to the state. They are underlining the value of copyright and the expected involvement of the Reserve Bank in the copyright discourse.

Value of copyright

The theme regarding the ‘value of copyright’ contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting a practical copyright model to address infringement.

The combined four key words and concepts are as follows: combination of knowledge, behavior, practice and educated state; present models of copyright are highly inefficient; politically charged; no shift to give it a true value.

- *“Combination of knowledge, behavior, practice and educated state is a true example of the value of the copyright. The present models of copyright are highly inefficient and politically charged so there is no shift to give it a true value.”*

Taxes on IP in Malawi

The ‘taxes on IP in Malawi’ theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of consistent tax application to the creative industry.

The combined four key words and concepts are as follows: \$88 million total value where \$10 million goes to artist and \$78 million to sales and distribution; government introduced tax on money distributed to the artists; but not to the majors who made more; consultation on how to improve the situation in Malawi.

- *“In Malawi, \$88 million is a total value of the IP, where only \$10 million goes to the artists and \$78 million goes on sales and distribution. The government introduced a tax on the money distributed to artists, but not to the money made by the major publishers. Collecting society has held consultation on how to improve a situation in Malawi.”*

IP value to the state

The theme on the 'IP value to the state' contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of engaging the Reserve Bank in the copyright discourse.

The combined three key words and concepts are as follows: IP is a part of the capital; to transfer it one needs permission; approached Reserve Bank – Reserve Bank side-tracking government money in SA.

- *“In South Africa the definition of capital includes IP. In order to transfer IP outside South Africa one needs permission from the South African Reserve Bank. After approaching the Reserve Bank, one understands that the Reserve Bank is not tracking transfers of copyright outside South Africa.”*

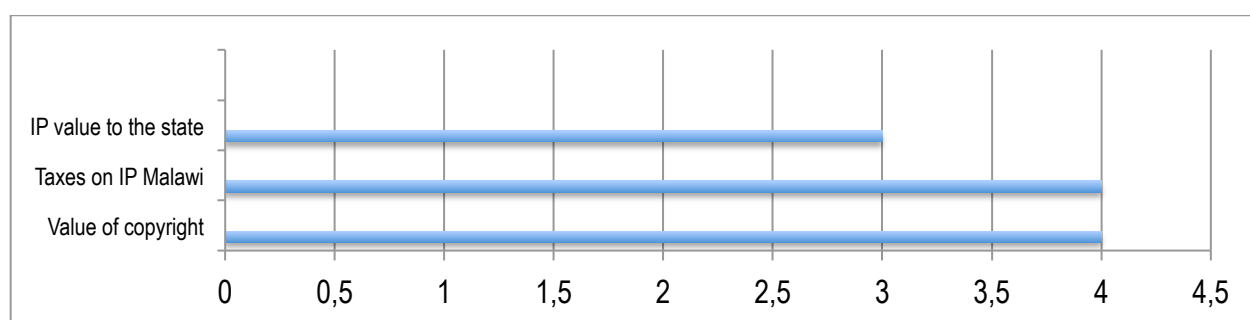


Fig. 5.39: Tax and copyright

5.7.4 The copyright culture support for the new industry

This section contains five themes, namely, copyright culture, culture change, industry new value proposition, changing culture of consumers and legal music share. They are focused on the importance of transforming the culture of the consumer and promoting copyright.

Copyright culture

The 'copyright culture' theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting the value of copyright.

The combined four key words and concepts are as follows: IP is a value to the state; copyright requires culture; it gives value to culture; monetary value.

- *“Copyright is a value to the state, copyright requires culture; it also gives value to the culture, monetary value.”*

Culture change

The ‘culture change’ theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of transforming the infringing culture of consumers to a pro-copyright culture.

The combined four key words and concepts are as follows: culture change; the industry was asleep for twenty years; generation who did not want to pay for music did not think that they would need to; re-education.

- *“The culture of a consumer needs to be changed, the industry was asleep for twenty years and there is a generation who did not want to pay for music and did not think that they would need to, so it’s time to re-educate them.”*

Industry new value proposition

The theme on ‘industry new value proposition’ contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of maximizing royalty returns from the ICT sector.

The combined four key words and concepts are as follows: new value proposition; click through; Internet language encryption; in 2010 90% of the musical industry revenue is controlled by ICT/telecoms.

- *“Industry has a new value proposition; in 2010 the ICT and telecoms sectors controlled 90% of the musical industry revenue.”*
- *“When people are looking for new value propositions, people going for advertising issue, for a click through issue, lots of ICT, and Internet language encryption.”*

Changing culture of consumers

The theme on ‘changing culture of consumers’ contains four key words and concepts, derived from the research participants. The researcher identified the commonalities within the notion of the value of culture in copyright.

The combined four key words and concepts are as follows: educational propaganda long term commitment; for consumers commercial exploration of copyright; changing culture; people will be paying with a feeling of doing something for public interest – long term plan.

- *“Educational propaganda on copyright is a long-term commitment. For consumers, commercial exploration of copyright, changing culture, people will be paying for music with a feeling of doing something for the public interest as a part of a long term plan.”*

Legal music share

The theme on ‘legal music sharing’ contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of consumers willing to pay for content.

The combined four key words and concepts are as follows: some people are prepared to pay for that; iTunes is a legal way to share music; iTunes has an agreement with majors on terms and conditions.

- *“Some people are prepared to pay for the music. The iTunes is a legal way to share music and the iTunes has an agreement with majors on terms and conditions of sharing.”*

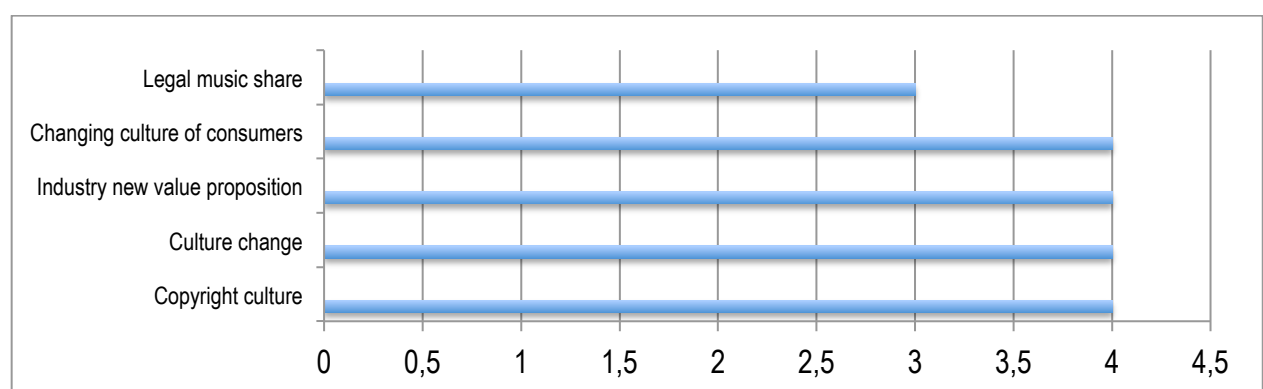


Fig. 5.40: The copyright culture support for the new industry

5.7.5 Negotiating with government as a key player in copyright

This section contains twelve themes, namely, lack of government commitment to IP, governmental involvement in the fight against IP infringement, law enforcement in

Nigeria, challenges of government, law enforcement, lack of funds, role of CMO, case in England, cooperation of various stakeholders, the need for resilient law enforcement by government, consumer needs to be educated and legislation in Israel best results. These issues focus on the weak involvement of government in the deployment of resources for protecting copyright and the importance of cooperation with all interested parties.

Lack of government commitment to IP

The theme on the 'lack of government commitment to IP' contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of the government's role in business.

The combined four key words and concepts are as follows: government is not in charge; lack of resources and a lack of commitment; government is benefiting from taxes; government needs to commit with resources and bring parties together.

- *"Government in Mauritius is not in charge to fight copyright infringement. A lack of resources and a lack of commitment from the government, the government is benefiting from the taxes and that is why it is not in charge. Government needs to commit with resources and bring parties together."*

Governmental involvement in the fight against IP infringement

The theme on 'governmental involvement in the fight against IP infringement' contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of resource value in advancing copyright against the illegal copyright market.

The combined four key words and concepts are as follows: there was an idea to create an anti-piracy unit in Malawi; it failed due to a lack of resources; the unit was supposed to have a platform for copyright owners, CMO and law enforcement; government left the implementation of this idea to COSOMA.

- *"There was an idea to create anti-piracy unit in Malawi but it failed due to a lack of resources. The unit was supposed to have a platform for copyright owners, collecting society and law enforcement to fight the copyright infringement. Government has left to implement this idea to Malawian collecting society COSOMA."*

Law enforcement in Nigeria

The 'law enforcement in Nigeria' theme contains four key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting copyright awareness.

The combined four key words and concepts are as follows: law enforcement KUSON and NCC; in 2008 did a 'music' day; broadcasters did not play music for a day; to increase public's awareness of infringement.

- *"In 2008 Nigerian collecting society did the 'music' day, broadcasters did not play music for the whole day to increase awareness of public on copyright infringement. Currently KUSON, Nigerian collecting society is working together with NCC, Nigerian Copyright Committee."*

Challenges of government

The theme on 'challenges of government' contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of the value of anti-piracy units.

The combined three key words and concepts are as follows: does not have enough resources for law enforcement; anti-piracy unit is established; it is too small.

- *"Government has not enough resources for the law enforcement, the anti-piracy unit is established in Mauritius, but it is too small."*

Law enforcement

This theme contains three key words and concepts and they are as follows: law enforcement; reflect on how creative industry can establish legal framework; umbrella to protect the industry (Mauritius).

- *"In Mauritius, the law enforcement need to reflect on how the creative industry can establish the legal framework, the umbrella to protect the industry."*

Lack of funds

The theme on the 'lack of funds' contains two key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of funding copyright skill development programs.

The combined two key words and concepts are as follows: no funding from the government; lack of staff to administer.

- *"No funding from the government and a lack of staff to administer royalties."*

Role of CMO

The 'role of CMO' theme contains two key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of training.

The combined two key words and concepts are as follows: CMO advises government on IP; training of new staff to be able to comply.

- *"Collecting society advises on the IP to the government and training new staff to be able to comply with requirements."*

Case in England

The theme on the 'case in England' contains two key words and concepts derived from the research participants. The researcher identified the commonalities of awareness as a means of campaigning.

The combined two key words and concepts are as follows: England; a law firm sends out notices.

- *"In the UK, a law firm is sending out notices to the individual users, as a part of a campaign to fight the copyright infringement on content."*

The four themes below have been clustered according to the notion of cooperation and copyright knowledge as valuable contributors in the campaign against infringement.

Cooperation of various stakeholders

- *“Cooperation of various stakeholders is needed to fight copyright infringement.”*

The need for strong law enforcement by government

- *“To enforce the law a strong government is needed.”*

Consumer needs to be educated

- *“Consumer needs to be educated on the copyright issues.”*

Legislation in Israel best results

- *“Legislation in Israel gives the best results to fight the infringement.”*

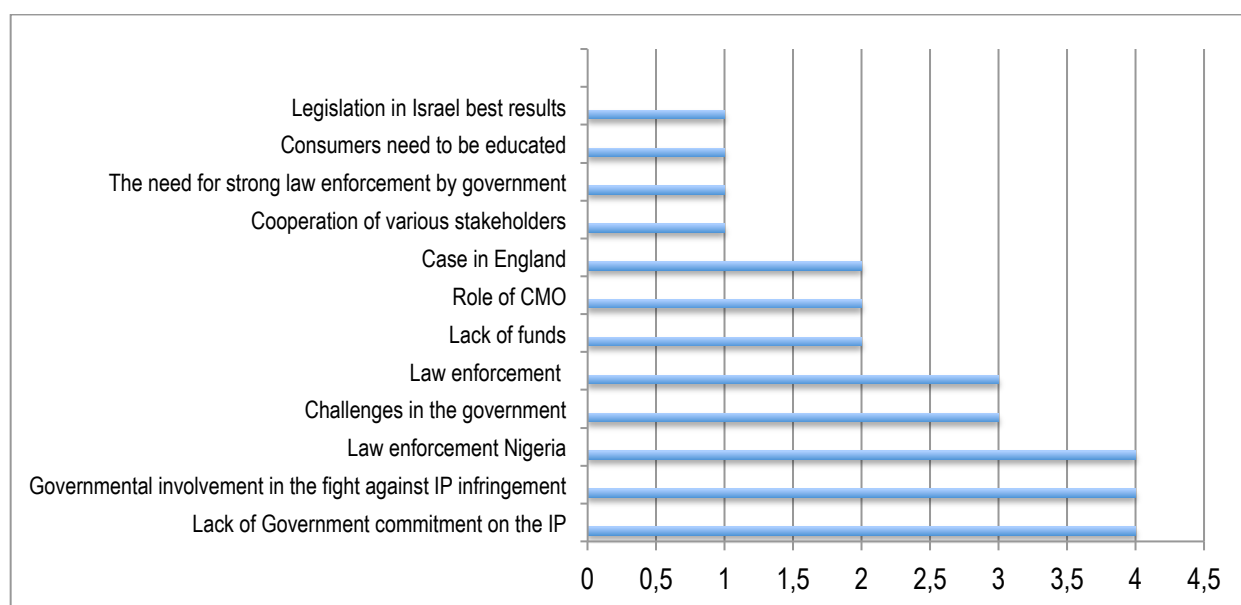


Fig. 5.41: Government as a key player in copyright

5.7.6 The operations of copyright

This section contains seven themes, namely, metadata infringement, CMO infringement, non-sufficient royalties via the bulk audience, cue-sheets issue, latency, international songwriter code contains a collecting society, artist label, 'black box'. They are focused on the challenges experienced by collecting societies in managing copyright due to systematic and other errors in the system.

Metadata infringement

The 'metadata infringement' theme contains three key words and concepts derived from the research participants and the researcher identified the commonalities within the notion of content databases' common protocols goal.

The combined three key words and concepts are as follows: metadata is a code with details; infringement is based on 'misspelling' of one of the components: composer, publisher, shares of the performance rights, mechanical rights, territory database, host ISP, Tune Code, ISWC; no money to the creator.

- *"Metadata is a code with details including: composer, publisher, shares of the performance rights, mechanical rights, territory database, host ISP, Tune Code, ISWC and/or ISRC."*
- *"the infringement can be and is often based on 'misspelling' of one of the components - If the infringement occurs, no money is paid to the creator."*

CMO infringement

The 'CMO infringement' theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of encouraging the improvement of copyright management in collecting societies.

The combined three key words and concepts are as follows: CMO receives a lump sum; no one knows who these amounts should be distributed to; CMO cannot monitor these activities, income smoothing, royalties manipulated.

- *"Collecting society receives a lump sum of money, no one knows who these amounts should be distributed to and the collecting society cannot monitor these activities."*
- *"CMOs practice 'income smoothing, royalty income is manipulated."*

Non-sufficient royalties via the bulk audience

The issue on 'non-sufficient royalties via the bulk audience' contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of royalty distribution.

The combined three key words and concepts are as follows: music writers become used to a music value through the bulk audience; royalties are filtering; from ten pounds to the last person who is getting nothing.

- *“Music writers become used by the bulk audience to a music value and the royalty is filtering, so from ten pounds going through the chain to the last person who is getting nothing.”*

Cue-sheets issue

The ‘cue-sheets theme’ contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of challenges in royalty management by CMOs.

The combined three key words and concepts are as follows: cue-sheets; if a name is not filled out correctly, money never reaches a person; money disappears from the system after five years and one cannot claim it thereafter.

- *“If BBC uses my music and the cue sheets are not filled in properly, or a name is not filled out correctly, my money never reaches me. Money disappears from the system after five years and one cannot claim it after that.”*

Latency

The ‘latency’ theme contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of inaccurate royalty distribution.

The combined three key words and concepts are as follows: latency; authors are not paid what they are supposed to; difference between exploiting music via iTunes through an aggregator and joining a collecting society.

- *“Latency is about data, authors are not paid what they are supposed to, and there is a lag between somebody exploiting their music on iTunes through an aggregator and actually passing the certain requirements to join the collecting society and be paid.”*

The two themes have been clustered according to the tracing of lost works in the system when the author cannot be found.

International Song Work Code contains the name of the work and the authors and composers of that work

- *“The ISWC contains the name of the work and the authors and composers of that work.”*

Black box

- *“The music industry generally and Collecting societies specifically have a so-called practice termed ‘black box’ where collecting societies cant identify the author/composer of a work and keep the money that would be due to the party that can’t be identified.”*

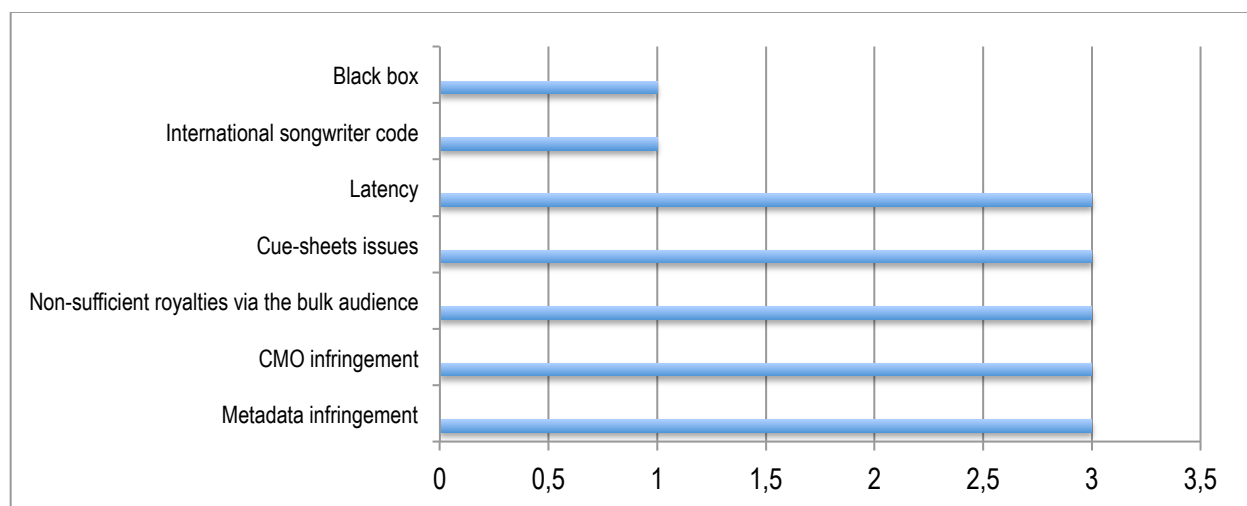


Fig. 5.42: The operations of copyright

5.7.7 The music business and value to the creator

This section contains three themes, namely, music business value, music industry is a business and stealing from a person vs. stealing from a corporation. They are focused on the value of copyright and negative implications of theft.

Music business value

The theme on ‘music business value’ contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of promoting the value of the music business.

The combined three key words and concepts are as follows: music business is a copyright business; it has an economic right; value proposition.

- *“Music business is a copyright business; it has an economic right and value proposition.”*

Music industry is a business

The theme on ‘music industry is a business’ contains two key words and concepts derived from the research participants. The researcher identified the commonalities amongst the notions underlining new artists entering the business.

The combined two key words and concepts are as follows: music industry grows by signing new artists; better business sense – takes control of own rights.

- *“Music industry growing by signing new artists. New artists have better business sense and they take control of their own rights.”*

Stealing from a person vs. stealing from a corporation

This theme outlines the concern of copyright theft in other forms relevant to the IP discourse.

- *“Stealing from a person has a moral implication versus from stealing from a corporation.”*

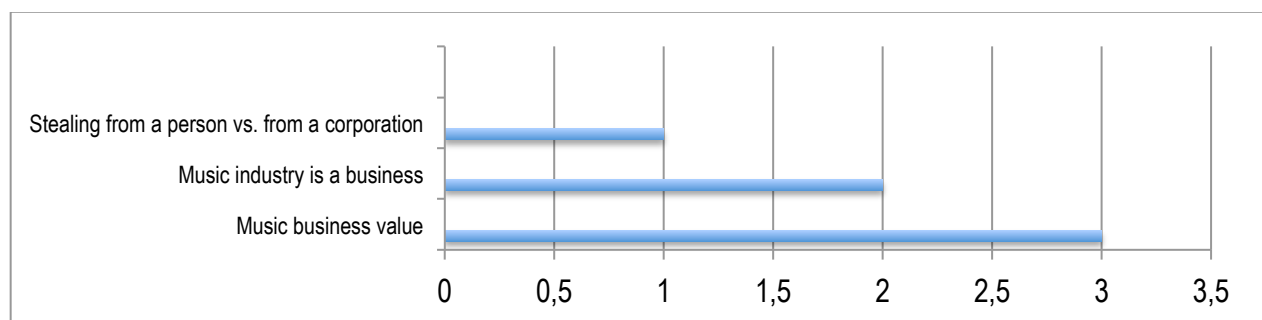


Fig. 5.43: The music business and value to the creator

5.7.8 The artist’s challenges in the music business

This section contains fourteen themes, namely, artist is not paid, artist and agent, taking advantage, education on an artist’s role, artist has no control, no procedure in place, campaign for authors’ rights, territory license, illegally used music, Synchronization rights infringement, need to create a comprehensive model on the artistic work, re-engineer the alignment between police/customers/CMO and content owners and artist

has a “little” performance fee. These issues form the general challenges experienced by artists in respect of content exploited in the market.

Artist is not paid

The theme of ‘artists not being paid’ contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of poor royalty collections.

The combined six key words and concepts are as follows: artistic work is not paid; do not pay the artist; artistic work has a value proposition; music is used for advertising and creator is not paid; Malawian community abroad compiles and distributes its own collection without authorization; no payment to creators.

- *“Artistic work is not paid enough. They do not pay to the artist; the artistic work has a value proposition.”*
- *“Music is used by the ISPs for ringtones, or for advertising by creator is not paid.”*
- *“Malawian community abroad compiles and distributes its own musical collection without authorization, so no payment for the local Malawian creators.”*

Artist and agent

The theme of the ‘artist and agent’ contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of the traditional process of conducting business in the music industry.

The combined three key words and concepts are as follows: gives work to agent; goes to producer to exist – for ‘help’; charges a fee to download artist’s work on the website.

- *“Artist gives work to the agent. Artist goes to producer to exist – for ‘help’, a producer charges a fee to download artist’s work on the website.”*

Taking advantage

The theme of ‘taking advantage’ contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of unfair management of the conducting of business in the music industry.

The combined three key words and concepts are as follows: 'helping' artist; no royalty; taking advantage of the artist.

- *“Agent by helping to the artist, taking the advantage of the artist, as the agent does not pay the royalty to the artist.”*

The four themes below are specifically clustered according to the technological challenges of the artist in terms of distribution and CMO intervention.

Education on an artist's role

The combined two key words and concepts are as follows: artist is not a fun provider; need more awareness.

- *“An artist is not a fun provider; the public needs more awareness on it.”*

Artist has no control

The combined two key words and concepts are as follows: artist has no control on earnings; no control on distribution.

- *“Artist has no control on earnings and no control on distribution of his music.”*

No procedure in place

The combined two key words and concepts are as follows: building websites, wanting to use them to sell music without a license; no procedure in place.

- *“Young artists want to build a websites and sell music via them without a license; there is no procedure in place to educate them on copyright.”*

Campaign on author's rights

The combined two key words and concepts are as follows: reproductive rights exclusive to the IP owners (authors, composers, producers); educational campaigns on licensed music created by others.

- *“The CMO had introduced an education campaign on reproductive rights, exclusive to the IP owners (authors, composers, producers). This education campaign is also related to license music created by others.”*

Territory license

The ‘territory license’ theme contains two key words derived from the research participants and the researcher identified the commonalities within the notion of highlighting the success of actions taken to manage copyright.

The combined two key words and concepts are as follows: introduced a compulsory license for producers based on the territory; CMO is collecting royalties to arrange distribution of artistic works outside of the country.

- *“The CMO in Malawi introduced a compulsory license for producers based on the territory, as it makes it easier for the CMO to collect royalties to arrange distribution of the artistic works outside of the country.”*
- *“Communication commission authority of Namibia provides licenses to ISP on music and gives ‘provisional’ rates on music use.”*

The theme of illegally downloaded music contains two key words derived from the research participants, which address the notion of non-complaint radio stations.

Illegally used music

The ‘illegally used music’ theme contains two key words derived from the research participants and the researcher identified the commonalities within the notion of copyright malpractices of radio stations.

The combined two key words and concepts are as follows: music is illegally used; download illegally.

- *“Music is downloaded illegally and used illegally by the radio stations.”*

Synchronization rights infringement

The 'synchronization rights infringement' theme contains two key words derived from the research participants and the researcher identified the commonalities within the notion of copyright malpractices of radio stations.

The combined two key words and concepts are as follows: lower price; synchronization rights are infringed.

- *"Lower price on the infringed goods, and synchronization rights are infringed too."*
- *'Some TV stations use music without sync rights and make it very difficult should one try and challenge them.'*

The three themes below are clustered according to the need for a comprehensive model that addresses artists' revenue management.

Need to create a comprehensive model on the artistic work

- *"We need to create a comprehensive model on the artistic work."*

Re-engineer the alignment between police, customers, CMO and content owners

- *"We need to re-engineer the alignment between police, customers, the CMO and content owners."*

Artist has a "little" performance fee

- *"Artist has a little performance fee."*

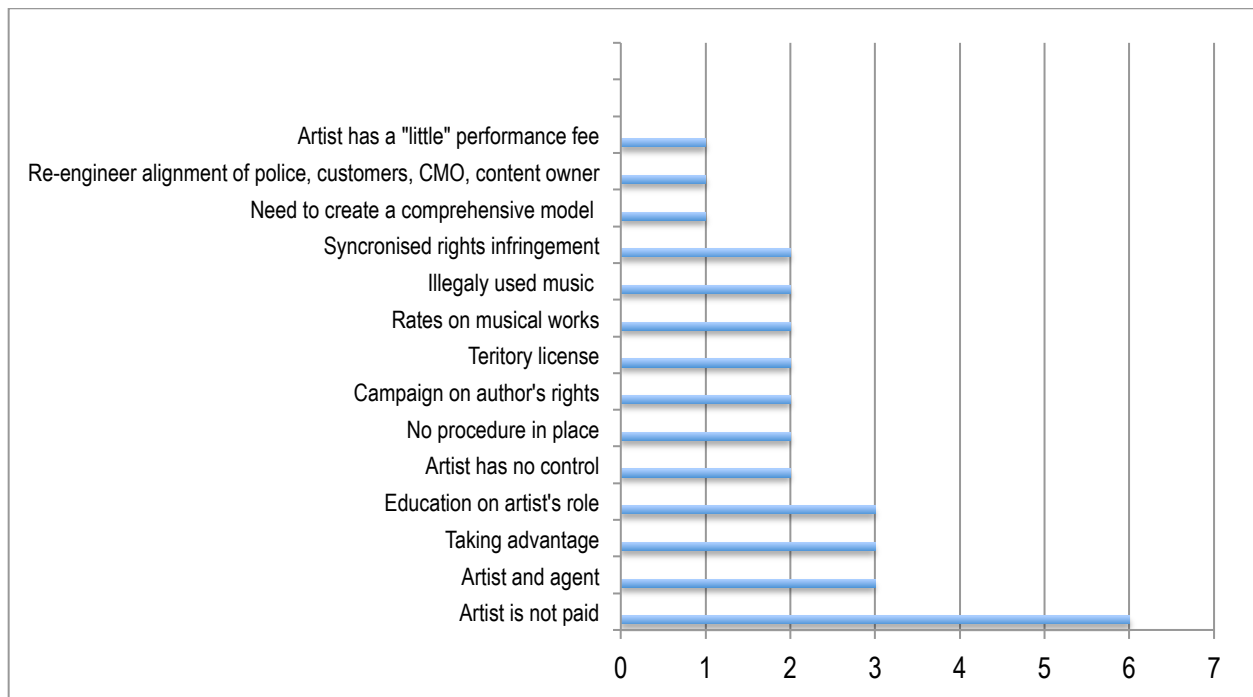


Fig. 5.44: The artist's challenges in the music business

5.8 Lamination six: CMO copyright data and technology transparency integration with external oversight

Lamination six emerged from the five research questions' data and the researcher clustered all the notions that emphasized the significance of and need for external oversight over CMO copyright data and technology transparency and the integration of same with the external oversight on a practical basis.

5.8.1 The negative impact of technology on copyright

This section contains sixteen themes, namely, penalties for digital piracy, technology related infringement, illegal models, legalization of illegal copyright market, copyright, online piracy, patent, technology related, websites without digital license, low digital piracy, barriers of entry, BitTorrent, pay per connection, user collapse in price in a digital world and peer-to-peer is a marketing tool. These issues highlight the negative role of technology on content owners when works are exploited without compensating the author.

Penalties for digital piracy

The theme on 'penalties for digital piracy' contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of monitoring websites.

The combined three key words and concepts are as follows: while illegally downloading from the website a message flashes; penalties for pirated ads; cutting off a source of revenue.

- *"There are some website, while a person illegally downloading from the website, a message flashes up: "It's illegal!" Penalties are paid on the pirated ads and it is cutting off a source of revenue for illegal content owners."*

Technology related infringement

The theme on 'technology related infringement' contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of levy on devices to collect royalties.

The combined three key words and concepts are as follows: technology related; importers of tech gadgets should pay levy; slow adapting to new technology.

- *"Importers of the tech gadgets should pay levy for devices, which are contributing to the technology related infringements. Law enforcement slowly adapting to new technology."*

Illegal models

The theme on 'illegal models' contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of unaccounted earnings in the royalty system.

The combined three key words and concepts are as follows: money laundering; website is based in country with weak copyright law; copyright owners are not paid.

- *"Illegal models are money laundering, to host websites in a country with a weak copyright law; as a result copyright owners are not paid."*

Legalization of illegal copyright market

The theme on the 'legalization of the illegal copyright market' contains three key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of illegal copyright market opinions.

The combined three key words and concepts are as follows: legalize illegal copyright market; it should stay unacceptable; one deals with it, but it can never be accepted.

- *"The illegal copyright market should stay unacceptable, one deals with it but it can never be accepted. We need to legalize the illegal copyright market income."*

The eight themes below are clustered according to the challenges of managing copyright in the digital environment. The eight issues collectively emerged from the research participants with key words relating to the digital sharing of content that links to content exploitation.

Copyright

This theme contains two key words and concepts, namely, new generation of tech companies 'hate' copyright; it slows down information culture.

- *"New generation of tech companies 'hate' copyright because it slows down information culture."*

Online piracy

This theme contains two key words and concepts, namely, slowly replaced by digital piracy; online distribution.

- *"Physical piracy is slowly replaced by digital piracy with online distribution channels."*

Patent

This theme contains two key words and concepts, namely, renting a patent; no pay to copyright owner.

- *"There is a practice of renting a patent without paying to a copyright owner."*

Technology related

This theme contains two key words and concepts, namely, peer-to-peer via phone and tablets; sharing music and movies with friends.

- *“Peer-to-peer sharing with friends of music and movies is mainly happening via phone and tablets.”*

Websites without digital license

This theme contains two key words and concepts, namely, websites without a license from the IP owners; free streaming/downloading of music via a website.

- *“Websites without a license of the IP owners where one can stream or download music via a website for free.”*

Low digital piracy

This theme contains two key words and concepts, namely, only 30% of the country has access to the Internet; digital piracy is low in Malawi.

- *“Only 30% of the country has the Internet, so the digital piracy is low in Malawi.”*

Barriers of entry

This theme contains two key words and concepts, namely, price barriers of entry is low; new entrants.

- *“Price barriers of entry into the digital piracy are very low, that is why there are plenty of new entrants.”*

Bit Torrent

This theme contains two key words and concepts, namely, BitTorrent; not created for IP infringement.

- *“BitTorrents was not created for the IP infringement.”*

The three themes below are clustered according to mechanisms of payment on digital platforms and the marketing advantages thereof.

Pay per connection

- *“There is a system on the Internet ‘pay per connection’.”*

User collapse in price in a digital world

- *“User collapse in price in a digital world.”*

Peer-to-peer is a marketing tool

- *“Peer-to-peer sharing is a marketing tool.”*

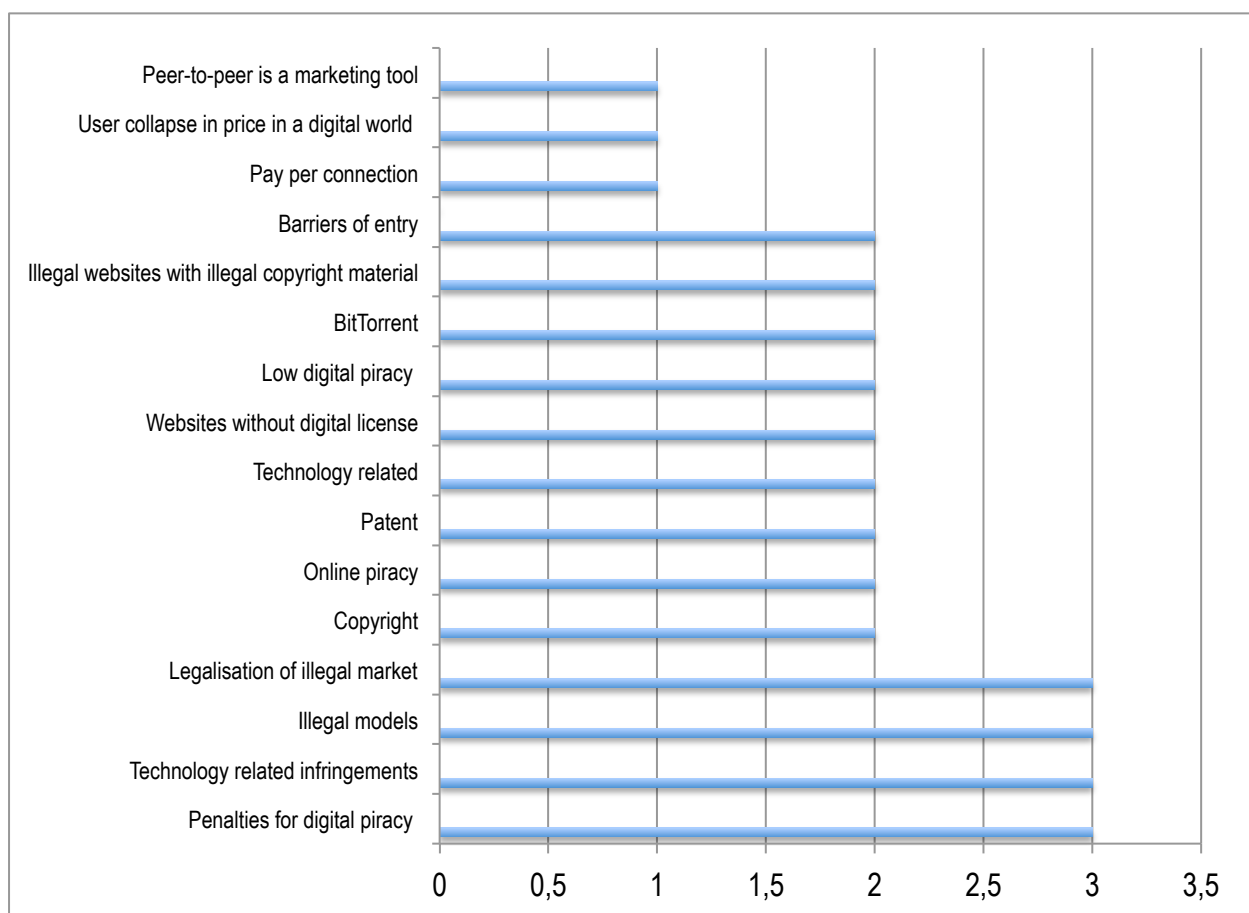


Fig. 5.45: The negative impact of technology on copyright

5.8.2 The copyright role and infringement

This section contains five themes, namely, copyright is a thing in itself, scientific development, slow response to copyright infringement, monopoly vs. Internet and

statue on its own. These issues have no graphical representation and the researcher consolidated them as less influential in the qualitative conversation.

