

MMAKS | ALN

MMAKS ADVOCATES

COPYRIGHT AND COLLECTIVE MANAGEMENT

-

UGANDA PERFORMING RIGHT SOCIETY



23.07.2021

Grace Nakabugo

Guiding questions

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- What is copyright?
- What are the relevant laws in Uganda?
- What are the types of rights under copyright?
- What is the duration of the right?
- How can copyright be exploited and/or commercialized?
- What is collective management of copyright?



Source: Google photos

What is copyright?

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- Original works reduced to material form in whatever method irrespective of quality or purpose of creation
 - ▣ Literary works
 - ▣ Artistic works
 - ▣ scientific works

NB: the legal categories do not necessarily correspond to the objects protected by copyright



Literary



Musical

Works that Can be Copyrighted



Artistic



Dramatic



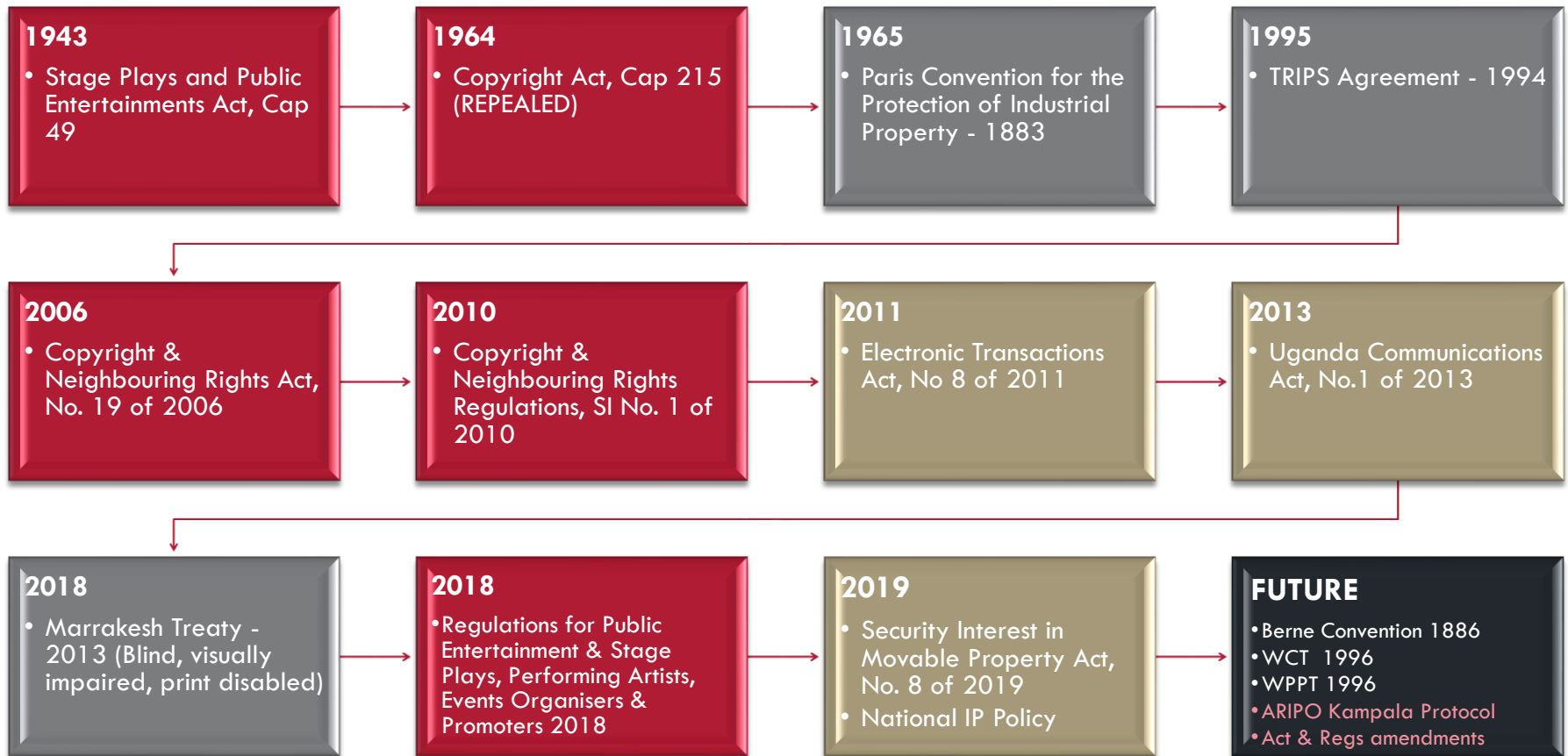
Recording



Source: Google photos

Relevant laws in Uganda - Timeline

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The types of rights under copyright?

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□ Copyright right

■ Right to subject matter

- Lyricist, musical Composer
- Sculptor
- Book author

□ Neighbouring rights

■ Rights related to copyright, attached to auxiliary role played by:

- Performers
- Producers of sound/audio-visual recording
- Broadcasting companies

auxiliary role is dependent on the work of the author/owner - without which the role cannot begin.

□ Economic rights - Owner

■ Commercial exploitation

- Distribute, reproduce, perform
- Rent, lend, adaptation
- License, sell, authorize acts etc.

□ Moral rights - Author

■ Paternity

- Acknowledgement in use
- Authorship claim

■ Integrity

- Objection to distortion, dilution, mutilation, alteration etc.

