THE PERCEIVED INFLUENCE OF INTELLECTUAL PROPERTY RIGHTS ON INNOVATIVENESS AND CREATIVITY IN THE MUSIC INDUSTRY: A CASE STUDY OF THE MEMBERS OF MUSIC COPYRIGHT ORGANIZATION OF KENYA //

BY:

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DECLARATION

This Management Research Project Report is my original work and has not been presented for a degree in any other University.

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D61/P/8397/03

Date 14th September 2006

The Management Research Project Report has been submitted for examination with my approval as a University Supervisor.

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Date 26/9/2006
DEDICATION

To my parents and family members who have always been there for me and to my husband Oscar Ikinu and my son Ikinu Wambugu.
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# TABLE OF CONTENTS

Declaration ...................................................................................................................................... 1

Dedication....................................................................................................................................... ii

Acknowledgements...................................................................................................................... iii

Abbreviations and Acronyms................................................................................................... vii

List of Tables and figure............................................................................................................ viii

Abstract.......................................................................................................................................... ix

## CHAPTER ONE: INTRODUCTION

1.1 Background ....................................................................................................................... 1

1.1.1 Intellectual Property Rights Regime ........................................................................... 2

1.1.2 The Music Industry in Kenya ................................................................................. 3

1.1.3 Innovativeness and Creativity..................................................................................... 5

1.2 The Research Problem ................................................................................................... 6

1.3 Research Objectives ..................................................................................................... 7

1.4 Importance Of The Study ................................................................................................. 7

## CHAPTER TWO: LITERATURE REVIEW

2.1 Intellectual Property Rights ........................................................................................... 8

2.2 Intellectual Property and Innovations .......................................................................... 12

2.3 Intellectual Property Rights and Creativity.................................................................. 15

2.4 Intellectual Property Rights and the Music Industry.................................................. 17

## CHAPTER THREE: RESEARCH METHODOLOGY
CHAPTER FOUR: DATA ANALYSIS AND FINDINGS

4.1 Introduction ........................................................................................................................................23

4.1.1 Respondents Profile ......................................................................................................................23

4.2 Evaluation of the music industry .....................................................................................................25

4.2.1 Production of music .....................................................................................................................25

4.3 Intellectual Property and Music ......................................................................................................26

4.3.1 Influence of Intellectual Property Rights

on Creativity and Innovativeness ..............................................................................................................26

4.3.2 Intellectual Property Rights in the Music Industry in Kenya .....................................................28

4.3.3 Impact of Infringement of IPRs in the Music Industry ..............................................................29

4.3.4 Commercialization of IPRS ........................................................................................................29

CHAPTER FIVE: CONCLUSION

5.1 Summary, Discussions and Conclusions ..........................................................................................31

5.2 Limitations of the Study ..................................................................................................................32

5.3 Recommendations for further Research ..........................................................................................33

5.4 Implication for Policy and Practice ................................................................................................33
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>GATT</td>
<td>General Agreement on Trade and Tariffs</td>
</tr>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>G.O.K</td>
<td>Government of Kenya</td>
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<td>IP</td>
<td>Intellectual Property</td>
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<td>IPRS</td>
<td>Intellectual Property Rights</td>
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<tr>
<td>MSCK</td>
<td>Music Copyright Society of Kenya</td>
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<td>PCT</td>
<td>Patent Cooperation Treaty</td>
</tr>
<tr>
<td>TRIPS</td>
<td>Trade Related Aspects of Intellectual Property Rights</td>
</tr>
<tr>
<td>TTIP</td>
<td>Trade Mark Law</td>
</tr>
<tr>
<td>WIPO</td>
<td>World Intellectual Property Organization</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
<tr>
<td>WPPT</td>
<td>Wipo Performance and Phonogram Treaty</td>
</tr>
<tr>
<td>UNDHR</td>
<td>Universal Declaration for Human Rights</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
</tr>
</tbody>
</table>
LIST OF TABLES AND FIGURE

Table 1: Profile by Gender .................................................................................... 23
Table 2: Profile by Age .......................................................................................... 24
Table 3: Profile by Level of Education ................................................................. 24
Table 4: Recording of musical productions ......................................................... 25
Table 5: Respondent's awareness of Intellectual Property Rights ................... 26
Table 6: Influence of Intellectual Property Rights (IPRS) on Creativity...... 27
Table 7: Influence of Intellectual Property Rights (IPRS) on Innovation...... 27
Table 8: Experiences of infringement of Intellectual Property Rights .......... 28
Table 9: Forms of Infringement of Intellectual Property Rights (IPRS) ....... 28
Table 10: Resignation due to infringement of IPRS .............................................. 29
Table 11: Proposals of Commercializing IPRS in Music ..................................... 30
Figure: Validity of Copyrights ............................................................................ 19
This study sought to find out the influence of Intellectual Property Rights on creativity and Innovativeness in the music industry. The need of this study arose from the fact the progress of human beings and of economies at large rests on the capacity to create new innovations not just in the area of technology but also in the areas of creative industries such as music, culture, software, books and films which ultimately spurs economic growth, creates new jobs and industries and enhances the quality and enjoyment of life. Music as a creative industry has the potential to make a profound contribution to the economy of a country especially if well nurtured and protected. Music has the potential to create capital for creative authors and contribute to the growth and development of economies of developing countries.

The objective of the study was to determine the perceived influence of Intellectual Property Rights on innovativeness and creativity in the music industry. Primary data was collected using a semi-structured questionnaire with close ended and open-ended questions. These were administered to 17 musicians. Data was analysed using descriptive statistics through the use of percentages, frequencies and content analysis. The analysis revealed that the intellectual Property Rights have not had a substantial impact on creativity and innovativeness in the music industry. It also revealed that infringement is a major challenge to musicians. The study also revealed that enactment of strict laws and policies as strict enforcement of the same as well as payment of royalties to copyright holders would enhance the creativity and innovativeness in the music industry. The study revealed that the Government of Kenya ought to come up with its own regime of Intellectual Property Rights so as to enhance creativity and innovations and ultimately commercialization of IPRS in the music industry.
CHAPTER ONE: INTRODUCTION

1.1 Background

Intellectual property places a premium not on the traditional factors of production nor on the primary Government investments but on new ideas, creations innovations and Technologies (Sihanya, 2001). The progress of human beings and of economies at large rests on the capacity to create new innovations not just in the area of technology but also in the areas of creative industries such as music, culture, software, books and films which ultimately spurs economic growth, creates new jobs and industries and enhances the quality and enjoyment of life (Ouma, 2004).

Music as a creative industry has the potential to make a profound contribution to the economy of a country especially if well nurtured and protected. The creative industries currently account for more that 7% of the world’s gross domestic product (World Bank, 2003). The management of the development of Intellectual Property Rights (IPRs) should thus focus on efficient ways of commercialising innovations and creations. Music has the potential to create capital for creative authors and contribute to the growth and development of economies of developing countries. India has a vibrant entertainment industry and this can be attributed to the effective intellectual property regime that has existed over the years. The entertainment industry in India was as at 2004 valued at US$ 4.3 billion (UNCTAD, 2004). In the developed countries such as the United States of America, the music industry has thrived and contributes substantially to revenue growth, jobs and international trade (Siwek, 2002).