Copyright is a thing in itself

- *“Copyright is a thing on itself.”*

Scientific development

- *“The pharmaceuticals use scientific development.”*

Slow response to copyright infringement

- *“The industry in 90s gave a slow response on the copyright infringement.”*

Monopoly vs. Internet

- *“Music publishing monopoly versus the Internet.”*

Statue on its own

- *“Copyright is a statue on its own.”*

5.8.3 The majors and artists

This section contains four themes, namely, majors were fighting publishers, artists and songwriters, there was a group of people who did not want to pay for the artist's work, lower a price to accommodate Internet – do not affect mechanical rights and industry did not have a structure. These themes were grouped according to the low feature they had in the ten conversations.

Majors were fighting publishers, artists and songwriters

- *“Majors in the 90s were fighting publishers, artists, song writers.”*

There was a group of people who did not want to pay for the artist's work

- *“There was a group of people who did not want to pay for the artist's work.”*

Lower a price to accommodate Internet – do not affect mechanical rights

- *“To lower the price to accommodate Internet and do not affect mechanical rights.”*

Industry did not have a structure

- *“Industry did not have a structure.”*

5.8.4 Training in copyright law

This section contains three themes, namely, Berne convention gives right to have copyright on artistic works, perpetrators brought to justice through CMO and how to identify illegal goods/ how to make an arrest/ how to verify goods/ how illegal goods enter the country. These issues are clustered according to the actions that were taken in addressing copyright infringement. Each issue appears as an isolated action; however, collectively they highlight the importance of copyright knowledge in the creative industry.

Berne convention gives right to have copyright on artistic works

- *“Berne convention gives rights of one’s country to have the copyright on artistic works.”*

Perpetrators brought to justice through CMO

- *“Perpetrators brought to justice through the collecting society in Malawi.”*

How to identify the illegal goods/ how to make an arrest/ how to verify goods/ how illegal goods enter the country

- *“The collecting society in Malawi does workshops on how to identify the illegal goods, how to make an arrest, how to verify goods, and provides the strategy on how illegal goods enter the country.”*

5.8.5 WIPO and infringement challenges

The most important treaties, regulations and acts that are considered are the following:

- In South Africa
 - Copyright Act 98 of 1978 as amended
 - Copyright Regulations

- Performers Protection Act 11 of 1967
- Collection Society Regulations 2006
- WIPO – all applicable copyright treaties and conventions
- WTO and TRIPS as such apply to national copyright laws of signatories.

It should be noted that not all countries who are signatories to the WTO and TRIPS are signatories to the WIPO treaties and conventions. South Africa for example is a signatory to the WTO and TRIPS but is not a signatory to the Rome Convention or the WCT. On December 12, 1997 South Africa signed the WPPT however since has neither ratified nor acceded to the WPPT and thus same has never come into force in South Africa.

The theme on the 'WIPO and infringement challenges' contains ____ key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of the difficulty of using copyright law to address copyright infringement and correct wrong copyright data.

- *“Even when you know and can prove and evidence of copyright infringement using the law to do something about it seems like an impossibility, especially in a digital age”*
- *“sometimes the copyright data that is linked to your work is wrong especially at places like iTunes, you only find out sometimes months or even years later and fixing it is a nightmare”*

5.8.6 The operational challenges of copyright in the global system

Economic impact of translation

The theme on the 'economic impact of translation' contains eight key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of works that are lost by the original copyright proprietor due to translation, resulting in loss of revenue.

The combined eight key words and concepts are as follows: economic inconvenience of translation; original song in a foreign language with the same title as a translated song; foreign language act states that a local title needs to be used for an English song;

permission is needed to translate; it cannot be the same as the foreign name; it is called an 'alternative' version; it is an adaptation; inconsistency of the copyright law.

- *“There is an economic inconvenience in area of translation. The original song in a foreign language with the same title as a translated song by the major act in foreign language states that a local title need to be put in for the English language song; the permission is needed to translate and the title cannot be the same as the foreign title of the song. It is called the ‘alternative’ version and it is an adaptation. This brings the inconsistency in the copyright law and leads to the infringement.”*

5.8.7 The history of collective management and current discrepancies

CMO colonial legacy

The 'CMO colonial legacy' theme contains six key words and concepts derived from the research participants. The researcher identified the commonalities within the notion of current copyright practices that are rooted in the history of collective management.

The combined six key words and concepts are as follows: PRS was established in 1914 and collecting society in 1929 before the world regulations; the organization still has the colonial infrastructure of ownership rights; questionable representation structure; tax haven registration; SACEM has mandate on smaller French-speaking countries; these CMOs control the play around the world via old regulations.

- *“The UK collecting society PRS is established in 1914 before the world regulations. The organization still has the colonial infrastructure of the ownership of the rights and a very questionable representation structure. The collecting society is registered in the tax haven which exempts it from paying taxes in the UK. SACEM, on the other hand, is the collecting society in France and it has mandate on smaller French-speaking countries in Africa. Until now the French collecting society collects royalties on the African continent. These two collecting societies still control the play around the world via old regulations left from the colonial times.”*

5.9 The six qualitative laminations

These six laminations emerged from the fifty conversations that were held and they are the building blocks of the consultative framework in this study.

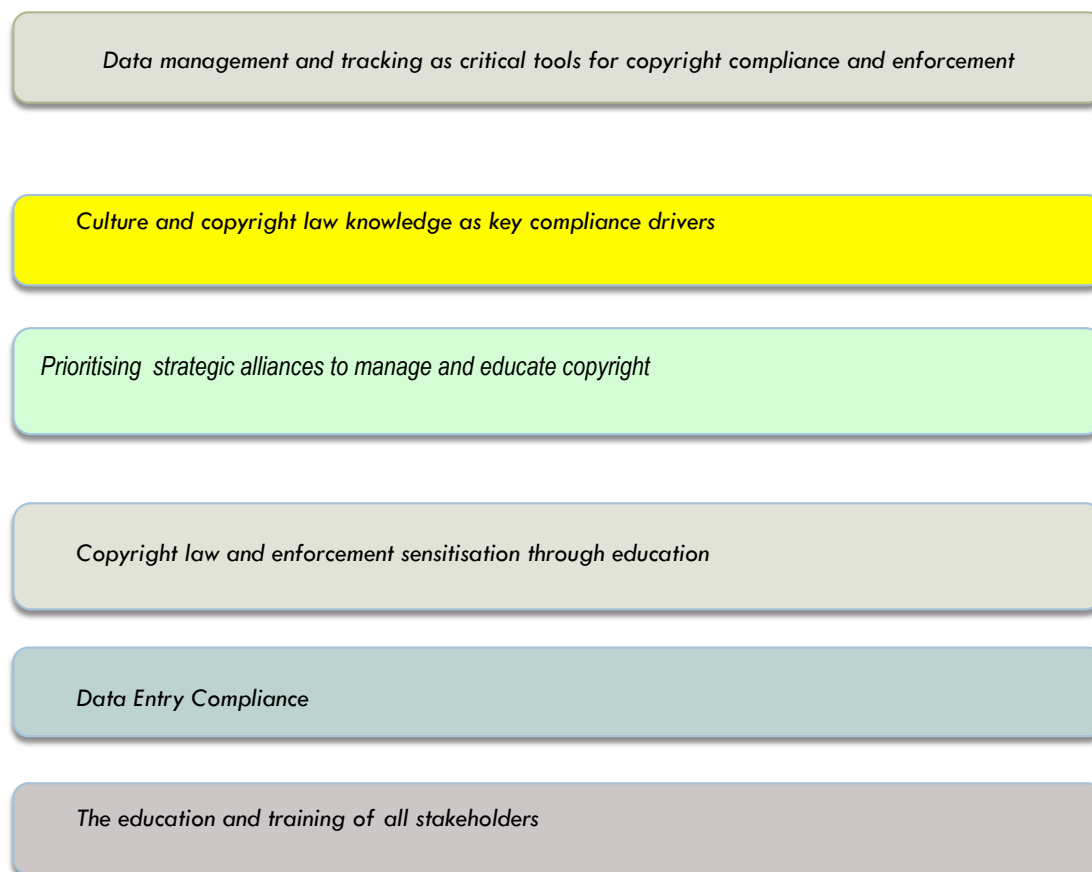


Fig. 5.46: The six qualitative laminations

Source: Own construction (2014)

5.9.1 Conclusion

The qualitative data that was presented in this chapter, encompassed a collective schema of the most important themes that emerged during this exploration. The key words were crucial in extracting the most important statements, in the form of responses, which underlined critical issues in the copyright domain. In order to strategically validate the data in this study, laminations were applied. The six laminations (as seen in figure 5.46) were funneled through six phases. Each lamination filtered the data in relation to the original research questions.

The central concern that emerged from the research participants was the absence of key copyright knowledge to protect the industry from the illegal copyright market. The diversity of the research participants confirmed the importance of copyright in the global economy, and this necessitates the involvement of government through the enforcement of copyright laws. The major and central concern that was collectively reported by the participants was the lack of resources deployed into copyright. The

centric experiences pronouncing the lived reality of copyright infringement amounted to losses in royalty earnings brought about by both physical and digital piracy. This preludes towards the critical importance of copyright law enforcement. In the next chapter the data is discussed and interpreted.

CHAPTER SIX: DISCUSSION OF DATA

“Without change there is no innovation, creativity, or incentive for improvement. Those who initiate change will have a better opportunity to manage the change that is inevitable.” (William Pollard)

6.1 Introduction: Laminations and discussion of data

In chapter five the data was grouped in fifty-one categories, from section 5.2.1 to 5.7.7, containing themes of which the values were graphically represented at the end of each section. The qualitative laminations represented in figure 5.1 emerged from the informal interviews which were transcribed and funneled into different thematic analysis, forming categories of data. The data was furthermore analyzed in relation to the six laminations. The results arising from the research participants' involvement, as outlined in figure 1.5, were integrated into the literature in chapter two and three. These six laminations as a subsequent emergence from problematizing through the five research questions, addresses what the literature overlooked and identified copyright enforcement as a critical future proposition as a key value proposition to re-engineer the copyright dividend in the illegal copyright market. The six laminations are foundational to the theoretical construct of the study.

These six laminations represent a set of alternative assumptions from what the literature was presenting and to a large extent confirms the assumptions held by the research participants as to what they already assume to be the case about the copyright infringement subject matter and confluent perspective in dealing with copyright infringement.

The conversational phase of the research underscores the value of the six laminations as a concrete basis for re-engineering the copyright dividend as an expected and supported outcome of copyright exploitation and use in the global economy. The building patterns of the data revealed six laminations, which support development in the management and tracking of information. The laminations are grounded on the literature in chapter two and three. They are related to data management and tracking as critical tools for copyright compliance and enforcement as well as the importance of harmony between the organizational and consumer culture. This chapter links the discussions in chapter two and three with the research data.

These six lamination as an emergence from problematizing through the five research questions address what the literature overlooked and identified copyright enforcement as a critical future proposition. These six laminations represent a set of alternative assumptions from what the literature was presenting and to a large extent confirms the assumptions held by the research participants as to what they already assume to be the case about the copyright infringement subject matter and confluent perspective in dealing with copyright infringement.

The data has showed that the global copyright system and stakeholdership lack the necessary strategies to address copyright infringement effectively. This is the major impediment of technological advancement and it is independent of the progress of governments and relevant parties affected by infringement, as confirmed by Depoorter (2009), Liebowitz and Watt (2006), Mestmäcker (2005), Samuelson (2007), Scharf (2012) and Waldfogel (2012).

The data also clarified that, linked to a lack of copyright law knowledge, learning, training and self-management in this regard are not evident in collecting societies' development and this indicates the urgency of initiating purposeful leadership. International alliances, global databases and law enforcement bodies, connected through dialogue with all stakeholders in the copyright market, within the framework of the knowledge management and innovation imperatives, reveal the modern patterns of data clustered in grounded laminations. The historical perspective and the evidence of discrepancies in the global copyright arena intensify the need for improved data and tracking copyright protection through education and training of all stakeholders.

The main focus of this research was to understand copyright infringement and to develop a framework to address the problem and its future impact on the global market. The coherence and scope of the copyright industry is relatively new. In previous centuries, particular groups of industries mounted efforts against copyright infringement, which in essence was not nearly as pervasive as the online rights violations reflected in the current illegal copyright market. The effect of theft on sellers of content depends on its effect on consumers, who differ in their willingness to pay for the product (Waldfogel, 2012). Hence, the nature of infringement is such that the violation of copyright is positioned as a victimless offence.

6.2 Lamination one: Data management and tracking as critical tools for copyright compliance and enforcement

The following lamination emerged within the reality of copyright infringement as a critical tool for addressing copyright infringement and seeing to outcomes of copyright compliance and enforcement. The data that was produced and the multiple factors which emerged during this in-depth exploration presented evidence that is imperative to the management and tracking of copyright data, both author/owner as well as users. It deals with internal and external barriers that have established the unique obstacle that is presently obscuring all parts of the copyright economy from optimal commercialization. The researcher argues that for re-alignment and augmentation of the many parties to form it is imperative to identify effective ways for innovation to emerge, particularly in copyright data management and tracking. Although consumers of content are more demanding, as indicated in the peer-to-peer platforms, collecting societies and governments should be more coherent in meeting their future needs through creating new ways of connecting tools that track copyright use and compliance.

6.2.1 Illegal actions affecting the progress of copyright

This section, as indicated in section 5.2.1, contains four themes that emerged from the research and deals with the different areas of infringement within copyright, which entails fields of infringement, fragmentation in the industry, intellectual property theft and illegal downloads. These discussions are linked to the literature discussed in chapter two and three.

What has been noted is the privatization of copyright data, whether such be regarding authorship and ownership or whether such be regarding users. To a certain extent there are barriers to entry to data concerning illegal actions of copyright infringement and theft.

6.2.1.1 Fields of infringement

Copyrights are traded for a value much less than the original market value and the data indicates that authors and creators are not adequately remunerated for their works. This is experienced when rates are set low and recording artists receive an unfair return on content (Villasenor, 2012). Data outlines the fields of infringement within the film, music and literature industries; it also proves that there are individuals who cannot compensate the theft of intellectual property due to their lack of resources. Individuals

lack the freedom of creating and incubating new forms of authenticity as the present condition creates conflict and crime (Andrews, 2005). However, one of the main challenges lies within the fact that copyright holders cannot adequately access the very information needed to enforce their rights through remedies offered by copyright law. This notion supports the data showing that authors are not remunerated for works exploited.

The data also revealed that there is a unique type of copyright infringement which is a novel issue and it entails using a new “voice over” on a foreign film; it is not a direct translation of the original movie dialogue, it is replaced with a completely new storyline unrelated to the visuals. This illegal practice is pervasive and has a captive market that consumes the infringed content. At first glance copyright owners have been diligent in finding ways to reduce the gain from crime, increase penalties, and optimally enforce violations (Andrews, 2005); however, infringement of these rights constantly outlines an unchallenged trajectory in the weak reality of copyright data available and accessible.

The data concerning Nigeria also revealed that infringement is experienced with commercial radio stations not complying with copyright by not paying royalties for works broadcasted by the station and not tracking the works played. According to Parkinkis (2012), it is common knowledge that some consumers of music, including shops, restaurants, bars and clubs, often do not pay to play music. The knowledge of intellectual property is low amongst these types of users. In the case of Malawi the data indicated that, with as little as 30% of the population having access to the Internet, and only in the urban areas, peer-to-peer sharing is not widespread, as opposed to the USA and the UK where 100% of the population has Internet access.

The data further revealed that there is a perception of looking at piracy as the illegal reproduction of physical products, even though it entails more violations of copyright, including physical piracy, broadcast piracy and online piracy. The notion on the preceding arguments regarding the fields of infringement is supported by Mueller et al. (2012), in that the Internet has undermined the exclusivity of recorded music, movies, books and software by creating intense political, economic and regulatory contention.

In the digital world there is clear evidence of convergence to the extent that once far flung industries like film industries, the book publishing industries, the music industries and other copyright industries which represented fields of infringement have all

converged into a single field called the internet and the way interaction occurs in the form of a single graphic user interface or screen.

6.2.1.2 Infringement due to a fragmentation in the industry

In the data it is mentioned that copyright theft is experienced on many levels, with a lack of commitment from the major players in small markets, like Malawi for instance, where there is no representation of international record labels and agents, as the closest offices are in South Africa. This indicates the weakness of the business model used by the major players in Malawi, seeing that they are not prioritizing copyright protection as a method by which firms can build and use its resources to offer its customers better value than its competitors (Afuah & Tucci, 2003). That data concerning copyright ownership and use that is available is inaccessible. This leads to the parallel markets whereby anybody can bring infringed goods into the market and there is data access to efficiently check, track and trace the copyright ownership data, notwithstanding the use. The data shows that, due to the small size of the industry in Malawi, copyright infringement affects the film industry through the same channels and suffers the same circumstance concerning access to data.

The nature of the current international copyright law is considered to be the primary concern, because a single act of unauthorized uploading of copyrighted material, taking place in one specific location, can result in copyright infringement by numerous Internet users in various countries (Fröhlich, 2009). This emphasizes the necessity of publisher presence in isolated markets in an attempt to reduce the output of the illegal copyright market. The data pertaining to Namibia revealed that publisher presence in isolated markets is necessary in order to have visibility, as confirmed in the literature by Afuah and Tucci (2003). This notion is important because copyright is transmissible, as movable property and can be transferred freely through physical and online market networks and as digital data can as easily be tracked, traced and verified. However, anti-competitive market dominance should not be negatively exploited, thereby compromising the creators and owners of the works.

The research produced evidence that a single publisher and distributor in a market discounts and acts against the interest of creators and owners through the offering of unfavorable contracts. Although artists can now record and sell their own music digitally, aspiring musicians still maintain to the rules of the traditional music industry (Jakobsen,

2012). A goal is to advance the copyright knowledge of artists and facilitate an entrepreneurial orientation that will enable them to gain the necessary skills to function independently from unfavorable relationships with publishers and distributors. *The* goal however is to see the playing field concerning access and tracking of copyright authorship, ownership and use data. The researcher's notion is that all interested parties involved in any project that entails copyright should be informed of its guidelines and roles should be created that are aligned to the Copyright Act 98 of 1978 in order to achieve an equitable transaction. Due to a lack of knowledge on copyright and its entitlement, the decision on how to pay music royalties to the relevant parties has always been difficult, in that it requires determining which permissions are necessary, who can grant such permissions, and what the cost of the rights will be (Oxenford, 2013).

The data pertaining to Malawi revealed that with copyrighted material not being supplied timeously, and because of a lack of prominent music producers in the Malawian market, their demand is not satisfied and copyright infringement compensates for this gap. The data further indicate that the channels that creators need to use to distribute to the market are unclear and this leads to the pervasive spread of physical and digital piracy. According to Menell (2012), the principal technology and content sectors are deeply divided on how to address the widespread availability of unauthorized copies of copyrighted works.

The data further indicated that intellectual property owners do not collaborate with others to release their music and do not share data concerning their releases. The researcher maintains that this is not always the case and that the lack of collaboration often only pertains to interested parties' capability to address copyright infringement. The collaborative abilities of partners are important for an alliance to succeed (Child et al., 2005; McElroy, 2003). The data indicates that fragmentation in the industry and a lack of access to copyright author, owner and user data is affecting the progress and efficient evolution of copyright law.

The supporting notion is that physical piracy takes place in all countries; it has, however, become a key issue among publishers as it relates to the third world, seeing that the bulk of the world's large scale commercial piracy takes place in the third world, which once again highlights the degree of fragmentation. In the conventional use of the term

“third world” it refers to the developing or undeveloped countries of the world. (Altbach, 1986; Mattelart, 2012).

In the data it is mentioned that the role of the producer is not well-defined, which creates a situation where material can be produced without a license, using a personal computer, leading to the exploitation of the artist through unauthorized activities. This is not an uncommon problem; intermediaries are no longer adding value and technology allows for a new way of selling content, thereby dissolving the importance of traditional recording companies in executing such connections (Karunaratne, 2012). Record companies’ traditional models are no longer working and they have to find other sources of income (Rivkin & Meier, 2002 and Vaccaro & Cohn, 2014). The only strategic imperative is to find ways of creating a sustainable mechanism and method that will protect copyright stakeholders by using technology to enhance access to data concerning their works and the use of such, and increase their income flow.

6.2.1.3 Intellectual property theft

The data indicated that the duty of creators should include initiating dialogue with consumer associations and sharing data concerning their copyrights. The rationale for dialogue is an outcome of website developers and owners not paying any royalties to creators for content exploited. Moohr (2009) argues that the changing technology impels copyright holders to seek more protection from the law for their increasingly valuable products. The researcher asserts that the relationship between copyright law and technology is imperative in the content discourse. Others have argued that copyright law has always been driven by technology and that it has benefited over time from the changes in technology. The classic view is that vinyl manufacturers killed the sheet music business, the tape generation killed the vinyl business and the tape was killed by the CD generation, which was subsequently killed by digital files.

The data indicated that website owners retain the generated income for distributing and selling unauthorized works, with no knowledge that it is illegal not to pay for copyrighted works, which amounts to theft. The data highlights that illegal earnings are also derived from advertising, which is a theft of good faith of the consumer. The infringement of copyright is accelerated by what is mentioned by Jain (2008), Mann (2014) and Picard (2004), namely that pirates incur production and distribution costs, and a separate market and demand function exists for pirated products, which promotes the theft of

intellectual property. The concern is that technological change has sharply reduced the degree of effective protection that copyright offers (Vaccaro & Cohn, 2014; Waldfogel, 2012).

Illegal downloading appears to be a marginal topic in mainstream criminology and is considered a rather minor offence (Aaltonena & Salmi, 2013). The arguments that see illegal downloading as a victim-less crime underscore the lack of engagement mechanisms between content owners and consumers, the lack of common databases and access to such and the lack of use of tracking methodology all of which contributes to the continuous and uncontrollable growth of copyright infringement. No common platform of dialogue has been established that is inclusive of the collective interests of the parties at stake and no common database exists detailing the authorship and ownership of copyrights being traded.

According to the data, digital piracy in Nigeria is a widespread occurrence; moreover, copying and sharing of illegal content is done openly in informal market settings without any apparent law enforcement. Copyright law is expected to give creators temporary monopoly rights, called economic rights, to reproduce, adapt, and make a work of their mind available to the public (Meyer, 2012; Park, 2010; Silcock, 2007). This is not evident in Nigeria as the practice of infringement is intertwined with social norms as a legitimate means of earning an income.

The researcher learnt that in Nigeria the musical collecting society is educating the country, the city, hospitality establishments and the general public on copyright. Competitive advantage is achieved when market knowledge is applied in support of business objectives (Hoe, 2006). According to the data, the distribution network for music in Nigeria is very weak, from the point of production up to the release of the music. In improving this situation, the opinions of policymakers must be attuned, including those of technical experts and civil society groups, in addition to those of aggrieved copyright owners. Policy questions affect copyright and intellectual property in Africa, with international copyright agreements being under constant examination regarding the ways to govern ownership and access to digital information (Bridy, 2012; Ricketson, 2003).

6.2.2 Financial mismanagement through databases inefficiencies

This section, as indicated in 5.2.2, deals with five themes, namely misallocation of funds through non-unified identifiers and databases, licensing issues, database access, data filtering, current money abuse by collecting societies and collection and distribution. The core issue derives from the fact that databases, in terms of their integration into the global copyright system, do not “talk” to each other, which leads to copyright infringement as a result of fragmentation.

6.2.2.1 Misallocation of funds through non unified identifiers in the databases and database unification

The database theme is problematic in terms of copyright infringement via collecting societies. The key drivers are that these databases are not aligned, are operated privately with controlled limited access, do not speak to each other and the authorship and ownership information regarding copyrights is open to manipulation. In the literature it is mentioned that the management of copyright has become more evolved in terms of technological progress, which presents a new set of questions in how royalty payments are distributed and as how ownership and authorship are confirmed. The missing link is the level of transparency and data access within the copyright stakeholdership. According to Laud and Scheepers (2009), relying on the current, complicated reporting systems has simply proved to be inadequate, frustrating, misleading and, too frequently, detrimental to those very individuals it was designed to protect.

The challenge, as revealed in the data, is that all databases contain different protocols and codes of communication, which creates high incompatibility. Technological change has sharply reduced the effective degree of protection that copyright offers (Waldfoegel, 2012). The ISWC is supposed to be allocated to all musical and literary works around the world; however, the ISWC database does not ‘communicate and interface’ with either the Tune Code database or the WID. The issue of access to the databases is unresolved and a contributor to infringement, because capacity to check the veracity of data is limited and private. The researcher asserts that access to data is important element in combating copyright infringement.

In the data it is indicated that Hollywood and BBC have their own work identifier codes, and the four major global publishing groups all have their own work identifiers confirming the alignment of their work and author claims in the databases. Individual

CMOs also have their own codes independent from the other industry stakeholders. The preceding contributes to high levels of inefficiency and creates an environment that breeds copyright infringement. Creating a uniform external control mechanism to meet with the external market changes is important in managing content (Guibault & Van Gompel, 2006).

The literature confirms that all the collecting societies were established from a colonial legacy basis and can be affected by the changes in the market environment in which they operate. The lack of transparency of the collecting societies reflects an inherited culture that discounts practices of governance and accountability to the members. Due to this bureaucracy and redundancy, the threat of large Internet platforms replacing the functions of collecting societies in the near future, offering multi-territorial licensing to commercial users worldwide has arisen. This has seen CMOs, particularly in the EU, embracing Pan-European licensing for digital users.

6.2.2.2 Licensing issues

The data indicated that some songwriters and artists prefer to go directly to publishers and record labels respectively, where they can obtain higher tariffs for mechanical rights in their works, to secure such rights, without involving collecting societies. In doing this they are, however, assuming a huge amount of risk, while in collaboration with a collecting society the songwriters and artists assumes the risk. The data have stated that going directly to a publisher can also affect the copyright policy; however, this practice is an outcome of the industry's inefficiency and unfair monopolistic behavior. The traditional business models of the industry are affected by technological advancements, which lead to unattractive returns (Rivkin & Meier, 2002; Williams, 2010).

In practice, licensing agreements integrate the licensor and the licensee regarding certain activities in a defined area, while both retain their separate identities and ownership (Child et al., 2005). According to Blythe and Wright (2008) many performers and musicians maintain that record companies exercise unfair practices in order to reduce royalties payable to artists.

6.2.2.3 Data filtering

An ideal way to manage an audience is through data filtering, by which the audience can be broken down into “small pieces of information” so as to establish the demand and demographics of the audience. The use of data filtering in the copyright industry would allow the controlling of royalty collection by collecting societies in order for copyright stakeholders to claim the full amount due to them. Currently, this activity poses a challenge for collecting societies owing to insufficient resources and a reduced capacity to resolve conflict and process information. CMOs in the EU are mandated to offer multi-territorial licensing to commercial users EU (Thakker, 2009); however, their resource limitation affects their overall product offering.

6.2.2.4 Current money abuse by Collective Management Organizations (CMO)

The conflict with collecting societies arises from their engagement in anti-competitive agreements and practices (Thakker, 2009). The manipulation of rights by collecting societies is a practice that is not allowed in the Copyright Acts. The conflict occurs when collecting societies that are non-profit organizations operate for profit, and when commercial enterprises acquire shares and/or outright ownership of these entities. This equity structure prioritizes the interests of shareholders from commercial enterprises over that of authors and publishers, which affects royalty returns for the members of the CMO.

The data revealed that collecting societies manipulate digital rights to accommodate new activities that are not part of the mandate of the organization. An example of this is when a collecting society collects earnings for online ring tones from a recipient that has been issued a license for permanent downloads, and such a license is not classified as a sound right, but as an online right. In order to illegitimately accommodate a new royalty collection, the collecting society in this instance would need to add a new definition to the copyright act. This irregularity discourages transparency in the organization. The conflict between collecting societies within the EU, EC competition law, and copyright law as it relates to musical and literary works, has recently become a controversial area of increasing dominance in legal processes (Thakker, 2009).

6.2.2.5 Collection and distribution

The data pertaining to Costa Rica revealed that actions are being taken to obtain more information regarding infringing technologies, and also to develop strategies for managing technology related copyright violations locally. There also appears to be a lack of understanding of the nature and potential of peer-to-peer computing technology and what it can bring to the copyright stakeholdership (Pankaj *et al.*, 2012). Copyright holders often attempt to remove dual-use technologies from the market by legal and political means when they believe that the loss of revenue associated with the infringing uses of a particular type of technology is greater than the benefits of its non-infringing uses (Orbach, 2008).

The data also indicated that collecting societies know how to collect royalties and distribute it to their members. It is expected from collecting societies to adhere to the highest ethical standards in administering the royalties and interests of their members (Castle & Mitchell, 2009; Smith, 2012). The data also suggest that collecting societies need to control the works loaded online via online notifications, specifying how much is going to be collected and distributed to the author in terms of royalty payments.

It is further mentioned in the data that commercial, public and community radio stations all use the same content, but when it comes to compensation the tariffs are not the same, indicating the need for harmonization within these structures. Globally, there are very few successful business models for the online distribution of copyrighted materials (Kretschmer, 2003), which makes copyright law harmonization and copyright database access urgent priorities in the management of copyright and the impeding of copyright infringement. The data also showed that the CMO rules allow them to collect and distribute royalties. This remuneration structure also allows them to subtract their management fees in a transparent manner.

6.2.3 Limited intellectual property knowledge impact on revenue

This section, as indicated in 5.2.3, concerns three themes, namely losses via the lack of understanding of the copyright law, the economic model on compensation and the domicile of an artist. It is also concerned with the skill shortfall within collective management and it carries on the revenue potential of content. The issues addressed in this section assert a collective view in respect of the strategic importance of royalty

collection and distribution to the rightful parties, as it is not currently experienced because of insufficient copyright knowledge within the stakeholdership.

6.2.3.1 Losses via the lack of understanding of the copyright law

In the data it is mentioned that Internet Service Providers' (ISP) understanding of creators' rights is inadequate; in using 60% of all ringtones without a license, the ISPs abuse the mechanical rights of copyright owners. In the knowledge economy intellectual property moves from a legal matter to a strategic issue (Smith & Hansen, 2002).

The data also revealed that some retailers withhold money received for a copyrighted product from collecting societies and proprietors that have to distribute these funds to copyright owners, and this amounts to infringement and fraud, notwithstanding a lack of understanding of copyright law. Blythe and Wright (2008) mentioned that record companies are often accused of using questionable accounting practices to fraudulently appropriate artists out of their royalties, which is identical to the retailers' illegal practice. A customer buying a ringtone on the basis of a three month license, for instance, will not know that in the process the mechanical rights of a proprietor are being infringed upon. As a result, the music proprietor (who may be a creator as well) receives no fair compensation for the reproduction of their works. Some record labels are also keeping revenues to themselves.

Streaming services via the Internet, such as Sportify, with a very low streaming rate, are not affording creators a sustainable return (Section 5.3.2). The overall cost of illegal downloading and the estimated impact of illegal downloading on the entertainment industry remain a somewhat contested topic (Aguiar & Martens, 2013; Liebowitz, 2005) and continue to challenge content owners in terms of negative compensation models. The laminations revealed that copyright law is not advancing at the same rate as the digital economy (Section 5.2.3). This weakness creates new challenges in the management of copyright and creates opportunities for new conflicts to arise to the detriment of the creators of works.

The researcher has found data that gives evidence that collecting management societies in Namibia, Nigeria and Malawi require more knowledge on copyright law (national and international), royalty collection, access to data concerning copyright authorship, ownership and use, and the education of publishers on how to collect royalties. This supports the notion of Boehm (2009), Cheverie (2002), Fröhlich (2009),

Liebowitz and Watt (2006), Samuelson (2010), Scharf (2012), Swartout (2011), Tehrania (2009) and Waldfogel (2012) that copyright is a critical commodity in the information economy and environment. The preceding supports the view that infringement must be discouraged and that collecting societies need to control online works via notifications. There is a substantial need for tariff harmonization amongst all parties involved in the distribution of royalties to authors, with the expectation of strict budgeting and appropriate allocation of working capital to the operations of the collecting society.

6.2.3.2 Economic model on compensation

The data indicated that authors are not satisfied with the royalties they are earning and that the inadequate compensation makes the exploitation of their works almost indistinguishable from piracy. Accounting practices are not well defined and managing royalties is still a process that lacks transparency (Jakobsen, 2012). An example in the data that reflects royalty earnings was provided by one of the research participants who mentioned that a statement for works exploited on Spotify reflected 0.00002 USD as a gross earning to an author for a single stream. At the current streaming rate, such an income is considered minuscule.

The data also indicated that the music business is not transparent and that record labels are signing off revenues for their own purposes and own profits. The effort of maintaining traditional business models is a catalyst to the copyright conflict in that it creates systematic discrepancies with current trends of how content is consumed in the market (Molteni & Ordanini, 2003).

In Namibia for instance, the economic model works in such a way that Namibians can earn commission for selling illegal products, the selling price of these illegal product being lower than that of the original product. A similar situation is evident in the cinematographic industry in Namibia, where films are mainly imported, to the extent that foreign works are more prevalent than local content.

The official distribution channels are weak in Namibia, Nigeria and Malawi. This creates an opportunity for copyright infringers and, due to the slow response of the industry in these countries, they maximize on profits via the sale of infringing articles such as pirated goods. A similar model has been adopted in Panama and other Latin- and Central American countries. Piracy should be seen as an unrelated whole, where

diverse agents with different objectives intervene on a variety of fields, and where amateur practices co-exists with small and medium sized businesses, be they local or national, and transnational “pirated” industries (Mattelart, 2012).

In the discussions of an economic model, the proportion of knowledge expected to manage the financial interests of creators is evolving with constant re-invention to accommodate the changes brought about by the external market. According to Christman (2014), Kobalt, a publisher with a new model for administering royalties, is delivering royalty payments with greater transparency and accountability. This is an improvement to the traditional publishing and collecting societies’ business practices.

Literature has indicated that the competitive advantage of Kobalt in royalty collection and accounting is that by receiving payments directly from collection societies around the world, Kobalt claims to have halved the traditional two to four year time lag in collecting publishing royalties from abroad. The publisher further claims that it has increased royalty payments to authors and composers by as much as 25%. It has also provided improved accounting transparency to songwriters and their managers, with its system enabling songwriters to see the activity of their works around the world on a daily basis. Kobalt provides weekly reports of these activities to its clients as backup.

6.2.3.3 Domicilium of an artist

The data have revealed a novel theme relating to the domicilium of the artist. The works of the creator can be used in any jurisdiction without it accounting for tax revenues in the creator’s home country. Samuelson (2010) argues that copyright law should limit control over uses of creative works by setting boundaries to the rights of copyright owners and to remedies for infringement. This raises the issue of the domicilium of the author and the national and tax benefits arising from such a domicilium, taking into account that the bulk of the cream of Africa’s creative crop holds CMO membership outside of the African continent. This situation results in African monies (that would otherwise flow to African CMOs) being split primarily between two CMOs: the PRS (UK) for the English speaking countries and SACEM (France) for the French speaking countries on the African continent. African countries are deprived of both copyright income and the reporting of financial activities concerning copyrights of their citizens and this is exacerbated by fragmented data and data access concerning the works of their citizens.

In order for African authors to receive royalties for their works, they have to originate and have domicile in a qualified country. Domicile of the author becomes a tremendously important component in order to keep works (and money) in a country and to enable the collection of the income arising from the worldwide use of such works.

The data have shown that the “discrimination model” pertaining to broadcasters is an issue that requires the involvement of content owners and users to establish interoperability between databases that collectively are representative of all the interested parties in the copyright industry. Content owners complain that the law is not protecting them against mass-scale infringement over digital networks. Hence, copyright law should also be reformed and adapted, in particular in terms of the opportunities unlocked by digital technology (Hugenholtz, 2013; Ranaivoson & Lorrain, 2012).

