The Obama Factor

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I speak in the spirit voice of comity, of the American Father of Nation, Abraham Lincoln. We should be irrevocably cut off from our past, and be forced to splice the ragged ends of our lives upon whatever new conditions chance might leave dangling for us. I confess that I had my doubts at first whether the support of our Kenyan Law Students were not too narrowly institutionalized to embrace the proportions of a national peril, an all Kenyan Legal Magazine. Men acting gregariously are always in extremes; as they are one moment capable of higher courage, so they are liable, the next, to baser depression, and it is often a matter of chance whether numbers shall multiply confidence or discouragement. The only faith that wears well and holds its color in all weathers is that which is woven of conviction and set with the sharp mordant of experience. For the imposibility of every man is rendered null by birth, I extend this rhetoric to appraise the possibilities am optimistic about on Kenyan Legal. I am particular about success, for I know me and my team are right on our way to it, and even so, mine is beyond success to significance; for Enthusiasm is good material for me as a learning orator, but for progress we need something more durable to working,--must be able to rely on the deliberate reason and consequent firmness of the people, without which, the will to go on will be wanting at the critical moment; am staying put. Welcome.

REGARDS,

Michael
Michael Opondo O.
Managing Editor,
KENYAN LEGAL
The Kenyan Legal Secretariat members during the 1st Anniversary Celebrations: (Left to Right) Dennis Gicheru (Partnerships Director), Cindy Amuka (Associate Editor), Linda Wangui (Communications Co-Director), Michael Opondo (Managing Editor), Patricia Ngare (Content Manager), Arnold Otieno (Communications Director), and Anthony Mwangi (Partnerships Co-Director).
Absent from picture is Sheilla Mokaya (Assistant Editor)

Courtesy: Kegan Photography

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The recent announcement by the Music Copyright Society Association of Kenya, to put into place measures to ensure that copyright holders get their royalties from those using their works publicly has fueled a robust debate on the matter. This was specifically directed at matatu operators who play music to entertain their customers which is very auspicious because I can imagine how boring travelling in those buses would be (even though the association has been in place since).

Thanks to the Copyright Act that has made it possible for the owners of copyrights to receive royalties for use of their works in different spheres, and redress is also available in instances of infringement. The MCSK, herein fore referred to as the Music Copyright Association of Kenya, has had a sharp rise in the number of those registering with it to wit the number sky-rocketed in the year 2007 from 400 to 3,593 in 2009.

Essentially, musicians and producers who are copyright owners assign their rights to the MCSK who in turn offer licenses to people who use such works publicly or for commercial gain: radio and television broadcasters, and even businesses playing music for gain. Among the duties of MCSK is to license the use of recorded music on behalf of the thousands of performers and record companies.

Consequently, any person who wishes to use recorded music in the operation of his business - televisions and radio stations, online streaming services, hundreds of thousands of shops, pubs, and night clubs - must pay for a license from MCSK. The fact that copyright owners receive royalties through the MCSK’s licensing of radio and television stations and at the same time receive another extra amount from people playing the same music via the licensed radio and television stations is absurd.

While the Act has been very efficacious in the growth of the music and literary industry, it has also imposed draconian and unnecessary fines on certain classes of people in our society. And this is evident in the twofold manner in which these regulations have, has or will be applying. This is pertinent because there is one aspect of a matatu owner/ business person playing recorded music

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and another where he/she plays music from a radio station.

Is it therefore right and justiciable for the MCSK to impose charges on a matatu operator who has only tuned into a local radio station to listen to a morning talk show irrespective of whether it is intended to entice customers or not. This is a manifestation of flagrant exploitation arising from laws that were meant to ensure the betterment of Kenyans; the same is akin to double charges so that there is an element of unjust enrichment for copyright holders.

That using a radio station to entertain one’s revelers adds value to the business so that you have to pay, is an argument that I find very preposterous. In as much as I strongly support the rights of copyright holders to earn what is rightfully theirs, it would be very absurd to have one pay for recorded music that that royalty has already been paid. However, this should not be confused with charges for playing recorded music (not through a broadcasting station) which I do support.

Consider this scenario: I am a matatu operator and I use a local radio station to entertain my passengers, so I tune into a morning talk show and clearly I do not know whether they will talk throughout the show without playing any music, which is impossible. But then do I pay for entertaining my passengers with the interesting discussions in the talk show or for the music played or both.

Is this not very analogous to being charged fifty shillings for a loaf of bread and then when I take it to my family, they are also charged additional ten shillings for eating it.

*By Jack Gonda,*

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