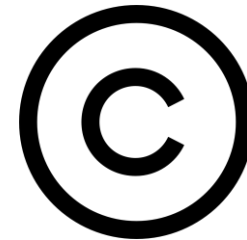
Protection of copyright works



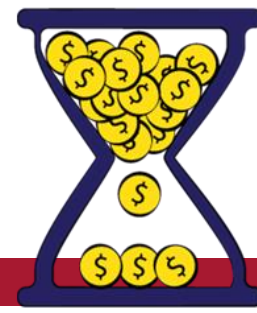
Source: Google photos

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- ❑ Copyright “right” is inherent on creation of an eligible work
- ❑ Protection not subject to formality – registration is voluntary
- ❑ Ideas, concepts, procedures methods and the like are not protected by copyright
- ❑ Registration is voluntary for;
 - Keeping evidence of ownership
 - Identification of works and authors
 - Maintenance of record of rights
- ❑ Infringement
 - Occurs without valid transfer, license, authorization or contrary to **permitted/fair use**
 - Infringement is not actionable unless it involves the whole or substantial part of the work
 - Includes use prejudicial to honour or reputation of author



Duration of the rights



Source: Google photos

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❑ Moral rights - **not assignable**

- Exist in perpetuity - whether economic rights are still protected or not

❑ Economic rights

- **Individual**: lifetime of the author and 50 years after death
- **Legal entity**: 50 years from the date of first publication of the work
- Computer program: 50 years from the date of making the program
- Photographic works: 50 years from the date of making the work
- **Audio visual, sound recording or broadcast**: 50 years from the date of making the work or when work is made available to the public
- **Performers**: 50 years from the date of the performance

Copyright in a song

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□ **Musical work**

▣ 1 song 3-4 copyrights

■ **Composition**

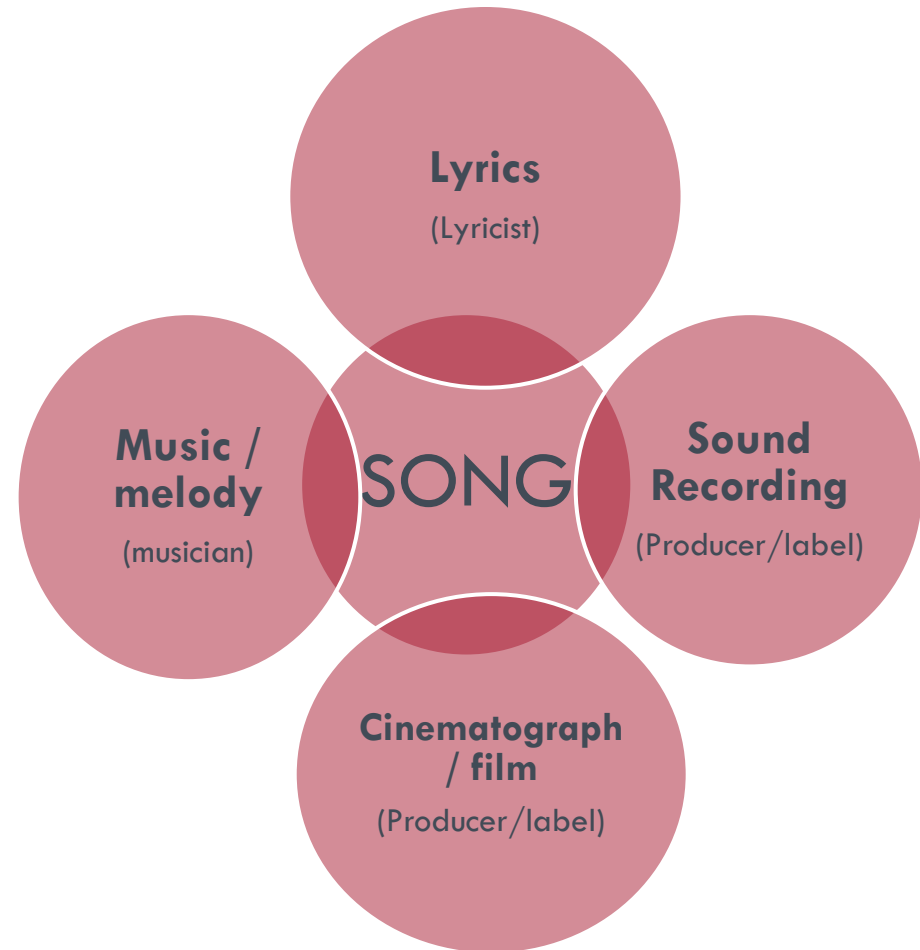
- ▣ Lyrics
- ▣ Melody / musical composition

■ **Recording**

- ▣ Sound recording/Audio compilation
- ▣ Visual compilation

A song may consist of literary and musical works (the lyrics being a literary work);

A CD might contain a sound recording, a musical work, and a literary work.



Rights in a song

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A. Copyright

- ▣ Composition
 - Lyrics
 - Melody/musical composition
- ▣ Sound recording
 - Audio compilation
- ▣ Visual recording
 - Cinematograph film / video

B. Neighbouring rights

- ▣ Auxiliary role played by
 - **performers, producers** of sound recording and audio-visual and **broadcasting companies**
 - through-
 - ▣ (a) the fulfilment of literary or artistic works;
 - ▣ (b) the provision of destiny and permanence in works; and
 - ▣ (c) the diminishing of distance in the publication of works;

respectively, which auxiliary role is dependent on the work of the author and without which the role cannot begin.