6.2.4 Copyright limitations on broadcaster revenue generation

This section, as indicated in section 5.2.4, contains eight themes, namely discrimination model across broadcasters, radio station infringement, equal rights, Internet, violation of mechanical rights, non-licensed broadcasters, tariffs adjustment and FM stations with illegal content. The broadcasting of content is a core function of broadcasters, but the study has revealed contentions of infringement and licensing discrepancies relating to broadcasters, which warrant the development of urgent intervention strategies.

6.2.4.1 Discrimination model across broadcasters

The data pertaining to Namibia has indicated that authors whose works are broadcasted by radio stations are restricted in earning an income due to a difference in tariffs for public and private broadcasters. There are also restrictions for broadcasters because they are measured according to their audience size, which limits advertising. The broadcasting restriction for advertising applies to community and religious radio stations, regardless of their audience. This gives commercial radio stations unfair competitive advantage. These laws limit the growth of the industry and are discriminatory to the interested parties. The entertainment industry will not survive unless intellectual property laws are strengthened, enabling creators to reap profits proportional to the popularity of their works (Carrapico, 2011; Depoorter, 2009).

As mentioned above, different tariffs apply to public and commercial broadcasters. Community radio stations for instance, cannot generate extra earnings because of the

size of the audience, as well as license and advertising restrictions. Even if the size of the audience at commercial and public broadcasters is the same, there are still restrictions on the income from advertising. The argument is held by Tehrania (2009) that the current system privileges the interests of repeating, sophisticated right holders, often at the expense of smaller, less sophisticated creators.

The most important challenge for the broadcasting industry is that of copyright reform, and in particular to establish a fair and balanced copyright tariff regime that reflects the important contributions of all those who generate success and wealth (Canadian Association of Broadcasters, 2014). Integration of the size of the audience can counteract the discrimination model and increase the earnings of authors. Royalty rates as relating to tariff structures play a crucial role in shaping digital music broadcasting (Villasenor, 2012). If the rates are set too low, the recording artist receives an unfair return on content, and if the rates are too high, it affects the broadcaster's ability to provide the public with access to music (Villasenor, 2012).

The broadcasting industry encompasses a number of vertical stages, with some outsourcing of program production (Armstrong & Weeds, 2014:03). Program production costs are independent of the number of viewers and once transmission and reception capacity is in place, the cost of transmitting a program to an additional viewer is marginal. This means that returns can be high once the content is developed and that a program can be rebroadcasted at no cost, which can be an added advantage to the author, should the license agreement recognize this value (Armstrong & Weeds, 2014).

6.2.4.2 Radio station infringement

The data indicated that the goal of radio stations is to transform their signals to digital, depending on the market in which they operate. The challenge is that they do not have the right product offering, such as advertising, and in the event that they load music on their systems, Copyright Act requires mechanical right and performing right compensation. Should these radio stations not secure the necessary licenses and make the necessary payments, their actions would result in copyright infringement. From a recent report, "The Piracy in the Emerging Economies", conducted by SSRIC media, the author has concluded that copyright education campaigns are inadequate, because it seems that consumers are not ignorant regarding copyright; they actually like their inexpensive infringed copies (Bitton, 2012).

In Nigeria for instance, some radio stations convert to digital systems, loading music directly onto their computers and playing the music without remunerating the copyright stakeholders. It can be argued that this type of infringement can be looked at from a contributory perspective (Gregorian, 2009) seeing that it not only affects the performing rights and the reproductive rights of the copyright owner and the author, but it also encourages infringement amongst the audience as anyone can record music played on the radio. Copyright as a movable property is aimed at owners having their own incentives to voluntarily adopt measures to secure their entitlements in their belongings (Bell & Parchomovsky, 2012).

6.2.4.3 Equal rights

The data in Nigeria have indicated that, as a part of the broadcast code of Nigeria, “the rule says that you must give everyone equal treatment”. It is further stated in the data that the public is not fully informed of the fact that airwaves, whether it is public or private, belong to them as a constitutional right, like freedom of speech.

6.2.4.4 Internet

The Internet is driven by the quick demand of content as finding content on the Internet is easy. In the near future, large Internet platforms may well replace the functions of collecting societies and may even offer multi-territorial licensing to commercial users worldwide ((Karunaratne, 2012; Thakker, 2009). However, the use of the Internet is surrounded by the contention that file sharing damages the industry and artists’ income streams (Karunaratne, 2012).

6.2.4.5 Violation of mechanical rights

In the data it is mentioned that the illegal copying of music from the radio is a violation of the mechanical rights of the content owner. Copyright theft can have a devastating effect on both producers and consumers (Waldfoegel, 2012). However, some copyright holders charge super-monopoly prices, thereby encouraging low-value buyers to copy content illegally, resulting in authors not being compensated for the use of their works (Harbaugh & Khemka, 2010).

6.2.4.6 Non-licensed broadcasters

The data indicated that many Nigerian broadcasters are not licensed. To license content to a broadcaster will guarantee payment to the proprietor, as alternatively neither the proprietor nor the artist is protected. In the event where the broadcaster has a license and the rates are set low, recording artists will still receive an unfair return on content (Villasenor, 2012).

6.2.4.7 Tariffs adjustment

In the data it was mentioned that if artists' music are played on the radio it is seen as prestige, even if the tariffs from television and radio are different. The main concern is that it affects the royalty contributions to the artist. In theory the broadcasting industry is characterized by substantial fixed costs while marginal, per-viewer costs are negligible (Armstrong & Weeds, 2014). As indicated in section 6.2.4.1, the returns can be high once content is developed in that programs can be rebroadcasted at no cost, which can be an added advantage if the author's license agreement recognises this value (Villasenor, 2012).

6.2.4.8 FM stations with illegal content

The data have also indicated that many Nigerian radio stations are in possession of illegal content. In the literature it is mentioned that broadcasters have agreements with content owners in regard to the broadcasting of their material and moreover, the Copyright Act is supposed to ensure that all interested parties are financially rewarded according to the number of times the material has been aired. However, the absence of a legitimate license creates a situation where content owners are not compensated when their works are exploited on air. As the most appropriate working model, the granting of compulsory licenses offering legal authorization to make copies after payment of a statutory license fee would remain relevant (Hugenholtz, 2013; Nadel, 2004).

6.2.5 The ethical imperative of intellectual property

This section, as indicated in 5.2.5, contains four themes, namely fair trade platform, the fair trade goal, parties for the fair trade platform and remuneration. This section also enforces education and fair consumption of content that is representative of both the

creator and the consumer. The transparency objective within the copyright system is a key challenge, and emerged in the data in terms of remuneration to the creator of works.

6.2.5.1 Fair trade platform

Fair trade principles are the system of principles which involve all copyright stakeholders, Internet service providers, digital stores such as iTunes, streaming services, music publishers, performing rights societies and mechanical rights societies to sustain the industry and the creators. The owner of the works has to benefit financially from any exploitation of the works.

Copyright gives creators temporary monopoly rights, called economic rights, to reproduce, adapt, and make a work of their mind available to the public. It also grants certain moral and personal rights to creators, such as the right of attribution and integrity of the work (Meyer, 2012). In establishing compulsory licensing for interactive webcasters, music listeners will be able to consume copyrighted recordings in the most beneficial and preferred manner (Tyler, 2013). The principles of fair trade are education, remuneration, the economic effect, recapturing of copyright and freedom of speech.

The initial use of this concept came from agriculture, and specifically the coffee industry, where the producers of coffee were underpaid. The fair trade music project has the stamp of approval of many stakeholders and it is endorsed as a progressive and innovative system. Copyright is meant to encourage creativity and provide an incentive to share innovations and discoveries (Kelly, 2011).

6.2.5.2 The fair trade goal

Fair trade is a process of exchange linking production, distribution and consumption with the aim of promoting solidarity and sustainable development (Fretel & Roca, 2010). In the goal towards a platform that is based on copyright knowledge and transparency the data mention that Canada has a very well regulated copyright system. In the data it is also mentioned that a sustainable regulatory framework entails the involvement of the judiciary in learning and maintaining the market changes linked to copyright law. Views expressed in this regard included the point that accessibility to the platform, to the data concerning the authorship, ownership and users of copyrights would have a significant impact on copyright infringement; and also included the issue regarding the use of copyright tracking and tracing technology.

This is key knowledge in that it allows for the sharing of copyright experiences drawn from litigations and strategies related to its management in business. The appreciation of knowledge as a competitive commodity that has an impact on business is a widely accepted idea (Earl & Scott, 1999; Goh, 2002; Osterloh & Frey, 2000). The socialization of this knowledge is a key leverage in advancing the interests of the copyright stakeholdership.

6.2.5.3 Parties for the fair trade platform

The data pertaining to Canada indicated that creators are initiating a project on fair trade music, with an exemplary symbol of the current performing rights society. The scope of copyright law is restricted to protecting works within a given territorial space and limitations (Mlot, 2001). The data mentions that the fair trade platform does not only inform consumers of fair trade principles in music, but also informs music creators and owners.

It is mentioned in the data that dialogue on how fair trade principles apply to services such as Internet streaming, digital stores, and Skype, as well as to stakeholders like music publishers, performing rights societies and mechanical rights societies which would all need to conform to the fair trade criteria. The fair trade music project has been adopted by the music industry and involves the participation of collecting societies in several countries with the aim of protecting and sustaining music creators. In fair terms, the right of control of dissemination by the intellectual property creator is only one side of the copyright issue; the other side involves the need for members of public to obtain clearance to utilize the same property (Palmer, 2006).

6.2.5.4 Remuneration

In the data it is mentioned that broadcasters and users of content do not always pay royalties to artists and writers. The data assert that principles that must be adopted should include access, co-operation, partnership, ethical consumption, exchange and transparency. Deciding on how to pay music royalties to the relevant party has always been difficult, in that it requires determining which permissions need to be obtained, which person or institution has the rights to grant such permissions, what data needs to be tracked, who the claimants are and how much the rights will cost (Oxenford, 2013). This makes the implementation of a compulsory licensing system more practical in addressing the non-payment of authors.

6.2.6 The dialogue imperative in the intellectual property spectrum

This section contains four themes, as indicated in section 5.2.6, namely monetising on behavior of consumers, monetising on customers' activities, dialogue with consumers and collaboration with users. These sub-sections elaborate on the issues that emerged from research participants in respect of collaborative skills that are necessary for copyright to be equitably exchanged between creators and consumers.

6.2.6.1 Monetising on behavior of consumers

The research has shown that monetising on the behavior of consumers is a key imperative in maintaining technological momentum (section 5.2.6). Consumers' activities on the Internet cannot be controlled by the music industry which leads to disorientation. All stakeholders need to find a way to monetize on consumers' behavior. Globally there are very few successful business models for the online distribution of copyrighted materials (Kretschmer, 2003).

6.2.6.2 Monetising on customers' activities

The data indicated that a successful model to monetize activities of consumers on the Internet is required. In the explorative conversations one of the research participants stated that "*they will buy it if you own them*", referring to consumers. This expresses the goal of engaging and striving towards understanding the consumer in order to maximize from the social culture that drives the consumption of content. The consumer market is complex and requires the content owner to understand the factors that lead to identifying consumers' needs in order to take control of the market. Competitive advantage is achieved when market knowledge is applied in support of business objectives (Hoe, 2006).

6.2.6.3 Dialogue with consumers

In contrast to the preceding, the data indicated that in Italy, creators and consumer associations have established a platform for engaging in dialogue on a possible model for monetising on consumer behavior. The data also indicated that there is a need to engage with the representatives of consumers, of the industry and of creators to see which actions can be taken that are considered fair by everyone involved. The dialogue assists in exercising the constitutional rights of consumers and simultaneously

encouraging flexibility. The fact that legislative regulation is in place is not a guarantee that the violation of copyright is prevented (Geach, 2009). This means that innovative platforms are necessary for exploiting consumer behavior in order to maximize the returns of copyright.

6.2.6.4 Collaborate with users

In the data it is mentioned that knowledge of copyright law has to be increased amongst copyright owners and users. The appreciation of knowledge as a competitive commodity and its impact on business is commonly found in literature (Earl & Scott, 1999; Goh, 2002; Osterloh & Frey, 2000). The data further revealed that stakeholders in the creative world need to collaborate with users. Dialogue between consumers, ISP providers and authors are necessary to identify what is considered “fair”.

6.2.7 The corporate memory of copyright in the industry

The six themes raised in this section, as outlined in section 5.2.7, are as follows: situation in 90s in the music industry and infringement on tax, license structure, illegal way of accessing music, industry state, infringement on tax and pharmaceutical companies put IP in the same box. They outline the brief history of the industry in order to explain the reasons behind the current condition of illegal downloading activities’ pervasive growth, as well as the causes behind the lagging response of content owners against technology’s offensive role in copyright infringement.

6.2.7.1 Situation in the 90s in the music industry and infringement on tax

The research has found that the sluggish progress of technology in the musical industry in the 90s led to the current gap between the industry and digital platforms. In the 90s the music industry was represented by a vertical model, where the four major publishing companies and record companies owned a vertical chain, from creation to distribution. Executives of these companies were close to retirement age and in the 90s the Internet, being in its early stage, might have been too complicated to get involved with. Publishers had a different license structure and had a transportation fee on mechanical rights.

According to Reid (2012), the music industry, is predictably known for resisting new entrants via law; they repeatedly deploy their formidable copyright resources to restrain

competition from emerging though new media so as to maintain their dominant market position in the production and distribution of music, television programs, movies, journals and books. Hence, record companies and publishers suffer the most devastating effect of copyright infringement on repertoire as their profits continue to decline.

6.2.7.2 License structure

The data pertaining to the United States show that licensing, as related to usage of content, creates high levels of contention amongst partners. The traditional licensing model required all users of content to obtain licenses from a collecting society, but due to different tariffs and advantages of technology, many users now prefer to obtain licenses directly from the publishers. The licensing of copyright models itself, as a strategy to consolidate financial interests from users of content in the areas most affected by infringement is crucial. Through the establishment of compulsory licensing for interactive webcasters, music listeners will be able to consume copyrighted recordings in the most beneficial and preferred manner (Tyler, 2013).

6.2.7.3 Illegal way of accessing the music

The data indicated that in the initial stages there was no legitimate way to access digital music, which created an opportunity for piracy to fill the gap. The results produced evidence that the power of digital infringement is based on the advantage that a master copy is not required to create new copies. The detrimental impact of this is that a single copy can be duplicated repeatedly at the quality standards of the original authentic copy. This requires content owners to become more efficient in the distribution of content and to avoid product delays that can lead to infringement. According to Smith and Telang (2009), members of the creative industries have expressed the concern that they are unable to compete with free copies of their content made available through new information technology systems.

6.2.7.4 Industry state

It is mentioned in the data, initially there was no real competition in the industry with CD prices set high and compilations only being created after the year 2000. The data revealed that the major publishers did not adopt new business models incorporating online shops in the 90s, as this posed a threat to their existing business models. Prices

of CDs were very high, and the first peer-to-peer sharing started at university campuses via their websites. Tech start-ups in the 90s, such as Google, Apple and Yahoo, received governmental funding to start businesses; today these companies are giants in the IT field.

The data have indicated that at the beginning of the 90s, the Internet was not widely used and not available in people's homes; however, it was available at universities and as university students started to share files via university websites, the peer-to-peer model was created. The music industry is an international market of substantial economic size within the copyright spectrum, and the industry is currently undergoing changes as a result of transformations in its business model (Liebowitz & Watt, 2006). The rise of the social media can cause excessive levels of infringement, for instance when a user shares a song with many other peers; however, it can also be leveraged as a positive model for monetising on consumers' behavior. Many authors provide a free digital copy of a product, a book or a song from an album, in order to sell a hard copy of the book, CD or DVD.

6.2.7.5 Infringement and diversion of tax

In the data it is mentioned that four major UK publishing companies are currently not domiciled in the country and have offshore registration for tax purposes. The current copyright system, being the benchmark of the EU, specifies that societies may not discriminate on grounds of nationality, for instance by conferring associate status solely on foreign authors. This implies that all collecting societies must permit other EU nationals to become members (Thakker, 2009). What this means is that a creator of works domiciled in his/her country of birth can allow his/her works to take citizenship in a foreign country, which makes it easy to bypass the tax system of the country of origin.

Collecting Societies in certain of the EU countries have long solicited the citizens of other countries (particularly Africa) to domicile their collection society membership in the EU rather than in the citizens' respective countries, effectively diverting global copyright dividends (and the corresponding taxes) away from the country of domicile and to those EU countries. France, Germany and Portugal have significant memberships from Africa for instance.

6.2.7.6 Pharmaceutical companies put IP in the same box

In the data it is mentioned that technology start-ups like Google, Apple and Yahoo received monetary aid from government. The data also indicated that pharmaceutical companies put different types of intellectual property in the same box with the result that copyright is not treated differently in practice, which negatively compromises its returns. These practices are likely to be counterproductive because they create an industry that fails to generate sufficient profits (Boehm, 2009).

6.2.8 Copyright infringement as a catalyst for unlawful business platforms

This section, as outlined in section 5.2.8, contains six themes, namely counterfeit goods, physical piracy is the alternative source of music, strategy of a pirate, reasons for physical piracy, pirated goods and the illegal goods model. They create a cluster that presents the adverse implications of counterfeit goods in the creative network. These arguments emerged from the research participants as a major concern and represents the adverse consequences of the illegal copyright market to the creative industry and the state.

6.2.8.1 Counterfeit goods

The data have presented evidence that the existence of counterfeit goods is an issue that still requires increasing the skills of customs officers, but this would need the resource inputs of government (section 5.2.8). Diverse agents with different objectives should intervene in a variety of fields where amateur practices co-exist with small or medium sized businesses, either local or national, as well as transnational counterfeiting industries (Mattelart, 2012).

6.2.8.2 Physical piracy is the alternative source of music

The data indicate that physical piracy represents a substantial percentage of the market; besides the cheaper branded goods it also offers an alternative way of acquiring music and films, especially to third world countries such as African and Central- and Latin American countries. In practical terms creative works can be copied freely and unauthorized copies drive prices below the levels needed to induce most creators and publishers to create new works (Nadel, 2004).

6.2.8.3 Strategy of a pirate

In the data it is mentioned that 'pirates' have advanced hardware, they own production plants and they also do digital and physical distribution, filling a gap for cheaper goods on the Namibian market with the latest available releases. Their activities are resourceful and this gives shape to a form of entrepreneurship as opposed to copyright infringement. The issue of violating intellectual property is unknown in this environment, which presents a basic challenge of poor copyright knowledge and its impact on the creator's world. Since copyright is a movable property that can be infringed in any jurisdiction outside its original domicile, international agreements have been introduced over the years to advance minimum international standards that will assist national governments in preventing the widespread infringement challenge (Bitton, 2012). This still does not guarantee that existing legislative regulations would prevent the violation of copyright (Geach, 2009).

Physical piracy takes place in all countries, but it has become a key issue amongst publishers as it relates to the third world countries, as the bulk of the world's large scale commercial piracy occurs in these countries (Altbach, 1986). Intellectual property is produced and reproduced in these regions without rights and licenses (section 5.2.8).

The data relating to Namibia revealed that even though infringers are arrested for broadcasting from home and using technology for producing pirated goods, no figures are available on the contribution of intellectual property to the Namibian economy. The violation of copyright is a complex issue to address and one can be an indirect copyright infringer even if only by supplying technology that is used to infringe (Hollaar, 2004). The researcher is of the opinion that dialogue forms the basis of encouraging conversations that will reveal the drivers of infringement to all interested parties. In the data it is further motioned that actions have been taken through the introduction of a fully-fledged program on copyright law, exchanges of information on copyright works and the data basing of copyright information. These actions are important to advance the future of the creative industry, because changes in digital technology are altering economic incentives for producing and disseminating works of authorship and information, which could ultimately weaken the advantages of the copyright system (Cheverie, 2002).

6.2.8.4 Reasons for physical piracy

The research data and literature confirm that the distribution channels for artists are defragmented due to parallel markets and infringed goods that overpower the market place. The data show that the recording industry did not introduce differential pricing for territories and countries where their content is consumed, which in essence should be informed by the living standards of a particular region. This leads to the pervasive growth of infringement because of the overpriced legal content in the market. However, over the years international agreements have been introduced to advance minimum international standards that can assist national governments in preventing widespread infringement (Bitton, 2012; Carrier, 2013; Geach, 2009).

6.2.8.5 Pirated goods

The researcher has found data that gives evidence that the demand of the illegal copyright market, the economic model of the illegal copyright market, relations to illegal sales, access to information regarding authorship and ownership of copyrights and market demand are important in the discussion of copyright law. In the countries with a high level of physical piracy losses on original sales are homogenous. There is a global need for cheaper goods of good quality, and pirated versions of CDs and DVDs can satisfy this demand as they are presented to the market at prices lower than that of the authentic copies. The enforcement effort contests a challenging reality in that the fundamental principal of criminology is that crime follows opportunity, and opportunities are abundant in the digital age (Grabosky *et al.*, 2001).

6.2.8.6 Illegal goods model

The data indicated that there is a risk in keeping pirated goods in stores because the stores can be prosecuted. The data also showed that the collecting society in Nigeria is taking actions and is implementing strategies to address stores that sell illegal content. Because cinematographic rights violations are integrated with musical works, for example when copyrighted music is used as soundtracks in films, it can impact all parties that require collective action mechanisms to address the illegal copyright market.

The data have revealed that the film industry in Nigeria does not have its own collecting society and does not have its own database, but has different guilds that deal with rights issues. Currently another collecting society deals with cinematographic issues while the

approval of a collecting society in the film industry and literary works industry is pending. At the moment, monetary gains are not maximized in the film industry. The absence of a relevant collecting society addressing cinematographic issues creates an opportunity for infringers. Tehrania (2009) confirms the value of a collecting society in that it allows authors the advantage of registering their works in order to enjoy the protection benefits of copyright against infringement. This emphasizes the importance of visible structures that protect copyright.

6.2.9 Artist exploitation through technology and lack of copyright compliance

This section, as outlined in section 5.2.9, contains four themes, namely market reality of the copyright market, right vs. might, infringement towards the artist and ISP legitimate pirates using semi-legitimate ways. They collectively underscore the challenges that authors are confronted with in respect of royalty payments for works exploited.

6.2.9.1 Market reality of the copyright market

The data revealed that market reality, which pertains to infringement and not paying artists the expected earnings from related platforms, is a concern. Matthew (2014) states that digital music infringement, has become a victimless offence. The laminations produced evidence that the streaming rate of online services is very low, and that copyright stakeholders have no control over earnings generated.

In the data it is mentioned that collecting societies need to implement economic education of artists advance their understanding of royalty distribution, as stream rate royalties are indistinguishable from piracy. The current arguments do are not reflecting the practical reality where works are infringed upon in the sound recording market. This market is currently in a state of flux and some even argue that it is in a state of disarray, owing to the ability of the Internet to lower transmission costs of both authorized and unauthorized copies (Liebowitz & Watt, 2006).

The data indicate that the selling price of music in the legal market is high, and because the illegal copyright market offers the same products at lower prices they appropriate the sales, resulting in artists not generating an income from their works. Rectifying these market imbalances is challenging in that law enforcement agencies are not effective due to a lack of capital and knowledge in addressing the infringement activities. The data assert that CMO's have no control over how often music is performed or which

pieces and songs are performed and also that CMO databases, record company and publisher databases are not accessible to members in the main, where such data bases do exist.

6.2.9.2 Right vs. might

Major record and publishing companies have adopted an alternative route to the market by connecting to fan databases directly via websites and social media, without remunerating the creators. Another source of conflict in the market is the license model where users and consumers accuse the copyright industry of abusing copyright as an instrument to exert monopoly power and outdated business models (Hugenholtz, 2013). The discrimination that arises from such persistence is that weak copyright law enforcement enables firms to collaborate in charging higher prices to a particular segment of consumers, thereby not complying with copyright law (Jain, 2008).

6.2.9.3 Infringement towards the artist

The data have revealed that historically, artists were exploited by producers and agents. The reason for this was that the artist needed the agent and the producer to exist. The agent charged the artist to place the repertoire on a website and in the event of the music gaining popularity the artist received no royalty from either parties, who claimed that they offered assistance to the project.

The artist's work has a value proposition. Music is used for advertising and other purposes, but the interested parties are not always remunerated. Artists need more awareness of their moral and economic rights under the copyright law. The data indicate that artists do not always charge high rates when performing in public, therefore all income generating avenues are important to their overall career earnings. When copyright scholars write and speak about markets, they refer to an opportunity for profit and works that should belong to the copyright owner (Stadler, 2009). An important criterion for ensuring that artists' contracts are informed is promoting equitable exchanges on all platforms with all interested parties.

6.2.9.4 ISP legitimate pirates using semi-legitimate ways

A notion that emerged from the data, is that Internet Service Providers (ISP) are legitimate pirates and use semi-legitimate ways to sell products without paying royalties

to the copyright holders. The data also support the view that through advertising and direct payment, ISPs are enriching themselves, leaving the creators of works without remuneration. In Italy consumers are frequently in dialogue with creators, as consumers have a strong voice in the society.

6.2.10 Leveraging technology as a revenue advocate

This section contains, as indicated in section 5.2.10, seven themes, namely Internet based infringement, digital IP, peer-to-peer sharing, infringement via technology, technology related IP infringement, technology is not the enemy and online piracy does not have a solution. They are clustered according to the technological ramifications of the illegal exploitation of content.

6.2.10.1 Internet based infringement

In the data it is mentioned that Internet based infringement entails accessing content for free without compensating the copyright holder. Intellectual property is highly valuable in the information-based economy; however, modern information- and telecommunication technology and the Internet make the protection of intellectual property difficult (Meyer, 2012).

Another model driving infringement is website subscription based and interchangeably encourages users to discount the value of copyright. Evidence of website infringement in the literature is the case of MegaUpload.com. Digital technology alters economic incentives for producing and disseminating works of authorship and information, which could ultimately weaken the advantages of the copyright system (Cheverie, 2002).

The digital platform allows for various ways of accessing content, like direct streaming or, in the event a website is not free, downloading material for a set fee. The data reveal that some websites appear to be genuine but might be trading illegally, not remunerating the copyright holders for any works exploited on the site. The argument is that even though this is a crime not any different from theft conducted at a retail store where the consumer inappropriately and unlawfully takes a product, the digital space carries a different perception of illegal downloading. Cohen and Felson (1979), in the Routine Activity Theory (RAT), points out that when stealing CDs or DVDs from a retail store, the potential of getting caught is much higher than when downloading music or films from the Internet.

In order to change the situation of copyright infringement, the copyright law needs to be updated in some countries in order to reduce the ramifications of digital piracy. Many copyright acts in a number of African countries were written before the digital age and no protection mechanisms for digital intellectual property exist. The infringement of copyright, as an outcome of technological advancement, accelerates at a faster pace than the enforcement of copyright law; this introduces the space transition theory, as presented by Jaishankar (2007:07), namely that people behave differently when they move from one space to another.

6.2.10.2 Digital copyright

The data revealed that a disadvantage of the digital space is that it has no control or protection mechanisms in the event that copyrighted works are infringed upon. The data concerning authorship and ownership of works is inaccessible to the copyright stakeholder. The ways in which technology has been adversely exploited is commercially disabling to the creator of the works and causes a reputational loss to the synergy of all interested parties. According to Sinha *et al.* (2010), technology has been a key strategy in preventing copyright infringement through systems such as digital rights management (DRM), which strives to make it difficult, if not impossible, to reproduce and distribute copies of legally purchased digital music.

The preceding activities are evidence of and emphasize the importance of copyright knowledge on the part of the creator as well as the importance of access to data concerning authorship and ownership of works. In the traditional context the Internet and the World Wide Web in particular, have destabilized many copyright industry sectors as the economics of creating, publishing, and disseminating information rich works have drastically changed (Samuelson, 2010). This necessitates aligning the new digital platforms with all the traditional models to bridge the gap in the industry. Collecting societies have to play a very active role in educating artists on how to get protected and compensated. However, the copyright law in third world countries cannot maintain the changes brought about by digitalization.

The data revealed that illegal uploading and the absence of digital licensing have become issues, even with online giants such as YouTube, where more than one million videos are illegally uploaded annually. Digital content and online file-sharing has evidently not delivered the expected outcomes (Swartout, 2011). It is mentioned in the

data that many artists believe that services such as YouTube can help them to be recognized in the industry, but instead these services lead to exploitation without gains, as there is no catalogue number, no owning rights and no knowledge on how to get compensated for one's work. Tehrania (2009) holds that the works of creators who fail to timely register their copyrighted content enjoy lower protection in that they remain susceptible to unauthorized manipulation and appropriation.

6.2.10.3 Peer-to-peer sharing

The data indicated that students in the USA adopted the Internet at its inception, which led to the sharing of musical works. The data show that this sharing was accelerated through peer-to-peer models of exchange which affected sound recordings through later developments, such as YouTube, where the cinematographic rights were violated through the illegal copying of visual content, brought about by the subsequent emergence of broadband. Liebowitz and Watt (2006) indicated that the market for sound recordings in this instance is currently in a state of flux and disarray, due to the ability of the Internet to lower transmission costs of both authorized and unauthorized copies.

6.2.10.4 Infringement via technology

In underscoring the evidence of copyright infringement, the Internet as a technological vehicle provides motivated offenders easy access to illegal content, with practically no capable custodians to enforce any copyright restrictions. In the data it is mentioned that technology related infringements are all about speed, bandwidth pipes, access to free pipes and broadband, and leaving no trails. The efforts at reducing infringement are aimed at trying to persuade consumers to purchase licensed digital music files and streams, protected under copyright law, instead of downloading music files without paying (Boehm, 2009). File sharing through the bandwidth advantage accelerates infringement and represents an enormous financial loss both to copyright-centric industries as well as to the economy at large (Swartout, 2011).

The data pertaining to Malawi indicate that speed to market of content is weak and access to data which both create opportunities and exacerbate copyright infringement. According to Katz (2012), the process of creating a work is more costly than to copy it. The concern is that copyists can undercut a copyright owner in pricing, making the rights holder incapable of recuperating a return from the investment.

It is also mentioned in the data that copyright infringers have created the value chain of production and publishing. In this they also produce and conduct the sound recordings in home studios. This includes creating audio-visual works and selling it to the local market. The infringers are thus utilizing the gap of international entertainment labels not being present. In engaging with the infringing parties, owing to a lack of enforcement resources, intellectual property transforms from being a legal matter to being a strategic issue (Smith & Hansen, 2002).

6.2.10.5 Technology related copyright infringement

It is mentioned in the data that technology-driven copyright infringement is an outcome of new technological developments and the speed of technological change. The challenge is that copyright law does not reflect these changes. It is indicated in the rationale that the industry's efforts are aimed at trying to persuade consumers to purchase licensed digital music files and streams, protected under copyright law, instead of downloading music files without paying (Boehm, 2009).

The researcher is of the opinion that the manipulation of rights is a means of improvisation of collecting societies due to the delay of aligning copyright with technological advancements, which in essence affects the goal of making the users of content compliant. The entertainment industry will not survive unless data concerning authorship and ownership of works is accessible and copyright laws are organized to meet the threat of new technologies and the widespread theft that occurs via the Internet (Depoorter, 2009).

6.2.10.6 Technology is not the enemy

It is mentioned in the data that technology should be embraced and not treated as an enemy. Hence, copyright law is supposed to create property interests to support creators, distributors and the public to engage in a series of market transactions and not be isolated from the benefits of technology (Von Ljohmann, 2008).

6.2.10.7 Online piracy does not have a solution

The data indicated that in the current state online piracy does not have a solution. With the pervasive growth of technology it has been a challenge for copyright holders to launch a war against peer-to-peer file sharing which began with the rise of computer

programs like Napster (Karunaratne, 2012). So far their efforts have not resulted in any progressive solutions for infringement. Copyright infringement is clearly present, and indeed is currently at levels that are uncontrollable (Liebowitz & Watt, 2006).

6.3 Lamination two: Culture and copyright law knowledge as key compliance drivers

6.3.1 Culture as an equitable copyright exchange

This section, as indicated in section 5.3.1, contains three themes, namely infringement via culture, IP culture and culture driven infringement. The discussion within this cultural trajectory has emerged from the ten conversations of the research participants underscoring its strategic importance in the copyright domain.

6.3.1.1 Infringement via culture

The data reveals that infringement via culture is pervasively affecting the progress of copyright. The data revealed that the disadvantage of the infringing culture is that children are involved in the violation of copyright without being aware of it and in the process are sensitized to the implications of infringement. The main reaction to the problem of declining profits has been to try to discourage consumers from downloading unlicensed works by litigating against them and against companies that commit copyright infringement by transferring digital music files. The efforts also aimed at trying to persuade consumers to purchase licensed digital music files and streams, protected under copyright law, instead of downloading music files without paying (Boehm, 2009).

The exploration of the copyright infringement model inadequacies, process or mechanism causing losses to content owners is arguably broad. For instance, there is an emergence of content companies shifting their strategy away from litigation and toward lobbying for graduated response laws, while at the same time experimenting with new business models for digital distribution (Swartout, 2011).

In the data it is mentioned that the pervasive impact of infringement is also experienced with employees of big and small corporations. In this instance a platform for a negative culture is created in that authorities and law enforcement agencies never detect the violation of copyright in these environments. The implication affecting the content owner is that the absence of copyright knowledge in these practices allows the infringer the

ignorance of not being aware that illegal copying is a crime. Lichtman and Landes (2003) and Katz (2004) explain that contributory infringement applies where one party knowingly induces, causes and contributes to the infringing conduct of another. These authors further state that vicarious liability would apply in situations where one party, in this case the employer, has control over another and also enjoys a direct financial benefit from the other party's infringing activities.

6.3.1.2 IP culture

The cost of policing infringing behavior is escalating. Anonymous offenders engage in copying outside of organized markets as the copied items are perfect substitutes for the original goods and copying becomes practically costless in such environments (Liebowitz & Watt, 2006). A culture of infringement can take on various forms and in the context of business it arises where an employer hires an employee for a lawful purpose, but the employee's actions on behalf of the employer lead to copyright infringement. Another example is the social culture created through illegal downloads outside the corporate environment.

The social context is not independent from the corporation and is a concern that rests on the foundation of increasing awareness of the role of copyright. Hence, the importance of harmony between a service organization's culture and the culture of its' customers suggests that the optimum culture in one nation may be different from another nation with different cultural values (Webster & White, 2010).

6.3.1.3 Culture driven infringement

In the data it is indicated that copyright infringement carries no moral codes. A well-functioning copyright law carefully balances the interests of the public in access to exclusive works and the sound advancement of knowledge and technology (Samuelson, 2010). All parties should recognize culture-driven copyright infringement and its ramifications to the economy. There is practically no evidence of a confluence achieved in the industry.

In order to decide on a way forward the system must consider not only copyright law, but also conflict-of-laws methods to address the disconnect (Fröhlich, 2009). Lack of understanding of copyright law and the lack of a legal framework negate the value of copyright and its impact on the economy. Even in the current industry structure where

copyright laws do exist, they generally fail to address digital technology and electronic copyright (Palmer, 2006).

6.3.2 Driving compliance in the copyright spectrum

This section, as outlined in section 5.3.2, contains three themes, namely rules of engagement of the legal music sharing providers, legal vs. illegal music on the Internet and transactions value. It emphasizes the challenge presented by the Internet in that it is uncontrollable, which necessitates an engagement platform to establish equitable copyright exchanges that will advance the collective interests of all the parties.

6.3.2.1 Rules of engagement of the legal music sharing providers

The researcher has found data that gives evidence that the issue of the rules of engagement in the music business is an urgent matter. Rules of engagement on the Internet are not well defined. The other challenge is that the supply-demand formula is ineffective, where the supply is much greater than the demand. The legal way of sharing music, such as through iTunes, compromises the existence of the copyright business when stakeholders do not re-invest in copyright music businesses.

iTunes is a company, registered in Luxemburg, seen as a tax haven destination that promotes the interests of shareholders and not those of the creators and owners. Copyright law should be reformed and adapted, in particular relating to the opportunities unlocked by digital technology and the implications of digitization, in that it takes control away from rights holders and gives it to third parties that do not value copyright (Ranaivoson & Lorrain, 2012).

