



ARIPO

*African Regional Intellectual
Property Organization*

MASTER CLASS – FAIR PLAY

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Fostering Creativity and Innovation for Economic Growth and Development in Africa

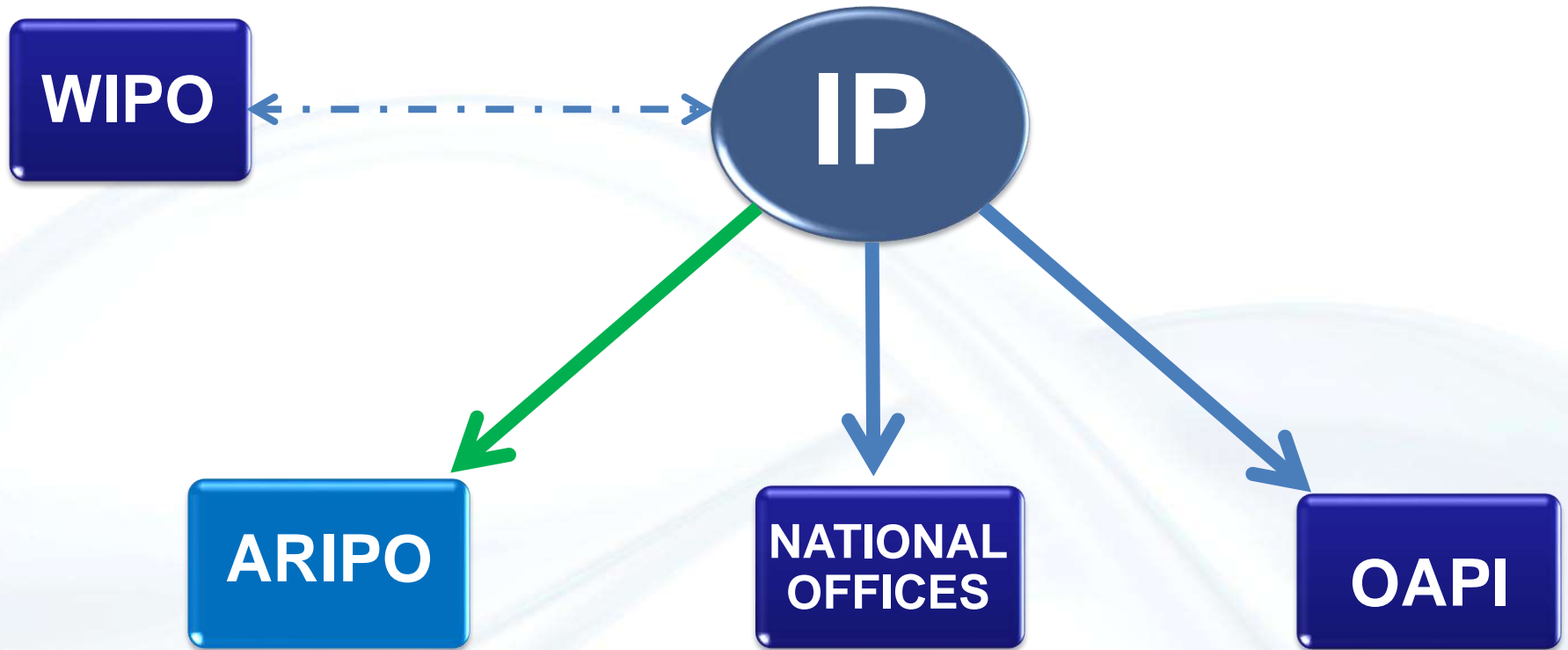
OUTLINE

- 1 Introduction
- 2 Importance of Copyright & Related Rights Protection
- 3 International & Regional Treaties on Copyright & Related Rights and the Rights Involved
- 4 Role of National Copyright Offices & Collective Management Organizations
- 5 Enforcement & Remedies
- 6 Conclusion – Key Takeaways



Fostering Creativity and Innovation for Economic Growth and Development in Africa

Management of IP in Africa



About ARIPO

Established by the Lusaka Agreement, 1976
(ESARIPO → ARIPO)

Vision

- To be Africa's leading IP Organization that promotes socio-economic development.