Kenya as a member of World Trade Organization (WTO) is obliged by the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) to give effect to a set of basic minimum principles and rules covering copyrights, trademarks, geographical indications, industrial designs patents, layout designs of integrated circuits, protection of undisclosed information and the enforcement of intellectual property rights. The challenge for Kenya is to design policies and standards on IPRs that will generate wealth to the creators and innovators and be of economic benefit to the country.
It is thus important to assess the effects of IPRs on the entertainment industry against various measures of economic and social performance ranging from innovation, competition and market structures to trade, investment and licencing decisions. This study is to examine the influence of IPRs on the growth and development of the Music industry and will make reference to musicians who are members of the Music Copyright Society of Kenya (MSCK).

1.1.1 Intellectual Property Rights Regime

The ordinary common sense description of Intellectual property (IP) is that it simply comprises all those things that are ‘intellectual’ because they emanate from the use of the human brain (Phillips and Firth 2001). The legal description of IP rights differs from the colloquial in that it focuses upon the rights which are enjoyed in the produce of the mind rather than upon the produce itself (Phillips 2001).

According to World Intellectual Property Organization (WIPO, 1967 Convention) IP refers to the products of the mind: inventions, literary and artistic works, symbols, names and images used in commerce. Intellectual property rights are intangible rights that allow the creator or owner of a patent trademark or copyright to benefit from his or her work or investment. WIPO has classified IP into two categories Industrial Property that includes patents for inventions, trademarks, industrial designs and geographic indications. The other category is Copyright which includes Literary works such as novels, poems and plays films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms and those of broadcasters in their radio and television programs.

The need for Intellectual property became evident when foreign exhibitors refused to attend the international exhibition of inventions in Vienna in 1873 because they were afraid their ideas would be stolen or exploited commercially in other countries. The importance of intellectual property was first recognized in the Paris Convention for the protection of Industrial property in 1883 and in the Berne Convention for the protection of Literary and Artistic works in 1886.
Intellectual property rights are like any other property rights. They allow the creator or owner to benefit from his or her own work or investment. These rights are outlined in Article 27 of the Universal Declaration of Human Rights (UDHR) 1948 which sets for the right to benefit from the protection of moral and material interests resulting from authorship of any scientific literary or artistic production.

Intellectual property protection provides incentives to individuals by offering them recognition for their creativity and material reward for their market inventions. These incentives encourage innovation, which assures that the quality of life is continuously enhanced. Intellectual property rights reward creativity and is a valuable asset that may be exploited by firstly assigning whereby the ownership in the whole or part of transferred or licences given in respect of it and may even be used as security for loan such as mortgage or charge. In 1996, Enid Blyton copyrights were sold for US$ 34 billion (The Times 24th January 1996).

In this age of satellite and cable transmission of broadcast, interactive media of computers, intranets and the internet, creation and transfer of entertainment and education, thousands of works are created daily and hundreds are also infringed (Ouma 2004).

1.1.2 The Music Industry in Kenya

After years under the shadows of foreign beats, Kenyan music has gained phenomenal popularity. According to Muchina (2006) the increase in airplay on the local Radio’s and Television has been a boom for local musicians. According to Kamau (2006) piracy is a recent phenomenon that was unknown in the 1970’s and 1980’s. Then due to the heavy investment required, only two recording studio operated in Kenya which discouraged piracy but with the entry of audio cassettes in the late 1970’s music recording began outside the professional studio’s. According to a World Bank Report in 2005, almost 90% of all the music sold in Kenya is pirated.

In Africa, music is seen as a way of life; like other cultural industries, it can be a source of wealth for developing countries (Penna and Coenard 2002). Worldwide sales of recorded music in 2000 were estimated at US$ 40 billion annually and the
"World Music" accounts for 1 percent of the said amount (Collins, 2000). The entertainment industry though faced with a major issue of unauthorized use or piracy has a lot of potential for Kenya's development and if properly developed and protected can not only encourage creativity but also attract Foreign Direct investment and increase income not only for the creators but also for the exchequer from abroad and within the economy (Sihanya 2001).

The Concise Oxford Dictionary 1992 asserts that music is the art of combining sounds with a view to beauty of form of expression of emotions of sounds so produced. A musical work is one consisting of music, exclusive of any words or action intended to be sung or spoken or performed with music. A song will therefore have two copyrights, one in the music and one in the words of the song, the latter being a literary work (Copyright Act 2001). Any form of recording whether on tape or in musical notation will suffice to fix a musical work for copyright. So far as literary, dramatic, musical and artistic works are concerned, the treatment of creatorship and ownership follows a close pattern. The author of such works is the person who renders it into an appropriate tangible form and copyright vests in the author unless some other party has a better claim to it (Times Law Report 1917).

The main legal instrument for the protection of works in the music industry is the Copyright law. Other laws include Intellectual Property Act 2001, the Law of contract and Trademark laws. The Copyright Act 2001 offers protection for performers such as actors and Musicians for their literary and artistic creation and performances. Copyrights and related rights protection is obtained automatically without the need for registration or other formalities. According to WIPO, the field of copyright and related works has expanded enormously in the last several decades with the spectacular progress in technological developments which have in turn brought new ways of disseminating creations by such worldwide forms communication such as satellite broadcasting, compact discs and DVDs. Dissemination of the works though the internet is another development which raises questions concerning copyright and related rights in this global medium. The study is intended to assess the benefits as well as limitations of IPR in the music industry with a view to enhancing capacity and creating the suitable environment for its growth. This is a case study on the members of the Music Copyright Association of Kenya.
1.1.3 Innovativeness and Creativity.

Carver (1860) observed that Intellectual Property is the power of creativity and innovation applied to artistic expression or the solving of practical problems and is not the exclusive province of any country or people and can be used to enrich the lives of individuals and the future of nations materially, culturally and socially. He further noted that IP is relevant to every aspect of our lives from Agriculture to music to the internet.

Andersen and Howells (2000) noted that Creativity and innovation are natural resources and IPR’s provide the prospect of reward which in turn encourages creative and technological advancement by increased incentives to invent, invest in and innovate new ideas. They further noted that efficient IPR protection allows firms to enter or develop an industry or firm or market.

Economic historian Schumpeter (1954) observes that Creativity is the generation of new ideas and innovation as the translation of a new idea into a new product, service and or process. Schumpeter further viewed innovation as the source of success in the market economy and that any organization or enterprise that is not innovative may not survive in this changing and competitive environment and organizations should look for ways of encouraging and fostering creativity and innovation on both the individual and the organizational level. One of the ways of nurturing and encouraging creativity and innovativeness in by recognizing and protecting the works of individuals and organizations from been copied.

According to Berenbeim (1987) the ability to translate creative talents into results, products processes or services requires encouragement. He further states that the creative process involves three steps: Idea generation, Problem solving or Idea development and implementation. Idea generation depends on the flow of information on need or demand for new products services or processes as people may have new technologies ways or alternative approaches to an issue in the market. Idea development is greatly stimulated by external contacts and recognition. Implementation stage of the creative process consists of those steps that bring in a solution or invention to the market place. This paper will seek to find out how the
creative process aforesaid influences the idea generation of music, composition, performance, implementation within the Kenyan context in relation to intellectual property issues.

1.2 The Research Problem

Music is a unique form of intellectual property. Its unique characteristics include creativity, innovation, protection and enforcement. Although a vast reservoir of talent and creativity exists in Kenya, the music industry has stagnated and the lack of effective enforcement mechanisms has retarded the establishment of collective management societies and recording facilities (Ouma 2004). The Music industry although supported by the youth who make 50% of the total Kenyan population has not had a similar translation in financial gains for the musicians and the exchequer.