The data revealed that the supply side is also affected by copyright infringement. The argument is that the supply side cannot circulate properly with persistent questions pleading to understand how content owners can benefit from the demand side. Many individuals now experience the Internet as consumers where it functions as a key supplier of content to an increasing demand from the market (Muir, 2013).

6.3.2.2 Legal vs. illegal music on the Internet

In the diverse pool of solutions, the iTunes store by Apple emerged as a strategic model that offers a legitimate, industry-supported alternative to online music infringement. Selling most individual songs it was the first online venue to make digital music

purchases mainstream (Muskus, 2013). The research laminations reveal that the culture of copying progresses because of the lack of commitment from the industry stakeholders. It is further emphasized that the Internet has no control over legal vs. illegal alternatives for music sharing.

The preceding is emphasized by the free sharing of music via the Internet, which continues to diminish the value of copyright. The weak copyright expertise creates fragmented communication, which leads to non-integration of any models aimed at curbing infringement. The current international copyright law is considered to be of primary concern in that a single act of unauthorized uploading of copyrighted material can result in copyright infringement by numerous Internet users in various countries (Fröhlich, 2009).

Bit Torrent is a peer-to-peer file-sharing service that was created as a legal tool for sharing large amounts of information on the Internet by sending small pieces of information from different servers. This idea became popular with digital pirates resulting in Bit Torrent's service being used globally for illegal sharing of music and movies. In these developments the law sets the rules and norms; however, in cyberspace there are different types of communities, like there is in the physical world, that intersect the regulation (Scharf, 2012).

6.3.2.3 Transactions value

Legal online streaming services, such as Sportify or Apple Radio, have a low streaming rate per song; a song can be highly downloadable and popular among customers, while earnings from the song can be US\$0.0006 and less. This amount is not enough to create a song, and these digital services become detested among creators to the extent that they are compared to illegal downloads, where the creator receives no remuneration. The effect of theft on sellers of content depends on its effect on consumers, who differ in their willingness to pay for a product (Waldfoegel, 2012).

The data have indicated that a UK collecting society changed the definitions in its articles in terms of performing rights to include a new phrase, called an 'online right', and gave a definition to the online right which allows them to copy. The assertion in the data in respect of this action is that it is an illegal process. Collecting societies must seek administrative authorization from its members before initiating such operations (Thakker, 2009).

6.3.3 Supply and demand implications on the technological platforms

This section, as indicated in section 5.3.3, contains four themes, namely infringement supply-demand related, supply demand related, accessibility and availability. The conversation in this section underscores the impact of technology on the copyright domain and its repercussions to content owners, which represent a central concern in managing intellectual property.

6.3.3.1 Infringement supply-demand related

The research has found that infringement related to supply and demand on the Internet is a complex phenomenon. The Internet has unlimited supply and demand which is met instantly, and this increases copyright infringement. On the supply side, the primary difference between physical and digital media is that virtual media products do not require physical manufacturing and production for distributive purposes, thus significantly reducing costs to the production company (Picard, 2004).

The research indicates that if the demand can be met constantly by the supply, the infringements would be reduced, and the cycle could be broken. There are many reasons for the infringements to grow; accessibility to a product paired with the timeous availability on any market at any given time would partially solve the infringement problem. Pirates incur production and distribution costs and a separate market and demand function exists for pirated products, which accelerate the growth of the illegal copyright market (Picard, 2004).

6.3.3.2 Supply-demand related

Intellectual property is not difficult to appropriate and use without payment, as there is a free choice in the moral aspect of the culture involved in the decision process. Digital infringement income can be diverted into legal market income with the right value proposition. In determining the economic impact of infringement the effects need to be considered within the context of value chain elements on the supply side and in terms of rivalry among consumers, which affects the demand side and thus price on the demand side (Picard, 2004).

The research findings indicated a social culture that drives infringement due to the weak supply of content to the foreign market, underscoring the importance of integration

amongst the copyright partners. In this case Korea demonstrated a unique type of infringement where a group of enthusiasts translated an English language series due to its unavailability in the local market. A novel issue emerged from the research concerning these volunteers who dedicated time to translate the series at no cost and in the process committing infringement. This unlawful activity, called 'responsibility driven', was provoked by the unavailability of the series in the market at the time of consumer demand.

The distribution of the series was based on infringing the rights of the creator. However, the fact that the volunteers had no financial gains whatsoever showed that if speed-to-market was achieved by the content owner the infringement could have been prevented. The literature indicates that the multiplicity of infringement causes are setting a complex platform whereby consistencies must be established towards practical mechanisms to safeguard copyright.

6.3.3.3 Accessibility

The data have shown that infringement on content has lowered the barriers to entry in the industry. Content has become much easier to exploit as technology allows the reproduction of content without studios, a master copy or the overheads related to reproduction. Investment in the creation of content and development will not be forthcoming without the incentive that law enforcement protection currently provides (Geach, 2009).

According to Scharf (2012), Internet users may value a particular piece of content and equally appreciate the work and effort that went into its production; however, the user may not necessarily place any value on the distribution of that content, as opposed to the creation of that content. Telecoms, for instance, use content without paying royalties to authors or getting clearance for the content. Infringing content sharing goes largely undeterred and unpunished, with a few unsuccessful individuals bearing disproportionately high costs for their content sharing activities (Swartout, 2011: 504).

6.3.3.4 Availability

The data have indicated that some content is difficult to access online. It is stated that consumers can only hear it but not own the content. In the data it is mentioned that an agent will place the artist's works on a website with the aim of assisting the creator in terms of increasing the visibility of the artist. This entails increasing the distribution and availability of the artist's works, but the creator receives no royalty payment in the event of popularity of the content. Copyright law should recognize that new technology might create new opportunities to infringe copyright as well as new opportunities to transact over copyright rights and to distribute and use copyrighted works (Samuelson, 2010; Smith & Telang, 2009).

6.3.4 Royalty discrepancies and violations

This section, as indicated in section 5.3.4 in chapter five, contains four themes, namely infringement on content, infringement within a country, content exploitation and compensating the author. These issues highlight the value of copyright in terms of infringement experienced in the industry and the royalty challenge, which has a direct impact on the creator of the works.

6.3.4.1 Infringement on content

The results present evidence that digital platforms can distribute content more efficiently and increase the popularity of a work (section 5.3.4). However, this advantage is not exploited as an efficient marketing tool that accommodates the interest of the creator of the works, but instead is isolated from the overall strategies of legitimate distribution as in the South African case study of "Sista Bethina" that emerged from the data.

In the data it is indicated that broadcasters are infringing on the very content they have obtained permission to broadcast, exceeding the stipulated contractual limitations by using the content in forms that are not included in the license agreement. The violation is conducted through creating promotional material of the overall content scheduled for broadcasting by editing pieces from different movies to create a single promotional item with a shorter duration, in order to advertise the overall bouquet of channels of the broadcaster. The arguments from the respondent are that the promotional items created from various movies are not included in the licensing contract and the content owner is

not remunerated for these items. Broadcasters are typically vertically integrated, with some outsourcing of programme production (Armstrong & Weeds, 2014).

The loophole with the broadcaster in respect of copyright violation is that the content that it owns is legally allowed to be edited into promotional material to advertise the channel bouquet, but instead programmes that are foreign and only obtained through licenses with a set duration are exploited to promote the broadcaster without compensating the owner of the content for that specific promotional project. The most important challenge for the broadcasting industry is copyright reform, particularly the establishment of a fair and balanced copyright tariff regime that reflects the important contributions of all those who generate success and wealth (Canadian Association of Broadcasters, 2014).

6.3.4.2 Infringement within a country

In the data it is indicated that to manage infringement within a respective country, some European countries such as France, Italy and Germany, as well as the United States implemented special measures to protect users against illegal downloading. The countries go after the individual users, punishing them and cutting access to websites with illegal content. Vertical fragmentation of distribution platforms in the Internet age has created an impediment between platform innovators and creative industries that hinders e-symbiosis (Menell, 2012).

6.3.4.3 Content exploitation

It is revealed in the data that the funds, which have to go to the record label by law, are transferred to the ISPs. This directly shows that the ISPs have no understanding of intellectual property and the Copyright Act. If the copyright transactions within the stakeholderhood continue to discount the actual value of the asset to content owners, the illegal copyright market will persist. The lack of governance by ISPs affects US companies in that they suffer losses because their intellectual property rights, such as copyright, trademarks and patents, are not adequately protected outside their territory (Feinberg & Roussiang, 1990). The researcher maintains that the lack of compliance to copyright affects all content owners.

6.3.4.4 Compensating the author

The research reveals that the monopolistic behavior of publishers (section 5.2.7) and distributors include contracts that fail to stipulate the monetary terms, but emphasizes corporate interests over the author, and in principal these entities are expected to demonstrate developmental initiatives to the creative environment. These initiatives are critical future value propositions in that these entities' economic advantage is diminishing due to traditional business models and placed in the value chain of record companies. Traditional music stores are losing CD sales; they need to find other sources of income or risk going out of business (Vaccaro & Cohn, 2014). The relationship between artists and publishers is important for establishing new terms of engagement and the emphasis is that both parties have a reciprocal gain potential to exploit the digital platforms.

6.3.5 Proposition for rules and regulations in the intellectual property spectrum

This section, as indicated in section 5.3.5, presents six themes, namely harmonization on the rules of engagement, all parties getting involved, official platforms taking a more active role, unified channel CMO, compensation and education and law differences on piracy. It predominantly underscores the value of copyright and the importance of set rules and regulations that will contribute to the creative community through the fair trade platform.

6.3.5.1 Harmonization on the rules of engagement

The researcher has found data that gives evidence that harmonization on the rules of engagement is a urgent need at the micro and macro level. The law regarding secondary liability in the UK does not require intent to qualify for infringement, but pertains to willful actions of knowing that an income is generated from copying CDs and DVDs. Within these systems, the scope of copyright law is restricted to protecting works within a given territorial space and limitations (Mlot, 2001). One does not have to have intent to infringe in the UK law, but infringement is treated as the secondary infringement, and one needs to have knowledge that one commits a crime, for instance, that one can generate an income from copying a CD or DVD. In order to harmonies the rules of engagement, it is necessary to identify the rights and duties of interested parties. The key disconnect driving infringement is the lack of integration and collaboration by the partners.

Conflict between civil law and common law also create disputes in cases addressing copyright law (Huang, 2010). The findings regarding the qualitative conversation indicate that the absence of proper rules of engagement agreed upon can result in a negative future of having no products to consume (section 5.3.5). The future market of copyright should deal with the fundamental issues of fragmentation and the un-harmonized global structure of copyright law in order to suggest an ecosystem that will bring strategic solutions to infringement.

It is mentioned in the data that copyright infringement is an economical emergency; its negative continuation at the current rate will result in no more products left for the market to consume. Investment in the creation of content and development will not be forthcoming without the incentive that protection currently provides (Geach, 2009).

6.3.5.2 All parties to get involved

The data showed that the controlling of copyright infringement benefits all interested parties. The data also indicate that it is crucial to identify the rights and duties of all interested parties, such as consumers, because they have the right to access the culture. This also includes creators because they have the right to be remunerated and the right to develop the culture. Constitutional Law owns the balance of the rights. Conventional copyright enforcement relies on private litigation and places the burden of enforcement on rights holders (Swartout, 2011). This is a limitation in the action against infringement because the process is not inclusive of all interested parties.

6.3.5.3 Official platforms to take a more active role

According to Levine (2007), at the core of the common and civil law regimes are divergent models of administrative governance. The civil law model relies on centralized, agency-based state administration aimed at the implementation of regulatory standards through expert legislators and bureaucrats. The common law model fundamentally distrusted bureaucratic administration, and as a consequence, identified courts as the proper locus for administrative governance. This makes the law interpretation complex and jurisdiction issues more valuable in the global reality of technological infringing networks. These contradictions would legislatively propose unified copyright laws through reform. However, a copyright reform project would also require significant amounts of time, financial capital, and relevant skills (Samuelson, 2007).

The process of convergence between the two legal systems, common and civil, is undoubtedly stimulated by the fact that these systems have the same types of problems to confront in the global copyright economy (Cavinet, 2003). In the common law system the work of authors are protected by copyright whereas in the civil law system, authors' rights protect them. The most advanced nations have problems with copyright ownership, and CISAC, as being the main player in the industry, has to play a more active role by remodeling this situation on a global scale (section 5.4.1).

6.3.5.4 Unified channel CMO

The data revealed that a unified channel is required that will address the infringement challenge by delegating responsibilities to managers in the collecting societies, and this process should be executed in a cost effective manner. Effective partnership in the management of copyright will depend upon recognition of mutual professionalism and commitment (IFPI, 2014). The presence of strong intellectual property rights will increase benefits for all interested parties (Zirnstien, 2014).

6.3.5.5 Compensation and education

It is mentioned in the data that the entire globe has to deal with copyright infringement in an aggressive manner. Especially when India, Singapore and Australia would join the global arena of copyright protection, it would be complete and all interested parties would be united. The fair trade music project is a very powerful tool to educate consumers and music creators, which gives a stamp of approval to all parties involved in the curbing of copyright infringement. Copyright issues have become a gateway on the information trajectory making it indispensable for developing countries to examine whether their intellectual property policies support or obstruct economic and technological development (Palmer, 2006).

6.3.5.6 Law differences on piracy

The data confirmed that the lack of skills in copyright law and the lack of service delivery have a direct impact on infringement from a cultural point of view.

6.3.6 Distribution implications on the technological platforms

This section as, outlined in section 5.3.6 of chapter five, contains two themes, namely cinematographic films and cinematographic issues. They are particularly focused on the

violation of cinematographic rights within the intellectual property spectrum. The discussion underlines the pervasive impact of infringement within the creative industry and the negative technological implications affecting the content owner.

6.3.6.1 Cinematographic films

The data have revealed that infringement on cinematographic films is a concern equal to all other copyright violations (section 5.3.6). Losses due to infringement are particularly difficult for the film industry to absorb, because it has a low average rate of return with an extremely high volatility (Walls & Harvey, 2006). The cinematographic industry is a demand-driven industry; the infringements are mainly experienced through the supply being not timeously available. The cinematographic industry has limitations per territory and country, and due to this fact losses are high as piracy exploits the market gap.

6.3.6.2 Cinematographic issues

In this objective the data revealed that the Nigerian collecting society has formed a coalition, which is a combination of a collecting society and guilds which have representatives from the music industry and Nollywood. The coalition is set up with the Nigerian departmental license; this license helps to deal with cinematographic issues. Currently the film industry in Nigeria cannot maximize gains. In confirming the losses of infringement, Hogberg (2006) states that the advent of ubiquitous personal computers, including Internet access, has enabled individuals to inexpensively duplicate and widely distribute perfect copies of music, movies and other creative content.

There are many motivational factors behind the formation of copyright strategic alliances that are aimed at maximizing the value of creative input. A great deal is expected from the intervention of the government. There is a need for resilient collaborative structures with a vested copyright interest against the illegal copyright market in Nigeria.

In the data it was mentioned that the collecting society of Nigeria was re-established in 2011. Previously artists were not earning royalties on performing rights. The society brought all the parties together, as well as the former Nigerian Music Industry coalition, to form cooperative alliances. The outcome of not having a collecting society that is visible in enforcement actions is indicated in the literature by the research conducted by

Mattelart (2012), with youth selling pirated products on the campus of Cocody, in Abidjan. Their activities express the gain of being resourceful, which gives shape to a form of entrepreneurship as opposed to copyright infringement.

The collecting society in Nigeria's principle is to represent a diverse group of artists with different needs in the industry in relation to copyright management. But in order for the collecting society to be able to enforce copyright the empowerment of law enforcement agencies with knowledge and expertise in addressing infringement is key (Mann, 2014). The researcher maintains that in order to maximize from copyright, fundamental rethinking and radical redesign of business processes are needed to achieve dramatic improvements in critical contemporary measures of the performance such as cost, quality, service and speed.

6.3.7 Direct licensing as a new competing strategic enterprise

This section, as outlined in section 5.3.7 of chapter five, contains two themes, namely direct licensing with publishers and Pandora vs. American majors.

6.3.7.1 Direct licensing

The research findings pertaining to the United Kingdom indicate that new entrants in the industry adopted a different licensing model that is altered from the traditional model. This new model is not necessarily beneficial to the new entrant, based on its cost implications and a lack of risk sharing. The old models of copyright management are greatly affected by technology, as supported by Hollaar, 2004; Hugenholtz, 2013; Liebowitz and Watt, 2006; Meyer, 2012; Samuelson, 2010 and Silva, 2012, in that copyright business has to re-invent itself in a decentralized market.

The challenge is that a new entrant obtains direct licensing with publishers to receive mechanical and performing licenses at a tariff that is higher than that offered by the collecting society. The inconsistency is that publishers keep a larger portion of the generated earnings and remunerate the author at a lower tariff for the exploited works without sharing any risks, as would have been the case with the society.

6.3.7.2 Pandora vs. American majors

In the case of Pandora the data indicated that it won against majors in America for direct licensing and that they cannot obtain a direct license from the majors until 2015,

but instead need to license through ASCAP. The data mentioned that the majors have been charging Pandora slightly more, but they have been told that they cannot do it directly. This gives collecting societies time to improve the system, get a higher rate and get better matching.

6.3.8 Intellectual property's weak adoption in the industry

This section, as outlined in section 5.3.8, contains three themes, namely lack of understanding of intellectual property, value of intellectual property to all players and lack of a copyright hub in South Africa. In the discussions, as obtained from the research, intellectual property is mentioned as a key necessity to the industry based on the current infringement challenges that are experienced by the content owner.

6.3.8.1 Lack of understanding of intellectual property

The researcher has found data that gives evidence that the lack of understanding of intellectual property is a catalyst for infringement in that it exploits the inability of the legal market to connect with rapid technological changes. The UK government takes intellectual property very seriously. It has, for example, created a copyright hub which is a website that contains all the necessary information related to copyright, outlining all players, rights, different societies, licensing offices and definition of the acts. However, the success is only guaranteed if the government, the collecting society and the creative community are working together. It is expected from copyright law to fulfill a constitutional directive to ensure that adequate incentive exists for artistic and scholastic creators (Boehm, 2009).

6.3.8.2 Value of intellectual property to all players

The data suggested that South Africa should recreate the copyright hub of the UK, with information on copyright, all players, rights and societies involved. The literature confirms that a pro-copyright culture is an important vehicle that should be driven by a sustainable viewpoint between all interested parties. Digital information comes into conflict with a range of national and international laws (Palmer, 2006). Hence, it is important to establish a copyright hub that will ensure that the interests of all the parties are represented in the global intellectual property spectrum.

6.3.8.3 Lack of a copyright hub in South Africa

The data further indicated that the Department of Trade and Industry (DTI) should understand the importance of the international relationship and the value of intellectual property to the economy. The international ties should be created by the DTI with countries where the intellectual property value is reaching the end-customer faster, and should involve all parties in recovering the illegal copyright market share and returning it to the content owner. The value of copyright should allow all interested parties to create a uniform external control mechanism to meet with the external market changes (Guibault & Van Gompel, 2006).

6.3.9 The copyright knowledge deficiency in the creative industries

This section, as outlined in section 5.3.9, contains four themes, namely lack of understanding of the copyright law, value proposition of the copyright law, lack of copyright knowledge and understanding of copyright. Their emphasis is on copyright knowledge. The knowledge conversation exponentially indicates the strategic immediacy of copyright skills within the industry in addressing infringement.

6.3.9.1 Lack of understanding of the copyright law

In the data it is indicated that the teaching of copyright law does not stand on its own. This results in a lack of qualified people who can argue the value of copyright law on a governmental level, and who can bring the government to understand it as a valuable asset to the economy and cultural heritage. As indicated earlier in the data, copyright law is also argued to be too academic.

In its financial goal, copyright law creates property interests to encourage creators, distributors, and the public to engage in a series of market transactions that will result in the creation and distribution of, and wide public access to, creative works (Von Ljohmann, 2008). The data revealed that a lack of specialists results in huge errors of judgment and brings even more challenges to the local government level. Conventional copyright enforcement relies on private litigation and places that burden of enforcement on the rights holders (Swartout, 2011).

6.3.9.2 Value proposition of the copyright law

The data have shown that in the educational system, copyright law is mostly part of a curriculum that is mixed with patent and design. There is no value proposition in teaching copyright law and this has a definite impact on infringement. The data also revealed that there is a lack of opportunities for practitioners in copyright law resulting in a large impact on infringement and a lack of service options. Copyright law is wide and complex as it covers all aspects of design in media, music, literature and manufacturing (Eaton, 2013). This opens the opportunity gap for the participation of skills required in advancing the value of copyright.

6.3.9.3 Lack of copyright knowledge

The data revealed that there is very little academic knowledge on copyright law, which challenges the local government. The data further indicated that there is a lack of qualified practitioners, resulting in people making errors of judgment, notwithstanding the many people in roles where copyright law qualification is requisite, who have no such expertise.

6.3.9.4 Understanding of copyright

In the data it is mentioned that government's ability to understand copyright law is very low and that the Reserve Bank's regulations on copyright are very vague in South Africa. The value that can be expected from the global engagement is that the presence of resilient intellectual property rights spurs innovation leading to higher economic growth and increasing benefits for all (Zirnstein, 2014).

The lamination indicates that in Costa Rica there is a special bureau working at the Ministry of Economic Affairs, together with the collecting society and the intellectual property office. Costa Rican congress is re-engineering the copyright law based on the international treaty with the USA and Canada; unfortunately the Costa Rican government is not very active on this issue.

6.3.10 Levels of infringement within copyright

This section, as indicated in section 5.3.10, contains five themes, namely literary works and music works, analogue copy, copying without reproductive rights, licenses, literary rights organization has been established (in Namibia – NAMRO) and publishing

organizations have a monopoly. It is a cluster of arguments that present infringement as a challenge that affects all parties involved in creating content in that a film will have the same implications as a cinematographic violation or a song that is being infringed upon, which emphasizes the need for collective participation of all interested parties in balancing the industry's interests.

6.3.10.1 Literary works and music works

The data have shown that literary and musical works infringement require collective strategies. In the last ten years musical works and literary works were jointly infringed (Section 5.3.10). If a song embedded in a film is infringed through reproducing it without a license, this would be considered as and musical and literary work infringement. Hogberg (2006) states that the advent of ubiquitous personal computers and Internet access has enabled individuals to duplicate inexpensively and widely distribute perfect copies of movies, music and other creative content. Photocopying of books, for instance, or recording a concert on a CD is also considered an infringement if a person does not have a license to do that, as the original copyright holder is not remunerated.

6.3.10.2 Analogue copy

The literature indicated that conventional copyright infringement models and processes can be traced back to the analogue process. This is followed by unlicensed access to copyrighted content with consumer-to-consumer dissemination over file-sharing networks that bypassed the traditional segments of the copyright market (Depoorter, 2009). These models, in their negative role, advanced alongside supporting cultures.

The lamination that emerged showed the importance of harmony between the organizational culture and the culture of the customer. The illegal downloading of content is contained within the social and business culture, anchored in the violation of copyright and not remunerating the content owner, which in third world countries is mainly through the duplication of CDs. Previous research has examined major record labels' responses to the piracy culture of music downloading via litigation and digital copyright protection technologies (Freedman, 2003). In the digital space the illegal downloading of files and copying remains a clear infringement of copyright. In judging industry claims about lost revenues, the strategic integration of all the relevant interest parties remains unattained.

6.3.10.3 Copying without reproductive rights

The research revealed a case where an Italian professor at the conservatorium in Rome was photocopying books for his students at the conservatorium. The books had a note description of opera music. The professor was re-printing it, and infringing the rights of the original copyright owner, as he did not have a reproduction license (Section 5.3.10). The university also failed to reach an agreement for reproducing these types of literary works with the intellectual property office in Italy. In spite of copyright law protecting the interests of creators and authors during its term, copyright infringement is clearly present on all levels, which is of extreme concern (Liebowitz & Watt, 2006).

6.3.10.4 Licenses

The data revealed that the photocopying of books without licenses is an exercise that is prevalent in universities and which forms an infringement culture that is not supportive of the goals of copyright law. Copyright infringement legal actions are less effective to execute when there are a large number of small infringers and the Internet introduced a culture that undermines the value of intellectual property (Hollaar, 2004; Mueller *et al.*, 2012). The findings reveal that an organization's culture is important in integrating it with copyright law.

6.3.10.5 Literary rights organization has been established (in Namibia – NAMRO)

The data indicated that a literary organization has been established in Namibia as a step towards protecting intellectual property and increasing the earnings of creators. This is a novel issue that emerged from the research.

6.3.10.6 Publishing organizations have a monopoly

The data indicated that publishing companies still have a monopoly. Copyright holders charge super-monopoly prices, thereby encouraging low-value buyers to switch to inferior pirated copies (Harbaugh & Khemka, 2010). If a price increase would cause customers to purchase other products instead, then the product being tested has reasonable substitutes (Stadler, 2009). This is a confirmation of the accelerated growth of the illegal copyright market in that it offers products that are low priced with almost an equal quality to the ones offered by the legal market.

6.4 Lamination three: Prioritizing strategic alliances to manage and educate copyright

The following lamination has emerged and is related to the international alliances, law enforcement, and dialogue for intellectual property market growth. One of the reasons this research has formed visible results in addressing copyright infringement is that it has emerged out of the market reality that the entertainment industry is still confronted with the uncertainty of managing copyright infringement. As a result, the only objective is to ensure that a system exists and creates an appropriate copyright exchange platform to advance the interests of all affected parties by opening access to copyright databases and leveraging the exchange opportunities that arise. This platform can basically come in any form, provided the objective is consistent with the relevant interest within the copyright stakeholdership.

In contemplating best processes there is still the challenge of ensuring that earnings are accurately directed to the owners and creators of the works, which in essence is a durable acid test to ensure that a model or mechanism is delivering at optimum level. According to Oxenford (2013), deciding on how to pay music royalties to the relevant party has always been difficult, in that it requires determining which permissions are required, which person or institution has the right to grant such permission, and how much the rights will cost. The processes that are supposed to ensure that royalties reach the relevant party can be detrimental if they do not accurately function, in that if it systematically fails it amounts to infringement, which can qualify litigation. This alone is suggestive, at all levels of managing intellectual property rights, that innovation is a critical base for the seamless delivery of value to the content owner.

6.4.1 Negotiating copyright strategic alliances

This section, as outlined in section 5.4.1, contains eleven themes, namely all parties together to form an international alliance, law enforcement and dialogue, international platforms for fair trade, lack of considering the future of IP, evidence collection, all parties involved, state intervention, law enforcement, legislation issues, law protecting courses to be updated and stakeholdership involvement. This is a collective conversation of cooperative dynamics in the proposed alliances against copyright infringement.

6.4.1.1 All parties together to form an international alliance

The data has shown that all parties should jointly form international alliances to engage in dialogue regarding intellectual property. There is a concern that copyright law can no longer satisfy the actual expectations of creators (Stadler, 2009). The main cause of this crisis in copyright is the increasing gap between the rules of the law and the social norms that are shaped, at least, in part by the state of technology (Hugenholtz, 2013). International alliances are platforms to address global copyright infringement and the role that access to data concerning copyright authorship, ownership and use plays. The platforms have the ability to protect society with a well-compensated intellectual property system, by protecting the producer and by protecting a product and are underpinned essentially by access in real time to quality information. Social and economic platforms have to work together in order to use existing laws instead of creating new ones as a means to impact the illegal copyright market.

6.4.1.2 Law enforcement and dialogue

Dialogue between law enforcement and consumers can bring a legislative change in a copyright law leading to law enforcement being more successful. Dialogue among all interested parties and education on copyright law can reduce global copyright infringement by adding barriers to entry to the illegal copyright market through increased legal, user and consumer information sharing.

6.4.1.3 International platforms for fair trade

It is stated in the data, verbatim, that the Internet is currently a “jungle”. This is an expression that underscores the absence of rules of engagement with the Internet and outlines the degree of copyright risk exposure in that the environment is not structured. A creator has the right to be remunerated and to develop the cultural value. A constitutional right of a consumer is to access the culture; however, rights need to be balanced to achieve harmonization. The data supports fair trade as a possible outcome of the application and use of global platforms for copyright exchange and copyright data access. Where copyright infringement is reduced and the illegal copyright market shrunk fair trade finds footing.

As mentioned above, a research participant stated that the Internet is a jungle with no rules for hunters and the aim of addressing infringement should be based on converting

them into rangers. In this dialogue the Internet is seen as destroying content and is a platform with unlimited activities that are not supportive of the interests of copyright. According to Dannenberg and Gerk (2009), digital technology has continued to grow exponentially in importance, complexity, and breadth with the DMCA which is only limited to the US coming into place; many other countries have amended or added to their body of laws relating to digital media, technology, and related issues.

6.4.1.4 Lack of considering the future of IP

The data showed that collecting societies, as merchants of copyright, are not proactive about its future. They are selling copyright without any concern for the future, resulting from short term thinking and the concern that they will be robbed of copyright by the environmental changes. Hence, the diverse views are shaped as an interrogative leverage to reengineer the copyright dividend in the illegal market (Ryan & Bernard, 2003).

6.4.1.5 Evidence collection

The data revealed that in Israel for instance, to collect evidence on copyright infringement the collecting society uses private investigators, qualified litigators and lawyers. In some countries legislation needs to be revised and aligned between all stakeholders. An opportunity for profit should belong to the copyright owner and should be protected from the infringement brought about by the illegal market (Stadler, 2009).

6.4.1.6 All parties involved

It is mentioned in the data that partnerships between consumers, artists, Internet Service Providers, importers, manufacturers, judges and the police are crucial. The emphasis should be on copyright stakeholders reflecting on existing alliances concerning copyright and forming strategic alliances towards reducing copyright infringement. It is also mentioned in the data that copyright infringement thrives where all parties are not involved and copyright infringement is exploited where all parties do not have access, equal or otherwise, to copyright databases and information. For the alliances to function it must be recognized that the global copyright economy is driven by a diversity of cultures. Optimum organizational culture in one nation may be different from the optimum organizational culture in another with different cultural values (Webster & White, 2010).

6.4.1.7 State intervention

The data relating to Malawi reveal that visible actions are being taken in addressing copyright infringement. New learning opportunities in copyright are created and the efforts are addressing the existence of bureaucratic conflict through training the judiciary and customs officials to optimize the intellectual property goal in the interest of all parties. These engagements are supporting the assertions of Letts *et al.* (2007) and Ryan & Bernard, (2003), that the extractions of knowledge from the lived experiences of infringement are crucial in consolidating actions that will address the violation of copyright.

6.4.1.8 Law enforcement

In the data it is indicated that lobbyists are lobbying for a stronger copyright environment through the support of the legislation on copyright and the creation of a stronger punishment model on infringement as well as improved engagement and exchange with law enforcement.

6.4.1.9 Legislation issues

It is mentioned in the data that the legislation on the digital rights in the UK has to be revised. The copyright law and government policy often neglect the importance of innovation to the economy. Legislation means that to achieve collective action in order to address problems that cut across multiple sectors of the society and economy, the copyright law provides for a level of enforcement of the established rights, which means it not only defines the right of ownership, but it also provides some protection of these rights (Liebowitz & Watt, 2006; Menell, 2012).

6.4.1.10 Law protection courses to be updated

The data pertaining to Malawi indicate that the training that is supplied to all parties also focuses on the law of contracts in copyright. The copyright dividend framework (figure 2.2) summarizes the driving basis for copyright in the context of its exchange as a valuable commodity, which concurs with the education of the interested parties on contracts. Andrews (2005), Gregorian (2009) and Liebowitz and Watt (2006), support the data with the assertion that the cost of policing infringement is high due to the

fragmentation of the industry addressing the violations of intellectual property, in that contracts with users are contributing to the positive growth of content.

6.4.1.11 Stakeholdership involvement

The need for education in the countries researched collectively, underpins the value of copyright. In the data it is further indicated that in Namibia, the collecting society is actively involved in the education of the customs officials, police officers and magistrates on copyright law and infringement, how to recognize it and how to deal with it. It also trains Internet Service Providers on copyright law. The collecting society has long term plans to educate all stakeholders and to train them on various aspects of copyright law, including digital piracy.

6.4.2 Mismanagement of copyright

This section, as indicated in section 5.4.2 in chapter five, contains five themes, namely manipulation of rights, rights and revenues, IP owner, artist's challenges to exist and rights equals revenue. In this discourse copyright is not managed in a standard manner, which results in negative monetary outcomes due to the manipulation of the rights.

6.4.2.1 Manipulation of rights

In the data concerning infringement practices through the manipulation of existing rights, money misallocation, massive extraction of capital and managing a collecting society as a company, instead of a non-profit organization as it is stated in the mandate, raise questions of both transparency within the controlling of these entities as well as in respect of author and owner access to copyright stakeholder data and to profits, none of which are shared with members and the creative community (section 5.4.2). The principal technology and content sectors are deeply divided and as a direct result transparency becomes difficult to achieve in managing copyright (Menell, 2012).

6.4.2.2 Rights and revenues

The data asserts that the exploitation of the rights of the creator equals revenue for the collecting society and in the digital age education on digital rights is essential. In terms of the prevalence of copyright infringement, the data also indicated that in Namibia, "expirates" are transformed into instrumental agents that assist the enforcement agencies to identify infringers in the local market. Hence, the copyright stakeholdership is aimed

at achieving the confluence of culture and collaboration amongst the partners through the exchange of information and access to databases concerning authorship, ownership and use.

The data also indicate that the Namibian collecting society structure includes two officials from the government and the Arts and Culture department and the rest of the board consists of artists and publishers. The disadvantage is that the authors have no knowledge of intellectual property matters and how such function and no understanding of the critical role that copyright information and database access plays. It is also indicated that some board members are not informed in policies of governance, which leads to the inappropriate use of funds (section 5.4.4). The collecting society staff members also need to be educated, trained and motivated on the principles of best practice in collective management. Copyright reform projects will require significant amounts of time, financial capital and relevant skills (Samuelson, 2007). Meyer (2012), Nadel (2004), Menell (2012), Samuelson (2007), Waldfogel (2012) and Zirnstein (2014), support the education initiative, because copyright is a key investment that requires regaining of control and governance mechanisms to ensure the survival of the creative industries in the digital economy.

6.4.2.3 IP owner

The individual nature of the rights of the copyright owner is very important because it equates to revenue to the creator which emphasizes the importance of the maximization of royalty returns. However, facing the risk of infringement liability, the user sometimes foregoes the use, even though a transaction would have taken place had the user been able to locate the copyright owner (Loren, 2012:1433). The challenge with orphan works is not only that they cannot be used by third parties, but also that royalties are sometimes allocated to the incorrect party, which results in copyright infringement.

6.4.2.4 Artist's challenges to exist

A case study from Mauritius has showed that in order for the artist to become recognized, the artist needs to invest capital in a recording in order to obtain a return on investment. The discrepancy is that the artist will add a profit margin without paying attention to the number of copies sold or the distribution channels, which makes it difficult to get into the market and in return affects the return on investment. Copyright

gives creators temporary monopoly rights, called economic rights, to reproduce, adapt, and make a work of their mind available to the public (Meyer, 2012; Park, 2010; Silcock, 2007). However, due to the skill shortfall in the management of copyright it is difficult to exercise the rights afforded by the Mauritius Copyright Act.

6.4.2.5 Right is revenue

The data has revealed that the prevailing issue is that artists download their works, without notifying YouTube, to use it as a marketing medium and fail to be compensated in the event that the work loaded reaches high ratings. On the part of YouTube payment cannot be conducted, because they have no information of the artist and no legal agreement was drawn to load the content on the platform. This gives reason to the occurrence that globally there are very few successful business models for the online distribution of copyright materials (Kretschmer, 2003).