Protocols

- Harare
- Banjul
- Swakopmund
- Arusha
- Kampala

Member States

- **22** Member States
- Population: over 170 million



Mandates

- Patents, Utility Models, Industrial Designs
- Trademarks
- New Plant Varieties
- Copyright & Related Rights
- Traditional Knowledge, Geographical Indications



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ARIPO OFFICES – Harare, Zimbabwe



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ARIPO Membership – open to all AU Member States

- Botswana
- Cabo Verde
- Eswatini
- Gambia
- Ghana
- Kenya
- Liberia
- Lesotho
- Malawi
- Mauritius
- Mozambique
- Namibia
- Rwanda
- Sao Tome & Principe
- Seychelles
- Sierra Leone
- Somalia
- Sudan
- Tanzania
- Uganda
- Zambia
- Zimbabwe

22

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Potential MS:

- Angola
- Burundi
- Democratic Republic of Congo
- Ethiopia
- Eritrea
- Egypt
- Nigeria
- South Africa
- South Sudan

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NB: ARIPO Member States are at different levels of development.

Importance of copyright & related rights protection

- Reward rights holders for their works
- Encourage creativity
- Employment creation
- Source of revenue
- Contributes to GDP
- Cultural identity
- Preserves personality and talent
- Attracts local and foreign investment
- Public benefits
- Catalyst for development
- Balance access to and use of content
- **ARTICLE 46 CONSTITUTION OF DRC**
- **Copyright is a fundamental Human Right-UNDHR Art. 27 (2)**



Country	Year	GDP	Employment
Australia	2009	10.3%	8%
*Botswana	2019	5.46%	2.66%
Colombia	2005	3.34%	5.80%
Hungary	2002	7.42%	7.41%
Jamaica	2005	4.8%	3%
Kenya	2008	5.31%	3.25%
Malawi	2013	3.5%	3.35%
Peru	2009	2.67%	4.50%
Singapore	2001	5.7%	5.8%
South Africa	2011	4%	4%
Ukraine	2008	2.85%	1.90%
USA	2004	11.01%	8.51%
Tanzania	2012	3.2%	2.6%

- **Botswana (2019):** The contribution to GDP (5.46%) surpassed sectors such as water, electricity, agriculture, and manufacturing. In terms of employment, it contributed more than mining and quarrying, finance and insurance, and water and electricity.
- **Malawi (2013):** The contribution of the creative industries was higher than that of the mining and quarrying, human health, education, construction, transport and storage sectors.
- **Tanzania (2012):** The contribution was greater than that of the mining and quarrying sector in 2009 and 2010 (3.2% and 2.8%, respectively).
- **IPRs play a central role in business strategies.** High bargaining power, highly valued, and a competitive advantage.

International Treaties	Democratic Republic of Congo	contracting parties
Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) – 1886 – 1971	Accession: October 8, 1963	181
International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) – 1961	Not a party	98
WIPO Copyright Treaty (WCT) – 1996	Not a party	118
WIPO Performances and Phonograms Treaty (WPPT) – 1996	Not a party	114
Beijing Treaty for the Protection of Audiovisual Performances (BTAP) – 2012	Not a party	48
Marrakesh Treaty to facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled (MT) – 2013	Not a party	100
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) – 1994 - WTO	In force - January 1, 1997	166

Monist vs Dualist

Monist

Treaty duly ratified becomes part of the national legal system

Example:

“Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia” (**Article 144, Constitution of Namibia**)

Dualist

Requires the translation of the treaties into the national law (Without this translation, international law does not exist as law in the Country – e.g., cannot be invoked in Court)