The two main types of music copyright:

SOUND RECORDING

Ownership of the track
(a particular recording).

Usually owned by a label or artist.

COMPOSITION

Ownership of the song (the music &
lyrics that exist separately from any
particular recording of that song).

Usually owned by songwriters and/or publishers.

Commercialization

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Source: Google photos

□ Assignment / transfer

An assignment is a transfer of ownership of the copyright. As a result of an assignment, assignees stand in the shoes of the assignor and are entitled to deal with the copyright as they please.

□ License

A permission to do an act that would otherwise be prohibited without the consent of the proprietor of the copyright. A license enables the licensee to use the work without infringing. So long as the use falls within the terms of the license.

□ Collateral - mortgage / charge / securitization

Copyright can be given as security for a debt to access financing

Assignment / transfer

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Copyright Assignment



Transfer of ownership rights from the owner to, another individual or company.

It can be either partly or wholly.

Payment: a royalty, fixed sum or both



Source: Google photos

Licensing

When a copyright owner gives permission to a particular party to use the copyrighted work for a specific reason.



You can use my
song called
"Oo Oo Yeah Yeah"



License — License or Usage Agreement / Terms

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Voluntary license



Exclusive

Licensee
only

Equal to
a lease



Sole

One
licensee
and
owner



Ordinary

Various
licensees
or uses
of work

Compulsory license - by law

- Permitted use / exceptions
- Administrative procedures to obtain license
- Deny owner the right to bargain



Source: Google photos

Assignment vs License

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- Assignment -

- An assignment must be in writing.
- An assignment transfers ownership of your work to some other person or company.
- They can do whatever they want with your work after you assign your work to them.

- Why It Matters -

You don't want to inadvertently lose control of your work so you need to be very careful.

You can license your work multiple times but you can assign it only once.

If you want to maintain ownership and control over your work, you should never use the word "assign" or "transfer" in a contract.

- License -

- A license can be verbal or written.
- You can retain ownership of your work.
- A license can be limited or unlimited.
- A license can be exclusive or non-exclusive.
- A license can be limited to a specific period of time.
- A license can be limited to a specific project.

A license, if properly drafted, can allow someone the right to use your work for a limited time, for a limited scope, while you retain ownership of your work.

Once you transfer ownership of your work via an assignment, you cannot use your own material any more, unless you get permission.



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Source: Google photos

Collateral - mortgage / charge / securitization

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Collateral LOANS

Collateral is often required when the lender wants some assurance that they won't lose all of their money. If you pledge an asset as collateral, your lender has the right to take action.

TYPES OF COLLATERAL



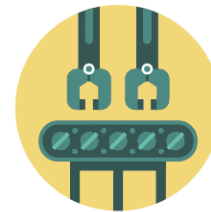
Automobiles



Real estate (including equity in your home)



Valuables and collectibles



Machinery and equipment



Investments



Insurance policies



Cash accounts

Source: Google photos

Collateral - mortgage / charge / securitization

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Source: Google photos

SECURITY INTEREST IN MOVABLE PROPERTY REGISTRY SYSTEM (SIMPO)

Safer lending, Easier borrowing

Are you a bank, money lender, SACCO, microfinance institution, or any other type of lender? Do you lend against movable property like cars, motorcycles, business stock, plant & machinery, household items, agricultural products?

Your security interests in these movable assets can be registered on the online Security Interest in Movable Property Registry System (SIMPO). The whole world would be notified

#Safertolend #Easiertoborrow #SIMPO

+256 712 448 448 0800 100 006 www.ursb.go.ug URSBHQ @URSBHQ

simpo.ursb.go.ug

NB: under the Security Interest in Movable Property Act, movable property includes **intangible assets** which include **intellectual property** like works protected under the **Copyright and Neighbouring Rights Act**.

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Collateral - mortgage

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Mortgage

- Like other forms of property, copyrights may be mortgaged - that is, assigned as security for a debt.
 - This can be a useful technique that enables copyright owners to raise funds.
 - Particularly common where a work is extremely expensive to create, as in the film industry.

- A mortgage is achieved by way of an assignment of the copyright by the copyright owner to the mortgagee (lender).
 - Subject to a condition that the copyright will be reassigned to the mortgagor when the debt is repaid or on 'redemption'.
 - It is important that the assignment reserves for the mortgagor a right to continue selling copies of the work (exclusive license).

Collateral - charge

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Charge

- Copyright can be used as security by way of a charge.
- While, in these circumstances, there is no assignment, the chargee does gain certain rights over the copyright as security – crystallization.



Source: Google photos

- In the case of security as mortgage or charge, the transaction should be in writing and signed by the parties *in order to be valid*.
- It is assumed that a mortgagee has the powers of proprietor and is therefore able to sue infringers, even though, as a matter of practice, the borrower is in a better position to police infringements.

Collateral – securitization

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Securitization

- ‘Securitization’ - a further way of raising money from copyright.
- Typically, securitization involves **selling tranches of** (that is, defined periods of entitlement over) **the rights to royalties** accruing from bundles of copyrights,
- The reasons for creating these financial arrangements stem from the desire to exchange future possible income for immediate capital, which will facilitate reinvestment of that capital in new projects.



Source: Google photos

Collective management of copyright

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What is Collective Management?