6.4.3 Endorsing intellectual property in the education system

This section, as outlined in section 5.4.3 in chapter five, contains two themes, namely education on IP at schools, and conversations/consultations with government/ministry of education to get IP into school/high school curriculums. It is pro-copyright in terms of its value in the education system. The critical issue emerging out of this cluster is the importance of copyright to education, which necessitates its adoption in the system.

6.4.3.1 Education on IP at schools

The data pertaining to the United Kingdom indicated that intellectual property should be taught at schools from an early age (section 5.4.3). The government in the United Kingdom approved this subject as a part of the curriculum as the children have no understanding of intellectual property. The data suggested that intellectual property could become an elective at school. The drawback is that the Department of Education needs to be more involved as there is no written syllabus at the moment and there are no books on the subject. The teachers would also need to go through special education and training to teach this subject. Piracy, as impelled by illegal manufacturing is greatly affecting markets of information goods, such as business and entertainment software applications, sound recordings, movies and books (Tade & Akinleye, 2012).

6.4.3.2 Conversations/consultations with government/ministry of education to get IP into school/ high school curriculums

The data reveal the importance of including copyright in the curriculum in schools and the involvement of government in this process as a stakeholder in influence a compliant culture in respect of copyright use. In the infringement trajectory this practice in its grand scale debilitates the competitive advantage for the industry, which necessitates its social adoption crucial in the global system. The researcher underlines the infringement implications of infringement in the social context and the value of copyright education in schools as stated by Mattelart (2012) in a case of youth selling pirated products on the campus of Cocody, in Abidjan. Their activity expresses a gain of being resourceful, which gives shape to a form of entrepreneurship as opposed to copyright infringement.

6.4.4 Prioritizing intellectual property as a high return asset

In this section the data, as indicated in section 5.4.4 in chapter five, contains three themes, namely priority allocation to IP issues, government and IP issues and law enforcement via CMO. They are all clustered according to intellectual property as a burning issue based on the pervasive infringement.

6.4.4.1 Priority allocation to IP issues

The researcher has found data that gives evidence that to give priority to the intellectual property issues will require the support of government. Some creators, despite copyright infringement being a burning issue, find other priorities more important. In the data it was indicated that in Israel, copyright infringement is not the most important priority for either the government or performers. Performers find copyright infringed materials entertaining as they can attract bigger audiences to live concerts, thereby being compensated in a different way. It is important to treat intellectual property rights with the economic contribution it carries, because it is a product of national legislation (Mestmäcker, 2005).

In the data it is mentioned that the law enforcement on copyright in Israel is quite strong and that it is subsidized by the state, also that the interested parties do not go out of their way to catch infringers. Consumption habits regarding digital content continue to

demonstrate the persistence of copyright infringement indicating an important disjoint between the existence and operation of copyright and its influence (Scharf, 2012).

The data indicate that there is no effective individual punishment for copyright infringement. The control mechanism does not work for the larger players. Claims and statutory damages are sent against individual customers. However, there should be an attractive and affordable model to monetize on activities of customers. It is evident that problems presented by digital content and the Internet has caused the failure of traditional copyright enforcement mechanisms to adequately address infringement that takes place through online file sharing (Swartout, 2011).

6.4.4.2 Government and IP issues

The research indicates that in Costa Rica, every new government brings new improvements to the copyright law, with no continuity of the previous improvements in the law. A copyright reform project would require significant amounts of time, financial capital, and relevant skills (Samuelson, 2007). The researcher's notion is that all leadership should recognize the financial implications of consistent copyright law application and continuity and should avoid repetition of costs on work that was already in progress. The current government does not attach importance to the copyright issue and the capitalization of intellectual property on the market. The artist lobbies the copyright in congress instead of the intellectual property bureau that has been established by the Ministry of Economic Affairs.

6.4.4.3 Law enforcement via CMO

The data show that the Malawian collecting society has a mandate to collect royalties on behalf of members and authors and to restrain infringement. The collecting society has enough power to approach an infringer through the courts. The copyright law was recently updated and penalties are high for first time infringers. The challenge is that infringers circumvent the system through bribes to remove any penalties and continue with infringement.

6.4.5 Promoting a new copyright culture

This section, as outlined in section 5.4.5, contains six themes, namely online piracy and culture sharing, music is culture, culture related infringement, infringement within a

country, illegal downloading as a marketing tool and law enforcement deployment into copyright. They are clustered according to the discussions of culture in respect of infringement.

6.4.5.1 Online piracy and culture sharing

The culture of copyright infringement is a moral choice where an individual can choose not to copy but to comply with the law. In the current social culture, children are asked to assist their parents to download a ringtone or any other infringed content. The data has shown that online piracy and culture sharing is an outcome of the lack of copyright awareness by consumers and within society generally. The data mentioned that online piracy is also a moral issue, and the sharing of files with peers is not perceived or deemed illegal; however, the basic rights of any user is to be protected and to be able to share culture with others. Music is a part of the culture and has been used as a part of life for centuries. As technology and infringement continue to expand, both the legislature and courts struggle to maintain the balance between technology and the integrity of artistic works protected under the intellectual property laws (Pavlick, 2013).

6.4.5.2 Music is culture

The data revealed that music is a part of culture, especially in Africa. It is stated that as music is shared through cultural experiences such as weddings, funerals and other important events it makes piracy a foreign concept.

6.4.5.3 Culture related infringement

In the data copyright infringement is portrayed as a culture-driven activity, which has no moral relationship between “air” and “legality”. The challenge presented by copyright infringement is not easily manageable, because it is conducted by businesses that conduct legal business whereby content is only exploited as a means of promotional material without complying with licensing requirements (Parkinkis, 2012). Enforcing copyright against the infringement culture in the face of widespread consumption of all kinds of music is next to impossible (Mestmäcker, 2005).

6.4.5.4 Infringement within a country

The data indicated that it is very important to manage infringement within the respective country where it occurs, as is done in France, Germany, Italy and the USA. It makes

alliances critical in enforcing mechanisms where the interested parties can share experiences in addressing infringement (Child *et al.*, 2005; Haskel, 2008).

6.4.5.5 Illegal downloading as a marketing tool

Culture-driven digital infringement has no moral codes and provides the opportunity for commercially driven infringement where “air” is used for free despite this being illegal. With the scale of digital piracy over the last twenty years, illegal downloading is working as a marketing tool for the legal copy to be bought. The widespread copyright infringement that the Internet and personal computers have introduced is a culture that is affecting the future potential of creative industries (Hogberg, 2006). Copyright law is wide and complex as it covers all aspects of design in media, music, literature, and manufacturing (Eaton, 2013). This confirms the effects of the infringement culture in that it affects diverse segments of the creative industry.

6.4.5.6 Law enforcement deployment into copyright

It is indicated in the data that in the first world countries there is a well-organized police force consisting out of the trading extended officers to fight physical piracy. They are allowed to go to the infringers’ houses, to make arrests if needed and to send infringers to jail. It is stated that physical piracy is under good control in the first world countries. In terms of achieving the same copyright enforcement levels as the first world countries, harmonization becomes a critical basis for advancing the laws of third world countries. Bitton’s (2012) justifications for the use of criminal law vary from one branch of Intellectual Property Law to another, because of the differing rationales at the foundation of each branch, as well as the differing effects that the sanctions will carry in the domain. Based on the complexities, through the international copyright system using a web of multilateral and bilateral agreements and treaties, copyright protection is guaranteed to meet established international standards in certain foreign countries (Alexander, 2014).

6.5 Lamination four: Copyright law and enforcement sensitization through education

The following lamination has emerged within the reality of this research question of knowledge management and innovation imperative. According to Nonaka and Takeuchi (1995), the SECI model on knowledge management presents a set of four core

processes, namely socialization, externalization, combination and internalization. The copyright lived experiences of the research participants were extracted through socialization processes such as dialogue and storytelling.

6.5.1 Enhancing the value of copyright

This section, as outlined in section 5.5.1 in chapter five, contains five themes, namely lack of understanding of copyright law, lack of understanding of copyright infringement, lack of information on IP, lack of knowledge on IP and lack of understanding of the copyright law. It consolidated issues in respect of the lack of copyright education affecting the progress of the industry brought about by the illegal copying of content.

6.5.1.1 Lack of understanding of copyright law

The researcher has found data that gives evidence that the understanding of a copyright law can have positive returns and is a key investment for the industry. To protect the copyright law from the increasing violation of the illegal copyright market, it is imperative for copyright knowledge to be made explicit through understanding and the collective formation of the diverse views into coherent mechanisms that will reduce the output of the illegal copyright market. According to Nonaka and Takeuchi (1995), knowledge is about beliefs and commitment as it is a function of a particular perspective.

6.5.1.2 Lack of understanding of copyright infringement

The researcher has found data that gives evidence that a lack of understanding of copyright infringement and intellectual property is not promoting sustainable productivity for creative works. There is a fine line between private copying and copying for commercial use. Due to a lack of education on the copyright law, copyright infringement is not understood. The knowledge of copyright law becomes even more valuable with the Internet and digitalization. The illegal copyright market represents demand that cannot be captured due to the rapid growth of technology and disconnect between the copyright law and the owner's work. Intellectual property is highly valuable in the information-based economy; however, modern information and telecommunication technology and the Internet make its protection difficult (Meyer, 2012).

Intellectual property knowledge sharing platforms and access to database containing copyright authorship, ownership and use information are necessary across the globe to

redefine the value of copyright for all interested parties. When technology creates new means of copying or communicating copyrighted works, a difficult question that of the relationship between existing copyright law and the use of copyrighted content made available through new technologies (Depoorter, 2009). The unpredictability of innovation necessitates the deployment of open-ended standards in copyright law (Depoorter, 2009).

6.5.1.3 Lack of information on IP

The data showed that creators, owners and users alike have to share database access to bring information across on what is currently affecting the industry. There is a lack of information on copyright and on sharing platforms and databases. In the data it is suggested and emphasized that there is a need to report every three months on copyright infringement as a part of information sharing. The data also suggest that creators should establish an intellectual property day as a national day to celebrate milestones. The appreciation of knowledge as a competitive commodity makes a difference in business (Earl & Scott, 1999; Goh, 2002, Osterloh & Frey, 2000). Competitive advantage is achieved when market knowledge is applied in support of business objectives (Hoe, 2006). This makes the copyright market experience of the participants pivotal, enabling their knowledge by making it explicit and accessible.

6.5.1.4 Lack of knowledge on IP

In the data it is indicated that the duration of copyright extends beyond a creators life, though education on the legacy issues will be omitted. Lack of knowledge on copyright law provokes legacy issues. International copyright protection is a recent development that also resulted from the growth of technology, and its protection in certain foreign countries is guaranteed to meet established international standards (Alexander, 2014; Altbach, 1986).

6.5.1.5 Lack of understanding of copyright law

The data confirm that there is a lack of understanding of copyright law by different parties; as they lack the skills to apply it to the infringement reality, they disregard it and dismisses its value. In the timeline of infringement, digital networks amplify the consequences of copyright violations that were previously more tolerable, such as manual copying (Cheverie, 2002). The researcher's notion is that copyright knowledge

needs to be maintained and aligned to the momentum of the technological environment and one way this is achieved is the integration of copyright law knowledge into education. It is mentioned in the data that copyright is exceedingly academic and abstract and it lacks the value proposition.

This disconnect is a symbol of undefined roles brought about by the lack of copyright knowledge and inefficient role participation in the industry. There is a lack of opportunities for practitioners in copyright law and a lack of service options results in infringement. Copyright law as a discipline is usually mixed with patents and design when in truth it is a highly specialized and sophisticated area of law. The use of digital technology expands across the globe and fundamental democratic principles of private ownership and public access of digital information come into conflict with a range of national and international laws (Palmer, 2006).

6.5.2 Enforcing copyright and the judiciary

This section, as outlined in section 5.5.2, contains two key themes, namely copyright regime in Canada and strong regulatory platform to succeed. In this cluster the data emphasize the involvement of the judiciary and the value of a strong regulatory system in order for copyright to succeed.

6.5.2.1 Copyright regime in Canada

In the data it is mentioned that Canada has a very well regulated copyright regime. There is a copyright board with very strong knowledge on the subject. The board provides a good balance of various interests of shareholders. The copyright board has five judges specializing in the field and they constantly educate themselves on the issue.

6.5.2.2 Strong regulatory platform to succeed

In the data it is mentioned that there should be a very strong regulatory framework, fairly regulated with a court of appeal. This will ensure that policies are implemented and adhered to by all users of content and the protection of copyright is maximized, whereby the transmission of multimedia products and electronic commerce become much more convenient (Jiang *et al.*, 2012; Kwok, 2001; Nadel, 2004).

The data also revealed that the fair trade music project is a collaboration of consumer groups to discuss what is “fair”. This body has to listen to consumers and music

creators. The fair trade operations are based on transparency. Fair trade is essential for linking all the processes of managing copyright and exchanging it with the user (Fretel & Roca, 2010).

6.5.3 Addressing conflict of interest in copyright management

This section, as outlined in section 5.5.3, contains two themes, namely government and creative community and ISP and conflict of interest. It mentions the challenges of directors in firms exploiting copyright and not being able to address infringement related issues due to conflict of interest.

6.5.3.1 Government and the creative community

In the data it is mentioned that in Namibia, members of the collecting society need to be informed on copyright law. The collecting society is taking on the role of educating the owners of works and the end users on benefits of copyright and how the benefits can be exploited via the copyright owners' works. Besides the members of the collecting society, it also educates "pirates" on copyright law, directing them into the legitimate market. The collecting society helps music producers and distributors to reach the market and discover channels into the market. (Cumberland (2014), Guibault and Van Gompel (2006) and Loren (2012), assert that collecting societies need to optimize in royalty collections through acquiring the relevant intelligence skills of tracing any works exploited in the global system.

6.5.3.2 ISP and conflict of interest

The data revealed that in Mauritius, the government is exercising unfair practices of benefiting from the telecommunications companies through exploiting copyright such as ring tones, where payments are not given to the content creators. The government is one of the investors and is collecting tax at the same time. It is indicated in the data that this is a clear conflict of interest because telecommunications companies are state owned, but partially have private investors. There is a concern that copyright law can no longer satisfy the actual expectations of creators (Stadler, 2009). As a result, the legal adaptation of copyright law lags behind technological change (Depoorter, 2009). This creates an opportunity to exploit copyright in a manner that is unfavorable to the creator of the works and has the outcome of an expanded illegal copyright market.

6.5.4 The education imperative in promoting copyright

This section, as indicated in section 5.5.4, contains two themes, namely training and education and education on IP matters in Malawi. In this sub theme education to the copyright stakeholdership is negotiated as critical and is the value asset to the progress of the industry against infringement challenges.

6.5.4.1 Training and education

The data pertaining to Malawi mentions that conferences on law enforcement of copyright are organized annually. This supports the notion that the Internet has undermined the exclusivity of recorded music, movies, books and software by creating intense political, economic and regulatory contention (Mueller *et al.*, 2012). In such instances it is necessary for copyright law to maintain the growth momentum of technology. Since copyright functions in a global infrastructure it is important that third world countries align their local markets to the global platform. Hence, Farrand and Carrapico (2011) argue that harmonization measures in the field of copyright at the European level were justified on the basis of ensuring the good functioning of the single market. This is an imperative goal for the third world countries future copyright proposition.

6.5.4.2 Education on IP matters in Malawi

The data in Malawi also revealed that education on copyright is executed at all levels and that knowledge of intellectual property needs to be improved, even for the people in the broadcasting industry. The fragmentation experienced in copyright suggest reengineering, which is the fundamental rethinking and radical redesign of business processes to achieve dramatic improvements in critical, contemporary measures of performance, such as cost, quality, service and speed (Neidhart, 1993; Dassisti; 2010; Aguilar-Saven 2004; Choi 1995, Rijnders and Boer 2004). The researcher's notion is to create an integrated copyright platform (see figure 2.1) for the creative exploration of ideas and informed decision making towards a cooperative culture. The researcher's notion is to see to wide access to databases and key information concerning copyright for the creative industry.

6.5.5 Re-aligning copyright to market changes

This section, as indicated in section 5.5.5, contains two themes, namely outdated copyright law and re-aligning the Technology Act with the current Copyright Act. In this sub-theme the constant reviewing of copyright law is discussed and leveraged as a critical goal.

6.5.5.1 Outdated copyright law

In the data it is indicated that in Malawi and South Africa, the copyright law is outdated; the last revision was done in 1989 before the Internet and the digital age. It is difficult to prosecute a new crime of digital infringement without having a proper instrument and provision in the law to make a ruling. This is evidence of the poor legal and economic value of copyright in that there is the concern that copyright law can no longer satisfy the actual expectations of creators (Stadler, 2009). A major cause of this crisis in copyright is the increasing gap between the rules of the law and the social norms that are shaped, at least in part, by the state of technology (Hugenholtz, 2013). The data revealed that government has a bad intelligence sector, and no understanding of the music industry, and is also dysfunctional in making a decision.

In South Africa, the Copyright Act 98 of 1978 has not been updated with the Berne Convention since 1996, with no updates on international treaties, accessions and improved legislation for the common law copyright regime.

6.5.5.2 Re-aligning the Technology Act with the current Copyright Act

In the data it is mentioned that in Nigeria, the Copyright Act has not been reviewed since 2004 and is under current review with the assistance of the NCC (Nigerian Copyright Committee). It is mentioned that even though the copyright law is good, there is difficulty in its implementation because there is no structural body to form alliances with the government. In order to achieve public commitment it is important to promote copyright law in that it creates property interests to encourage creators, distributors, and the public to engage in a series of market transactions that will result in the creation and distribution of, and wide public access to, creative works (Von Ljohmann, 2008). Furthermore, when it comes to inputs for digital copyright policymaking, the opinions to which policymakers must be attuned include those of technical experts and civil society groups in addition to those of aggrieved copyright owners (Bridy, 2012).

6.5.6 Integrating the consumer into a new copyright culture

This section, as indicated in section 5.5.6 of chapter five, contains one theme, namely technology vs. consumers. The discussions are on the role of technology and its exploitation by consumers to infringe copyright.

6.5.6.1 Technology vs. consumers

The researcher has found data that gives evidence that the technology versus consumer (section 5.5.6) impact of peer-to-peer sharing and behavior-driven infringement is part of a relationship that excludes the creator of the works. Consumers can be very oblivious to copyright infringement. Despite the obvious self-interested origin of such anti-copyright norms “people assert that interests have nothing to do with their behavior in following various norms” (Depoorter, 2009), people care about access to music and have no idea about distribution of a song to the market. In the long run stealing can have a devastating effect on both producers and consumers (Waldfogel, 2012).

6.5.7 Advancing copyright into the future

This section, as indicated in section 5.5.7, contains one theme, namely copyright law and IP value. It is focused on conversations that seek to protect copyright through stronger enforcement mechanisms and to ensure that it moves into the future.

6.5.7.1 Copyright law and IP value

The data has shown that the intellectual property environment in the United Kingdom is progressive and that the UK’s relationship with the EU has seen the UK harmonize its copyright laws in particular, to meet the standards set by the EU Directives and Regulations. In the data it is mentioned that the United States took the lead in the copyright enforcement issues by establishing the Intellectual Property Enforcement Advisory Committee in September 2009. The United Kingdom has since adopted similar actions a similar approach. The establishment by the US of the Intellectual Property Enforcement Advisory Committee sends a strong signal about the value of copyright to the economy of that country. Currently, intellectual property enforcement in the United Kingdom contains four portfolios on copyright, designs, trademark and patents. Based on the infringement culture of consumers it is known that new technological uses of

content often proceed in settings where there is little to no enforcement of copyright law (Depoorter, 2009).

6.5.8 The alliance value to global copyright management

This section, as outlined in section 5.5.8, contains two themes, namely collecting culture and copyright infringement. It underlines the challenge of collective management and how it is affecting copyright. The objective, since most collecting societies have reciprocal agreements, is to promote a collecting culture within the smaller countries.

6.5.8.1 Collecting culture

It is mentioned in the data that small countries need standards for creating a collecting culture. Digital piracy is more prevalent and forces have to be joined internationally as it is not possible for a small country to win a battle on its own. This is an outcome of digital technologies in that it has continued to grow exponentially in importance, complexity and breadth with the DMCA coming into place (Dannenberg & Gerk, 2009). It is important that collective management recognises that Intellectual Property Law should be used to protect digital information (Bitton, 2011). The researcher's notion is that the founding documents of CMOs worldwide all speak to the respective Copyright Acts of their jurisdictions, which is about exercising and enforcing the rights and remedies of copyright. In practice though, there is a stark disrespect and disregard by the CMOs of their respective copyright laws; from the sublime, creating their own 'rights' to the unreasonable in excluding the definition of 'literary works' in their rules and attempting to put words into a musical work.

6.5.8.2 Copyright infringement

The data indicated that all possible actions have to be taken against copyright infringement, such as law suits, negative press, education and strikes, and that so far law enforcement has failed to counteract this issue. Copyright issues have become a gateway on the information trajectory making it indispensable for developing countries to examine whether their intellectual property policies support or obstruct economic and technological development (Palmer, 2006).

The data revealed that in South America, approximately 80-88% of the population has access to the Internet, in Costa Rica this figure is 75%. The Internet and World Wide

Web have destabilized many copyright industry sectors (Samuelson, 2010). Digital piracy is a serious issue in Costa Rica. Related transactions will generate a variety of potential cases such as cybercrime, including potential patent, trademark, and copyright infringement, through shared access by using a common username. Copyright law continuously seeks to adapt to technological innovations, because in the digital world information moves instantaneously (Alexander, 2010; Pavlick, 2013; Wittow, 2011).

The collecting society in Costa Rica has joined forces with the international collecting societies to get a better understanding of the collecting standards and how to cover the needs of the society. Child *et al.* (2005) emphasize alliances as an important platform that can negotiate the matching of strategic objectives and resources. It is also indicated that curbing infringement is not an effort that requires the commitment of all interest parties, as it is a global issue. The researcher has found data that gives evidence that metadata infringement and the collective societies' infringement, as well as cue-sheet data issues are not well managed and transparency is not attained.

The data also showed that collective management by the society has the advantage in that it is more efficient than individual management of copyright in the monitoring and enforcement of rights. The adoption of the Berne Convention was prompted by the need to bring uniformity to the incongruent bilateral treaties that existed in the nineteenth century, which gives collecting societies more advantages in managing copyright (Cole, 2014; Altbach, 1986) without imposing formality.

6.5.9 The illegal copyright market and royalty earnings

This section, as outlined in section 5.5.9, contains five themes, namely demand of illegal copyright market, economic model of illegal copyright market, survival, recovering the illegal copyright market, and partial measures on piracy. It drives the notion of the illegal copyright market as an outcome of weak systems within the legal market, which is presented by the demand for cheaper goods that increases the strength of the illegal copyright market.

6.5.9.1 Demand of the illegal copyright market

It is mentioned in the data that there is a global demand for cheaper goods and that the price of infringed goods is four times lower. This creates losses of the original sales and illegal money cannot be recovered. The researcher asserts that infringement is a

market indicator of the demand for goods as well as weak resources in protecting content against this violation. Value chain elements affect the supply side in terms of rivalry among consumers, which affects demand and thus price on the demand side (Picard, 2004).

6.5.9.2 Economic model of illegal copyright market

The data asserts that human nature perceives the opportunity to earn an income from infringement. In the third world countries this, to a larger extent, is adopted as an appropriate culture and is leveraged as an indicator of identifying and filling gaps in the copyright market. Many industry analysts see piracy as one of the key threats to profitability and innovation in the industry. It leads to higher prices for legitimate users, lower profits for firms, reduced new product innovation and is generally harmful to the society (Jain, 2008). The persistence of the illegal copyright market is a reflection of a poor copyright law.

6.5.9.3 Survival

The data revealed that copyright infringed goods reflect the issue of survival against poverty in many countries of the third world. Consumers are not ignorant but are in favor of inexpensive infringed copies and as such digital music infringement has become a victimless offence (Bitton, 2012; Matthew, 2014). The researcher maintains that these factors promote the illegal copyright market through the creation of opportunities for selling products at lower prices. This makes regulation and copyright education an important issue in order to protect the creative industries.

6.5.9.4 Recovering the illegal copyright market

The data revealed that in order to recover the illegal copyright market a way must be established to engage with the pirates. The data further indicated that all parties involved need to engage in dialogue to achieve unity. Lobbying for specific legislation, regulation, and empowerment is a basis for diminishing the illegal copyright market, by ensuring that content providers obtain a license from each and every relevant collective management society in each territory (Guibault & Van Gompel, 2006; Palfrey, 2009; Thakker, 2009).

6.5.9.5 Partial measures on piracy

The data revealed that in Malawi, in order for a local inventor to register his invention, a Malawian needs to pay \$400. This fee is contested to be too high for the local inventor based on the fact that the country has a weak economic performance with a population surviving on less than \$2 a day. This challenge is indicative of global standards but it would mean that every standard established needs to accommodate the local environment.

The research on Malawi produced evidence that the collecting society introduced a tool against physical piracy which is called a hologram. The collecting society together with the police places a hologram on every CD and DVD and monitor sales of these items. A number of copies sold contribute towards authors receiving their royalties, which directly benefits the owner of the work. Zambia has adopted a similar model. The actions on the preceding are an outcome of excessive intellectual property claims which highlight the emergency of progressive enforcement mechanisms. Currently the world's large scale commercial piracy is performed mainly in the third world (Altbach, 1986; Ananny & Kreiss, 2011).

6.6 Lamination five: Data entry compliance

This lamination has emerged based on the data in section 5.6, which is supporting the argument that there are discrepancies in terms of copyright law and copyright management and user copyright practices on the global scale. International copyright protection is a recent development and it resulted mainly from the growth of technology, from the increasingly international use of such languages as English, French, German and Spanish and from the emergence of international centers of book publishing and scholarship (Altbach, 1986). The development of technology means that copyrighted works can be reproduced, made available and communicated beyond national borders. This makes international copyright protection essential in order for works to both generate and retain their value.

Multilateral and bilateral treaties benefit both developed and developing countries. They contain numerous provisions that protect local creators in both the traditional and the digital environment. They further clarify and strengthen rights in the digital environment; they may be more immediately critical to countries that already have extensive use of digital networks (WIPO, 2003).

This lamination has emerged in the reality of specific actions taken and in order to protect intellectual property, the education and training of all stakeholders need to take place. The enforcement of the Intellectual Property Law is a continuing, ever growing and challenging task at a global scale. In response to the challenges realized, enforcement issues have arisen at both the national and international levels. International agreements have been introduced over the years in order to advance minimum international standards that will assist national governments in preventing the widespread infringement challenge (Bitton, 2012).

So far the issue is still mainly left to the discretion of governments. Prioritizing prompt innovative action over slow legal diligence is arguably supportive of this research, especially through a well-defined representation that illustrates the adverse effect of an un-harmonized global system regarding the owner of the works. The fact that legislative regulation is in place is not a guarantee that the violation of copyright is prevented (Geach, 2009). Copyright law and other government policies often neglect the importance of innovation to the economy (Carrier, 2013). The enforcement effort on intellectual property concludes that there is a need to bring forth mechanisms that are equal in resource, that have an impact on copyright infringement and deliver the balance within the domain of copyright stakeholdership.

6.6.1 The black IP in the new opportunity for copyright consumption

This section, as indicated in section 5.6.1, contains one theme, namely legacy of black IP. Arguments that pertain to the historical perspective are clustered to underscore the legacy issues around copyright.

6.6.1.1 Legacy of black IP

In the data it is mentioned that in South Africa, the intellectual property of the historically indigenous Africans referred to as black IP, is a novel issue referring to authors who never had the privilege of intellectual property. Hence, the adoption of the Berne Convention was prompted by the need to bring uniformity to the incongruent bilateral treaties that existed in the nineteenth century (WIPO, 2003). Government currently is not interested in investing in the “black IP” as it is not really based on the supply-demand issue. Potentially, South Africa can be the first country on the African continent where black IP can be acknowledged. It is a great tool for economic benefits and job creation for the local population, as 90% of the local music and films would be in

demand. The new generation has no idea about history and the legendary artists who are the custodians of the South African culture.

6.6.2 The levy issue in copyright and technology

This section, as indicated in section 5.6.2, contains four themes, namely law enforcement, levies, courts and strong entity required. The discourse on the enforcement actions are targeted at the user. This is not enough in that the resources for enforcement are limited; hence a levy on devices is discussed as a strategic goal to ensure that content owners are compensated for all works exploited with these technologies.

6.6.2.1 Law enforcement

The data revealed that monitoring services in Russia target the individual user. It is difficult for copyright holders to enforce their rights in this peer-to-peer setting, in part because of the difficulty of identifying, locating, and suing each individual infringer and in part because the individual users are often judgment-proof and lack the financial resources to compensate for their infringement (Miller; 2006).

The copyright law in Russia is weak and the police service is allowed to intrude the personal privacy of a user in order to monitor the activities on the Internet. This type of law enforcement cannot be used in the European Union or the United States for instance, where privacy intrusion is a serious offence. The initial freedom of the Internet created many benefits, but it also incubated new forms of conflict and crime (Mueller, 2012). Establishing principles of good governance and creating a uniform external control mechanism for enforcement in order to meet with the external market changes is necessary for copyright to succeed (Guibault & Van Gompel, 2006).

6.6.2.2 Levies

One of the actions that are taken, as revealed in the data, is compulsory licensing for users. The data also revealed that physical piracy is still dominating the market in third world countries. The real problem for enforcement of copyright in the third world countries is the proliferation of distribution channels (Brown et al., 2014). It is also mentioned that importers of technical devices should pay levies for bringing the latest technology into the countries, such as Namibia, Mauritius, and Nigeria, where these

devices potentially can be used for a production of illegal content. The researcher's notion is that the management of copyright against the illegal copyright market in third world countries requires knowledge production to be increased and integrated with global conversations towards a single market. This is because, as technology and infringement continue to expand, both the legislature and courts struggle to maintain the balance between technology and the integrity of artistic works protected under intellectual property laws (Pavlick, 2013).

The data revealed that in Nigeria the collecting society suggests levying all digital storage devices entering the country or manufactured in the country. The Internet Service Providers, importers of the latest gadgets and manufacturers need to join the fight against infringement. The new technologies or devices contain storage space, which can potentially be used for infringement. The levies will be collected by the collecting society and will be used to curb copyright infringement in the country. The copyright disconnect in respect of manufacturers is that the technology they introduce to the market can end up being used to infringe the rights of the content owner, hence the emergence of the Sony rule (Gregorian, 2009; Peters, 2004). It is of strategic importance that levies be adopted as a means of ensuring that the content that is exploited on these devices is fairly compensated for usage.

6.6.2.3 Courts

The data revealed that courts do not want to hold platform carriers responsible for copyright infringement and that one needs to litigate through the strong legislation of the copyright law which depends on the jurisdiction. Copyright functions form an interdependent international system of intellectual and related commercial relations among nations (Altbach, 1986; Tetley, 2000). The process of convergence between two legal systems is undoubtedly stimulated by the fact that these systems have the same types of problems to confront in the global copyright economy (Canivet, 2003).

6.6.2.4 Strong entity required

The data indicate that all content creators have to be formalized via international platforms and that there should be a strong entity first to control the progress. The researcher's notion, based on international platforms, is that in the common law system the works of the authors are protected by copyright, whereas in the civil law system authors' rights protect them. In these contradictions there is a widely held belief,

particularly among civil law experts, that the concept of moral right is a relatively novel intruder on the common law copyright system (Dworkin, 1995). These contradictions form the basis for the structure of the proposed international platforms in addressing common copyright challenges.

6.6.3 Tax and copyright

This section, as indicated in section 5.6.3 of chapter five, contains three themes, namely value of copyright, taxes on IP in Malawi and IP value to the state. It is argued that the present models on copyright and tax positioning with creators are highly inefficient, which is an issue resulting directly from the weak intellectual property knowledge within the global domain.

6.6.3.1 Value of copyright

The data has revealed that the combination of knowledge, behavior, practice and educated state is a true example of the value of copyright. The present models of copyright are highly inefficient and politically charged so there is no shift towards giving it true value. Based on the literature, the researcher's notion is that anything that pertains to infringement is not independent of financial implications in that the illegal copyright market carries adverse systems that accommodate money laundering, tax havens, deleterious demand of infringed goods and services which all form the basis for a culture of non-payment for copyrighted works. The copyright-protected industries are concerned about threats to their revenue from infringement which results in difficult questions about the relationship between existing copyright law and the use of the copyrighted content made available through the new technology (Depoorter, 2009; Waldfogel, 2012).

6.6.3.2 Taxes on IP in Malawi

The data revealed that in Malawi, the total value of copyright was \$88 million, where \$10 million were assigned to the artists and \$78 million to the state for sales and distribution of copyrighted materials. The government immediately introduced tax on the money distributed to the artist, but not on the money earned by the major publishing companies. This situation requires consultation with the international platforms concerning how to distribute the royalties. It also makes the informal channels of communication to government indispensable (Bridy, 2012).

6.6.3.3 IP value to the state

The data states that permission from the Reserve Bank is required in order to transfer and repatriate South African intellectual property outside of South Africa but this is a matter that is not dealt with. It stated that no enforcement and compliance mechanism are set by the Reserve Bank. It is essential to strengthen the partnership between industry and enforcement agencies at all levels. Effective partnership will depend upon recognition of mutual professionalism and commitment (IFPI, 2014).

6.6.4 The copyright culture support for the new industry

This section, as stated in section 5.6.4, contains five themes, namely copyright culture, culture change, industry new value proposition, changing culture of consumers and legal music share. In these discussions copyright culture is mentioned to be instrumental in advancing its goal in the industry to protect the rights of the creator and to protect it from the use of infringing technologies.

6.6.4.1 Copyright culture

The researcher has found data that gives evidence that the copyright culture and culture change can be a new industry value proposition. Copyright has a value to the state and it also gives monetary value to the culture. However, this culture is challenged by the continental civil law which provided a competing paradigm to that of the common law. Many authors discuss conflict between civil law and common law in procedures such as inquisitorial and adversarial systems, as well as in their way of executing judgments (Huang, 2010). The global environment is becoming more unpredictable due to the rapid growth of technology, and this will require searching through multiple platforms to realize the true value of copyright.

The data relating to Malawi showed that the collecting societies need to understand the monetary value of copyright. The role of copyright law is to protect the rights of the creator of the works (Hugenholtz, 2013). The rationale indicates the value of copyright through arguing the importance of achieving the balance of the copyright dividend (figure 2.1), and suggesting to sustain it through the human capital balance in terms of trust to achieve the financial capital. Because copyright is one guardian of knowledge, for it to have financial return Peterson (2008) states that new knowledge is created by various forms of conversations revealing tacit and explicit knowledge, whereby tacit

knowledge is made to become explicit through the process of externalization; by taking what is known from practice and experience and making it formal and accessible to others.

6.6.4.2 Culture change

The music industry was not paying attention to technological changes for twenty years and currently the culture of intellectual property needs to be changed. There is a generation who thought that they would not need to pay for music, and they need to be re-educated. The role of the copyright law, according to Hugenholtz (2013), is to protect the rights of the creator of the works.

6.6.4.3 Industry new value proposition

The data revealed that the industry has a new value proposition in that in 2010 the ICT and the telecommunications sectors controlled 90% of the musical industry. The data revealed that when people are looking for new value propositions they often choose advertising which is technologically done with the click through issue and lots of ICT and Internet language encryption. However, as the use of digital technology expands across the globe fundamental democratic principles of private ownership and public access of digital information come into conflict with a range of national and international laws (Palmer, 2006). This is a collective challenge that requires the involvement of all interested parties to create inclusive policies that are representative of its members.

6.6.4.4 Changing culture of consumers

A new value proposition of intellectual property needs to be redefined in the new digital age. Educational propaganda for consumers is a long-term commitment, where changing the culture of consumers will take a prominent role in exploring copyright further. Culture in one nation may be different from the optimum organizational culture in another nation with different cultural values (Webster & White, 2010). People need to pay for music with a feeling of doing something for the public interest, acting as proud citizens of a country. Hence, the ability to learn is the most important intangible asset in any society and its enhancement is frequently the main motive for entering into collaboration with other members of the community (Child *et al.*, 2005).

