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**A F R I C A**

## **Ghana Copyright- The Case of Kirani Ayat & Ghana Tourism Authority**

### **Introduction**

Kirani Ayat (“Kirani”) tweeted on 27<sup>th</sup> September, 2022, that, *“The president of Ghana has used my video “GUDA” in this ad to promote Ghana. I was actively reaching out to the Ministry of Tourism in 2018/19 to use this video to push tourism in the North and got NO reply, yet today it’s in an ad and no one reached out to me for permission,”*

Kirani’s tweet has attracted a lot of comments:

- On 27<sup>th</sup> September, the Joy FM online platform published, *“Kirani Ayat Calls Out Akuffo- Addo, Tourism Ministry after promo video featured shots from his ‘Guda’) visuals”*
- The Ghana Tourism Authority (GTA) issued a statement dismissing Kirani’s claims and argued that his rights to the content used for the promotional video by the President has not been infringed upon since they obtained the rights to use the content from an agency.
- Samsal, the creative agency mentioned by GTA, has stated that, the video it created for GTA is not what has been published. And that, it never authorized GTA to publish the content.
- BBC News Africa reported that *“Ghana’s President Nana Akufo-Addo has been accused of using a musician’s work without permission or credit to advertise the country to tourists”*.

The above comments raise legal issues related to copyright infringement in Ghana regarding content created by artists. This article examines regulation of copyright in Ghana and the legal issues arising in the Kirani case.

### **Copyright**

Copyright is a right (both economic and moral) which enables creators of literary and artistic works such as writers, artists, painters, musicians, software developers, and others to receive recognition for their creative works. The rights are conferred in the expression and not dependent on registration. The right entitles the author of the creative work to:

- authorize or prohibit the use of their works by others.
- claim authorship of the work and demand mention whenever used.
- receive compensation for the use of their works.

### **Effective Copyright System**

The essence of a copyright law is to confer the rights on the author and protect his or her expression from unauthorized use. To effectively achieve that goal, an efficient copyright system must be anchored on three (3) pillars:

- 1) Appropriate copyright legislation - the Copyright Act, 2005 (Act 690) and the Copyright Regulations, 2010 (L.I 1962) caters for this.
- 2) Sufficiently developed system for management of rights. There are three (3) Collective Management Organizations (CMOs) at the moment namely:
  - the Ghana Music Rights Organization (GHAMRO);

- the Audiovisual Rights Society of Ghana (ARSOG);
  - and CopyGhana (a Reprographic Rights Organization).
- 3) Enforcement- i.e. system of sanctions to be applied when rights under the law are infringed.

## Copyright Infringement



Infringement of copyright is the unauthorized use of copyrighted works in a manner that violates the copyright owner's exclusive right to produce or perform the copyrighted work. Infringement includes piracy, plagiarism, duplication, distribution and exhibition in public places. Most affected works are music, audiovisual works (films, music videos, etc), books or literary works and computer software.

Any such unauthorized use constitutes an infringement which breaches the rights of the author. Such breaches constitute an offence under the Copyright Law which provides that offences include reproduction, duplication, extracts, imitation, importation (except for private use). A person found guilty of copyright can face civil or criminal prosecution. The civil remedies available under the law include injunction, compensation, seizure, forfeiture or destruction of offending materials. In addition to the civil remedies, the law provides criminal penalties for violations or infringements which include a jail term and a fine.

### Enforcement Measures

The system of sanctions to be applied when rights under the law are infringed are grouped as civil remedies, criminal sanctions and border measures. A person whose copyright has been violated can approach the court for redress by way of civil action. The court may grant an injunction to prevent the

infringement or prohibit the continuation of the infringement. Additionally, criminal prosecution can be initiated where a report is made to the relevant institution. In respect of imported goods, a report can be made to the Customs Excise and Preventive Service to detain the goods.

### **Legal issues Arising- The Kirani Context**

The issue arising in this case is that Kirani has alleged breach of his copyright on the basis that permission was not obtained by the GTA for the use of his video GUDA. If this allegation is true, it means Kirani can make a claim for copyright infringement. However, GTA will not be considered to be in breach where it is able to establish that, it obtained the requisite permission for the use of the video GUDA.

A number of legal issues arise based on the above facts including whether the GUDA video is protected under law, who the owner of GUDA video is, whether permission was granted by the owner, the rights granted and the terms on which they were granted.

#### **a) Is the Material Protected Under Copyright Law?**

Generally, protection of copyright is not dependent on registration. Literary works are typically protected under law unless the works have fallen into the public domain. Works that have fallen into public domain are works with expired protection, works with authors who have renounced their rights and foreign works that do not enjoy protection in Ghana.

From the facts available, the video GUDA has not fallen into public domain. Consequently, the use must be subject to permission from the author.

#### **b) Identify the Owner**

Identifying the owner of the work is crucial in obtaining permission. Some kinds of art, such as video content and recorded music, can involve multiple owners. The recognized organizations that currently manage copyright in Ghana are the CMOs listed above. Thus, persons who wish to use copyright work can contact the relevant CMO.

From the facts available, GTA has stated that it obtained rights from Samsal to use the video GUDA for the promotional video. The issue arising is whether the creative agency was authorized by any of the CMOs to grant GTA the right to use the video GUDA.

### **Rights to Use Copyright Works**

Copyright holders have the right to permit others to use their works for agreed purposes. The grant of permit can be done in one of two ways:

- Assignment- transfer of ownership of the copyright to another person
- License- grant of a copyright license where another person (licensee) is allowed to use the works based on agreed terms.

Generally, licensing is the preferable method as it allows the copyright holder to keep the copyright over the work.

### **c) Identify the Rights you Need**

There is the need to identify the rights needed when asking for rights to use copyright works. Each copyright owner controls a bundle of rights related to the work, including the right to reproduce, distribute, and modify the work. Because so many rights are associated with copyrighted works, the rights needed must be specified.

The GTA has stated that per the terms of the MoU<sup>1</sup> it executed with Samsal, Samsal was to “*Deliver imaginative and impactful social strategies, such as content or documentaries for the use of GTA ‘as it so wishes’.*”. It is unclear what right Samsal had to enable it grant GTA any rights in the GUDA video.

### **d) Term/ Payment Negotiation**

The length of time for which you are allowed to use a work is often referred to as the “term”. Your rights under a license agreement will often be limited in duration. If there is no express limitation on the use, you are allowed to use the material for as long as you want or until the copyright owner revokes the permission. In reality, the copyright owner can only grant permission for as long as the owner’s copyright protection lasts. Additionally, when negotiating permission to use copyright work, payment must also be negotiated.

From the facts, Kirani did not receive payment for the use of the video GUDA for the promotional video.

### **e) Get it in Writing**

Relying on an oral agreement or understanding is not sufficient. The user and the rights owner may have misunderstood each other or remembered the terms of the agreement differently. This can lead to disputes. It is essential that the two parties enter into a well drafted license agreements that sets out the use of the license.

## **Conclusion**

We must be reminded that the original intention of copyright law is not to prevent information usage but to protect infringement. To achieve this, there must be commitment to safeguard the rights of both the creators and persons who seek to use the ideas of the creators. Many people who violate copyright law may do so simply out of ignorance. There is therefore the need to seek the relevant advice prior to the usage of creative works of others. In the Kirani case, it is recommended that the parties negotiate a settlement pursuant to which a license agreement is entered into to specify the consideration payable to the author and the terms under which GTA can use the GUDA video.

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<sup>1</sup> The MoU entered into was not reviewed in preparing this article.