In Kenya, local musicians have gained phenomenal popularity after decades of struggling to emerge from shadows of western pop. They have acquired thousands of fans across the country and beyond its borders and their music dominates the airwaves of most local radio stations and public places. The recognition and appreciation has however not translated into financial rewards due to piracy and other factors. The sale of illegally copied cassettes and compact disks is costing the Kenyan economy shilling 5 billion annually (Daily Nation June 2003) In the draft intellectual property policy (G.O.K 2003), it is appreciated that the domestic music industry has grown rapidly in the area of particular commercial interests, which has suffered extensively due to unauthorized copying.

Scholars interested in IPR’S in the music industry have focused on the rights of creators as well legal structures of the industry. (Fink and Maskus 2004) have focused on the role of IPR’S in encouraging Foreign Development Investment and Technology Transfer for the Developed countries. (Ouma 2004) Copyright and the Music industry in Africa have focused on the legal structures for IPRs in relation to Music industry in Africa. (Sihanya, 2000) Integrating innovation and intellectual property into the constitution, (Sihanya, 2001) making TRIPS work for African Development focuses on integrating IPRs in the constitution. None of the studies have focused on the benefits as well as limitations of IPRs on the music industry in the
local political, economic as well as social set up in Kenya. This study seeks to bridge this knowledge gap.

The Research questions being addressed are whether IPRs have had any impact to the music industry in Kenya and the challenges faced by the music industry in implementation of IPR’S. The study will also focus on the benefits and limitation of the IPR’S on the music industry and whether Kenya ought to come up with its own regime of IPR so as to enhance creativity and innovations.

1.3 Research Objectives

The research objective will be to determine the perceived influence of the policies and laws on Intellectual Property Rights on innovativeness and creativity in the music industry.

1.4 Importance of the Study

The findings of the study will be of benefit to the musicians to who will be able assess the effect of IPRs in their industry and in particular on their creativity and innovation. The musicians will also be in a position to assess the benefits of IPRs and improve on limitations. The paper shall be of use to the Government to be able to create an enabling environment for the maximum utilisation of Intellectual property for economic development. The Government through the Kenya Copyright board shall also be in a position to improve on the enforcement policies and legislation of IPRs. The prospective investors will be in a position to analyse the IPR benefit of investing in the music industry in Kenya. WIPO will find the study of use in assessing the impact of IPRs in Kenya.
2.1 Intellectual Property Rights

Intellectual Property Rights (IPRs) award to inventors, artists and institutions certain exclusive rights to produce, copy, distribute and licence goods and technologies within a country. Intellectual property protects applications of ideas that are of commercial value. According to WIPO (2005) Intellectual property (IP) refers to the products of the mind; inventions, literary and artistic works, any symbols, names, images and designs used in commerce. In the same vein World Trade Organization (WTO) has offered its own definition to state that IPRs are given to people over their creation of their minds and creators can be given the right to prevent others from using their inventions designs or other creations. (Cornish, 1996) argues that IPRS are essentially negative rights. Rights to stop others doing certain things - rights to stop counterfeiters, imitators and even in some cases people who have independently reached the same ideas from exploiting them without the licence of the right owner. Some aspects of IP confer positive entitlements such as the right to be granted a patent or to register a trademark upon fulfilling the requisite conditions.

Different forms of IPRS operate in distinct fashions and WIPO (2005) has divided them into the following categories: Copyrights, which grants the authors, artists and other creators protection for their literally and artistic creations. The beneficiaries of related rights include performers such as actors and musicians, producers of sound recordings such as cassette recordings and compact discs and broadcasting organizations in their radio and television programs. The most significant limitation is the fair-use doctrine, under which it is lawful to make a limited number of copies for research and educational purposes.

The Patent which is an exclusive right granted for an invention, which is a product or a process that provides new way of doing something or offers a new technical solution to a problem. A patent provides protection for the invention for a limited period of twenty (20) years. Patent protection means that the invention cannot be commercially made, used or distributed or sold without the patent owners consent. A patent owner has the right to decide who may or may not use the patented invention by giving
permission to use by way of licence to other parties to use the invention or selling the invention to somebody else. Thus patents establish a protected market in return for revealing technical knowledge.

A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services or to authorize others to use it. Trademarks promote initiative and enterprise worldwide by rewarding the owners of trademarks with recognition and financial profit. Trademarks encourage firms to invest in name recognition and product quality. Trademark protection also hinders the efforts of unfair competition such as counterfeits to use similar distinctive signs to market inferior or different products or services. If Trademarks were not protected, rival firms could pass off their lower-quality goods as legitimate versions of those produced by recognized companies.

Industrial designs are what make an article attractive and appealing hence they add to the commercial value of a product and increase its marketability. When an industrial design is registered the owner has an exclusive right against unauthorized copying or imitation of the design by third parties. Protecting industrial designs encourages creativity in the industrial as well as manufacturing sectors as well as in traditional arts and crafts.

Geographical indication is a sign used on goods that have a specific Geographic origin and possess qualities or a reputation that are due to that place of origin. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local geographic factors such as climate and soil. Geographic indications are understood by consumers to denote the origin and quality of products and may have acquired reputation which if not adequately protected may be misrepresented by dishonest commercial operators.

Trade secrets, where a company keeps information secret, usually by enforcing a contract under which those given access to information are not permitted to disclose it to others. Several technologies do not fit comfortably into these traditional categories.
of protection. Electronic transmissions of Internet materials, broadcasts, and databases may not be adequately protected by standard copyrights and two recent treaties that is the WIPO Copyright Treaty and the WIPO Performances & Phonograms Treaty will call for stronger protection in certain dimensions.

Link and Maskus (2004) found that IPRS have seen profound changes over the last two decades as rules on how to protect patents, copyrights trademarks and other forms of IPRS have became a standard component of the international trade agreements. Most significantly during the Uruguay Round of Multilateral negotiations (1986-1994), members of what is today the World Trade Organization (WTO) concluded that the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which set out minimum standards of protection, that most of the world’s economies must respect. Additionally IPRs rules have been created in various bilateral and regional trade agreements in a number of intergovernmental treaties negotiated under the umbrella of World Intellectual Property Organization (WIPO). The process of globalization has enabled intellectual property to cross international boundaries more easily. Indeed for many rich countries IPR-intensive goods and services constitute a rising share of the income they derive from their presence in foreign markets. It is therefore not surprising to see political economy forces at work in these countries leading governments to raise IPR protection as a key negotiating issue in international trade agreements.

Kenya as a member of World Trade Organization (WTO) is obliged by the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) to give effect to a set of basic minimum principles and rules covering copyrights, trademarks, geographical indications, industrial designs patents, layout designs of integrated circuits, protection of undisclosed information and the enforcement of intellectual property rights. The aspects of IPR that have been protected in the Kenyan legislation are; (the Intellectual Property Act 2001) which covers patents for inventions, certificate for industrial designs, utility models, trade marks, service marks and geographical indications, topographies of integrated circuits, technovations, unfair competition and trade secrets Administration of Industrial rights; (the Copyright Act 2001) which covers Copyrights and related rights that include literary, artistic and musical works cinematographic works, performers rights, broadcasting rights and
rights of producers of phonograms; the Seeds and (Plant Varieties Act) which caters for plant breeders rights and new plant varieties.