6.6.4.5 Legal music share

The data indicated that some consumers are prepared to pay for music. iTunes is a legal way to share music, and it has an agreement with the majors on terms and conditions of sharing. Even with such milestones there is still the persistence of infringement on the market. The current role of the copyright law is to protect the rights of the creator of the works, but according to Hugenholtz (2013), the law of copyright in the EU seems to be constantly experiencing challenges that affect the content owner in that the law fails to address the mass-scale infringement over digital networks.

6.6.5 Negotiating with government as a key player in copyright

This section, as indicated in section 5.6.5, contains four themes, namely lack of government commitment on IP, governmental involvement in the fight against IP infringement, law enforcement in Nigeria and challenges of government. In this discourse the concern is that government is a key stakeholder but the experienced challenge is that there is a lack of resources and commitment in protecting copyright.

6.6.5.1 Lack of government commitment on IP

The data regarding Mauritius showed that no funding is received from government to address copyright infringement. This resource limitation has led to the lack of staff and capacity and there is a need to train new staff to be able to comply with requirements of managing copyright. It is stated that the creative industry need to create a legal framework to protect the industry in Mauritius. Copyright owners have been diligent in finding ways to reduce the gains from crime. Content sectors are deeply divided on how to address the widespread availability of unauthorized copies of copyrighted works (Andrews, 2005; Menell, 2012). This makes it difficult to channel resources into a system that is fragmented due to weak collaborations of the interested parties.

As indicated earlier in the data, the government of Mauritius is one of the investors in the telecommunications firms. The experienced conflict is that government benefits from taxes and it also functions as an investor in private public interests. The challenge is that the telecommunications firms are resisting paying for ring tones, which entails the exploitation of copyrighted works. This makes litigation difficult in that government is supposed to be part of the enforcement of rights sanction. It is in the interest of government to acknowledge that infringement represents an immense financial loss,

both to copyright-centric industries as well as to the economy at large (Swartout, 2011). The conflict of government with the public sector should not be limiting criteria for the progress of copyright law.

6.6.5.2 Governmental involvement in the fight against IP infringement

The data from Malawi indicated that there was an idea to create an anti-piracy unit, but it not successful, due to a lack of resources and commitment from the government. Such a unit was supposed to represent copyright owners, the collecting society and law enforcement on a united platform. However, the government left the task of implementation to the collecting society and due to a lack of resources it was never implemented. The central goal of government policy toward the economy is to deploy a nation's resources such as labour and capital with high and rising levels of productivity (Porter, 1998,Liu;2010). The creative industries are fragmented which leads to the lack of engagement with government.

The researcher has found data that gives evidence that government's commitment to intellectual property is crucial in advancing its economic contribution (section 5.6.5). The data show that collecting societies mention the lack of commitment from the government in many countries in fighting copyright infringement. Government is benefiting from taxes but in order to bring parties together, government needs to commit, with resources, to this process. The immediate strategy is to develop the ability to work in teams in that it is becoming ever more essential along with the increasing number of specific competencies stakeholders have to bring together, whether through alliances or on their own (Child *et al.*, 2005).

6.6.5.3 Law enforcement Nigeria

The data concerning Nigeria revealed that government gave the responsibility of implementing the copyright law to COSON, the Nigerian copyright society. Law enforcement is shared between COSON and the Nigerian Copyright Coalition. In 2008 the collecting society organized a music day where broadcasters did not play music for a day in order to increase the awareness of the general public of copyright infringement. The current anti-piracy unit is very small and has no resources to fight the piracy (section 5.6.5).

6.6.5.4 Challenges of government

The researcher has found data that gives evidence that law enforcement is a burning issue that is directly linked to a need for resources. Depoorter (2009), Muir (2013), Pavlick (2013), Swartout (2011) and Telang (2009) confirm that digital platforms have introduced new complexities to law enforcement with a new resource requirement which is confirmed by the creative industry's incapability of competing with the illegal copyright market. Law enforcement in the digital piracy age can work in many different ways (section 5.4.1). With a strong legislation on digital piracy, results can be achieved in enforcing copyright. However, the courts do not want to litigate against digital platforms and ineffectively use resources for litigating against the individual user who downloads illegally. In order to have resilient law enforcement, the international platforms have to unite, and to create a solid entity.

6.6.6 The operations of copyright

This section, as indicated in section 5.6.6, contains six themes, namely metadata infringement by CMOs, CMO infringement, non-sufficient royalties via the bulk audience, cue-sheets issue, latency and black box. The focus is on the database challenges regarding integration of systems.

6.6.6.1 Metadata infringement by CMOs

The data indicated that CMOs struggle in the attempts of maximizing their own collections, sometimes by infringing the rights of members. In an attempt to address the illegal actions in copyright the protection of intellectual property rights would require criminal law via a harmonized directive on criminal measures to supplement the enforcement of intellectual property rights (Farrand & Carrapico, 2011). One of the infringements of a collecting society is based on the incorrect spelling of authors' details on the metadata, which is a code with details in order to allocate royalties (section 5.6.6). This includes the information of the composer, publisher, shares of the performance rights, mechanical rights, territory database, host Internet Service Provider, intellectual property number and the ISWC code. It is expected that collecting societies adhere to the highest ethical standards in administering the royalties and interests of members. Every time copyrighted music is performed in public or broadcasted, a royalty should be paid.

6.6.6.2 CMO infringement

In the data it is also mentioned that when the collecting society receives a lump sum of money, and no one knows how to distribute the royalties, music writers are being used by the “bulk audience”, such as on the Apple Radio, and the royalties are paid in bulk. This implies that the royalties filter down from ten pounds for a song until almost nothing is left to be distributed (section 5.6.6). The consolidated views of Castle and Mitchell (2009:01), Blythe and Wright (2008), Depoorter (2009), Laud and Schepers (2009), Mestmäcker (2005), Meyer (2012:107), Miller; (2006), Ranaivoson and Lorrain (2012) and Thakker (2009), underlines the copyright infringement as an outcome of poor compliance to copyright are instrumental in negotiating a new approach in managing copyright. Moreover, the CMO infringement can result in vicarious liability (Katz, 2004; Lichtman & Landes, 2003) whereby one party has control over another and also enjoys a direct financial benefit from the other’s infringing activities.

6.6.6.3 Insufficient royalties via the bulk audience

The data indicate that when music writers’ works that are used by the bulk audience, it creates a situation where royalties are filtering down, reducing the amount, to the last person who is getting nothing. The researcher is of the notion that copyright controls mechanisms by partners are lacking in that the proposed alliance needs efficient skill sets that exceed the current capabilities of the illegal copyright market.

6.6.6.4 Cue-sheets issue

The data also revealed a novel issue in that cue-sheets are used as another tool in the mismanagement of royalties. A cue-sheet contains the name of a copyright holder, publisher and when a broadcaster wants to use music of a specific composer; broadcasters need to complete these cue-sheets. If the name of a copyright holder or the name of a work were incorrectly spelled, it would translate into the author not receiving any payment from the exploited works broadcasted. The CMO keeps the royalty track only on a basis of five years, and if it is not claimed within this period of time, it cannot be claimed at all and is sent to black box. The researcher asserts that the current creators need to focus on the factors facilitate and compel the development of copyright through functional autonomy in an attempt to understand copyright mismanagement, which is dependent upon relationships amongst partners.

6.6.6.5 Latency

The latency issue is a novel notion that emerged from the research participants. Latency is another “new” term, which creates royalty mismanagement. The authors are not paid what they are supposed to as the royalties are paid in bulk. The iTunes aggregator selects the most popular music but 700 composers, for instance, have to share the amount of 10.000 Pounds. The composer who joins a collecting society and a composer who is allocated royalties via the iTunes aggregator are both creative people, but the exploitation of music via iTunes is enormous. This applies to the monitoring of licensees as well as the discovery of infringers. The individual enforcement of copyright in the face of widespread consumption of all kinds of music is next to impossible (Mestmäcker, 2005). Within the copyright spectrum the music industry is undergoing a change brought about by transformations in its business model and in the constant resistance against these models copyright law continuously seeks to adapt to technological changes (Liebowitz & Watt, 2006; Pavlick, 2013).

6.6.6.6 Black box

The black box contains all the unclaimed earnings, which can eventually become a controversial issue in terms of how the collecting society plans to spend these earnings (Smith, 2012). In the very issue of expected transparency the challenge is that some collection societies have a black box of unclaimed royalties which may be kept or given to another organization, such as a musicians union. This money is owed to writers, performers, and labels that are named on royalty paperwork from users of content, but that cannot be traced (Cumberland, 2014). The unethical practice is that collecting societies are able to claim that they do not have enough data to redistribute revenues to creators, even if this is not the case, and in the process members without financial and legal backing are exploited through the “black box” process (Smith, 2012).

6.6.7 The music business and value to the creator

This section, as indicated in section 5.6.7, contains three themes, namely music business value, the artist’s challenges in the music business and artist is not paid. The value of the music business is emphasized through the economic right in copyright and that it carries value to the creator of works.

6.6.7.1 Music business value

The researcher has found data that gives evidence that the music business has an important social and economic value (section 5.6.7). The music business is a copyright business which grows via signing new artists. The artist has to be educated on copyright issues in order to take control of the business and his/her own rights. Illegal downloads and copying through technology is a major threat to the industry as it reduces the commercial exploitation potential of content creators and providers (Geach, 2009).

The data indicated that the download of original content causes authors not to be remunerated and although the dialogue with consumers is happening on a continuous basis, the creators are still lacking fair remuneration. The issue of copyright infringement being a global problem equally presents challenges to all countries in terms of copyrighted material consumption, as it is more costly to produce copyright related information than to reproduce it (Cheverie, 2002).

6.6.8 The artist challenges in the music business

This section, as outlined in section 5.6.8, contains one theme, namely artist is not paid. Artists are compromised by the system of not receiving royalties for music that is exploited by the user.

6.6.8.1 Artist is not paid

In the data it is mentioned that creators are not paid enough for their artistic works. The data indicated that ISPs fail to comply with copyright through refusing to pay for ring tones and advertising used on devices. Rights holders have placed pressure on governments to introduce new statutory measures which will force Internet Service Providers, as the source of the connection to the Internet, to play an active role in enforcing copyright (Muir, 2013).

6.6.9 Lamination six: CMO copyright data and technology transparency integration with external oversight

This section, as outlined in section 5.7.1 of chapter five, emerged from the data of the five research themes and the information that is clustered in this lamination

consolidates the technological challenges with the copyright data transparency and access in respect of infringement.

6.6.9.1 The negative impact of technology on copyright

This section, as outlined in section 5.7.1, contains four themes, namely penalties for digital piracy, technology related infringement, illegal models, and legalization of the illegal copyright market. Technology is used against copyright to infringe on content, for instance through illegal websites, which increases the strength of the illegal copyright market.

6.6.9.2 Penalties for digital piracy

The data showed that there are some illegal websites a message flashes on the screen saying that it is illegal, while a person is illegally downloading from the website. Penalties are paid on the pirated adverts which it is cutting off a source of revenue for illegal content owners. File sharing represents an immense financial loss, both to copyright-centric industries as well as to the economy at large (Swartout, 2011). The researcher asserts that a sustainable copyright regime requires new directives from partners regarding processes that contribute towards skills and knowledge and incorporate the importance of knowledge management to protect the industry against infringing technologies.

6.6.9.3 Technology related infringement

The data suggest that a proposed levy for digital devices with a storing and copying capacity be implemented in order to sustain campaigns against copyright infringement. However, according to Peters (2004), the selling of copying equipment, as in the selling of other articles of commerce, does not constitute contributory infringement if the product is widely used for legitimate, unobjectionable purposes. The researcher maintains that no guarantees are given that this would restrict the user from copyright infringement.

The researcher has found data that gives evidence that penalties for digital piracy and technology related infringement have become uncontrollable (section 5.7.1). As an achievable goal, Cheverie (2002), Child *et al.* (2005), Picard (2004) and Scharf (2012) support the argument that the future of copyright is dependent on cooperative alliances

that balance inherent economic characteristics of information towards meeting the demand of intellectual property. Technology can undermine norms and laws, and at the same time it can also support them (Scharf, 2012).

6.6.9.4 Illegal models

The data revealed that an illegal model is, for instance, that of money laundering, such as the hosting of websites in a country with a weak copyright law, resulting in copyright owners not being paid for works exploited. In the literature it is indicated that copyright exchange channels through dialogue improve the shared meaning of creative works and improve understanding of the adverse impact of infringement, which is crucial to facilitate learning amongst partners. Compulsory licenses offering legal authorization are crucial in administering copyright and copyright should not be abused as an instrument to conserve monopolistic power that eventually compromises the creator in any financial exchange (Nadel, 2004; Hugenholtz, 2013).

6.6.9.5 Legalization of the illegal copyright market

It is mentioned in the data that the illegal copyright market should stay unacceptable; one deals with it but it can never be accepted. According to Jiang *et al.* (2012), along with the popularization of the Internet and computer technology, the transmission of multimedia products and electronic commerce became much more convenient. However, copyright infringement still represents a significant challenge to modern copyright owners.

The illegal copyright market has already been argued as an outcome that feeds from the lack of integration amongst partners. In the literature it is indicated that the illegal copyright market is exposing the weak collaboration of content owners in respect of taking an offensive position in the copyright market. This makes markets for copyright infringement, like all other black markets, inherently difficult to study, due to the illicit nature of the transactions (Walls & Harvey, 2006). The researcher's notion is that the illegal copyright market is an informal market with no compliance measures in place. The provision of copyright knowledge to this segment and the implementation of compliance measures will re-channel the earnings into a legitimate structure where all parties can benefit.

6.6.9.6 The copyright operational challenges in the global system

This section, as outlined in section 5.7.6, contains one theme, namely economic impact of translation. Copyright is exposed to both human and technological tempering whereby the original identity is lost through translation when a work gains a new title in a foreign language, resulting in the original creator not being compensated for the exploitation of the adapted work.

6.6.9.7 Economic impact of translation

The data revealed a point of contention in the area of translating an original song into a foreign language (section 5.7.6), which has both moral and economic implications. The translation matter is a novel issue that emerged but still qualifies the technological difficulty, outlined by Ranaivoson and Lorrain (2012), whereby significant challenges face copyright holders in enforcing their rights against infringers through a multitude of technological problems. The infringing of works through translation is a global problem that can only be challenged on an international scale (Bitton, 2012).

When a song is translated into a new language and is given a new title, the original author no longer has the royalty privilege in that the song is not easily identified within the global copyright databases of collecting societies. Intellectual property rights such as copyright, trademarks and patents, are not adequately protected outside their territory (Feinberg & Roussiang, 1990). In the data it is mentioned that in some non-English speaking countries, a local title has to be used for an English song. Permission is needed for translation, and the title of the foreign song in the metadata of the song cannot be kept the same as the original title in English. It is called an alternative version of a song, but in the law it is called an “adaptation” of a song.

The metadata translation of an original work into a new one becomes very inconsistent with the original copy in terms of keeping the same data namely that of the composer, publisher, territory database, the host, the IP number and the ISWC code (section 5.7.6). In practice, there can be a number of people using the same title for a song, and it can become an item of infringement, as one might not have access to all the details belonging to an “adaptation” of an English song. This becomes difficult to manage in terms or royalty payments to the right party in the right country.

6.6.9.8 The history of collective management and current discrepancies

This section, as indicated in section 5.7.7, contains two themes, namely CMO colonial legacy and barriers to entry. The data that emerged underlined the historical legacy of collecting societies and the impact it has on the creator.

6.6.9.9 CMO colonial legacy

In the data it is revealed that corporations, for example in the UK, produce millions of pounds annually, but the revenues are diverted to offshore accounts, leaving only the employees to pay taxes and not the corporations themselves. People who are entitled to this money cannot reach them. New artists get direct licensing with music publishers; however, this holds a huge risk to the artist. According to Thakker (2009), US collecting societies are permitted to coexist. However, it is important to formalize the domicilium agenda of works that are domiciled in different countries in that they might not be complying with the tax systems of the country of origin.

The data revealed that the UK collecting society, PRS, was established in 1914 before the world regulations was developed. The organization still has the colonial infrastructure of ownership of rights and a very questionable representation structure. The collecting society is registered in the tax haven, which exempts it from paying taxes in the UK and uses an archaic structure called a CLG or a company limited by guarantee to avoid taxes. SACEM on the other hand, is the collecting society in France, and it has mandate on smaller French speaking countries in Africa. Until now the French collecting society collects royalties on the African continent. These two collecting societies still control the play around the world via old regulations from the colonial times.

6.6.9.10 Barriers to entry

The data pertaining to Namibia indicated that the barriers of entry on the Internet are very low; new entrants can start using the service immediately. Namibia is a country with a weak copyright law and the younger generation wants to build websites and use them to sell music, not understanding that they want to sell illegal content via the websites. According to Katz (2012), infringement is traditionally understood to be an economic loss. Copying a work costs far less than creating and developing it. The collecting society plays an active role in educating all members of the community on the

right procedures for licensing music, as well as the digital, reproductive and Synchronization rights and how to avoid infringing them. In Namibia, the communication commission provides licenses to Internet Service Providers for music usage, using provisional rates at this stage.

6.7 Conclusion

The six laminations contributed to the construction of discussions of data for the five research questions, which resulted in the copyright data management and enforcement framework. The qualitative laminations confirmed the assertions of the rationales. In the discussion of the data the emphasis of copyright knowledge from the research participants confirmed the value and adoption of the copyright dividend framework (figure 2.2) as a basis that will advance the six laminations into a future consulting framework in the management of copyright. The laminations concurred with the argument that the data concerning copyright industries is fragmented and the risk exposure of copyright infringement and theft is high due to technological advancements that exploit it for commercial and social purposes, without compensating the owners and the authors of the works. In the next chapter the recommendations and conclusions will be presented as well as the copyright management consulting framework.

CHAPTER 7: RECOMMENDATIONS AND CONCLUSIONS

"The achievement of excellence can occur only if the organization promotes a culture of creative dissatisfaction." (Lawrence Miller)

7.1 Introduction: driving copyright into the future perspective

This chapter is a practical discussion on the recommendations and the future of the copyright management consulting framework. The six laminations in chapter five (see figure 5.46) are demonstrated the building blocks for the copyright management consulting framework (see Figure7.1). This chapter is an outcome of the gaps that were identified from the literature through the problematization of the five research questions which led to the findings of the copyright fair trade from the research data. The copyright management consulting framework promotes copyright enforcement with all interested parties and its cultural integration in order to increase the value of works in the market. The six laminations form the construct of the framework and promote cohesion as a key driver.

The framework is intended to increase the capability for content owners to continually rejuvenate copyright-value from multiple resources, and it demands that the copyright market can ensure that the copyright stakeholdership fitness is achieved as a driving force for improving creativity through the protection of works. The current economy is becoming increasingly complex and copyright consumption patterns suggest rejuvenation of the system, offering new propositions extracted from the six laminations. These laminations have become the structural foundation for the execution of action plans that were formed through the collective knowledge of the research participants.

The copyright management consulting framework, shown in figure 7.1 below, supports the legal market and it is a tool that maximizes the value of intellectual property. It was developed through mutually consistent learning, using information obtained from the key players involved, driving infringement from the illegal copyright market. This chapter focuses on the recommendations based on the six laminations; the support of the copyright management consulting framework validates the assertions and proposes change in the copyright system. The copyright management consulting framework recommends an instantaneous risk tool, which measures benefits of works exploited and where market sustainability is assessed. The framework offers a visual perspective for the implementation and maximization of the copyright dividend.

The new strategic solutions for future of the copyright improvement, based on the data, it has shown that infringement is an eroding threat to intellectual property (IP) and that critical knowledge is an urgent necessity to re-install copyright value in its global ecosystem. However, this should be a collective effort with more emphasis on strategic alliances that should embrace the common value of the returns of copyright in the industry. New mind-sets are required to act as key enablers that will foster open communication channels and knowledge sharing in the stakeholdership to transform current copyright knowledge.

The copyright management consulting framework, in essence, recognizes the critical importance of copyright authorship, ownership and usage data access to both, copyright stakeholders and government, as well as the role of tracking and tracing usage of copyright works by using technology. In the current copyright stakeholder representation structures, it engages with government on the basis of the exchange and access the data, the outcomes are resulting in fairer trade, with yielded enhanced equitability. Between government and copyright stakeholders, the resources and capacity building for re-engineering the copyright dividend is well evidenced through the frequent interactions, not necessarily amicable, but occurring currently through meetings, gatherings, conferences and problem sharing. The copyright management consulting framework is targeted at CMO's, government and broadcasters where the management of copyright will be improved and it is demonstrated in figure 7.1.

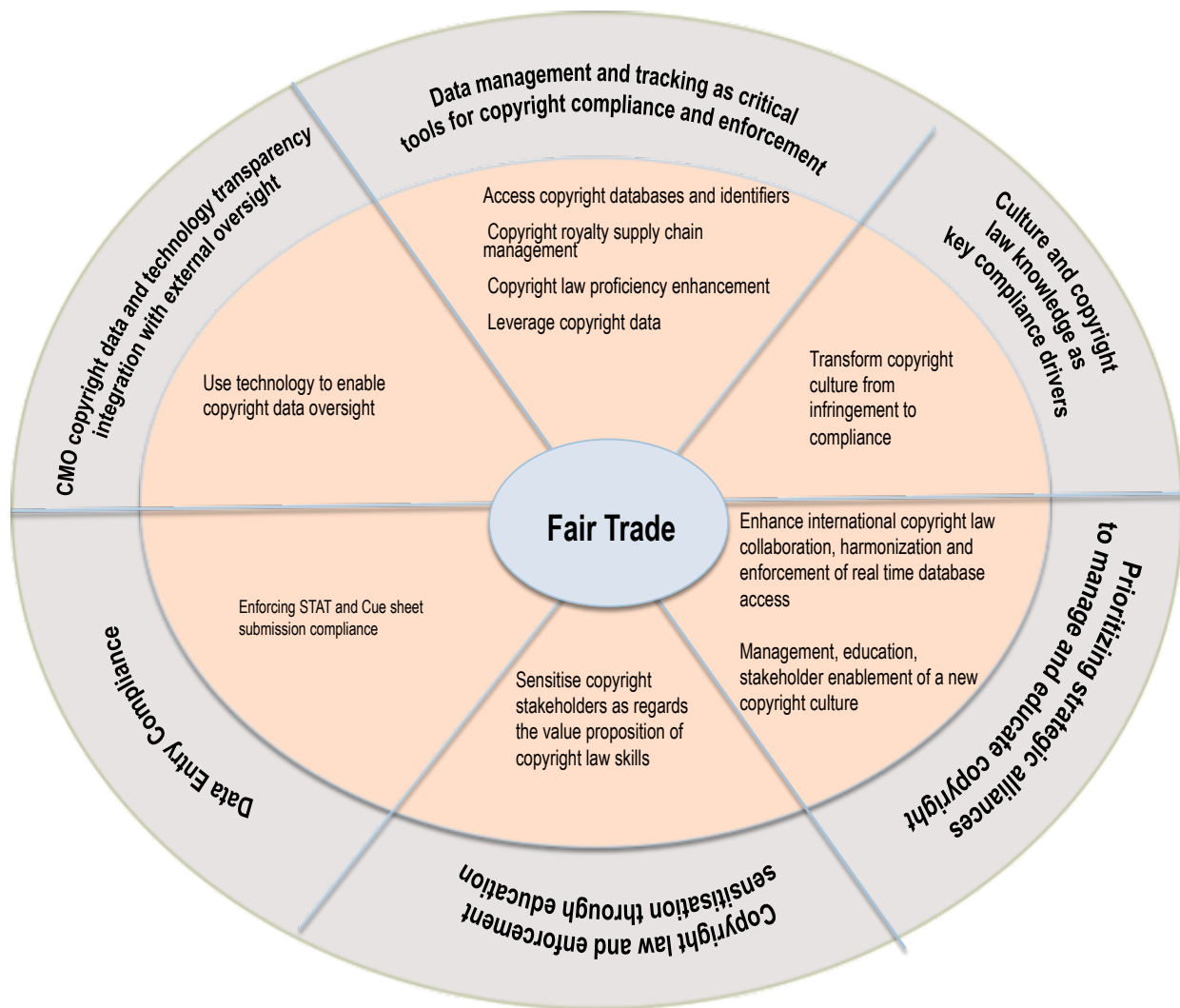


Fig. 7.1: The copyright management consulting framework

Source: Own construction (2014)

7.2 The copyright management consulting framework discussions

The copyright management consulting framework is an outcome of the six qualitative laminations described in the previous chapter and graphically represented in figure 5.46. Each lamination has a set of variables, which become the source for future solutions and recommendations. The copyright management consulting framework re-engineers the copyright dividend through the multiplicity of personal and collective experiences from the participants' infringement realities by lobbying the direct participation of all stakeholders to adopt fair trade as an equitable exchange with the copyright market. Within this innovation-based multi-dialogue, the diminishing of absolute control of the illegal market promotes the sufficient reflexivity to compose informed choices to

facilitate a more effective understanding of copyright within the copyright stakeholdership.

The copyright management consulting framework is a novel contribution, with its objective to promote fair trade. The problematization of the study in chapter two and three was expressed through the five research questions with the aim of addressing the lack of copyright enforcement in the copyright illegal market. This makes the copyright management consulting framework relevant. It becomes a strategic-fit into the overlooked issue in the literature in respect of enforcement and it makes it to be a foundational tool that will advance the equitable exchange and management of the copyright through enforcement. As indicated, the seminal role of the framework in terms of fair trade is specifically intended to address and promote the enforcement of copyright.

The copyright environment is a high-risk environment due to the exponential levels of infringement. The framework identifies six dimensions that are aimed at evaluating the degree of infringement through offering innovative mechanisms for providing solutions. Future copyright praxis will benefit exponentially from the copyright management consulting framework guidance and will improve the current stakeholdership condition in its fight against the pervasive growth of infringement brought about by the illegal copyright market.

The laminations concur with the notion that copyright is not well protected in the global economy which calls for resilient copyright enforcement. The enforcement of copyright law requires flexibility and merging jurisdictions into a singular negotiation platform, because copyright is a movable property. The development of effective learning resonates with all participants and therefore necessitates the copyright communities of practice to build the necessary awareness. The copyright management consulting framework in figure 7.1 recognises the mobility of copyright and its orientation to the profit-centric through the equitable exchange of copyright. Its emphasis is on interrelated jurisdictional relationships in the global network to protect the interests of the content owners by ensuring that financial returns are maximized in the local and foreign markets where the works are consumed.

The copyright management consulting framework ethos recognises infringement risk and its limitless territoriality in the global system and promotes new action learning in

the copyright community. The framework represents tools for cultural shifts into copyright centric sustainable environments, which reduce the risk exposure of works with infringement, through the promotion of cooperative dynamics within the copyright dividend (figure 2.2). The framework functions at an operational and policy level where it initiates engagement in the event where infringement and lost revenues are incurred in the exploitation of works and suggest operational remedies through linking the dispute to the relevant geographical policy framework. The six laminations are the foundation of the framework that is leveraged as a prescriptive trajectory of inquiry in curing an infringement case and it is a preventative tool against the violation of copyright through fair trade.

The six laminations introduced technological and policy conduits into the global copyright network that interrogate and function as a benchmark proposition in managing copyright. The collective input of the six laminations suggests that knowledge is imperative and that the traditional litigation strategies are lacking; a framework requires more preventative measures, not discounting the litigation model which is more curative, but rather striving to be an enhancement model that is incorporated into the current copyright system.

Lamination One

The following lamination has emerged within the reality of supporting data management and tracking as critical tool for copyright compliance and enforcement.

Table 7.1: Access copyright databases and identifiers

<i>Situation now</i>	<i>Future proposition</i>
Fields of infringement	Access and track copyright data, identifiers and use
Fragmentation in the industry	
User cost = zero	transform user cost to equitability with interested parties
Copyright theft	Improve copyright database quality and tracking/tracing of copyright use
Copyright holder not remunerated	improve remuneration equitability

The data has shown that the fields of infringement and fragmentation in the industry require digital and physical integration. Copyright security is a necessary response to

Copyright theft. This is applicable in the event of copyright not being equitably exchanged and not remunerated. The future proposition is to improve copyright authorship, ownership and a user data access and thereby implement fair remuneration mechanisms, improve equitability, reduce copyright theft and diminish fragmentation.

Table 7.2: Copyright royalty supply chain management

<i>Situation now</i>	<i>Future proposition</i>
Misallocation of funds through databases	Access, inspect and improve transparency of the databases
Money abuse	Enhance and improve use tracking and tracing technology and implement financial benchmarking
Licensing issues	improve alignment of tariffs and business practice
Collection and distribution	Develop skill capacity and data access to the royalty supply chain collection and financial benchmarking
Data filtering	Access and monitor databases
Manipulation of rights	Correct copyright law statutes and application thereof
Rights = revenue	improve royalty supply chain transparency

The data has shown that the misallocation of funds through database and money abuse by Collective Management Organizations (CMOs) is a critical challenge that has not been addressed. The future proposition to manage this challenge is to improve access, inspection and transparency of databases and financial benchmarking to address the mismanagement of finance. This will require learning and interdependent methods to improve copyright skill capacity within the CMOs. The objective of financial benchmarking is a process of transparency and governance matched to international good practices in managing funds. This is achieved through learning and should be facilitated through collaborative policies by all interested parties. The setting of licensing alignment entails equitable tariffs with fair compensation of the creator of the works. The collection and distribution of royalties is not transparent. This can be managed through the collection and allocation benchmarking of earnings with international standards.

The data further showed that data filtering is a not properly managed by the CMOs. The future proposition to address this challenge is the implementation of consistent data access and monitoring mechanisms. The manipulation of rights presented another problem with CMOs, which requires the correct copyright law statute application to avoid this malpractice.

Improving copyright royalty supply chain transparency can address the issue of qualifying rights as a means of revenue. It is founded on the argument that the market in which the copyright functions is exposed to high risks in terms of the levels of infringement. Royalty supply chain transparency is concerned with ensuring that the infringement risk is reduced through transparent access to the environments where works are exposed in order to adopt the best and most profitable distribution channels that maximize the returns of copyright in the legal market.

Table 7.3: Copyright law proficiency enhancement

<i>Situation now</i>	<i>Future proposition</i>
Lack of understanding of the copyright law, international conventions, applicable jargon and related right losses	Enhance copyright law proficiency skills Capacitate global copyright law and regulatory environment skills
Outdated and inefficient economic model of compensation of a creator/owner versus cost to the user	improve alignment of data access
Domicilium of rights	Improve financial authority, database and copyright owner access, integration and communication

The data have shown that the lack of understanding of copyright law leads to loss of revenue. “*Rights equal revenue*”, as the saying goes. The losses are expressed in three levels: physical, virtual and legislative. The solution is revenue gains through copyright law proficiency and capacity building as well as enhanced global copyright law and regulatory environment skills amongst database owners, financial authorities and copyright owners. The economic model of compensation of the creator and owners can be managed through better access to authorship, ownership and user databases. The domicilium of copyright stakeholder’s rights is a key legal priority that determines the point where royalties need to be accounted for in terms of earnings declaration for tax

purposes. This is addressed through the improving of financial authority, database and copyright owner access, integration and communication in the events where works are exploited in foreign markets and need to be channeled to the country of origin where taxes are to be declared.

Table 7.4: Leverage copyright data

<i>Situation now</i>	<i>Future proposition</i>
Discrimination model across broadcasters	Approach regulatory authorities for decreased discrimination
Fair trade platform	Improve fair trade platforms and database access
Monetising on consumer's behavior	Database mining and monitoring
Physical piracy	Change parameters for data access and speed up access to user information in the form of market, price, supply and demand dynamics
Demands of illegal copyright market	
Market reality	leverage access to key market and trade data
Internet based infringement	Improve use and application of digital tracking and tracing tools and software

The data have indicated that the discrimination model across broadcasters is restrictive in terms of the size, amount of music played and tariffs per broadcaster. The future proposition is for stakeholders and broadcasters to approach regulatory authorities for decreased discrimination. The fair trade principles are recommended as a key benchmark to all interested parties. This is also directed at benefiting broadcasters, affected by discrimination model. The data have indicated that there is an opportunity to monetize on consumer behavior if the data concerning such can be accessed and leveraged. This can be achieved through database mining and monitoring, where the activities of consumers on the digital platform can be monetized without giving a specific preference to a platform. The advantage of database mining and monitoring is that a consumer is in charge and can choose any platform, but no matter what the consumer chooses, the copyright stakeholders can leverage from that specific platform.

The data has shown that physical piracy and the demand of the illegal copyright market can be remedied, firstly, by ensuring that both the market of legitimate goods and the access of user's information in the form of market, price, supply and demand dynamics, is achieved to curb infringement caused by weak distribution and delays of products reaching the market. Secondly, to avoid pure profit or high prices. The factors that affect legitimate goods in the market are accessibility, availability, data accessibility and price. In the data market, the reality indicates that the challenge of the physical non-presence of the two major record labels in other markets causes infringement to grow exponentially, as well as government showing a lack of involvement in terms of resources. This also limits the role of the CMOs and others in these areas to facilitate best practices, because the markets are fragmented and copyright risk exposure is high due to infringement. The other concern is the impact of the growth of the parallel market, which accelerates infringement through the illegal copyright market's ability of speed delivery of infringed goods to market over the legal market. The proposed solution is for copyright stakeholders and user, as well as regulatory authorities to leverage access to key market and trade data.

The data has also indicated that Internet based infringement is growing exponentially in all economies and it is diminishing the output of the legal market. Technologically advanced devices are used as means of Internet infringement. The solution is to improve the use and application of digital tracking, tracing tools and software.

Lamination Two

The following lamination emerged through negotiating culture and copyright law knowledge as key compliance drivers.

Table 7.5: Transform copyright culture from infringement to compliance

<i>Situation now</i>	<i>Future proposition</i>
Infringement via culture	Improve communication of and access to the copyright regulatory environment to copyright stakeholders and users
Rules of engagement	
Technology vs. consumer	
Copyright culture	
Online piracy and culture sharing	Simplify procedures to settle disputes Address culture in content and communication
Regulation and enforcement fragmented	Increased use of tracking and tracing

	technologies
Supply-demand cycle	Enhance data transparency Improve access to release data
Content infringement (sound recordings, computer programs and artistic works)	Engage concerted effort to address culture and ethic shortfalls
Cinematographic films	Improve access to and distribution of copyright law information Make copyright authorship, ownership and user information accessible
Lack of understanding of IP	Improve quality of copyright law information access
Literary and musical work infringement	Improve access to databases and distribution of copyright law information. Make copyright authorship, ownership and user information accessible

The data have shown that infringement via culture is negatively affecting IP income flows, value propositions and state coffers. The rules of engagement are not well defined. Online piracy and the culture of sharing music are not morally or ethically sensitive to the content owner. In this event the consumer uses technology negatively, which affects the value of copyright, to the extent that all copyright stakeholders need to engage in a concerted effort to address culture and ethic shortfalls amongst copyright stakeholders, users and consumers. In the data, it is also mentioned that the copyright culture with consumers and within corporations needs to be changed and aligned to the value of copyright as a contributor to the economy.

Copyright stakeholders are put to redouble efforts at education regarding copyright law best practice and to make such accessible. The proposition to address the negative copyright culture is for copyright stakeholders to engage with the copyright regulatory environment with the specific aim of improve communication of and access to the copyright regulatory environment to copyright stakeholders and users, simplify procedures to settle disputes and to address culture in content and communication concerning infringement. The copyright stakeholders are disadvantaged, and to a certain extent prejudice themselves, in not engaging with the copyright regulatory environment and it is thus the copyright stakeholders who gain by interaction, thereby reducing the illegal copyright market. The approach is aimed at involving the consumer

on different levels, including children, parents and corporate employers and employees, on the ramifications of copyright infringement. The strategy will include needs re-definition and determining the consumer's motives for infringement so that from culture and ethics point of view, the copyright stakeholders are able to input on the content and communication aimed at changing consumer behavior. The communicative implication will result in the value increase of the exchange regarding copyright's asset value and the economy.