- Collective Management



- CMO is Not-For-Profit organization:
 - administering the owners' rights & monitoring use of works,
 - negotiating and licensing appropriate fees and conditions,
 - distribute royalties among the owner of rights,
 - taking legal action against infringers

Collective management of copyright

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Source: Google photos

CMOs/ Collecting Societies in Uganda - Voluntary membership

<p>CMO</p>	<p>Uganda Performing Right Society (UPRS)</p> 	<p>Uganda Federation of Movie Industry (UFMI)</p> 	<p>Uganda Reproduction Rights Organization (URRO)</p> 
<p>Bundle or category of rights</p>	<p>Musical works - Music</p>	<p>Audio-visual works - Film</p>	<p>Literary works - Books</p>
<p>Regulator</p>	<p>Uganda Registration Services Bureau (URSB)</p> 		

NB: Voluntary membership BUT One CMO per bundle or category of rights



- UPRS was formed in 1985 by musical authors.

Today UPRS;

- Is registered as a Company Limited by Guarantee having no share Capital.
- Is a CMO and has license from URSB to operate as a collecting society under the Copyright and Neighbouring Rights Act.
- Is a Member of the Confederation of International Societies of Authors and Composers (CISAC).
- Has entered into Reciprocal Agreements with other CMOs worldwide.
- Has mandate over local and foreign works within its repertoire in Uganda.
- Represents the rights of over 4,000 members in Uganda.
- Issues licenses to play, perform or make available copyright music on behalf of our members and those of overseas societies.
- Distributes royalties to its members and societies with reciprocal arrangements.

History until 2019

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PRE –
INDEPENDENCE
(PRS)