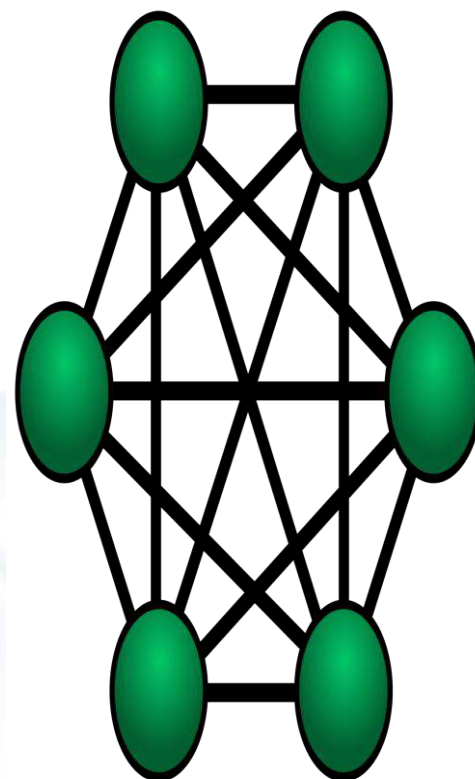
Example:

“Any international agreement entered into after the commencement of this Constitution shall form part of the law of the Republic if so provided by an Act of Parliament” (**Section 211, Constitution of Malawi**)



Benefits of International Instruments include:

- **Sets minimum international standards**, obligations and flexibilities;
- **Harmonization** - to smoothen the international environment (It does not mean uniformity);
- **Enhances** International relations;
- Essential to achieving the robust intellectual property protection that spurs global economic expansion;
- **Broaden protection** for local creators;
- **Enable cooperation** in fighting infringement and promoting commercialisation;
- Advent of digitalisation and other technological changes, much more coordination is required in tracking use of works to ensure the creators' and rightsholder's benefits.
- **Regional and national frameworks are also very important.**



Berne



BERNE CONVENTION Exclusive Economic Rights

- Reproduction Right Art. 9(1)
- Distribution Right Art. 14(1), Art. 6 WCT
- Rental Right
- Resale Royalty Right Art. 14 ter
- Adaptation Right Art. 8, 12, 14
- Translation Art. 8
- Public Performance Art. 7, 14 bis, 14 ter
- Communication to the Public Art. 7, 14 bis, 14 ter
- Making Available Right
- Art. 13(1) Recordings of musical works & words
- Art. 11bis(2) Broadcasting of works, Communication to the public by wire or rebroadcasting of the broadcast work
- Art. 11 bis(3) Ephemeral recordings of broadcast works.

Exceptions & Limitations

- Art. 2(4) Official texts
- Art. 2(8) News of the day
- Art. 10 (1) Quotation
- Art. 10 (2) Utilization for teaching
- Art. 2 *bis* Speeches
- **3 STEP TEST: Art. 9(2) BC and Art. 13 TRIPS** –special cases, not to conflict with normal exploitation of the work & not to unreasonably prejudice the legitimate interest of author.
- **Moral rights: Integrity & Paternity**
- **Duration Art. 7(1),(2),(3) BC Authors life+50 after his death. 25 years applied art & photographs (Uganda 50)**
- **Appendix to the BC Art. 21: Right of Translation & Right of Reproduction – Non-exclusive, non-transferable.**

Rome



Rome Convention (1961)

AIM	Performers- actors, singers, musicians, dancers, those who perform literary or artistic works	Producers of phonograms – persons/ legal entity	Broadcasting Organizations
To protect rights of performers, producers of phonograms/ sound recording & broadcasting organisations	Economic rights: broadcasting, communication to the public of a live performance, fixation of the live performance, reproduction of the fixation	Economic rights: right to authorize or prohibit direct or indirect reproduction of their phonograms. Equitable remuneration	Economic rights: to authorize or prohibit – rebroadcasting of their broadcasts, fixation of their broadcasts reproduction of such fixations, communication to the public of television broadcast in places accessible to the public for a fee
	N/B Performers rights ceases once he agrees to visual or audiovisual fixation (BTAP Art.12 fills gap)		