According to Maskus (2000) there are two central economic objectives to any system of Intellectual Property Rights protection. The first one is to promote investments in knowledge, creation and business innovation by establishing exclusive rights to use and sell newly developed technologies, goods and services. If the IPRs are absent economically valuable information could be appropriated without compensation by competitive rivals. Firms would be less willing to incur costs of investing in research and commercialisation activities. The second goal is to promote widespread dissemination of new knowledge by encouraging or requiring right holders to place their inventions and ideas on the market. Information is a form of public good in that it is inherently non-rival and moreover developers find it difficult to exclude other from using it. In economics terms it is socially efficient to provide wide access to new technologies and products once they are developed at marginal production costs. Such costs could be quite low for they may entail simply copying a blueprint or making another copy of a compact disk or video. Maskus (2000) has further observed that there is a fundamental trade-off between these objectives in that an overly protective system of IPRs could limit the social gains from invention by reducing incentives to disseminate its fruits whereas an excessively weak system could reduce innovation by failing to provide and adequate return on investment. Thus a policy balance must be found that is appropriate to market conditions and conducive to growth.
Maskus (2000) has further analysed the positive impacts of IPRs as stimulating economic growth and development. The three interdependent channels through which technology is transferred across borders include international trade in goods and services including pharmaceuticals, electrical machinery and professional instruments, foreign direct investment (FDI) of products and technologies and contractual licensing to technologies and trademarks to unaffiliated firms, subsidiaries and joint ventures. IPRs could also play a significant role in encouraging innovation, product development and technical change. The negative impact or concerns of IPRs according to Maskus (2000) are that in the developing economies, significant amount of labour is employed in unauthorized copying of goods enjoying IP. In a survey conducted in Lebanon in 1996 by Maskus (2000), it was observed that 5% of the employees in the industry copying software would be displaced with stronger enforcement of IPRs. The other major concern for IPRs is support for monopoly pricing particularly in the pharmaceutical, agricultural and biotechnology. There is evidence that patents generate considerably higher prices for protected drugs than for copied or generic drugs (Maskus, 1998).

2.2 Intellectual Property and Innovations

An innovation is a product that is new to the market or simply new to the adopter. An invention is a discovery and or process of doing new things or transforming creative ideas into useful applications. It is important to remember that of the total resources required for innovation only a small proportion comes from invention; the majority comes from design, production, marketing and the rest from a myriad of activities that contribute the making of things. This assumes that every invention contributes something. It does not. Many inventions make no input to any innovation. (Schott, 1981) Industrial, technological or scientific innovation is regarded by some as the acme of creativity. In fact it is also called invention or loosely discovery. It focuses on the development or introduction of a novel or new product or service deserving of protection. Sihanya (2002).

Schumpeter (1950) noted that although many innovations can be traced to some conquest in the realm of either theoretical or practical knowledge that has occurred in the immediate or remote past, there are many which cannot. Innovation is possible
without anything we should identify as invention, and invention does not necessarily induce innovation, but rather produces of itself no economically relevant effect at all.

Teece (1998) The failure to achieve the ultimate goal of successful innovation is often blamed upon what is seen as a rocky road from invention to innovation. Alternative model avoid the notion of a journey, of linearity. These maze models of innovation depict no obvious route from invention to innovation; the journey may start from anywhere in the system and may lead anywhere perhaps to invention more than once before innovation is reached- if it is ever reached at all. Innovation remains the goal, but getting there is the real challenge: Innovation is simply the last stop on the line.

(Fink and Maskus 2004) point out that in a closed economy, IPRs provide incentives to inventors to develop new knowledge and to authors and artists to create forms of artistic expressions. Thus over time there are dynamic gains from the introduction of new products, information and creative activities. But from the perspective of efficiency, they are only second - best means of encouraging invention because the market exclusivity conferred by IPRs reduces current competition and may therefore lead to static distortion in allocation of resources. Patents and Copyrights have a limited term, which minimizes the cost of market exclusivity.

According to Cornish (1996) patents give protection to technological inventions and design rights to the appearance of mass-produced goods: copyrights gives longer lasting rights in literary, artistic and musical creations: trademarks are protected against imitation so long as they continue to be employed in trade.

Maskus (2000) observes that one of the objectives of any system of intellectual property protection is to promote investments in knowledge creation and business innovation by establishing exclusive rights to use and sell newly developed technologies, goods and services. He further observes that the question of how IPRS affect the processes of economic development and growth is complex and based on multiple variables depending on the circumstances in each country. This includes macroeconomic stability, market openness, policies for opening the economy's infrastructure and acquisition of human capital. He further notes that IPRS could have many effects on growth and economic development some positive and some negative.
The positive impact of IPRs on economic development include encouraging innovation, product development and technical change. Maskus noted that developing countries tend to have IPRs systems that favour information diffusion through low cost imitation of foreign products and technologies. IPRS could also stimulate the acquisition and dissemination of new information as the inventors licence their technologies and products and thus technology is transferred across borders.

Anderman (1998) argues that the process of IPR licencing is generally regarded as precompetitive because it helps to increase the reward for innovative effort and the incentive for others to invest in the Research and Development (R&D) and this provides an important justification for the restrictions in licences which operate to help the licensor obtain the surplus inherent in the innovation.

A study conducted by Maskus (2000) in Lebanon indicated that innovation through product development and entry of new firms is motivated by IPRs protection. Firms in the apparel industry claimed to have a strong interest in designing apparel of high quality and style aimed at Middle Eastern markets were frustrated by the trademark infringement in Lebanon and in the neighbouring countries. The difficulties were also experienced in the food products sector, the pharmaceutical, cosmetics and metal products sectors hampering the innovative producers attempts to build markets and thus stifling the establishment of new firms.

In the local scene Sihanya (2002) argues that innovation and intellectual property ought to receive recognition that appreciates their increasing importance in the political economy. This would help in promoting, protecting and creating respect for innovation and intellectual property like other fundamental liberties and rights as well as public policy concerns. Sihanya further argues that Kenya should constitutionalize IP by securing the exclusive rights of innovators and authors. Local innovations and technology need to be protected from appropriation that is not socially optimal. For example ‘ciomados’ are reportedly being produced as far as Japan as yet no intellectual property is being enjoyed by the initial innovators who are a Kenyan community.

Intellectual property is not limited to granting, registering, recognizing and protecting patents, trademarks and copyrights or trade secrets. The question of balance is very
important. As argued by Sihanya (2002) the IP system should ensure that the holder of the holder of intellectual property rights should avail to the public information about his or her innovation in exchange for the protection granted. This information would enable consumers and other innovators to improve and modify the innovation, enjoy it or continue to secure its production after the term of protection expires. Section 48(2)(c) of the Copyright Act (2001) should be implemented to facilitate compulsory licencing of now working patent or where the copyright holder refuses to distribute or licence works on reasonable terms.

