

OPEN ACCESS

Manuscript ID:
ASH-2024-12017706

Volume: 12

Issue: 1

Month: July

Year: 2024

P-ISSN: 2321-788X

E-ISSN: 2582-0397

Received: 10.05.2024

Accepted: 25.06.2024

Published: 01.07.2024

Citation:

Louise, Gerard, et al.
“The Cultural Aspect of the Mauritian Copyright Law: A Tool for Promoting Cultural Diversity?”
Shanlax International Journal of Arts, Science and Humanities, vol. 12, no. 1, 2024, pp. 16–22.

DOI:

<https://doi.org/10.34293/sijash.v12i1.7706>




This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License

The Cultural Aspect of the Mauritian Copyright Law: A Tool for Promoting Cultural Diversity?

Gerard Louise

Institut Escoffier, Saint Pierre, Mauritius

Kumar Dookhitram

*Department of Applied Mathematical Sciences (AMS)
School of Innovative Technologies and Engineering (SITE)
University of Technology, Mauritius (UTM), Mauritius
 <https://orcid.org/0000-0002-3205-6936>*

Michael Blakeney

Faculty of Law, University of Western Australia, Australia

Patrick Allen

Independent Scholar, United Kingdom

Abstract

Scholarly interest in the connection between cultural diversity and copyright law has grown. This article looks at the cultural implications of copyright laws in Mauritius and considers how they may be used to support cultural diversity. Mauritius has made great strides in its social and economic development, but little is known about the cultural implications of its copyright laws. By offering a thorough examination of the cultural provisions of Mauritius copyright law and evaluating its effects on the preservation and advancement of cultural variety in Mauritius, this paper seeks to address this gap. The results show that Mauritius' copyright system needs to be more adaptable, transparent, easy to update, and sufficiently flexible to adjust to the evolving needs of its authors, users, and cultural environment.

Keywords: Mauritius Copyright Law, Cultural Diversity, Traditional Cultural Expression, Creative Industries, Policy, Cultural Provisions.

Introduction

The preservation and promotion of cultural diversity (UNESCO) have become increasingly important in the globalized world. Copyright law serves as a pivotal legal framework that governs the rights of creators and users/consumers of creative works, thereby influencing cultural production, dissemination, and consumption (Koskinen-Olsson and Lowe). The purpose of this paper is to present a thorough examination of the cultural implications of copyright laws in Mauritius and how they could contribute to cultural diversity. Through an examination of the existing legal framework, exploration of case studies of cultural industries, and comparison with international standards, this article seeks to enrich the academic discourse on the interplay between copyright law and cultural diversity (UNESCO). It aims to offer valuable insights for policymakers, legal practitioners, and researchers interested in cultural heritage, intellectual property rights, and cultural policy.

The background section provides an overview of the Mauritius' multicultural and multilingual society, emphasizing the significance of cultural diversity in shaping social cohesion. This article also explores the role of copyright law in the sphere of cultural diversity, considering international guidelines and perspective. The article presents the cultural provisions of the Mauritian copyright law, discussing their protection and their challenges and opportunities. Additionally, it examines the promotion of local cultural industries to assess access to and the use of cultural activities, materials, goods and services (UNESCO), as well as the impact and effectiveness of these provisions.

This study is grounded in cases studies from cultural industries in Mauritius and includes perspectives from selected stakeholders on the challenges they regularly face and their recommendations for implementations. A comparative analysis with relevant international treaties and conventions is also included. The role of the Mauritian Copyright law in promoting cultural diversity, along with its challenges and limitations will be discussed. Finally, the article concludes with policy and practice recommendations and suggests directions for future research.

Cultural Diversity in Mauritius

Mauritius is recognised to have a vibrant multicultural and multilingual society, shaped by a rich history of diverse influences. A melting pot of cultures was created by the arrival of 'European settlers, African slaves, Creoles, Chinese traders, and Indian labourers', making up the population of about 1.2 million people (Sunlife). The island's cultural integration is a testament to unity and pride in being Mauritian, despite the varied languages, customs, and traditions present. We observe that there is no official language, English is predominantly used in government and administrative work, with French widely understood and spoken in media.