WIPO Internet Treaties – WCT & WPPT



WIPO Internet Treaties aimed at	WCT	WPPT
<ul style="list-style-type: none"> ▪ Preventing unauthorised access to and use of creative works on the Internet or other digital networks. ▪ N/B Balance between protecting rights owners online and public interest 	<ul style="list-style-type: none"> ▪ Addressed Digital Agenda to respond to developments in technology and market place. ▪ N/B: Special Agreement under Art. 20 Berne Convention. ▪ 3 exclusive rights: distribution, rental & communication to the public. TPMs, RMI & provide enforcement procedures. ▪ AGREED Statement of Art. 10 applies similarly to Beijing Treaty –L&E may be extended to digital environment. 	<ul style="list-style-type: none"> ▪ Protects rights of performers and producers of phonograms. ▪ N/B: Has no relation to the Rome Convention ▪ Performers in their fixed performances: right of reproduction, distribution, rental, making available. ▪ Phonogram producers: right of reproduction, distribution, rental, making available. ▪ Moral rights ▪ 50 years ▪ TPMs, RMI, ▪ Enforcement ▪ L&Es, right to remuneration

Beijing



BEIJING TREATY AIM

- Addresses gaps left by the Rome Convention and the WPPT
- The preamble states so.
- AGREED Statement Art. 7 fully apply in the digital environment...storage of a protected performance in digital form in an electronic medium constitutes reproduction.
- 3 STEP TEST Art. 13

Exclusive economic rights & moral rights

- Grants exclusive economic rights of unfixed performances. Right to authorize:
 - Reproduction, distribution, rental, making available, broadcasting and communication to the public.
- Grants moral rights in their live performances or performances fixed in audiovisual fixations.
- Art. 12 on Transfer of Rights its key – on unwaivable equitable remuneration or royalties for any use of the performance.



Marrakesh



Marrakesh Treaty

- Gift to empower blind, visually impaired & other print disabled persons.
- Over 285 million population are blind.
- More than 90% of world book are not in accessible format creating book famine.
- 3.1 million people in Uganda have mild to total blindness.
- Accessible Book Consortium (ABC) - capacity building, book exchange & inclusive publishing.
- Authorized Entity: Non-profit & government entities. Specifically authorized by government or recognized by the govt as entities that provide many functions including education & information access.
- Country can have more than 1 AE:by govt or by law
- Works – literary & artistic BC
- Accessible format e.g., braille, Daisy (Text only,full text/audio, audio only) & large prints.
- Beneficiary persons
- Art.4 National law L&E on accessible format copies
- Art.4(2)(b) empowering provision allow individual assisting beneficiary person to make accessible format copy for personal use of beneficiary person.



TRIPS Agreement

- A comprehensive multilateral agreement on IPRs and Enforcement.
- International harmonized system of IP protection would enhance trade and reduce distortions and impediments to international trade.
- Incorporates key provisions of the Berne convention Art. 9 members to comply with Art. 1-21 BC.
- No obligation to comply with Art. 6bis BC on moral rights.
- Art. 11 TRIPS grants authors right to authorize & prohibit commercial rental to the public of originals or copies. Same as Art. 9(1) Beijing treaty for performers.
- Art. 14 (4) producers of phonograms
- Duration 50 years

KAMPALA Protocol on Voluntary Registration of Copyright & Related Rights

<https://www.aripo.org/wp-content/uploads/2021/09/Kampala-Protocol-on-Voluntary-Registration-of-Copyright-and-Related-Rights-2.pdf>

❖ Scope

Protocol shall govern the contracting states in the voluntary registration and notification of copyright and related rights.

❖ Objectives:

- (a) establish, manage, facilitate and coordinate a system for voluntary registration and notification of copyright and related rights;
- (b) uphold common principles regarding voluntary registration and notification of copyright and related rights;
- (c) provide copyright holders means of presumption to authorship or ownership of rights; and
- (d) to ensure that creative industries contribute to the socio-economic development of countries.

❖ **Benefits include** Database created, Presumption as to authorship & ownership, statistics, local & foreign investment, market expansion etc.

❖ Namibia ratified on 30 August 2024. There are twelve (12) signatories i.e., The Gambia, Ghana, Liberia, Malawi, Mozambique, Namibia, Sao Tome & Principe, Sierra Leone, Sudan, United Republic of Tanzania, Uganda and Zambia.