2.3 Intellectual Property Rights and Creativity

The Concise Oxford English Dictionary (1998) defines creativity is the ability to produce or bring new ideas and things into existence. Holt (2002) identifies five basic stages in the creative process namely idea generation characterised by interest or curiosity, preparation or rationalization is the second stage incubation or fantasizing which is assimilation of the idea which is followed by realization or recognition of the idea as a feasible one and lastly the Verification stage which is the application or testing of the idea. The creators of works protected by copyright and their heirs and successors have certain basic rights under the copyright law. They hold exclusive rights to use or authorize others to use the work on agreed terms. The creators of works can prohibit or authorize its reproduction in all forms including printing and sound recording: its public performance and communication to the public; its broadcasting, its translation to other languages and its adaptation such as a novel into a screenplay for a film According to (WIPO, 2005) copyright and related rights protection is an essential component in fostering human creativity and innovation. Giving the authors, artists and creators incentives in the form of recognition and fair economic rewards increases their activities and output and often enhances their results. The WIPO publication further states that with strict enforceability of the rights enterprises and companies can more easily invest in the creation, development and global dissemination of works which will in turn help increase access to and enjoyment of culture, knowledge, and entertainment all over the world, as well as stimulating economic and social development. IPRs can play a positive role in encouraging new business, development and rationalization of any inefficient industry and inducing technology acquisition and creation Maskus (2000).
IP rewards and protects creativity. Article 27 of the Universal Declarations for Human Rights (UDHR) 1948 was intended to maintain a balance between protecting private Intellectual Property and promoting public domain or common pool innovation. It states that everyone has the right freely to participate in the cultural life of the community to enjoy the arts and to share in the scientific advancement and its benefit. The work of Nobel laureates Ronald Coase (1937) provides a clear conceptual background to transaction costs and externalities respectively which have been used to explain inter alia technology transfer through licencing and outsourcing as well as to justify the regulation of some technologies that explain public good characteristics.

The Copyright Act (2001) protects creations of literary works and music, which provides the exclusive rights to copy and sell particular expression of ideas after they are fixed in a certain medium. The Copyright Act (2001) requires that for literary, musical or artistic work to be eligible for copyright, it should have an original character and it must be exhibited that sufficient effort has been expended in making the work original. Behind this lies the root requirement that sufficient skill, judgement and labour or selection, judgement and experience or labour skill and capital must be expended by the author in creating the work (Lord Artkinson 1923). In other words not only must the creative intellectual activity produce the right kind of work, but the input must satisfy a certain minimum standard of effort. Nothing can be treated as work; or closely associated with this work will be regarded as original. As well as works embodying the fruits of considerable creative or intellectual endeavour, copyright has been allowed in such mundane of compilations of information such as a timetable index, trade catalogues, examination papers, street directories and football fixtures list. Racing information list and the listing of programmes to be broadcast. The principle is that there must be sufficient “skill judgement and labour (Cornish 1996) Copyright generally protects as private property a wide range of expressions and technical manifestations of these expressions ranging from books, poems, musical works, records and compact disks, photographs, films and computer software. If these copyrights are infringed the owner has a right to launch a copyright infringement action (Drahos and Mayne 2002). Copyright protection exists automatically and upon creation; there are no registration requirements as with patent and Trademarks.
(WIPO, 2005) has further noted that the spectacular advances in technology have brought in new ways of dissemination creations by such worldwide communication such as satellite broadcasting and compact disks. Dissemination of the works is the latest development, which raises questions concerning copyright and related rights in this global questions medium. WIPO is involved in the on-going international debate to shape the new standards for copyright protection in cyberspace and in that regard administers the WIPO Copyright Treaty (WCT) and the WIPO Performance and Phonogram Treaty (WPPT), which are often referred to as the “internet Treaties”. These Internet Treaties have clarified international norms aimed at preventing unauthorized access to and use of creative works on the Internet.

2.4 Intellectual Property Rights and the Music Industry

Intellectual Property Rights play a major role in the protection and dissemination of knowledge and creative industries such as music; software, books and films are the main industries of the 21st century. These industries have assumed a major economic significance that makes profound contributions to the global economy Ouma (2004). Christopher May (2000) noted that publishing, software and entertainment industries are represented as the “paradigmatic” knowledge industries which will set the trend to be followed by other sectors as they switch to higher knowledge content for their products. Music as a creative industry has the potential to make a profound contribution to the economy of a country, especially when it is nurtured and protected. According to the World Bank as at November 2003 the creative industries accounted for more than 7% of the world’s Gross domestic product.

Music has the potential to create capital for creative authors worldwide. Worldwide sales of music in 2000 were estimated at US$ 40 billion annually. Nashville is an example of where the music industry has been used to generate capital and turn a previously poor territory into a music paradise for country music. It is the home of country music with a US$3 billion turnover; Nashville was however one of the poorest regions in the United States of America in the 1940s. Penna and Finger (2003). According to Ouma (2004) Nashville may not be replicated in Africa as there are several factors that need to be considered in regard to growth and development of the music industry there. These include the legal and administrative structures,
enforcement of the rights of the authors, composers, producers of sound recordings and performers in the music industry as well as the prevailing social and economic factors. The development in international law and technological advances play an important role in the development and growth of the music industry in Africa.

Scholars like Finnegan (1970) and Dock (1974) argue that prior to the 19th century traditional communities in Africa had vibrant creative industries and the proprietary notion or property did not exist with respect to music or creative works. Copyright law can be traced to the 19th century when European countries consolidated their interests in their colonies and like most other laws in the Africa applied their own laws of origin. After inheriting the British Copyright Act of 1911 parliament in Kenya passed the Copyright Act Chapter 30 of the Laws of Kenya whose provisions were largely adopted from those of its predecessor. The Act was amended several times and in 2001 the Copyright Act was passed by parliament and came into force in 2003. The various amendments witnessed during the last half of the 20th century to date were greatly influenced by the international laws and treaties mainly the Berne Convention, the Trade Related Aspects of Intellectual Property (TRIPS) Agreement, the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Copyright protection has been seen as a means of ensuring that the rights of the creator are respected and the creator is justly rewarded for his creativity Sterling (2003). Music is unique and its unique characteristics include creativity and innovation. The term musical work in the Copyright Act 2001 means any musical work irrespective of musical quality and includes works composed for musical accompaniment. Smith (1995) defines musical works as works consisting of music exclusive of any works or action intended to be sung spoken or performed and includes chants or other work generally recognised as music and performed without instrumentation. The author of musical work will in general be the person who first made or created the work and may be joint authorship or a body corporate. Folklore means literary, musical or artistic work presumed to have been created within Kenya by an unidentified author which has been passed on from one generation to another and constitutes a basic element of traditional cultural heritage of Kenya and includes folktales, folk poetry and folk riddles, folk songs and instrumental folk music, folk
dances and folk plays as well as the production of folk art, in particular drawings, paintings, sculptures, pottery, woodwork, metal ware jewellery, handcrafts, costumes and indigenous textiles. Section 23(2) of the Copyright Act 2001 confers rights in the following table:

Figure 1: Validity of works

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Date of Expiration of Copyright</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Literary, musical or artistic work other than photographs</td>
<td>Fifty years after the end of the year in which the author dies.</td>
</tr>
<tr>
<td>2. Audio-visual works and photographs</td>
<td>Fifty years from the end of the year in which the work was either made, first made available to the public, or first published, whichever date is the latest.</td>
</tr>
<tr>
<td>3. Sound recordings</td>
<td>Fifty years after the end of the year in which the recording was made.</td>
</tr>
<tr>
<td>4. Broadcasts</td>
<td>Fifty years after the end of the year in which the broadcast took place.</td>
</tr>
</tbody>
</table>

In the case of anonymous or pseudonymous literary musical or artistic works the copyright therein shall subsist until the expiration of fifty years from the end of the year it was published:

The Music Copyright Society of Kenya (MCSK) was set up in 1984 as a limited liability company with the objective of collective management of copyright and related rights. Its roots can be traced to the performing Rights Society (PRS) in the United Kingdom. Collective administration of Copyright and related right play an important role in the development and growth of the music industry. This is because individual licensing and collection of royalties can be quite difficult. The collective management organizations offer a centralized form of collection and distribution on behalf of their members. MCSK issues licences to hotels, restaurants, cinemas, and factories or to members of the public on behalf of the local and foreign authors affiliated to it.
Onma (2001) has observed that advances in technology have enabled inexpensive reproduction and distribution of Copyright works enabling the availability of the works at a relatively low price. The new information communication technologies facilitates the production of perfect copies of sound recordings, which can be reproduced and distributed in real time around the world at minimal costs. The compression of digital files and peer-to-peer file sharing enables the third world to download and distribute music files over the Internet. As the pirated copies are cheaper to produce they are inevitably cheaper than the legitimate copies and music piracy affects the entire music industry and there is need to have effective legal and administrative structures. Enforcement of copyright and related rights have been a major problem in the industry and even with the civil and criminal remedies of a sentence of a fine of Kshs 800,000 and the maximum custodial sentence now at ten years by virtue of Section 38 of the Copyright Act 2001 the effects of the provisions is yet to be seen.
CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Research Design
This is a case study. The study involves an in depth investigation the influence of Intellectual Property Rights on the creativity and innovation amongst musicians who are stakeholders as they generate the Intellectual property systems. This study has been selected, as it will facilitate the identification of the complexities and details of the study variables.

3.2 Population
The population for the research is all members of the Music Copyrights Society of Kenya Limited. According to the Register with the Copyrights Office at the Attorney Generals chambers of 30th June 2006, there are currently six hundred (600) members.

3.3 Sample
A sample of 30 musicians will be representative. This will be a random stratified sampling to ensure broader and relevant representation.

3.4 Data Collection Method
The study will rely on primary data. The data collection instrument is a semi-structured questionnaire. The respondents will be musicians who are members of Music Copyright society of Kenya. The questionnaire will be administered using the drop and pick later method, E-mail and telephone interviews. The questionnaire is divided into 2 sections. Section A-general information; section B-the influence of intellectual property Rights on Creativity and innovation.

3.5 Operationalization of Concepts
According to the Music Copyright Society of Kenya, the intellectual property rights that are considered important in musical works are, the Graphical Right which is the right to print or publish the music, the Mechanical Right which is the right to record the music and the Performing Right which involves the right to perform the music in public and broadcast it.
Schumpeter (1934) and Berenbein (1987) have stated that creative process involves three steps: Idea generation, Problem solving or Idea development and implementation. In relation to music Idea generation will be looked at as the stage of imagination or crafting of the music. The stage of Idea development will involve coordination of the knowledge and composition of the lyrics and the music. Implementation in relation to music will relate to development of electronic instruments and technologies, fixing of the music in analog or digital recording, performance and the management of the copyright which will include entering into licencing arrangements with producers, Radio and Television stations and to the distributors. The influence of IPR’s in the creative and innovative process will be analysed by way of Questionnaire.

3.6 Data Analysis

Descriptive statistics such as means, frequencies, standard deviations, and percentages will be used to determine the magnitude of the impact of Intellectual Property Rights on innovativeness and creativity. Mean scores will be used to determine the extent of effect of IPRs on innovativeness and creativity. Content analysis will be for the data that cannot be quantified.
CHAPTER FOUR: DATA ANALYSIS AND FINDINGS

4.1 Introduction

In this section, the data collected has been analysed using descriptive statistics such as proportions, percentages and summarized in Tables for presentation.

The Research Objective of the study was to determine the perceived influence of intellectual property Rights on creativity and innovativeness in the music industry. The findings of this study shall be presented in three parts. The first part will present the findings on demographics of musicians. The second part will present findings the nature of the music industry and evaluations on whether the music is recorded and in what form. The third part will present findings on the perceived influence of intellectual property rights on creativity and innovativeness in the music industry.

4.1.1 Respondents Profile

The examination profile was carried out on the basis of Gender, Age groups and education background. The assessment of demographics of the respondents gives an indication of the characters of the respondents.

From the study population target of 30 musicians 17 responded. A total of 17 questionnaires were completed. Overall response rate was 56.1%.

Table 1: Profile by Gender

<table>
<thead>
<tr>
<th>Gender</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>14</td>
<td>82</td>
</tr>
<tr>
<td>Female</td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td>100</td>
</tr>
</tbody>
</table>
Results show that of the musicians interviewed, 18% of them were female while 82% were male. The male musicians respondents were thus more than the female respondents.

Table 2: Profile by Age

<table>
<thead>
<tr>
<th>Age</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below 20 years</td>
<td>2</td>
<td>11</td>
</tr>
<tr>
<td>21-30 years</td>
<td>13</td>
<td>77</td>
</tr>
<tr>
<td>31-40 years</td>
<td>2</td>
<td>12</td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td>100</td>
</tr>
</tbody>
</table>

As Table 2 shows 77% of the musicians are aged between 21-30 years. 12% are aged between 31-40 years while only 11% are aged below 20 years. Majority of the musicians are thus in the youth group.

Table 3: Profile by Level of Education

<table>
<thead>
<tr>
<th>Level of Education</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>High School</td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>College</td>
<td>9</td>
<td>53</td>
</tr>
<tr>
<td>University</td>
<td>5</td>
<td>29</td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td>100</td>
</tr>
</tbody>
</table>

Results indicate that more than half of the Respondents that is 53% of the musicians interviewed are of the college level of Education. Results further show that 29% of the Respondents had acquired University Education while 18% are of the Respondents were of High school level of education. The majority of the respondents were thus fairly well educated.
4.2 Evaluation of the music industry

The study is intended to assess the benefits as well as limitations of the intellectual Property Rights in the music industry in Kenya.

According to WIPO the field of Copyright and related works has expanded enormously in the last several decades with the progress in technological developments which has in turn brought in new ways of disseminating creations by such worldwide forms communications such as satellite broadcasting and compact discs. The new information technologies have also introduced new forms of recording and production of music and also new kinds of infringements.

4.2.1 Production of music

The study sought to determine the form in which the respondent’s music would get to be known by the Respondents. According to the Copyright Act, (2001) for musical works to be eligible for copyright, it should have original character and it also must be exhibited that sufficient work has been expended to make it original. It was thus important to ascertain whether musical works are recorded and in what form. From Table 4 below an overwhelming 76% record their music while 24% do not record their musical productions.

Table 4: Recording of musical productions

<table>
<thead>
<tr>
<th>Recordings of music</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>13</td>
<td>76</td>
</tr>
<tr>
<td>No</td>
<td>4</td>
<td>24</td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td>100</td>
</tr>
</tbody>
</table>

The Copyright Act (2001) confers protection to musical work for a period of Fifty (50) years from the date of publication Results above indicate that 76% of the respondents recorded their musical productions while 24% did not record their music in any form.
4.3 Intellectual Property and Music

Intellectual property rights protect the creator of musical works, and the Copyright Act (2001) provides exclusive rights to copy and sell to the creators so that the creator or composer of musical works in the words and sounds to benefit from his or her investment. It was thus important to understand whether the respondents were aware of intellectual property rights.

Table 5: Respondent's awareness of Intellectual Property Rights

<table>
<thead>
<tr>
<th>Response on awareness</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>11</td>
<td>64.7</td>
</tr>
<tr>
<td>No</td>
<td>6</td>
<td>35.3</td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Surprisingly, results show that not all respondents are aware of the intellectual property rights. Although the majority of 65% of the respondents knew about intellectual property rights, 35% had no knowledge of it.