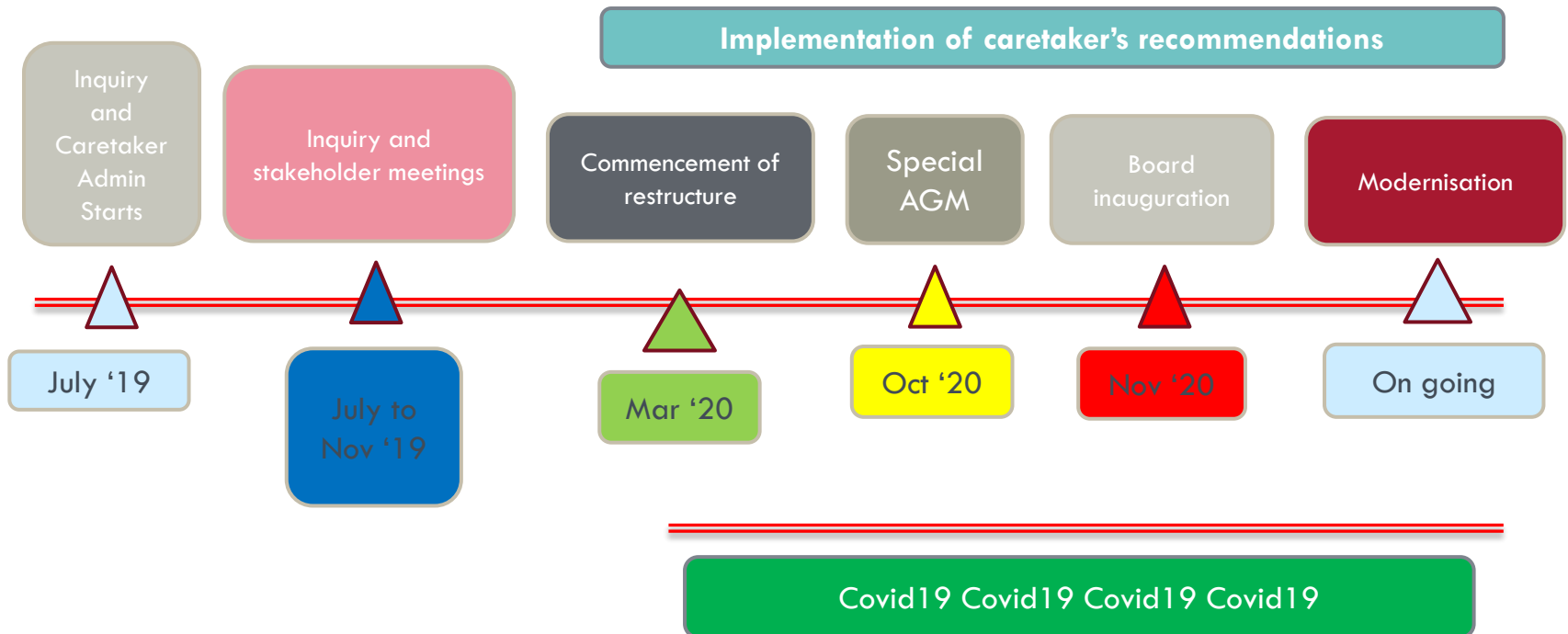
TURBULENT
1970'S

UPRS
FORMATION -
1985

THE
COPYRIGHTS
AND
NEIGHBOURING
RIGHTS ACT -
2006

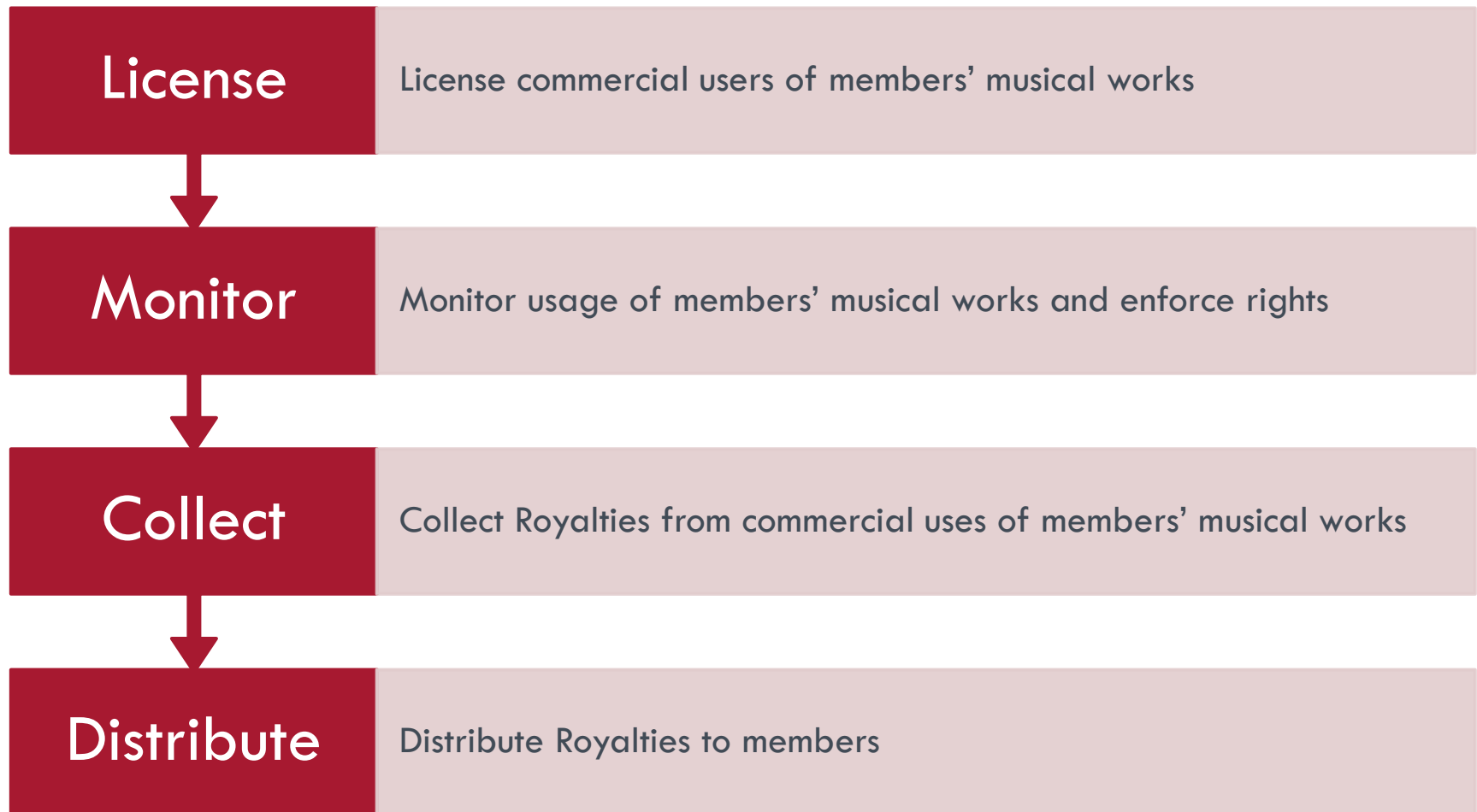


July 2019 to date





Key Functions

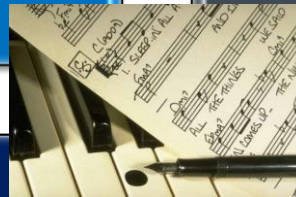


Member Segments



42
Publishers

600
Composers/ Authors



3,500
performers



Tariff categories

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NB:

- UPRS sets the tariffs and categories
- Currently 37 tariffs, e.g.

Aircraft
Shops, Stores, Showrooms, Offices
Bars, Gardens, Pubs
Beaches and similar Open air premises
Clubs
Discotheques and Dance Halls
Hair Dressing Salons and Bathers Shops
Hotels, Restaurants
Juke Boxes
Light Music Concerts
Live Music Performances
Memory Cards and Memory Sticks
Mobile Disco Jockeys
Musical Shows in Halls, Theatres and Auditoriums
Paid up Live Music Performances
Radios and Televisions
Sports Betting and similar premises
Buses, Motor Coaches, Taxis and Mini Buses
Guest Houses/Gyms
Banks

Statistics

PARTICULARS	CURRENT STATE 2021	REALISABLE POTENTIAL
Members	3,994	25,000
Works	16,200	126,200
Reciprocal Agreements	35	Potentially 80 CMO's
Assessed Users	2,550	253,000