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Role of National Copyright Offices (COs) – Generally include:

- Policy formulation
- Advisory role/ Guidance to the government
- License, supervise and monitor CMOs. Cancel CMO licence.
- Issuance of compulsory licences – reproduction and translation rights –Appendix to the BC
- Capacity building: Attachment/ internship/workshops/study visit/Distance learning courses/enforcement agencies
- Awareness raising
- Mediation of copyright disputes
- Enforcement - collaborate with enforcement agencies
- **Regulatory frameworks:** Knowledge on them it's a must/ necessity
- **Operational environment**, balance the needs and interests of different stakeholders. Governs structures and processes.
- **Role clarity COs is vital**



CMO Role includes:

- ❖ CMOs are mandated by copyright holders to **manage the rights in their copyright works**:
 - **implement** the enabling legislation;
 - **negotiate** license fees, tariffs for usage of copyrighted works;
 - **grant** licences in return for appropriate remuneration;
 - **monitors** that use to enforce the conditions upon which the license was granted;
 - Act as an **Intermediary**-Provide a link between rights holders and users;
 - Act as a **trustee**-Collects remunerations, **hold in trust** and distribute to right holders accordingly; and
 - Provide **services** in the interest of right holders and users to **facilitate** legal access to copyright works
- ***Distribution of royalties is very key.**



Enforcement

- Enforcement **requires proof of the existence of the right, and proof of the infringing act**, Harms (2018), **Fisher & Payer Financial Services Limited v. Karum Group** [2012] NZHC 794
- **Safety System Inc. et al. v. Albian Sands Energy Inc. et al.**, 2005 FCA 332(CanLII) – **proof of copyright infringement requires proof of lack of consent.**
- **Cause of action:** facts that gives a person right to sue, seek redress/ remedy
 - **Leo Feist, Inc., v. Young** – Judge Kerner states in **Equity jurisprudence**, there is no wrong without a remedy, and whoever comes to equity must come with clean hands as equity seeks above all justice.

Examples of remedies include:

- Negotiation - Alternative dispute resolution – Mediation, and Arbitration procedures
- Litigation: Civil, Criminal and Administrative procedures.
- Damages - can seek monetary compensation for unauthorized use of their work. Accounts for profits: The injured party may recover profits derived by the infringer from the acts of infringement.
- Injunctions: They can obtain court orders to prevent further unauthorized use or distribution of the work.
- Seizures
- Delivery up
- Licensing
- Take down notice
- Rights Management Information (RMI) and Technology Protection Measures (TPMs)



<https://www.aripo.org/publications/copyright-publications>

- ARIPO Guidelines for Ratification/Accession and Domestication of International Instruments on Copyright and Related Rights.
- ARIPO Guidelines for the Domestication of the Marrakesh Treaty.
- Copyright Awareness Raising Guide for ARIPO Member States
- Guidelines for the Development of a Business Plan for CMOs in ARIPO Member States
- Reputation Management Guide for Collective Management Organizations.
- Guidelines to Contracts
- ARIPO Model Law on Copyright and Related Rights
- WIPO website <https://www.wipo.int/portal/en/index.html>
- <https://www.cisac.org/>
- <https://www.ifpi.org/>
- <https://ifrro.org/>
- <https://www.scapr.org/>
- CREDIT: Google photos