4.3.1 Influence of Intellectual Property Rights on Creativity and Innovativeness.

The objective of the study was to determine the perceived influence of intellectual property rights on innovativeness and creativity in the music industry. To determine how well intellectual property rights influence creativity and innovativeness, a Likert-type scale questionnaire of 1-5 (where 1 = not at all and 5 = to a very great extent) was asked. Table 6 herein below presents the findings.
Table 6: Influence of Intellectual Property Rights (IPR) on Creativity

<table>
<thead>
<tr>
<th>Influence of IPRS on Creativity</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all</td>
<td>59</td>
<td>49.6</td>
</tr>
<tr>
<td>Once</td>
<td>22</td>
<td>18.5</td>
</tr>
<tr>
<td>Sometimes</td>
<td>17</td>
<td>14.3</td>
</tr>
<tr>
<td>To a great extent</td>
<td>14</td>
<td>11.8</td>
</tr>
<tr>
<td>To a very great extent</td>
<td>7</td>
<td>5.9</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100.0</td>
</tr>
</tbody>
</table>

Creativity is the generation of new idea. According to the results 49.6% of the respondents have not at all been influenced by IPRs in their creativity while a small percentage of 6% have to a very great extent been creative as a result of the Intellectual property Rights. Some of the respondents forms 18.5% have at some time or the other been influenced by intellectual property Rights to be creative.

Table 7: Influence of Intellectual Property Rights (IPRs) on Innovation

<table>
<thead>
<tr>
<th>Influence of IPRS on the innovation</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all</td>
<td>59</td>
<td>50</td>
</tr>
<tr>
<td>Once</td>
<td>16</td>
<td>13</td>
</tr>
<tr>
<td>Sometimes</td>
<td>19</td>
<td>16</td>
</tr>
<tr>
<td>To a great extent</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>To a very great extent</td>
<td>13</td>
<td>11</td>
</tr>
<tr>
<td>Total</td>
<td>119</td>
<td>100</td>
</tr>
</tbody>
</table>

Innovation is the translation of a new idea into a product, service or process. The first stage of the innovation process is to find new ideas and insights to commercialize. Respondents were therefore asked to check the influence of IPRS in the process of finding new ideas. Results indicate that 50% of the musicians have not at all not been influence by IPRs to be innovative while 11% have to a great extent been influenced by IPRs to be more innovative.
4.3.2 Intellectual Property Rights in the Music Industry in Kenya

The objective of the study was to determine the influence of Intellectual Property Rights in the music industry in Kenya. The Respondents were unanimous that the main issue on intellectual Property in relation to music in Kenya is infringement of intellectual property. According to Oxford English Dictionary, (1992) Infringement means to take over the rights of another person without the licence of the creator. It is indicative that a high fraction of the Respondents have experienced infringement of their intellectual property as presented in Table 8.

Table 8: Experiences of infringement of Intellectual Property Rights

<table>
<thead>
<tr>
<th>Respondent's experiences</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>13</td>
<td>76</td>
</tr>
<tr>
<td>None</td>
<td>4</td>
<td>24</td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td>100</td>
</tr>
</tbody>
</table>

Results show that an overwhelming 76% of musicians have experienced some form of infringement of their intellectual property Rights while 24% had not experienced any form of infringement.

There are different forms of infringement of intellectual property of the music industry in Kenya.

Table 9: Forms of Infringement of Intellectual Property Rights (IPRS)

<table>
<thead>
<tr>
<th>Forms of Infringements</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copying</td>
<td>10</td>
<td>22.7</td>
</tr>
<tr>
<td>Adaptation</td>
<td>5</td>
<td>11.4</td>
</tr>
<tr>
<td>Performance</td>
<td>3</td>
<td>6.8</td>
</tr>
<tr>
<td>Piracy</td>
<td>14</td>
<td>31.8</td>
</tr>
<tr>
<td>Internet Based</td>
<td>5</td>
<td>11.4</td>
</tr>
<tr>
<td>Producer Based</td>
<td>3</td>
<td>6.8</td>
</tr>
<tr>
<td>Broadcast Based</td>
<td>4</td>
<td>9.1</td>
</tr>
</tbody>
</table>
The Respondents indicated that of the infringement experiences, 31.8% of the infringement was by way of piracy. 22.7% was by way of copying while the other forms were by way of Adaptation, Internet based infringement, producer based and broadcast based.

4.3.3 Impact of Infringement of IPRS in the Music Industry

To determine the influence of IPRS in the music industry, the respondents were asked whether they have considered quitting due to infringement of their intellectual rights and the results were as follows in Table 10.

Table 10: Resignation due to infringement of IPRs

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>11</td>
<td>65</td>
</tr>
<tr>
<td>No</td>
<td>6</td>
<td>35</td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td>100</td>
</tr>
</tbody>
</table>

An overwhelming 65% of the respondents have considered resigning or quitting from producing musical works due to infringement of their works while 35% had not considered quitting.

4.3.4 Commercialization of IPRS

Music as a creative industry has the potential to make a profound contribution to the economy of a country especially if well protected and nurtured. To investigate why the benefits of the Intellectual property rights in the music industry had not had an impact, a high number of respondent musicians were of the view that there were no enforcement of the laws and also they had not been able to see the fruits of their creativity. Table 11 shows some of the proposals made by the respondents to promote commercialization of Intellectual property Rights in Music.
Table 11: Proposals of Commercializing IPRS in Music

<table>
<thead>
<tr>
<th>Proposals</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment of Royalties to copyright owners</td>
<td>61</td>
<td>54</td>
</tr>
<tr>
<td>Creating awareness of the members of the public</td>
<td>17</td>
<td>18</td>
</tr>
<tr>
<td>Strict enforcement of the laws and criminalizing infringement of intellectual property rights</td>
<td>23</td>
<td>21</td>
</tr>
<tr>
<td>Forming public music schools</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>Encouraging music from the young age.</td>
<td>5</td>
<td>4</td>
</tr>
</tbody>
</table>
CHAPTER FIVE: CONCLUSION

Introduction

This is the final chapter of the report. It outlines the summary of findings, discussions, results and the conclusion. This concluding chapter also highlights the limitation of the study and makes recommendations and suggestions for further research.

5.1 Summary, Discussions and Conclusions

The objective of this study was to determine the perceived influence of intellectual property Rights on innovativeness and creativity in the music industry.

Of all the 17 musicians interviewed, 82% were men and 12% were women. 77% of the musicians are aged between the ages 31 to 40 years. 11% are aged above 40 years while the rest are aged below 20 years.

Results show that the main factor that influences intellectual Property Rights in the music industry is Infringement. Although the Respondents stated that there are several forms of infringement of intellectual property Rights piracy and copying ranked top in the forms of infringements. Results further indicate that infringement of intellectual property has negatively influenced creativity and innovativeness of the respondents.

The influence of Intellectual Property Rights on innovativeness and creativity has not been positive and more than 59% of the respondents were of the view that intellectual property rights have not influenced their creativity and innovativeness as their creativity and innovativeness has not been protected from infringement due lack of adequate laws and legal systems, weak enforcement of the existing laws and lack of knowledge on the part of the consumers, lack of a policy on intellectual property rights and music. These are the wide gaps that contribute to lack of innovativeness and creativity in the music industry.