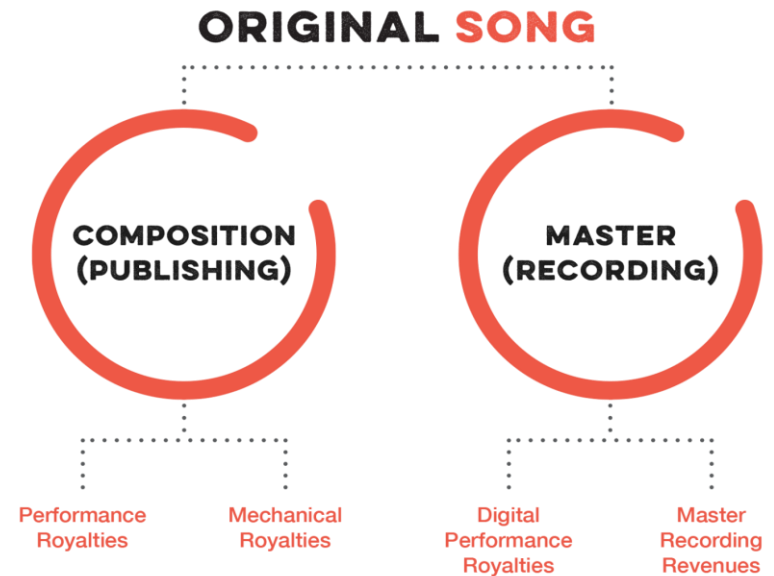
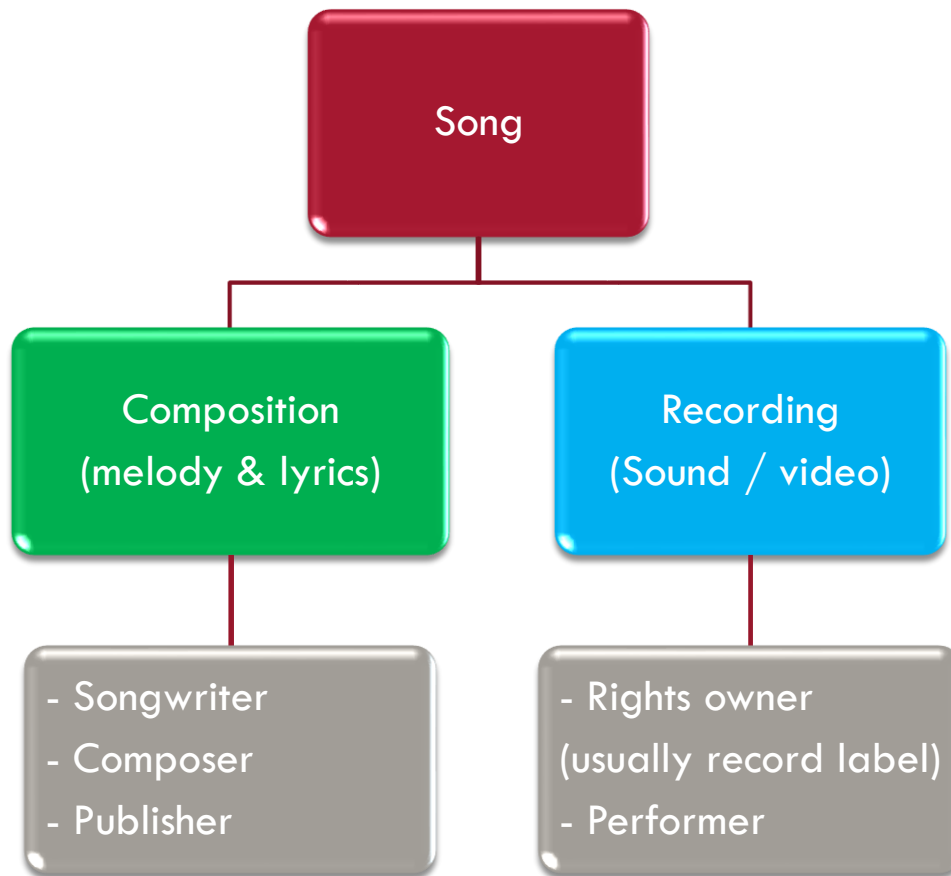
Music revenue – 2 main copyrights

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Source: Google photos



Who gets paid?