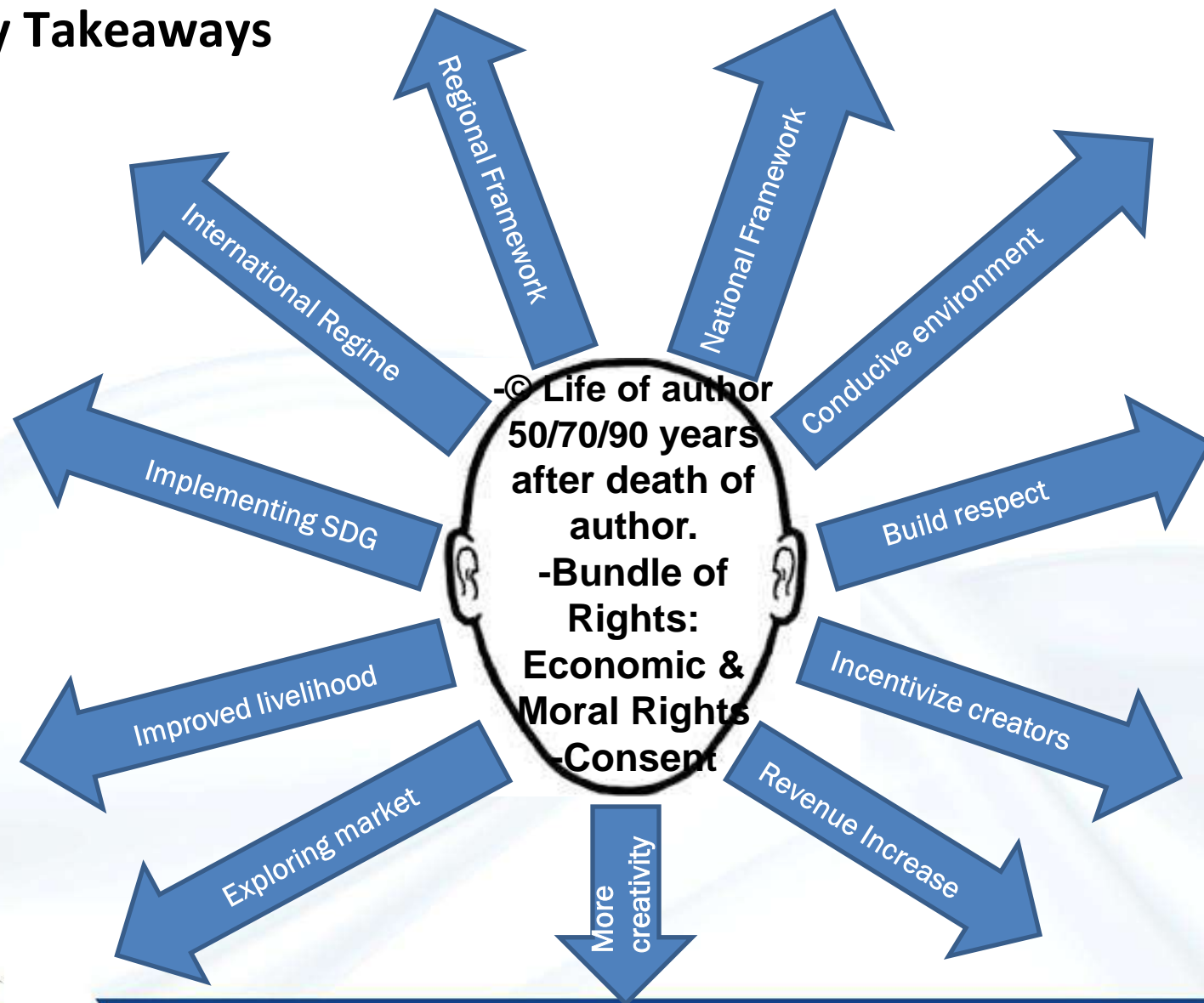


Conclusion

- International treaties play a crucial role in shaping and informing national laws and policies. DRC needs to consider ratifying, domesticating, and implementing the treaties/protocols to ensure that the beneficiaries are covered and benefit accordingly.
- COs to implement a continuous sensitisation programme for all stakeholders and users, ensuring no one is left behind.
- CMOs to collect and distribute royalties, observing transparency, accountability & good governance.
- TOGETHER THIS WILL FORM A ROBUST COPYRIGHT AND RELATED RIGHTS ECOSYSTEM FOR SUSTAINABLE CREATIVE ECONOMY



Key Takeaways



“There is a **difference** between **interest** and **commitment**. When you are interested in doing something you only do it when it is convenient. When you are committed to something you accept no excuses **ONLY RESULTS**”

Kenneth Blanchard



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Thank You!

HAVE YOU CREATED TODAY?



Fostering Creativity and Innovation for Economic Growth and Development in Africa



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