The data has shown that copyright infringement (upon cinematographic films in particular) is exponentially high in the illegal copyright market. This includes both digital and physical copyright infringement. The challenge is that content owners do not have proper mechanisms to protect their works and to benefit from the copyright platforms. The legal perspective is that online infringement is no different from physical theft, but it is treated as a victimless crime. The future proposition is engaging in a concerted effort to address culture and ethic shortfalls, the improving of access to and distribution of copyright law information and the making of copyright authorship, ownership and user information accessible. This will require the cooperation of all stakeholders in regards to the goal of fair trading of content.

The researcher has found that data gives evidence that a lack of understanding of copyright, in general, and a lack of application of copyright law specifically, in both cases lead to infringement. It is suggested that copyright stakeholders implement a copyright intelligence system that involves improved tracking, tracing and identifying use of copyrights. Such a system is expected to provide information on infringement activities in order to value and assess the causes thereof. It will function as a continuous improvement tool to re-position the copyright stakeholdership regarding copyright management. Digital tracking, scanning and watermarking are some tools considered for use in this system.

In the data, it is indicated that literary and musical work infringement is accelerating on both the digital and physical platforms. The channels driving the infringement are universities and corporations through the photocopying of books and copying of related content, such as films and music. The future proposition is an improved access to and distribution of copyright law information and making copyright authorship, ownership and user information accessible which will increase awareness of and provide the

necessary tools for acquiring copyright, for example licenses for content, as well as the rules and regulations surrounding use.

Lamination Three

The following lamination has emerged through prioritizing a new copyright culture using the endorsement of strategic alliances to manage and educate copyright.

Table 7.6: Enhanced international copyright law collaboration, harmonization and enforcement of real time database access

<i>Situation now</i>	<i>Future proposition</i>
Law differences on infringement	Seek increased State interaction for improved copyright law harmonization and treaty compliance Enhance real-time access to all IP Laws Enforce IP profit repatriation and circulation through increased transparency demands on stakeholders
Unified channels of the CMOs	
International alliances, law enforcement and dialogue	Integrate database access to copyright authorship, ownership and use of copyright Improve IP Law harmonization Improve IP Law training and collaboration by and between law enforcement and intelligence sharing on illegal and infringing activities
IP issues and law enforcement	

The data has shown that IP Law differences on infringement are affected by the respective country's historical pathway to IP Law use, such as arising from civil or common law colonial histories. IP Law regime differences impact directly on the difference in the rules of engagement between countries and enforcement of copyright laws by stakeholders requires collaboration, action and interaction. A harmonized copyright law standard is required in order to execute strategies that will curb infringement, similar to the strategies that are in practice in the EU. Countries outside of the EU have not harmonizes IP laws that will allow the harmonizing of IP Law systems. This has negatively affected the recovery of royalties to the country of origin in the event of a work being exploited in foreign territory. Rather than follow the logical

harmonization approach adopted by the European Union, Africa has ventured on a pathway, where there is no harmonization; instead two groups emerged – ARIPO (English speaking and common law countries only) and OAPI (French speaking and civil law countries only). The net effect of this has been the entrenchment of the two approaches (as opposites almost), proceeding in a manner that it is the antithesis of the harmonization of IP Law. The researcher has noted that without IP harmonization the European Union's capacity to trade internally, as they do today, would not have been possible.

The future proposition is to establish IP profit repatriation enforcement mechanisms with the host country and relevant parties. In the data it is indicated that international alliances, law enforcement, IP Law harmonization and dialogue can unify the global copyright communities. All legislative discrepancies can be addressed and solved by these communities. In addressing the preceding of the data, it has been indicated that current forums exist, but are affected by governmental continuity on matters relating to IP Law due to officials changing positions, which causes regression of previous milestones. The future proposition is integration into continuity mechanisms.

Table 7.7: Management, education, stakeholder enablement of a new copyright culture

<i>Situation now</i>	<i>Future proposition</i>
Mismanagement of copyright	Upgrading of copyright in education so as to enhance copyright management
Copyright not aligned in and with education systems	
Stakeholder relations with Government and copyright	Increased interaction between stakeholders and Government
The need for a new copyright culture	Upscaling of importance of IP to the economy Establishment of codes of conduct in Government and others regarding copyright

The data has shown that there is a need for a new copyright culture that sees stakeholders address mismanagement of copyright and the alignment of copyright

education in current education systems. Stakeholder relations and interaction with Government are key to upscaling the importance of copyright to the economy. The researcher's view is that this interaction will lead to a new copyright culture which by its essence and message seeks to reduce the illegal copyright market.

Lamination Four

The following lamination has emerged through promoting copyright law and enforcement sensitization through education.

Table 7.7: Sensitize copyright stakeholders as regards the value proposition of copyright law skills

<i>Situation now</i>	<i>Future proposition</i>
Understanding of copyright law, value proposition of copyright law, lack of copyright knowledge	Establish Internships – copyright enablement (“open platform” amongst players)
Lack of understanding of copyright infringement	Concerted effort by all parties in public and private practice to upskill copyright law in particular Address the shortage of copyright law skills and law enforcement's relationship with copyright law in particular
Government and creative community to fight infringement	Copyright law communities of practice (Customs, judges, government etc.) Improved standards and co-operation
Meta data, cue-sheets	Cue-sheet compliance
Lack of copyright compliance	Oversight in respect of reserves and CMOs

The data has shown that the understanding of copyright law and its value proposition is globally weak. The data also emphasized the lack of copyright law knowledge amongst all parties involved in the management of copyright. The high exponential level of the preceding, confirms the future value proposition of copyright enablement platforms; these are urgent in the administration of the applicable rights. Copyright stakeholders have a clear vested interest in advancing copyright law knowledge when such has the impact of reducing the illegal copyright market. The copyright enablement process assesses the market and the internal risks that affects the mobility and usage of works.

The expected outcome is copyright competitiveness through the embodiment of key IP knowledge is to advance it as a key asset.

The effect of digitization and the Internet on copyright has to exponentially increased the capacity to reproduce copyright works and thereby the supply of such works distribute and communicate such to the public, and to do this without attention to, or concern of, existing laws.

The lack of government's involvement with CMOs is another factor which has contributed to the inability to manage data. Government has no access to the CMO databases such as CIS-Net and the WID concerning the authorship, ownership and use of works, nor access to any of the copyright identifiers, such as the Tune Code and the ISWC, all of whom the CMO's have global monopoly and private control of, regarding the process of achieving copyright enablement. The data has indicated that government and creative communities should be curbing infringement collectively with a variety of approaches available, such as better copyright data access, tracking and tracing use. However, governmental structures and law enforcement bodies are lacking copyright law knowledge and lacking copyright database access. This includes judiciary, customs and anti-piracy units, which are not equipped with the necessary copyright law skills and database access rights. Since this is a high exponential problem, the future proposition is for copyright communities of practice to enable IP knowledge and copyright database access through tacit knowledge that can be transformed into explicit knowledge, ready for socialization and externalization within the copyright system.

The copyright enablement objective is layered within complex levels of practices. The data has shown that meta-data infringement is caused by non-compliance of cue-sheets and other ways of communicating key use data. Cue-sheets are reporting systems outlining the type of music that was used by a broadcaster or any other user of content. It outlines the details of the author and publisher that should receive royalty payment in return for the exploitation of the music used on television, radio or any other medium. The challenge is that users do not always complete cue-sheets accurately and no proper mechanisms are in place to track music that has been used at a given time. Cue-sheets containing incomplete information, result in the CMO not being able to distribute any royalties, therefore keeping the royalty earnings attributable as unclaimed royalties. The future proposition is to establish cue-sheet compliance mechanisms that will be deployed to all users of content.

Lamination Five

This lamination has emerged through promoting data entry compliance.

Table 7.8: Enforcing STAT and Cue sheet submission compliance

<i>Situation now</i>	<i>Future proposition</i>
Copyright and technology	Use of technology to improve copyright data submission by authors and users
Operations of copyright	Reposition the importance of copyright data to owners and users Increase use copyright data analytics
IP Value and the State	Increase IP dividend repatriation Seek to amend copyright law enforcement orientation away from 'cops and robbers' to copyright data tracking, tracing and scanning
Latency and Copyright Culture	Leverage vertical integration opportunities to effect copyright data submission compliance Change culture with respect to Copyright data
Law enforcement	Access copyright data
Urgent need for re-alignment	Motivate the formation of an aligned approach to copyright law enforcement

This lamination has developed from the data which supports the argument that there are discrepancies in terms of copyright law and copyright data management and the culture concerning copyright that mitigates compliance on a global scale. Whilst in the global copyright community, WIPO and WTO are the largest organizations and form basis for global platforms, treaty management and IP Law relations between countries is at a national level, where copyright data needs attention. Improved dispute resolution alignment as a future curative proposition would involve creating a bridge between different laws and creating confluence in addressing common conflict in the event of works infringed upon in foreign territories, however the data suggests that there is a pressing need for an effective approach to address the losses to authors and the State,

that an inappropriate and non-standardized approach to copyright data submission and access causes.

The data has further shown the importance of copyright data submission compliance by authors and data submission compliance by users. The traditional business structures have consisted of companies that have been and still are vertically integrated, meaning that the recording of an artist, and the publishing, manufacturing and production of CDs/DVDs are owned by the record label, including the distribution of the content. From a historical perspective, the technology has affected these business models, to the extent that it appears that barriers to entry are now lower, in that content is consumed on digital platforms and the demand for physical products is decreasing. This, however, belies another finding in that barriers to entry have also increased, specifically barriers to access copyright data and its usage.

The future value proposition is to leverage on circumstances prevailing with the vertical integration capacity of authors to record labels and distribute their own works through the existing digital platforms, including their own, and to treat the process as a key opportunity to effect control of the copyright data quality that is submitted to users, to access digital scanning services for tracking and tracing use and to unleash an entrepreneurial orientation in managing an increased return and equitable remuneration from the market.

The data has shown that latency, which pertains to is not being able to manage data filtering by CMOs, and it causes royalty misallocation. The future proposition is that data filtering and latency compliance should be aimed at the CMOs to increase revenue for all interested parties. This will also increase the accuracy of royalty distributions and reduce copyright disputes.

The data also indicated that law enforcement and government involvement in the regulating of copyright is the urgent necessity to protect it against the growing illegal copyright market. The value proposition arises when the interested parties integrate and standardize their respective approaches to copyright data and provide law enforcement which can increase effectiveness, not just through the deployment of the relevant human and capital resources, but with new thinking and approaches that recognise the critical nature of copyright data.

Lamination Six

The following lamination has emerged through promoting CMO copyright data and technology transparency integration with external oversight.

Table 7.9: Use technology to enable copyright data oversight

<i>Situation now</i>	<i>Future proposition</i>
The negative impact of technology on copyright	Reverse, realign and redirect the positive outcome potential to copyright of technology
Lack of access to copyright data	Motivate external oversight and access
Operational challenges	Increase transparency and use of technology regarding copyright data
Digital piracy and technology related infringements	Increase use of identifiers, digital scanning and tracking of copyright data

The data has shown the dual impacts that technology has on copyright, both as an adverse impact as well as from an enabling approach when technology is used to give access, transparency and oversight in respect of copyright data.

The data has revealed that on a global basis the CMO's have consistently for nearly two centuries been the sole managers and holders of copyright data. Before digitization, this was manageable, however, with the arrival of the internet, the importance of data sharing in respect of trade has made the role of the CMO critical, especially as far as access to and oversight of copyright data. It is the CMO that is the interface with users and the CMO provides the confluence for copyright data exchange.

The data has also indicated the weakness of penalties in respect to digital piracy and technology related crimes. Given that copyright works in the digital domain carry copyright data in the form of metadata, it is clear that the use of technology in the form of digital object identifiers, the scanning, tracking and tracing of copyright data will impact the legal and illegal copyright market alike. The main issue with penalties in the absence of copyright knowledge and government commitment is not necessarily curbing infringement, but the seeking of some form of financial compensation, in respect to the copyright dividend lost through the actions of a copyright infringer subjected to a penalty.

The high level of infringement represents a demand for goods at a price that consumers are willing to pay, through the resistance to the pricing of legal content. On the other hand, it represents a clear evidence of a gap in accountability, which can be recovered. The future value proposition is to strive towards an environment where technology becomes the enabler for transparency and access to copyright data that will ensure that illegal downloaders of content for commercial purposes are transformed into copyright agents that trade with CMOs through license agreements and that government adopt a levy model on electronic devices used to download and play content.

7.3 Intellectual property protection through the education and training of stakeholders

In lamination six the learning proposition is the basis for the deontological imperative, which promotes and is inclusive of the collective opinions of the copyright stakeholdership in respect to the infringement ramifications and the creative output. The expansive dialogue-driven global copyright platforms are gaining impetus from the constructivist and inductive cultural orientation of its constituents, so as to allow new manifestations of learning to sustain the copyright economy. In this construct, the infringement is permanently discharging new challenges that are supposed and are translated into ignitions of robust strategies deployed to the illegal copyright market.

Since copyright is a movable property, the data has revealed that penalties for digital piracy are necessary, because websites are also a key driver for infringement. The consulting framework promotes the continuous leveraging the drivers of infringement as a way to gain insight into the equilibrium of the legal market. The six laminations promote the pathways of education and training for the copyright stakeholders through the improvement of the current processes that manage copyright.

In the literature it is mentioned that a common market requires removing legal barriers that block the free movement of copyrighted goods and services. Copyright is a movable property, and the researcher recognises that contradictions in the policy spectrum compromise the copyright holder, because of the opposing views against the current copyright law that is argued to be restrictive.

In the law of property, the distinction is significant because the rules governing the transfer and hypothecation of movable property differ (in all common law regime countries and some civil law regime countries) from those relating to immovable

property. As a global shortfall, the difficulty of copyright moving freely into markets that have low copyright protection undermines its value as a movable property. Amid this high risk exposure, copyright becomes a volatile asset with no guaranteed returns.

The consulting framework confirms that copyright harmonization should be based on ensuring that the protection of works in any jurisdiction is equal or the same as that of its original domicilium. The framework emphasizes the importance of training and legislation to advance the judiciary knowledge capital and integrating them as unique communities of practice in the copyright global system.

The movability of copyright, as indicated in the data, is not independent of money laundering. The researcher's view is that earnings from illegal downloads and physical piracy is not necessarily making its way into a tax system, nor compensating the original authors, which increases the probability of money laundering. The consulting framework aligns to probable market outcomes that treat copyright as an asset which is exposed to environmental risks. Environmental risks are identified in both digital and physical infringement level, where the content is consequently reframed into profiles of risks that can be measured by the consulting framework.

In the data has also indicated that illegal websites are based in countries with weak copyright laws. The relationship between illegal content and websites in weak copyright law jurisdictions confirms the linkage to other crimes, such as money laundering, and this indicates the multiple relationships that threaten and pronounce the environments through which copyright is channeled. The consulting framework suggests that traditional systems, which include the trading of copyright, should be transformed into new forms of order that allows the content owner and consumer to coexist.

The literature indicates that copyright law fails to address the mass-scale infringement over digital networks. In this, the researcher maintains that jurisdictions with weak intellectual property laws and it has fragile links in the global copyright system. They affect the movability of copyright and adversely promote the existence of the illegal copyright market. The copyright management consulting framework's legislative orientation is carried by the law enforcement objective that promotes the modification of monitoring and protecting copyright through action learning.

It is in the vested interest of the copyright stakeholdership to ensure that weak copyright markets are revised, seeing that they form part of the global system that attract the

hosting of illegal websites that pervasively distribute illegal content into the global economy.

Regarding the current state of digital piracy, the data has indicated that workshops are essential in training customs and judiciaries. This is a strategic step in that infringing jurisdictions are compelled to understand digital and physical piracy. Furthermore, as indicated by the data, illegal goods are going through customs into new markets with no specific tax compliance which gives a reason to other related crimes, such as money laundering to emerge. The consulting framework suggests learning initiatives that will produce the intelligent organization of the future through reorganizing the systems that manage and administer the implementation of copyright laws.

From a global perspective, it is critically important to recognize that the harmonization of copyright law creates a foundation for the strategic alliance efficiency proposition. It is through these alliances the cooperative commitment can lead to the reduction of the illegal copyright market output. The framework promotes and generates diverse outputs that are informed by the multi-cultural copyright stakeholdership.

The education initiative for copyright law should be based on relational contracting, and it involves a long-term investment in building relationships between the parties. Relational contracting within the copyright stakeholdership should generate mutual dependence between partners and reduce the overall inefficiencies of dealing with infringement.

The data also has showed that creators (performers) have no control over online distribution and earnings. The consulting framework suggests that with the exponential growth of technology, the management of content should be more transparent and access to information should be a privilege of all the interested parties. By combining the content consumption culture of consumers with multiple perspectives in the global community, there is a new outlook perpetuating the impulse of a pro-copyright mind-set, is established in re-negotiating intellectual property as a premium commodity.

The literature states that creators (performers) are members of CMOs, the organization which collects royalties. It is resulting in exploitation of rights in its own country; not only for its own members, but also for the authors and publishers abroad who are members of other CMOs, with which it has concluded bilateral representation agreements. The data has showed that CMO staff members have no copyright law qualifications, and are

at best qualified administrators. The researcher's notion is that it will be difficult for creators (performers) to have an oversight of the distribution of their works and earnings in that the administrators of their works are not qualified to cater for the specific requirements pertaining to copyright law.

The copyright management consulting framework suggests a complete transformation and interaction between the author and sources of revenue generation that exploit the works. Through the six laminations learning applies at all levels of copyright law in the stakeholdership. The development of new capabilities and skills is a burning issue, which requires urgency in the formulation and implementation of practical action plans. Interactive discussions are inferred in the six laminations and should be a prerogative that is exercised by the copyright stakeholdership.

7.4 Non-unified identifiers and databases in copyright infringement

The laminations in figure 5.46 draws definite and complex contexts of copyright that seek to propel it as a central future investment feeding from knowledge management in the global economy. Copyright infringement is not only limited to the consumer, but the actual systems that manage it are fragmented. The laminations produced evidence that infringement can also take place through the misallocation of funds through non-unified identifiers and databases. These databases are managed globally by the respective (to the rights) confederations (on hub-and-spoke database systems, for example CIS-Net, powered by FastTrack) of CMOs with the intention of having them well integrated. All CMOs have reciprocal representation agreements based on a model provided by the European CMO confederation, the International Confederation of Authors and Composers Societies (CISAC).

The data showed that current CMOs and other users of copyright such as broadcasters still operate in highly fragmented environments. The consulting framework suggests that database unification urgently needs to be implemented due to the increased misallocation of funds through non-unified identifiers and databases. Authors, lyricists and composers hold the copyright, including public performance rights, on the works they have created. They usually sign their rights over to CMOs to manage on their behalf, with the expectation that their royalty collections are maximized on all the platforms where their works are exploited. However, the data revealed that this is not always the case; CMOs mismanage funds, and this directly affects members. This is

accelerated by the fact that within CMOs, international databases do not communicate. It is expected that a CMO collects royalties for the exploitation of rights in its own country, not only for its own members, but also for the authors and publishers abroad who are members of other CMOs with which it has concluded bilateral representation agreements.

The consulting framework promotes the value of integrated systems through a cooperative culture within the copyright dividend framework. The copyright dividend should be an outcome of human capital and technological coherence aimed at maximizing and protecting copyright against factors that expose it to the illegal copyright market, such as price and speed to market.

Based on the aforementioned the data confirmed that the database issue is very critical in regard to copyright infringement. The data also showed that databases are not aligned and although the International Standard Music Code of Work (ISMC) is allocated to 95% of works around the world, it does not 'speak' to GRD (Global Repertoire Database) and ISAC. The copyright management consulting framework opposes the maintenance of traditional business models, because it is a catalyst to the copyright conflict that creates systematic discrepancies with current trends of how content is consumed in the market. Hollywood and BBC also have their own codes, which are not adopted by the other parties. The "four majors" have their own identifiers, asserting the fact that international databases are not aligned. The consulting framework, through the copyright communities of practice, is action-learning based and produces experts that promote open innovation to deliver infinite value propositions that impact directly on the technological copyright platforms.

The disintegration is emphasized by the collecting societies in that they have their own codes, independent from all the other stakeholders in the copyright spectrum. The outcome is an enormous amount of infringement in the industry. In addressing this conflict the first stage would arguably be to create a new regulatory framework that would aim at establishing principles of good governance within collective management societies, as well as at creating a uniform external control mechanism to meet with external market changes. In all this Africa is isolated from the privilege to access the CIS-Net hub-and-spoke database system. Five CMOs, later expanding to twelve, privately own and control the data containing the ownership information of ninety million musical and literary works. Nine of the twelve owning CMOs are monopolies in their

respective EU countries and this raises an issue surrounding concerted practice and European Competition Law.

Regarding the level of copyright complexities mentioned it is important to ensure that content owners are compensated for any exploitation of their works. The data showed that, at 60%, this is a key imperative concerning the parties that are affected by infringement. The missing link is the lack of integration and adoption to change which has been evident within the recording industry. Over the years it has taken legal action against an increasing amount of computer users, accusing them of illegally sharing music on the Internet with the contention that file sharing damages the industry as well as artists' income streams. The fact remains that this is a captive audience; even though their activities take place through the consumption of infringed goods, it can be transformed into a legitimate form of consumption in the legal market. In the behavioral context the aforementioned is a strategic indicator of the expected contribution of the copyright management consulting framework.

7.5 Recommendations

7.5.1 Recommendation one: Promoting copyright as a movable property

Lamination one, two and three confirm the vulnerability of copyright as a movable property within the global system, which necessitates protection and trading mechanisms that exceed current capabilities. The six laminations are self-reinforcing and underline the significance of protecting copyright through the re-engineering of the copyright dividend in the illegal copyright market. The copyright management consulting framework is built on complex drivers, sourced from the opinions of parties involved with civil- and common-law paths, which position the model as a profit maximizing map and an investment tool that can be used in growing and protecting intellectual property in the global market.

The results produced evidence that cooperation is necessary for copyright to yield the expected returns. The copyright management consulting framework combines internal knowledge with multiple perspectives in the global network to improve copyright processes and affect the profit potential of works in the market. The framework promotes the multiple platforms of systems that manage copyright and negotiates their integration into a coherent structure that encourages transparency. The reason for this is that the fields of infringement seen in lamination one are suggestive of a single

market, but it will be more practical to implement and monitor unlawful activities in the trade of copyright on all platforms. The six laminations confirm that copyright infringement is an outcome of fragmentation in the industry, which leads to the undervaluing of intellectual property. The investment criteria within lamination one is instrumental in protecting and offering remedies in the event that infringement is experienced in both the local and foreign markets.

The value of copyright is reinforced by its ability to be a movable property, but infringement exploits this attribute. The copyright management consulting framework's six laminations serve as a tool that protects intellectual property, which automatically increases its asset value and reduces the market risk exposure. One catalyst of infringement is the unavailability of content in the legal market resulting in the consumer supporting the illegal copyright market. The illegal copyright market is a presentation of efficiency in terms of speed to market compared to the evident fragmentation of the legal market and its undefined copyright regime. The reason for this is that factors, such as price, product access and speed to market, competitively differentiate winning markets in regard to products offered to the consumer.

The researcher's notion is that "consumer impatience" is a key demand-and-supply imperative that confirms that the legal market distribution channels are inefficient. The consulting framework supports self-organizing mechanisms that must be adopted by content owners and that will reduce dependence on traditional distribution channels, with the orientation of entrepreneurial flexibility rather than relying exclusively on management direction.

Price, product access and speed to market cause the illegal copyright market to grow stronger than the legal market. The consulting framework creates copyright management systems that operate within a complex global landscape, containing multiple cultural orientations and centralizing all practices into a coherent pathway that impacts the violation of intellectual property by re-installing the necessary premiums on exploited works in the market.

In principal, copyright within the intellectual bouquet is supposed to be one of the protectors of innovation and guardians of culture; however, in reality it is the opposite and copyright law and other government policies often neglect the importance of innovation to the economy. Therefore, the very same technologies are used as

infringing tools and contributors of speed to market with copyright failing to enforce protection to the artist. The consulting framework offers tools for the copyright communities of practice to appropriate the necessary levels of value from content with users and to create sustainable platforms for equitable copyright exchanges.

There have been conflicting processes in the administration of copyright and the application of copyright law, which automatically suggest and speak to the value of harmonization. In this context it will lead to copyright as a movable property being protected from local and foreign infringement. Films, music, art and books which form part of cinematographic and literary works can be jointly affected, and in some instances collectively infringed upon. The downloading of content holds a high exponential threat, but the consulting framework suggests transforming this into a profitable enterprise, because copyright cooperative dynamics have the common goal of monetising from digital platforms.

The lack of understanding of copyright law is not independent from the infringement complexities it is experiencing and education on this matter must be based on the living challenges it is exposed to in the market. The involvement of government is also crucial in order to transform the current state of the copyright economy.

In exploring perspectives to manage infringement new lenses for future copyright enablement platforms should provide tactical objectives and action plans that are informed by the environments in which it trades. Hence, it is strategically important to recognize that copyright as a movable property needs protection in all the law jurisdictions it reaches through market demand. In achieving this objective, the data stress the importance of copyright knowledge. The data furthermore confirm the notion of illegal copyright market ramifications in that there is a critical need for government support of intellectual property through stricter enforcement based on the evidence of open infringement in informal markets.

The six recommendations follow a stringent execution plan that is presented as a strategic outcome. To achieve sustainability, strategic outcome one pertains to the agnostic collaborative system. Implementing the relevant copyright system and thereby incorporating innovation within appropriate copyright projects, is the primary collaborative goal, with the intent to establish global communities of practice.

In this recommendation, the emerging realities question the critical incidents that occurred and can maybe be seen as a potential source of conflict amongst copyright communities of practice, members and management. The conflictual issues related to predetermined outcomes, strategic goals and skills development need to be considered to fully understand the relevant copyright systems. This study evaluated and prioritized current global copyright law realities and introduced immediate collaborative working arrangements involving senior managers and all the key staff members involved in the relevant business projects.

New value propositions are initiated through engaging and meeting with all stakeholders and users of content to gather their collective input and secure their commitment to participate as collaborative partners. This strategic outcome is aimed at ensuring that all project team members receive training and coaching on collaborative competencies to maximize their participation and contribution to related projects. This outcome should be evaluated on an ongoing basis by monitoring the business results and the progress made with establishing collaborative interactions, evaluating both personnel performance and the effectiveness of the implementation methods being used.

7.5.2 Recommendation two: The new consumer of intellectual property

The results from the research showed that consumers object to paying for what they believe to be “air” and that there is no intellectual property culture within these spheres. The reason for this is that widespread availability of unauthorized copies of copyrighted works on the Internet and vertical fragmentation of distribution platforms in the Internet age have created an impediment between platform innovators and creative industries that hinders e-symbiosis.

This necessitates content owners to re-define current strategies for new value propositions and engagement with consumers in the exchange of copyright. It is no longer lucrative to trade content on traditional platforms and distribution channels without co-existing with the consumer. The “new consumer” is an outcome of collaborating with diverse cultures on the value of copyright and insisting on fair exchanges of content where illegal downloading is met with competing tariffs that will render it unattractive.

In lamination three it is emphasized that all parties to prioritize a new copyright culture using the endorsement of strategic alliances to manage and educate copyright with

emphasis on law enforcement and dialogue. The literature stresses that for an alliance to realize its full potential, there has to be a match, not only between the partners' strategic objectives and the resources they contribute, but also between their respective cultures and practices. The new consumer cultural composition is not independent from the lack of resources allocated to the enforcement of copyright.

The copyright management consulting framework presents new action learning activities that focus on advancing the consumer's copyright knowledge base and extracting collective experiences into a strategic confluence in the intellectual property spectrum. In lamination two culture and compliance features as a prominent aspect within the scope of copyright infringement. This makes culture and the alliance objective critical points of argument in negotiating the construct of the most appropriate working model. The alliance succeeding in creating a pro-copyright culture at all levels of content exploitation is a key imperative to link the suggested the copyright management consulting framework as seen in Figure 7.1

In the data it is shown that state intervention is crucial for dealing with legislative issues and mechanisms for law enforcement. In lamination four and five data entry compliance and CMO copyright data and technology transparency are supported as prerequisites for advancing the value of intellectual property. The new copyright management consulting framework discovers and corrects nonconformities that became noticeable within current illegal copyright market consumer practices in order to present the new copyright consumption configurations in the stakeholdership.

The researcher asserts that, for these issues to hold, it is important to conform the cultural policies that emerged within the social context to those of the content owners. The culture of infringement as a social issue is indicative of the level of awareness of copyright. The researcher furthermore raises the notion of the Routine Activity Theory (RAT), as presented in appendix C, which points to the opportunity structure that favors downloading music or films from the Internet, as opposed to stealing CDs or DVDs from a retail store, where the probability of getting caught is much higher. The Internet as a technological vehicle provides motivated offenders easy access to illegal content, with practically no capable custodians to enforce any copyright restriction.

In the aforementioned, culture is not only compromising the content owner, but is also adversely strengthened by the Internet. The data show that there is a great deficiency in

considering the future of intellectual property. This is a culture that requires dialogue and resilient alliances. In the data it is shown that emerging issues are aimed at all authors being put together globally to reflect and unite. Furthermore, dialogue with consumers and partnerships with artists are needed to advance the goal of enforcing copyright laws in order to combat infringement. Therefore it is the viewpoint of the researcher that functional reciprocity is needed and should be developed through active learning to co-exist with all benefit-based functions within the copyright industry.

The data showed that there is a need for legislation to be revised and that alignment between all stakeholders is needed. In lamination one data management and tracking as critical tools for copyright compliance and enforcement is vital in ensuring that new policies are inclusive and representative of all the interested parties. The six laminations challenge the current infringement practices through centered copyright leadership that emphasizes the copyright dividend, which is an outcome of collaborative initiatives against the illegal copyright market through fair trade.

The copyright management consulting framework proposes an instantaneous risk tool for works in local and foreign markets exploited on all platforms and by all users of content, by ensuring that the owner of works is equitably compensated. This model measures benefits, markets and sustainability, which offer the content owner the privilege of information regarding the platform and territory where the works are exploited.

The laminations in figure 5.46 link the copyright dividend framework (figure 2.1), which is characterized by the capacity to close the cultural gap, to all interested parties to promote the cooperative alliance objective. In this case competitive advantage is obtained through the cooperative dynamics of all the interested parties in the copyright stakeholdership. According to the researcher, legislative revision should be informed by the input of the cooperative alliance objective, seeing that it will be more representative and inclusive of the broad concerns of the copyright network.

Based on the aforementioned, the consulting framework suggests that a copyright-centric culture is necessary to encourage ongoing dialogue concerning the generation of alliances of critical knowledge communication to empower the consumer of content with knowledge on fair trade, so as to deliver unique and improved relational exchanges with the content owner. The meta-data shows that a growing number of social

networking sites allow users to post photos, videos, and other digital files for public viewing, inevitably resulting in their copying and distribution.

In the conversations that emerged, many reasons were given for the growing infringement of works; amongst others the accessibility and timeous availability of a product on a specific market. All these unauthorized activities are evidence of unfair copyright trade. Hence, those involved in Internet piracy face lower barriers of entry when acting as sellers, buyers, sharers, or downloaders, with a multitude of content being at their disposal. The consulting framework integrates the fragmented parts into a cohesive copyright whole that collaboratively sets protective mechanisms to reduce infringement within the overall system.

Retention occurs through price and demand constructs attracting the consumer towards the consumption of illegal goods. In the data it is indicated that the consumer needs to be educated on the implications of infringement. The consulting framework assessment criteria draws on both legal and illegal downloading acting as competing forces, opening new channels of distribution. This is an opportunity that sets new ways of trading copyright and re-constructing the legal market centered on fair trade.

Copyright comprises multiple rights or attributes and not all attributes of an asset need to be owned by the same person. The ramifications of the illegal copyright market necessitate internal cooperation within the diverse ownership of copyright and this requires the unified administration construct of a single work. With this goal in mind, the researcher outlines fair trade as a process of exchange linking production, distribution and consumption with the purpose of promoting solidarity and sustainable development in the copyright market.

In lamination two the aim is to develop methods to identify the new consumer so as to establish a comprehensive intellectual property initiative through a continuous learning program where copyright education is embraced by emphasizing the skills required for establishing collaborative copyright communities of practice that can deliver innovation value propositions.

The goal is to identify skills gaps that could make collaboration difficult and remedy them by reviewing in-house training programs for effectiveness in addressing gaps in the emotional, motivational and cognitive skill areas. The training department within the copyright practice should collaborate with managers and staff representatives to

develop, deliver and evaluate the most effective and comprehensive training programs required for developing collaboration skills.

7.5.3 Recommendation three: The cooperative copyright dimension

The increased cost of policing infringement is an outcome of poor copyright alliances and presence in certain markets. The imperative is to negotiate market presence through alliances. The copyright framework suggests integrated enforcement platforms that can protect works exploited within the local and foreign markets through ensuring that cooperative mechanisms are implemented in the copyright market.

The data show that modern devices, such as phones and hard drives, have a distribution ratio of 70:30, where 70% pertains to the distribution of music and 30% to films. In lamination two copyright law compliance is instrumental at transforming the infringement culture to copyright compliance which is a key imperative.

The laminations in figure 5.46 illustrate the need to re-design copyright trade in ways that will accommodate all interested parties by reconstructing the appropriate levels, roles and knowledge expectations. Furthermore, it is important that copyright law recognises that the system in which creative activities occur and in which creative works are circulated, is becoming increasingly global.

The need for alliances within the copyright spectrum is critical, but they can only be viable within strict financial management structures. In the data it is shown that the financial management of CMOs is not transparent and it is indicated that funds are used inappropriately. The six laminations declare the lack of financial transparency of royalties within the digital systems of CMOs and record companies. The theory of the copyright management consulting framework recognises the premium of works exploited in the market and promotes investment-centric transactions within the stakeholdership that yield equitable exchanges of content.

The success of the collective participation of CMO's is underlined by international alliances that function within financially transparent systems, informed by the global legal system, and that afford profits to be repatriated within a network that protects works from systematic and market related risks, such as infringement. In the six laminations copyright protection is critical and it is expected from governments to collaboratively engage in the economic interest of the creative industry.

The data further show that infringement has become a social culture, driven by a lack of knowledge regarding its adverse economic implications to the industry. The six laminations (figure 5.46) produced evidence that the infringing culture exists within a global system and that it is not a challenge that can be contained within one area, but that needs to be presented as a collective setback for all interested parties. The proposed copyright management consulting-framework (figure 7.1) questions current copyright infringement centered realities and suggests a solution for the protection of works exploited in the global economy through strategic alliances.

The copyright management consulting framework adopts a viewpoint that integrates diverse experiences into a new compass for fair trade in the global system and promotes learning within the copyright stakeholdership. Driven by processes within the global copyright system, the dominant cultural narrative becomes applicable within the copyright investment decisions, promoting a coherent path for the trading of copyright within the stakeholdership. The degree of involvement in these transactions ensures that content is consumed within the guidelines of the consulting framework.

In the data the Internet is described as a 'jungle'-like environment with no rules on the flow and exploitation of content. This description summarizes the central concern about the Internet as a tool that can have both negative and positive implications, provided that control is gained to protect intellectual property. The researcher's notion is that the Internet has undermined the exclusivity of recorded music, movies, books and software by creating intense political, economic and regulatory contention. The assertion in the data is that all people in the jungle of 'hunters' need to be converted into 'rangers'. The consulting framework (figure 7.1) encourages learning as a key catalyst in protecting copyright and promoting it as an economic asset.

The enablement of copyright as a high return commodity is resource intensive. The achievement of creating resilient enforcement mechanisms starts with measuring the value of copyright and its economic contribution. The consulting framework integrates enforcement and capital maximization of copyright to ensure that the risk exposure of content is minimized in the market. The framework optimizes work-based learning, acquired through knowledge sharing within the global copyright system that interchangeably feeds from the stakeholdership.