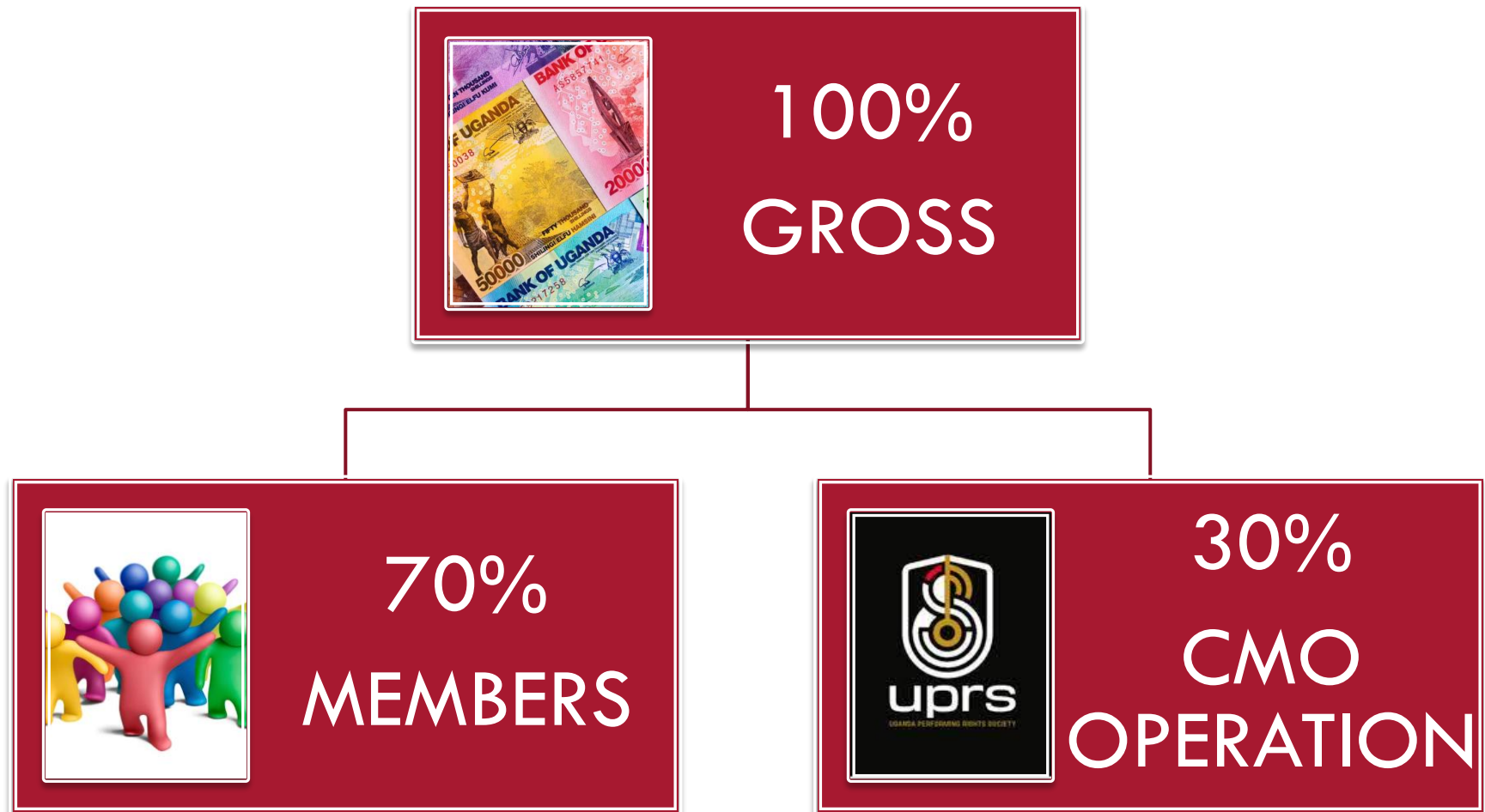


Source: Google photos

WIPO Guide Revenue split model

Collection vs Distribution

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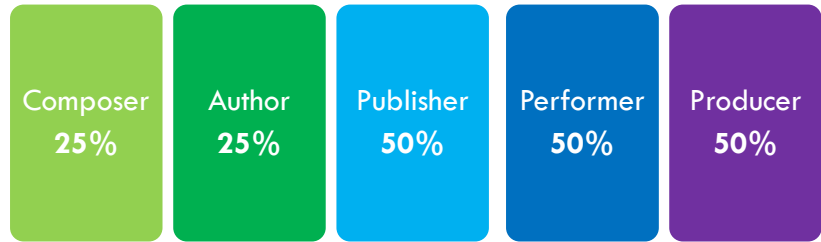




WIPO Guide Revenue split model

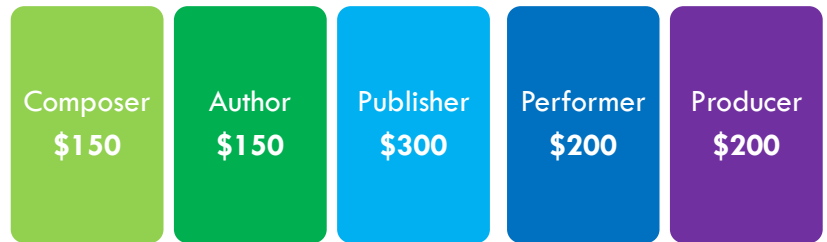
Members' 70%

REVENUE SPLIT MODEL



SONG
100% (70% of collection)

CASE STUDY \$ 1,000



SONG
\$1000

Creative

- Vibrant society shaped by the large youth demographic
 - Youngest population in the world, high rates of unemployment spurring entrepreneurship

Massive Growth

- Ugandan Music permeates our ethnic diversity and western tastes
 - Local music has locked out foreign works which enjoyed premium market space in the past.

Enhanced sector regulation

- URSB revived regulation of CMOs, UPRS restructure – URSB IP Enforcement (Police) Unit.
- UCC Broadcasting Policy - 70% Local content requirement – includes music, drama etc
 - Enhance social & night life, Liberalised media industry with 500 operating media houses and several other online broadcasters serving Ugandans in the diaspora

Low earnings

- Fame without fair “value” revenue
- Existing 37 tariffs can be reviewed – CMO is responsible for the tariff
- Unexploited potential - revenue leakages, enforcement leakages

MEMBER ELECTED

- **Justin** Basiima - Producers
- **James** Serumaga - Publishers
- **Juliet** Ssesanga - Performers
- **Wisdom** Kaye - Performers
- **Dr. Peter** Ntege - Composers

REGULATOR APPOINTEES

**Kabiito
Karamagi**

**Prof. Patrick
Mangeni**

**Robert
Ssemakula**

**Sam
Okello Kelo**

**James
Abola**

**Grace
Nakabugo**

Board of Directors (2020-2023)