The music industry in India and Nashville in the United States of America grew due to legislation and enforcement of laws and policies on Intellectual Property Rights
Ouma, (2004). Previous researchers Sihanya, (2001) have recommended the integration of Intellectual Property Rights in the constitution so as to enhance creativity and innovation. It is important that Laws on intellectual Property Rights be legislated and implemented. It is also argued that awareness should be created on not only the importance of protecting and encouraging creations but also on the potential of the music industry in the economic growth of a nation.

From the foregoing the following conclusions can be made, protection of Intellectual Property Rights appears to be the most important factor that can contribute towards innovativeness and creativity in the music industry, lack of a legal structure and well as enforcement of the existing laws is another factor that has contributed towards failure by to be innovative and creative and lack of awareness on the part of the musicians and the public is another factor that has led to minimal influence of IPRs on innovativeness and creativity

5.2 Limitations of the Study

The study was conducted by way of case study of musicians who are members of the Music Copyright Society of Kenya. A survey would have been carried out to include a wider scope of the musicians who are affiliated to other organizations and are not members of any organization.

The study was limited to musicians only. Consumers of musical works should have been examined on their understanding of intellectual Property Rights in the music industry and its influence on creativity and innovativeness and why the infringement is a major issue. Other stakeholders in the music industry who include Producers, Broadcasters, Law enforcement officers, Government officers at the Kenya Intellectual Property Rights Office and Copyright Board should have been included in the study.

It was not possible to take a larger sample of the respondents as well as an in depth analysis of all musicians from all parts of the country due to financial and time constraints.
5.3 Recommendations for further Research

Arising out of the limitations, the suggested areas of further Research are, the enforcement of the laws and policies of intellectual Property Rights relating to music in Kenya, the Government policy on enhancing creativity and innovativeness in the music industry in Kenya, the creation of awareness of the Intellectual Property Rights amongst musicians as well as members of the public in Kenya. The other area for further research would be creation of musical works as a source of capital gain and the management of growth of music as a spur to economic growth as well as commercialization of Intellectual property Rights in music in Kenya.

5.4 Implication for Policy and Practice

Music as a creative industry needs to be enhanced by protection of the artists, producers and performers against infringement of their works, productions and performance.

The Government should enact Laws and regulations on Intellectual Property Rights that not only encourages creativity and innovativeness but also protects creative musical works. Strict enforcement of the existing Intellectual Property laws should be embarked on by the Copyright Board including instituting criminal prosecution against infringers of Intellectual Property Rights who should be treated in a similar manner to persons who steal tangible form of other property as intellectual Property Rights are also are intangible forms of properties.

The Music Copyrights Society Of Kenya should create awareness of the importance of Intellectual Property Rights and through education of the members of the public on the importance of promoting and protecting the talents in music.

The draft policy on Intellectual Property Rights should be integrated in all Government departments and the Government also ought to formulate a policy on Music so as to encourage creativity right from the nursery school level.
Piracy and copying were found to be the main factor that inhibits creativity and innovation in the music industry. Strict enforcement of the existing laws would discourage piracy and copying and in return encourage innovation.

The findings of this study indicate that so as to reap maximum benefits from creative works the intellectual property rights ought to be integrated in the system of Government.
REFERENCES


The Times of 24th January 1996. Enid Blyton died in 1968 and her copyright will endure until the end of 2038.


The Intellectual Property Act 2001 of the Laws of Kenya

Plant Varieties Act Chapter 326 of the Laws of Kenya.


World Intellectual Property Organization (WIPO 2005) publication No. 450 (E).

APPENDICES

APPENDIX 1: LETTER OF INTRODUCTION

IKINU NANCY WAMBUI
P.O. BOX 69768-00400
NAIROBI.

Dear Sir/Madam,

RE: RESEARCH ON THE PERCEIVED INFLUENCE OF INTELLECTUAL PROPERTY RIGHTS ON INNOVATIVENESS AND CREATIVITY AMONG MUSICIANS MEMBERS OF THE MUSIC COPYRIGHT SOCIETY OF KENYA.

I am a student at the University of Nairobi, undertaking a masters degree in business administration (MBA). As part of my academic requirements, I am undertaking the above research project and would be very grateful if you could spare sometime and fill the attached questionnaire.

The information you give shall be treated with utmost confidentiality and will be used solely for this research. The findings can be availed to you upon request on completion of this research.

Kindly enclose the questionnaires in the envelop provided.

Thank you for your co-operation.

Yours faithfully,

IKINU NANCY WAMBUI

Dr Martin Ogutu

MBA Student

Supervisor
APPENDIX 11: QUESTIONNAIRE

A: This questionnaire is to get general information about the influence of intellectual property right on the individual. The information given will be kept confidential.

Tick the right answer and write where necessary.

1. Gender: Male [ ] Female [ ]

2. Age in years:
   - Below 20 years [ ]
   - 21-30 years [ ]
   - 31-40 years [ ]
   - over 40 years [ ]

3. Education Background

   Experience in music

   Number of productions

6. What motivated you to be a musician?
7. Area on focus:

- Gospel [ ]
- Secular [ ]
- Country [ ]
- Reggae [ ]
- Pop [ ]
- Local [ ]

8. Is the Music recorded?

- Yes [ ]
- No [ ]

9. Form of production: Please tick

- Record [ ]
- Tapes [ ]
- Cd [ ]
- Dvd [ ]
PART B:

10. Do you know about Intellectual Property Rights?

What do you know?

What are the benefits of Intellectual Property Rights system to you?

What are the limitations of the Intellectual Property Rights System to you?

Have you experienced infringement of your Intellectual Property?

How did you experience it?
Which of the following form of infringement have you experienced?

a. Copying [ ]
b. Adaptation [ ]
c. Performance [ ]
d. Piracy [ ]
e. Internet based [ ]
f. Producer based [ ]
g. Broadcast based [ ]
h. Any other ............................................................

17. What action did you take on either of the above?

........................................................................................................
........................................................................................................
........................................................................................................
........................................................................................................
........................................................................................................

18. To what extent would you say Intellectual Property Rights have enabled you to be more creative? Use a Five Point scale where
1= Not at all, 2= once 3= sometimes 4= To a great extent 5= To a very great extent.

<table>
<thead>
<tr>
<th>Generating new ideas</th>
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<td>Idea development</td>
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<td>Composition of the music and lyrics</td>
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<td>Development of electronic instruments</td>
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<td>Fixing of Music into analog or digital form</td>
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</table>
19. To what extent would you say Intellectual Property Rights have enabled you to be more innovative? Use a Five Point scale where
1= Not at all, 2= once 3= sometimes 4= To a great extent 5= To a very great extent.

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<tr>
<td>Innovate new ideas</td>
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<td>Internet based preparations</td>
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<tr>
<td>Offer recognition</td>
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<td>Enforcement of the rights</td>
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</table>

20. What is the contribution of Intellectual property to the following Rights?

(i) The Graphic right- the right to print or publish the music

(ii) The Mechanical Right- the right to record the music
(iii) The Performing Right—the right to perform the music in public and to broadcast it

21. If not any of the above reasons explain why and to what extent?

22. How is the enforcement of Laws on infringement?
   - Poor [ ]
   - Fair [ ]
   - Good [ ]
   - Very good [ ]

23. Cases have been known where musicians have considered quitting due to infringement of their works. Have you experienced the same?

24. If yes how did it happen?

25. What in your view can promote innovation and creativity in the music industry?
26. Is the Intellectual Property Rights system of music commercial?
   Yes | No

27. How can Intellectual Property of music be commercialized?

28. What are the other Intellectual Property issues in music?

Thank you for your time to complete this questionnaire.