The macro investment of copyright is important and can be negotiated, provided that governments recognize copyright and the value of its investment returns in the economy. The six laminations, as depicted in figure 5.46 and figure 7.1, can be used as a tool that facilitates a forum for copyright learning, with the aim of dealing with infringement through the re-positioning of the legal market as a dynamic environment for high returns. The copyright management consulting framework is learning-centered and promotes the investment value of intellectual property. Within the scope of the framework the process of learning entails forming copyright-centric networks that will drive a shared vision and a collaborative culture amongst artists and users of content.

The lack of integration with partners, is partially an outcome of the weak copyright law knowledge possessed by CMOs, which eventually leads to poor copyright governance and the inadequate founding of memoranda, articles and rules. This makes it difficult to advance policies, in that the custodians, managers and board members of copyright lack the necessary skills to manage it. The copyright management consulting framework proclaims that copyright knowledge enables strategic exchanges within the market, setting a premium for its strategic trade, as perused in Fig. 7.1. Henceforth, it is vital to shift the current weak copyright culture by re-installing organizational resilience; this will facilitate new cultural pathways for administering intellectual property.

The strategic outcome of recommendation three underwrites the cooperative copyright dimension, within a hierarchy of senior management that needs to develop within the copyright communities of practice, to enable fair trade.

In this strategic outcome it is critical for senior leaders to make clear statements regarding their collective commitment to creating a collaborative copyright culture and they should join forces with managers and staff representatives to develop and publicize core values of trust and respect as the foundation for such a collaborative culture. Global stakeholders should also collaborate with managers and staff representatives to develop communication and dialogue programs on fair trade that highlight the benefits of collaboration. A global committee or working group with representation throughout the copyright initiative needs to be established to focus on communicating the issues surrounding collaboration.

7.5.4 Recommendation four: The learning imperative

In lamination six the use of technology to enable copyright oversight is emphasized. The data indicated that the present copyright models are inefficient. The copyright management consulting framework offers tools for organizational and cultural practices to appropriate the necessary levels of value from exploited works in the market by promoting platforms for information exchange. This is prompted by the territoriality of copyright in that reciprocal presentation of works should be based on transparent platforms that protect the violation of copyright outside the country of origin.

Lamination two, four and six suggest that all copyright stakeholders need to engage in a concerted effort to address culture and ethic shortfalls amongst copyright stakeholders, users and consumers. In this suggestion it is also that the expected outcome is copyright competitiveness through the embodiment of key IP knowledge to advance it as a key asset. The fair trade has to drive the scanning, tracking and tracing of copyright data will impact the legal and illegal copyright market alike. It is also important for the copyright stakeholdership unlearning and then relearning the significance of the legal market, and the ramifications of the parasitic capabilities of the illegal copyright market, as key indicators of innovation to transform the copyright-based economy. This is the prerogative of copyright communities of practice and will increase market confidence in copyright as a high return commodity as seen in Fig. 7.1.

In lamination two the infringement culture is described as a social factor, which propels the illegal copyright market. It is an outcome of diverse developments within the technological space and copyright law lags in adjusting to the actual momentum of this environment. The key dimension of the copyright management consulting framework is the promotion of synergy within the global system that allows the collaborative exploitation of works on standard principles that accommodate the financial interests of the copyright stakeholdership through fair trade.

Learning in the copyright spectra is a critical challenge for the future of the industry and should be linked to the way that works are exploited in the market. As seen in the framework, illustrated in figure 7.1, copyright-centric learning appreciates the value of content and reinforces content owners to collaborate. The data confirm that content is consumed differently as a result of digital platforms and the aim is to re-direct consumers into a pro-copyright culture. The consulting framework generates innovative

energy that requires the reframing of consumer culture and integrating it into the decision making process of the copyright trade, to form a strategic confluence that represents the creator of works as a valuable contributor within the copyright stakeholdership.

The meta-data confirm that the Internet has created a new globalized virtual space and has destabilized many copyright industry sectors, in that the economics of creating, publishing, and disseminating information-rich works have changed dramatically. The consulting framework is set to create new cultural pathways that will interact with the digital age. The framework furthermore introduces a rationale for accepting infringement as the dominant indicator of legal market inefficiencies, and transforming such inefficiencies into strategic tools that will reframe the current strategies against the illegal copyright market, through the leveraging of creativity.

In the data it is shown that a CMO's organizational structure consists of a board, mostly without government representation, and with the majority of members being artists and publishers who, in most cases, possess no intellectual property knowledge. The proposition of lamination four is the enhance international copyright law collaboration as an outcome of knowledge management, which necessitates copyright law knowledge within the organizational structure of CMO's. The copyright management consulting framework creates community-based systems that operate within a complex global copyright network. This is coupled with a culture of continuous learning and innovation sharing by the copyright communities of practice sharing the central infringement challenge.

The data further reveal that performers now find compensation for their loss in income, caused by illegal sales, in increased concert popularity, in that the widespread availability of infringed music in the illegal copyright market contributes to successful public performances. With illegal sales being a dominant indicator of creative output offence, the copyright management consulting framework serves as a path for creative thought generation from the global cultural pool that promotes awareness within the copyright stakeholdership. The framework promotes the integration of copyright with technological advancements that would otherwise debilitate the progress of intellectual property synergy through the illegal copyright market.

From the data it is evident that illegal downloads are leveraged as a marketing tool to increase the performer's popularity which allows the copyright owner to recover lost earnings from illegal downloads through increased ticket sales. The researcher views this as a new culture and business model that can sustain content owners. This model is not positioned as an offensive strategy, but rather submissively concedes to the power of infringement.

The researcher's notion is that technological advancement allows the content owner to be in a million places at the same time, while live performances do not allow for such a privilege. The consulting framework drives collaborative actions through proactive participation to diminish illegal copyright market output, which is contingent to the particular future needs of consumers. It promotes technology in order to maximize the returns of the author.

The copyright stakeholdership, and the copyright dividend, depicted in figure 2.1, already emphasized the value of collaborative dynamics. This enforces the objective of this recommendation to identify gaps between the collaborative communication process and technology through manager and end-user assessment processes. These processes should include reviewing the organization's existing innovation based communication network to determine the optimal architecture for knowledge creation and collaboration. Moreover, the process should monitor the use of the copyright knowledge network and evaluate its usefulness for learning.

7.5.5 Recommendation five: Integrating copyright into the new future

The data confirmed that the real problem in the enforcement of copyright law is the proliferation of distribution channels brought about by the illegal copyright market. The copyright management consulting framework supports the new entrepreneurial orientation of artists of promoting technology as a progressive distribution mechanism. In lamination five it is confirmed that transparency within the management of copyright is a challenge. The consulting framework addresses this through promoting the importance of fair trade.

The data indicate that in order to curb infringement the system must provide platforms that will train judges and governments on copyright and its importance to the economy. The copyright management consulting framework pathway integrates multiple perspectives within the copyright global network, for the exponential collaboration of all

interested parties, and centered on infringement. The framework promotes copyright law knowledge as an important catalyst to structure a greater awareness of intellectual property through consistent education of all interested parties.

In respect of the proliferation of the illegal copyright market, the data show that physical piracy in Africa is accelerated by technology; copying is done in informal markets where illegal content is downloaded and copied onto CDs and DVDs. These illegal products are sold openly with no oversight of law enforcement. The copyright management consulting framework integrates the diverse industries to re-evaluate resource functions and to reduce the illegal copyright market output by re-aligning law enforcement to the copyright priority through fair trade. Resource incompatibility manifests when governments gain financially from tax collection, but neglect to deploy sufficient capital resources towards the enforcement of copyright.

In the data courts are depicted as lagging, only functioning once an offence is committed. The researcher declares that no preventative mechanisms are installed in the copyright structures and all strategies revealed through the data are litigation based. Laminations one and five resonate that access to copyright databases and identifiers and transparency is crucial. The framework optimizes copyright learning acquired through knowledge sharing within the diverse global network, to function as a preventative provision against infringement. Organic changes become visually identifiable and consequently the framework delivers an appraisal of risk in line with its preventative function.

From the aforementioned it is clear that government, as the custodian of copyright, is expected to monitor the outflow and inflow of copyrighted works. In the search for new strategic solutions to ensure a copyright-centric economy, the framework for creative leadership becomes essential in promoting knowledge sharing as a catalyst to the investment objective where works are exchanged across borders.

Lamination one indicates that data management and tracking is indispensable. In supporting this lamination copyright owners have been diligent in finding ways to reduce the gain from crime, increase penalties, and optimally enforce copyright law in the event of a violation at any level where works are exploited. The framework suggests open-copyright societies that form driving forces for solutions through instantaneous decisions within the current operating environment. For the successful implementation

of copyright-centered management, as outlined by the framework, a complete transformation of existing practices is required. This must be driven by cooperative dynamics with a shared vision, understanding the relationship between legal and illegal drivers of consumer retention.

The copyright management consulting framework takes a varying pathway and pressures the current conventional mind-set surrounding infringement, as it is positively evident from the data that copyright knowledge and education are drastically lacking. New competencies are therefore required to reframe the copyright stakeholdership mind-set, and to move beyond traditional approaches to unlearn copyright practices of the past.

In the six laminations the aim is to establish new guidelines within the global copyright community for decision-making and accountability as a fair trade prerequisite. In order to achieve this, a review needs to be conducted of how discussions take place in the organization, and to what extent input is provided by those with relevant information or expertise. The process entails taking steps to correct any information or knowledge gaps in decision-making and is aimed at establishing clear guidelines for authority and responsibility towards collaborative decision-making within the fair trade construct.

The strategic outcome should be to develop decision making authority transfer guidelines for individuals in interdisciplinary and cross functional teams, so they have clarity as to which decisions they can exercise on their own and which they need to obtain additional approval for. These guidelines should include an active delegation program where managers can report on how they are realigning decision making in their department, for example through increasing the job responsibilities of appropriate staff members.

7.5.6 Recommendation six: Promotion of copyright stakeholder collaboration

Collaboration amongst the copyright global stakeholders is recommended as an imperative to monetize the behavior of consumers and thereby deploy sufficient resources in the enforcement of intellectual property. The data showed that education on intellectual property in schools is crucial and should be considered as part of the curriculum. The copyright management consulting framework encourages the sharing of infringement-learned experiences and the re-conceptualization of past knowledge by

linking it to future realities of a possible illegal copyright market, thereby constructing a future copyright trajectory.

The other high ranking factor in the data is conversations and consultations with governments in regard to intellectual property. The researcher emphasizes the fact that consumption of cultural products, such as motion pictures, through physical media is diminishing. Digital platforms are becoming widely adopted with copyright lagging in these advancements. This became evident in the six laminations ; the colonial legacy of copyright affects its progress due to the slow process of harmonization, especially in Africa that is divided through Anglophone and Francophone language restraints.

The copyright management consulting framework indicates the importance of fair trade and copyright enforcement within the diverse environments of the civil and common law jurisdictions. The framework introduces new capabilities of copyright administration, reframing infringement to enable the spontaneous appearance of realities representing new opportunities for the intellectual property business.

The importance of embedding copyright law within an environment driven by limitless supply is revealing new forms of order and disorder for coexistence. The reason for this is simply that copyright might not survive the future and can diminish considerably if it continues to be managed the way it is in the current economy. In its enforcement objective, the consulting framework promotes new competencies as necessary drivers that prohibit threatening copyright infringing cultures, through restricting the flow of content in non-supportive systems. The establishment of compulsory licensing for interactive webcasters will enable music listeners to consume copyrighted recordings in the most beneficial and preferred manner.

It became evident through the data that content is exploited without paying the copyright owner and that no licenses are obtained to exploit works. The consulting framework questions the current licensing models and suggests a solution for the evaluation of copyright capabilities by re-installing a new premium for exchanges with the user. The framework encourages constant interaction with the global environment and consistently transforms the copyright management practice as a means of creating the necessary profitable conditions for the stakeholdership.

The data further show that new content cultures and platforms, that do not require copyright clearance, have emerged in the creative commons. The consulting framework

theory of copyright management recognises that because a system occurs within an environment with independent patterns, it does not exclude other mechanisms of copyright consumption. The framework insistently promotes the value of copyright and its equitable exchange as a leverage to sustain it into the new future.

The results of the research establish and mention that the rules of engagement on legal music sharing sites are not well defined and that, via organized crime, the industry loses value per transaction. The consulting management framework (Fig. 7.1) supports the notion that the protection that is provided by copyright should be aimed at rectifying market failure by providing incentives that encourage the production and dissemination of works through the fair trade of copyright. It should also provide a legal means by which those who invest time and labour in producing goods can be confident that they will not only be able to recoup their investment, but also reap a profit proportional to the popularity of their work.

The copyright management consulting framework leverages culture as a centre for negotiating learning systems that will unify the global copyright regime into an autonomous entity that promotes copyright-centric transactions.

Within the macro mission of harmonizing copyright in the common and civil law systems, rules of engagement are also needed to advance the goal of intellectual property management. The laminations stress the importance of copyright education and enforcement visibility. These two aspects, within a resourceful environment, can have a positive correlation; the more investment is made in copyright wskills and education, the more enforcement will be visible and effective.

Recommendation six is also aimed at promoting and developing an integrative resource strategy for recognizing and rewarding collaborative contributions and copyright growth within the global stakeholders. It is also aimed at creating the position of a Global Copyright Coordinator (GCC) to channel copyright issues onto a singular platform that can re-evaluate and re-create solutions through active learning. The goal is to determine best practices in collaborative behavior that would warrant special recognition and rewards in addition to performance result rewards.

The implementation of the six suggested laminations (see figure 5.46) are presented as strategic outcomes which facilitate the design of recognition processes that provide incentives for collaborative performance of copyright practioners. It should also enable

the development of new and expanded measures for collaborative performance based on feedback from working group members and customers. During this process it is important to hold collaborative performance award ceremonies and create publicity as soon as possible after evaluating the collaborative prototype business account and project results, in order to support the cultural change regarding copyright protection.

7.6 Conclusion

The six laminations contributed to the construction of discussions of data for the five research questions, which resulted in the copyright management consulting framework. The study looked at aligning all the interested parties in copyrights, to, whether utilizing existing technologies or by new methods, arrest the illegal copyright market share and divert the copyright dividend arising from the illegal copyright market to the legal copyright market and in doing so enhance fair and equitable trade. The rationale aimed at seeking to understand the impact of the internet, convergence and digitization on the way copyrights are traded ,reproduced ,used and consumed as well as how the information concerning ownership of copyright is integrated in the trade and consumption.

The qualitative laminations confirmed the assertions of the literature review and rationales. In the discussion of the data the emphasis on copyright knowledge by the research participants confirmed the value and adoption of the copyright dividend framework as a basis to advance the six laminations into a future consulting framework in the management of copyright, with all interested parties. The laminations concurred with the arguments that the creative industry is fragmented and that the risk exposure of intellectual property is high due to technological advancements that allow for the exploitation of IP, for commercial and social purposes, without compensating the creator of the works.

The laminations were discussed and examined according to their strategic contributions to the five question research questions in respect of copyright infringement, which led to the design of the management consulting framework (Fig. 7.1). Numerous exchanges involving diverse cultures confirmed the contentions of the research participants that infringement is a common global challenge and that it can be addressed through the promotion of the copyright dividend. The information contained in the six laminations were summarized within the context of the five research question questions and

resulted in a detailed copyright management consulting model offering recommendations.

In this chapter intellectual property knowledge was emphasized as a key concern that leads to a multiplex of challenges in its overall administration. The fragmentation of the industry, which inevitably leads to a weak response to the supply and demand of the legal market, was subsequently discussed. The construct of the illegal copyright market was described as a schema of the weaknesses of the legal market and the adoption of new technology and the social culture of content consumption. The fragmentation challenges also underlined the non-unified databases as catalysts that stimulate the illegal copyright market strength.

The structural composition of training and education should be inclusive of strategies that translate the key drivers of the illegal copyright market into grand strategies that will set a high premium on copyright. Legislation is one means for achieving collective action to address problems that cut across multiple sectors of the society and the economy. The central catalyst is technology and the drivers include price and accessibility, which means policies should be flexible to adopt these attributes for the benefit of the content owner.

This conversation has presented the management consulting framework which is relevant to all copyright stakeholders that affected by infringement and copyright protection. The data has also showed that infringement is an increasing threat to intellectual property and that critical knowledge is an urgent necessity to re-install the copyright value in its global ecosystem. This is essentially achieved by diverting the copyright dividends, stolen by the illegal copyright market. This explorative study has addressed the re-engineering of the copyright dividend to produce outcomes which can be used in the domain of the copyright law enforcement and essentially promotes the returns of dividends and fair trade to the rightful owners in an accountable and sustainable practise.

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APPENDICES

Appendix A

The US case of Dowling vs. US in 1985⁴²

In the Dowling case trial and appeal, the federal government brought its first case against Dowling in the United States District Court for the Central District of California, maintaining his guilt on the basis of illegally distributing records where he had no copyright ownership. He was sentenced of one count of collusion to transport stolen property in interstate commerce, eight counts of interstate transportation of stolen property, nine counts of copyright infringement, and three counts of mail fraud. Dowling had further charges against him for mail fraud, which came about his use of the United States Postal Service to distribute records, and were not indicative of not filling any orders as both Dowling and Theaker had highly rated credibility and honesty with their customers.

Dowling counteracted all these charges by appealing. The only matter that he could not appeal was that of copyright infringement. The case moved to the Ninth Circuit Court of Appeals, where he contended that the goods he was distributing were not “stolen, converted or taken by fraud”, according to the language of 18 U.S.C. 2314 – the interstate transportation statute under which he was convicted. In the matter of theft the court disagreed, affirming the original decision and upholding the conviction. Dowling then took the case to the Supreme Court, which concurred with his argument and reversed the convictions.

The phone records in question were not “stolen, converted or taken by fraud” for purposes of [section] 2314. The section’s language clearly contemplates a physical identity between the items unlawfully obtained and those eventually transported, and hence some prior physical taking of the subject goods. Since the statutorily defined property rights of a copyright holder have a character distinct from the possessory interest of the owner of simple “goods, wares, [or] merchandise”, interference with copyright does not easily equate with theft, conversion, or fraud. The infringer of copyright does not assume physical control over the copyright nor wholly deprive its owner of its use. Infringement implicates a more complex set of property interests than does run-of-the-mill theft, conversion, or fraud.

<http://mbaldanzamediaudies.blogspot.com/2010/10/dowling-v-united-states-437-us-207-1985.html>

Appendix B

Nature of copyright in cinematograph films

8. (1) Copyright in a cinematograph film vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

(a) Reproducing the film in any manner or form, including making a still photograph therefrom;

(b) causing the film, in so far as it consists of images, to be seen in public, or, in so far as it consists of sounds, to be heard in public;

(c) broadcasting the film;

(d) causing the film to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast, including the film, and is operated by the original broadcaster;

(e) making an adaptation of the film;

(f) doing, in relation to an adaptation of the film, any of the acts specified in relation to the film in paragraphs (a) to (d) inclusive;

(g) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the film.

(2) [Sub-s.(2) deleted by s.8 (c) of Act 125/1992.]

Moral rights

20. (1) Notwithstanding the transfer of the copyright in a literary, musical or artistic work, in a cinematograph film or in a computer program, the author shall have the right to claim authorship of the work, subject to the provisions of this Act, and to object to any distortion, mutilation or other modification of the work where such action is or would be prejudicial to the honor or reputation of the author: Provided that an author who authorizes the use of his work in a cinematograph film or a television broadcast or an author of a computer program or a work associated with a computer program may not prevent or object to modifications that are absolutely necessary on technical grounds or for the purpose of commercial exploitation of the work. **(2)** Any infringement of the provisions of this section shall be treated as an infringement of copyright under Chapter 2, and for the purposes of the provisions of the said Chapter the author shall be deemed to be the owner of the copyright in question.

Nature of copyright in sound recordings

9. Copyright in a sound recording vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

- (a)** Making, directly or indirectly, a record embodying the sound recording; **(b)** letting, or offering or exposing for hire by way of trade, directly or indirectly, a reproduction of the sound recording; **(c)** broadcasting the sound recording;
- (d)** causing the sound recording to be transmitted in a diffusion service, unless that service transmits a lawful broadcast, including the sound recording, and is operated by the original broadcaster;
- (e)** communicating the sound recording to the public. [Section 9 amended by s.2 of Act 9/2002]

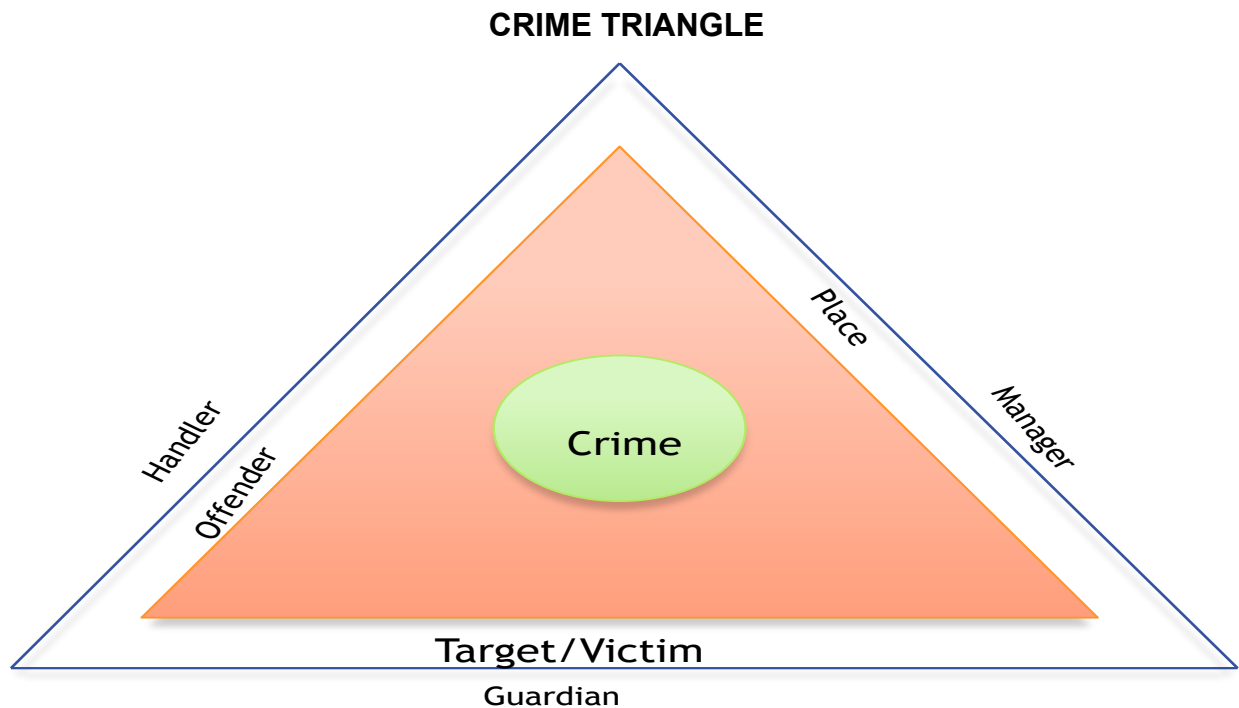
Royalties

9A. (1)

- (a)** In the absence of an agreement to the contrary, no person may broadcast, cause the transmission of or play a sound recording as contemplated in section 9(9), (d) or (e) without payment of a royalty to the owner of the relevant copyright.
- (b)** The amount of any royalty contemplated in paragraph (a) shall be determined by an agreement between the user of the sound recording, the performer and the owner of the copyright, or between their representative collecting societies.
- (c)** In the absence of an agreement contemplated in paragraph (b), the user, performer or owner may refer the matter to the Copyright Tribunal referred to in section 29(1) or they may agree to refer the matter for arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

Appendix C

The Routine Activity Theory Model



Routine activity theory is one of the main theories of environmental criminology. The theory states that crime occurs when the following three elements come together in any given space and time:

1. An accessible target
2. The absence of capable guardians that could intervene
3. The presence of a motivated offender

Appendix D

Questionnaire

Re-engineering the copyright dividend in the illegal copyright market: An explorative conversation

1. Introduction

The aim of the research is to address copyright infringement primarily across the copyright spectra that includes and involves music and to develop an integrated copyright management consulting framework that will maximize the returns of both the moral and economic right holder in all media and formats of repertoire exploitation.

Copyright, governed globally by statute and convention, is one of the five intellectual property pillars, the others being patents, trademarks, designs and geographical indicators. Typically regarded by the legal community as the 'poor cousin' of in the intellectual property bouquet, digitization and the Internet have seen copyright rise dramatically and significantly in relevance, to the extent of that copyright's economic rights dwarf the combined value of copyrights intellectual property bouquet bedfellows.

Specifically the research explores songs (musical work and literary work copyrights), photographs (artistic work copyright), recordings (sound recording copyright) and films (cinematographic film copyright).

The concept of the copyright dividend is concerned with the annuity value proposition offered by the exploitation of the copyright owner's exclusive acts, throughout the life of the copyright....i.e. the financial returns that can be expected from the legal monopoly arising from the ownership of copyright, whereas the illegal copyright market is argued to be unlawfully deriving earnings from the exploitation of the copyright owner's exclusive acts, without notice to or consent of the copyright owner and without any financial compensation to the copyright owner.

An illegal copyright market in this study is not necessarily a tangible place or market but any domain where copyright infringement occurs.

The copyright infringement explored during the research includes, but is not limited to, the following rights:

- Performing rights as in communicating a work to the public by any means
- Reproduction rights as in making a work available to the public by any means, including synchronization

The re-engineering of the copyright dividend in the illegal copyright market is firstly an explorative conversation with industry experts aimed innovatively at finding mechanisms that can be integrative and seamless towards a harmonized, transparent and efficient platform to deliver fair compensation to the creator. The second goal is to simultaneously reduce the impact of copyright infringement.

The discussion of economic impact in this study interests itself with all possible levels of financial losses or gains experienced by the copyright owners of the works against infringement and investment challenges experienced in the industry by the copyright owner.

2. Interview questions

Question 1:

- Give your opinions and views, on causes and evidence of copyright infringement within any one or all of the following domains of copyright stakeholdership:
 - a. Musical works and literary works
 - b. Artistic works
 - c. sound recordings
 - d. cinematographic films

Question 2:

- Which is in your opinion the least appropriate copyright infringement or piracy model causing losses to you (your organization, community and/or economy i.e. your view on the value of the losses caused to you, and how such can be re-engineered through alignment, or by any other means

Question 3

- What is in your opinion the most appropriate working model to fight copyright infringement or piracy

Question 4:

- Give your opinions and perspectives on how to manage copyright infringement by including all interested parties

Question 5:

- What are the specific actions taken, that proved most successful in your opinion in your country or in general (legislative, existing law enforcement, education, and other macro and micro conditions)

Appendix E

The participants below are listed according to table 4.1, characteristics of participants.

1. Profile: Participant number one

The participant is one of Southern Africa's leading experts in the fields of Copyright Law (SA, UK, EU and US Copyright Law), Business Affairs, royalty supply chain management, royalty audits and forensics, corporatization and commercial contracts throughout the copyright spectrum. A Kings College (London) alumni with an MA (Copyright Law – UK, EC and US) and a PhD research program currently underway concerning concerted practice in the EU, he has extensive local and international work experience across the copyright spectrum in both common law and civil law copyright regimes, including educational sectors and related intellectual property rights. The participant has been employed at boutique Copyright Law and Business Affairs consultants Nisa Global Entertainment (PTY) Ltd, since the firm's founding by the late Kentse Mpahlwa and he in 1999.

Apart from being responsible for IP audits, social media and estate IP valuations, and bank specification securitization preparations at Nisa Global Entertainment (PTY) Ltd., the participant is also responsible for the Business Affairs of a number of Southern Africa's leading and best known arts and entertainment industry artists, writers, programmers, labels, talent, publishers and brands.

Skills and knowledge development are an important part of the participant's work, lecturing widely within the industry including MAPPP SETA, the South African Roadies Association (SARA), the Entertainment Law course (at UJ) and the South African Music Conference amongst others. He has also presented the Music Business Program at the Cape Town International Jazz Festival for the past thirteen years. The participant serves as a trustee of the ZM Makeba Trust and on the boards of the ZM Makeba Trust's wholly owned exclusive licensee Siyandisa Music (PTY) Ltd and Nisa Global Entertainment (PTY) Ltd.

2. Profile: Participant number two

The participant is an Israeli musician, composer and arranger and ACUM chairman since 2011. He was born in Tel-Aviv 1956 and joined a leading rock group in the early

eighties, after his military service as a bass player. In the past three decades he played with many of the major Israeli bands and leading artists to become one of the most influential personas on Israeli music.

3. Profile: Participant number three

The participant is best known for writing such classic hit songs as “Hit Me With Your Best Shot” recorded by Pat Benetar, “Don’t Shed a Tear” by Paul Carrack, and “The Doctor” by the Doobie Brothers, as well as some two hundred songs recorded and performed by artists such as Joe Cocker, Carly Simon, Peter Frampton, Robert Palmer, Jeffrey Osborne, Donna Summer, Rita Coolidge, Rascal Flatts and Mountain.

As a record producer, he has enjoyed success with numerous projects, including the Doobie Brothers’ “Cycles” album, Paul Carrack’s “Groove Approved”, Rita Coolidge’s “Fire Me Back”, as well as his own recordings as an artist. His worldwide physical sales are currently in excess of 65 million units. A native of Toronto, he has won numerous music industry awards including multiple JUNO, BMI and SOCAN awards, including SOCAN’s prestigious Lifetime Achievement award.

In addition, he serves as President of the Songwriters Association of Canada, Co-Chair of Music Creators North America and the Executive Committee of CIAM, CISAC’s music creator arm. He was a longstanding director of SOCAN, and is a graduate of the renowned Leadership Music Program in Nashville. In late 2012 he was appointed a Member of the Order of Canada.

6. Profile: Participant number six

The participant started working in the copyright field in 1983, first by initiating the formation of a national copyright committee, which reviewed the old copyright law and led to the new 1989 act. It provided for the establishment of the Copyright Society of Malawi as a parastatal organization. The participant was seconded to establish the society in 1992 and eventually retired from the government, but stayed with the society up to 2008. The participant worked as a copyright administrator and executive director of COSOMA. The participant was chief arts and crafts officer in the Malawi government and is currently coordinator of the Southern and Eastern Africa Copyright Network (SEACONET), a grouping of copyright offices and societies in the sub region.

8. Profile: Participant number eight

Pianist, composer, researcher, professor at National University of Costa Rica, international guest lecturer and recitalist.

9. Profile: Participant number nine

IP consultant with broad client base ranging from creators to collecting societies. Private IP Rights Consultancy, August 1990 to Present. Global rights administration of IP rights has been a specific area of expertise since Harcourt conducted the ground-breaking audit of the collective administration of rights and revenues on behalf of Irish writer/performers, U2, in the 1990s. This led to similar work for other heritage acts and has provided the basis for a formidable international expertise in the operation and regulation of the not for profit collecting society network which is so crucial to the livelihoods of authors and performers. She has advised in relation to government policy and drafted submissions for intellectual property enquiries in the UK, the USA and Europe.

The consultancy negotiates contracts and conducts forensic reviews of music and audio-visual rights & revenues. It advises on the global restructuring of rights in the creative industries. Clients include writers, film and theatre directors, composers, musicians, actors, painters, designers, audio-visual producers, broadcast talent and collecting societies. She has held academic positions in both the UK and USA. An approved supplier of IP Audit services to SME candidates on the UK Intellectual Property Office IP Audit Scheme. Occasional contributor to copyright blog: <http://the1709blog.blogspot.com/>. Recent delivery (2013) of academic content to MSc - Web Science and Big Data Analytics. Department of Computer Science, UCL; LLM – IP in the Creative Industries; Centre for Commercial Law Studies, Queen Mary, University of London; MA - International Broadcasting & Producing Film and TV; Media Arts Department, Royal Holloway, University of London. Adjunct Professor: Faculty of Law, Pepperdine University, Malibu, CA. USA, 1996 – 2005 (9 years). Course design, securing of American Bar Association Accreditation and delivery of IP Law programme to post-graduate law students from Pepperdine and from the Pepperdine pan-US law programme offered by the London campus. At this time Pepperdine was a Top Tier US law school with the USA's No 1 Institute for Dispute Resolution. Subjects: International copyright, music law and trade practices, European competition law and collective administration of IP rights.

10. Profile: Participant number ten

Born in Turin, he studied composition from 1969 to 1973 with Massimo Bruni and Enore Zaffiri at Turin Music Conservatory, and philosophy with Gianni Vattimo and Massimo Mila at the University of Turin, earning a degree in aesthetics with a thesis on John Cage in 1974.

His early interest in the psychology of perception and psychoacoustics led him to IMEB, the International Electroacoustic Music Institute of Bourges, France where he did research on electronic music between 1972 and 1973, IRCAM in Paris, and to the Musik/Dia/Licht/Film Galerie in Munich, Germany in 1974.

The participant has received commissions from numerous festivals and institutions, his works being constantly performed throughout Europe and North America, particularly in Italy, Germany, France, Great Britain, Spain, Finland, Russia, the Czech Republic, and the United States. His most popular compositions include the operas *Marilyn*, *La figlia del mago*, *Mare nostro*, *Salvatore Giuliano*, *Charlotte Corday* and *La Conquista*, the first Piano Concerto, the Triple Concerto for violin, violoncello and piano, the set of six symphonic poems *La nuova España*, the song cycle *Canzoni d'amore*, *Parodia*, *Ostinato*, *Glamorama Spies*, *Capriccio* for piano and string orchestra, *Tempi di quartetto* for string quartet, and the ballet *Franca Florio, regina di Palermo*. In 1986 he participated in the Prix Italia with his work *La fuga di Foscolo*. His music is published by Casa Ricordi Milan.

As an active manager of art events, he has served as artistic director of the *Festival Puccini* in Torre del Lago (1980–84), *Unione Musicale* in Turin (1983–87), *Arena di Verona* (1991–94), and the *Musica 2000* fair. In 1999 he co-founded and coordinated the *Festa della Musica*, a showcase of classical, jazz and world music held in Milan, and four years later he managed the *Ravello Festival*. In 2007 the participant was appointed to the board of directors and elected vice-president of SIAE, the Italian Authors and Publishers Association. That same year he published the *Manuale di scrittura musicale*, a manual which describes the basic rules of correct and elegant music writing from the orthographic as well as the graphic point of view, which is addressed to all composers, musicologists, teachers, students and copy-editors in need of practical advice. In 2008 he translated, edited and published *Lo studio dell'orchestrazione*, the Italian edition of Samuel Adler's *The Study of Orchestration*, a

landmark orchestration manual.

The participant has been professor of composition at Milan Conservatory since 1980. His teaching appointments include positions at St. Mary's College of Maryland and LUISS Business School, a division of LUISS Guido Carli University of Rome. Moreover, as member of the Italian National Union of Composers, Librettists and Authors he co-founded ECSA, the European Composer and Songwriter Alliance, and since 2011 is chairman of CIAM, the International Council of Authors of Music, which is a committee within CISAC, the International Confederation of Societies of Authors and Composers.

He was described in *The New Grove Dictionary of Opera* as “the most successful opera composer of his generation in Italy”, and in *The New Penguin Opera Guide* as “a principal exponent of the neo-tonal tendencies common to a number of Italian composers of his generation, who has championed a brand of narrative music-theatre that aims to capture a wider audience than that achieved by the heirs of the modernist tradition”.

Appendix F

The researcher included only ten examples of the mind-maps following the Whiting and Sine (2012) approach of mapping the themes. These mind-maps were originally written on paper and due to the size of the data corpus and the amount of mind maps contained in the A3 paper the researcher only limited the ten examples to give a clear visual description of the grounded theory, thematic analysis and lamination foundations the researcher describes the grand narratives obtained from this exploration.

The researcher made an example of how they looked using PowerPoint. This does not include all the mind-maps that were on paper. The purpose of Appendix F is to illustrate how the mind-maps were constructed to ensure validity and reliability of data through the detailed lamination process (Boden, 1994).