Julie Ssesanga



Dr. Peter Ntege
Nawe



Kabiito Karamagi



Robert Ssemakula



Prof Patrick Mangeni



James
Sserumaga



Wisdom Kaye



Justin
Basiima



James Abola



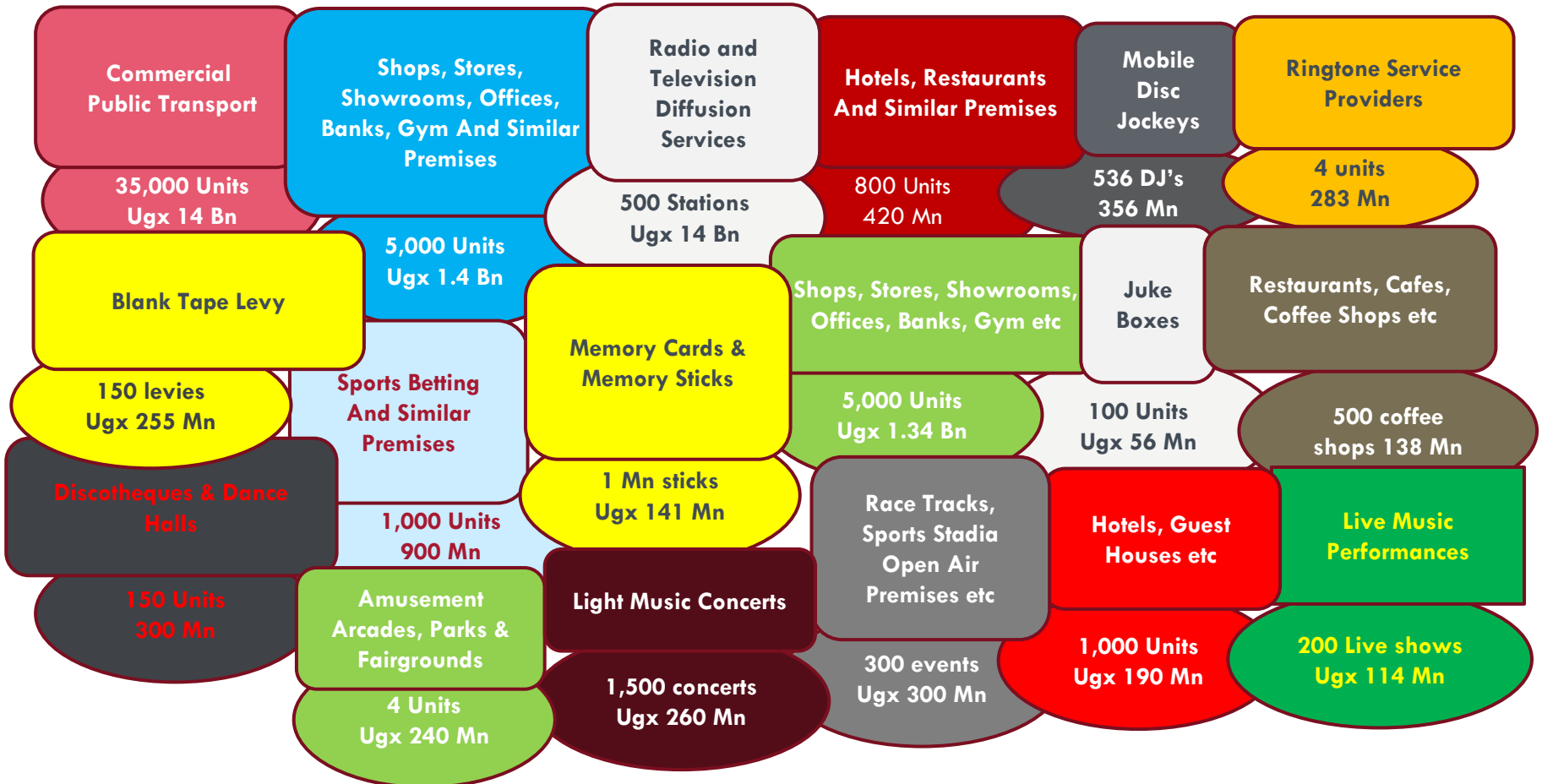
Sam Okello Kelo



Grace
Nakabugo



Revenue potential & leakages



Board priorities

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Enhanced accountability and value addition to the Members

- **Regular** payments of **value** Royalties
 - ▣ through the implementation of Business Process re-engineering
- Working with Govt agencies to build sustainable partnerships to **protect & commercialize members works**
 - ▣ URSB, URA, NITA, UCC, LGs, UPF, DPP, UNCC, NCF
- Seek partnerships to **provide value addition** to the members to
 - ▣ enhance their revenues, brands to attract societal respectability
 - ▣ Provide social protection (healthcare education etc)

Capacity building & Professionalisation of the CMO

Recruiting and maintaining	Recruiting and maintaining a professional staff
Training	Training in copyright for staff and members
Building	Building institutional capacity through Business Process re-engineering leveraging on ICT
Creating	Creating a firm regional footprint around the country to promote stakeholder engagements

Take away

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Collective management

- Voluntary but necessary
- Enforcement & strength in numbers
- Growth curve for the long game

Bookkeeping

- Creation in puts
- Marketing in puts
- Trends – demand & supply
- Copyright registration

Valuation

- Value of the work
- Commercialization

Revenue strategy

- Royalties or one-off payment
- License vs assignment
- Collateral over work or royalties



Source: Pixabay

THE END



*Thank
you!*

Grace Nakabugo, Principal Associate

E: nakabugo@ug.africalegalnetwork.com

MMAKS ADVOCATES

4th Floor, Redstone House,
Plot 7 Bandali Rise, Bugolobi,
P. O. Box 7166,
Kampala, UGANDA

T: +256 0393-260330

E: info@ug.africalegalnetwork.com

W: www.africalegalnetwork.com

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