However, the reading of Section 33(d) of the Constitution of Mauritius provides that 'to be qualified for membership in the National Assembly a candidate must be able to speak and read English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings

of the Assembly'. The most spoken language is Creole, which has a significant French influence. The linguistic diversity is further enriched by the presence of Indian language like Hindi, Tamil, and Urdu, as well as Chinese dialects, reflecting the multicultural fabric of Mauritius (ORAMA). Religion plays a vital role in Mauritian society. The Constitution guarantees freedom of religion, fostering a harmonious coexistence where people from different faiths participate in each other's cultural festivals, showcasing a high level of religious tolerance and understanding. This diverse religious landscape is a reflection of the island's multicultural heritage and the respect for different beliefs within the society.

On the overall, Mauritius stands out as a multicultural paradise where various ethnicities, languages, and religions coexist harmoniously, creating a unique and enriching cultural tapestry that is celebrated through festivals, traditions, cuisine, and a deep sense of national pride and unity.

Importance of Cultural Diversity in National Identity and Social Cohesion in Mauritius

Because of the country's extremely varied population which speaks over fifteen languages and is home to four major global religions and because it comprises individuals from African, Asian, and European roots, cultural diversity is essential for maintaining national identity and social cohesion in Mauritius (Van der Werf et al.). The government of Mauritius has strongly encouraged an inward-looking attitude towards cultural and religious diversity, embracing 'ethno-cultural diversity' as an integral component of the country's character (Tseung-Wong and Verkuyten), known as *lakorité* (it is a creole word meaning in harmony or harmoniously). This approach has contributed to the country's political stability and democratic success. In Mauritius, language is fundamental to the formation of national identity since it reflects the history, values, and customs of the nation and aids in the preservation of cultural assets and the bridging of cultural gaps.

Recognising the value of language in an increasingly globalised society, the Mauritian government supports language acquisition and multilingualism to forge a more robust and encompassing 'national identity' that honours

and values the customs and cultures of all people (Van der Werf et al.). Unlike comparable young postcolonial nations like the Maldives and Swaziland, the Mauritian government stands in contrast to them with its attempts to encourage cultural diversity and social cohesiveness, resulting in a constitutionally sound republic with a 'best-loser system' in place to guarantee political equilibrium (Van der Werf et al.).

In conclusion, cultural diversity is an essential aspect of national identity and social cohesion in Mauritius, contributing to the richness and vitality of the country's heritage, promoting understanding, trust, and solidarity among different groups and societies, and strengthening democratic stability and social cohesion. Embracing linguistic diversity and promoting cultural exchange and creative capacities can further enhance social cohesion and create a more inclusive and harmonious multicultural society in Mauritius.

Copyright Law and Cultural Diversity

Given Mauritius's extremely varied populace and rich cultural legacy, copyright legislation is essential to promoting and preserving the nation's cultural variety. To further safeguard copyright and associated rights, such as folklore and traditional cultural expressions, Mauritius's Copyright Act of 2014 has been revised (Moller and Bhima). The acknowledgement of cultural expression is a positive development for Mauritius, since it safeguards the rights of writers and other associated rights while also preserving the local customs and cultural legacy for the benefit of both international investors and Mauritius residents (WIPO, *The Copyright Act 2014 (Act No. 2 of 2014)*).

The copyright system is a crucial part of cultural policy, but due of its complexity, many people including those engaged, such as artists do not fully understand it (Lefever). Additionally, copyright has a significant economic component (WIPO, *The Copyright (Amendment) Act 2017 (Act No. 13 of 2017)*).

International legal frameworks play a crucial role in safeguarding cultural diversity, particularly in the context of copyright law. In Mauritius, the Copyright Act 2014 has been a significant development aimed at providing better protection for copyrights and related

rights, aligning with international obligations such as WIPO Copyright Treaty (WCT) (WIPO, *Summary of the WIPO Copyright Treaty (WCT) 1996*). The Berne Convention of WIPO helps to protect cultural diversity by establishing minimum standards for copyright protection that recognize and respect the rights of authors and creators from different countries (WIPO, *Berne Notification No. 123*). By ensuring that each member country provides protection or registration, the Berne Convention facilitates the dissemination and preservation of diverse cultural expressions worldwide. It encourages the free flow of cultural works across borders while maintaining respect for the unique cultural heritage and creativity of each member country.

Furthermore, academic research highlights the challenges in protecting folklore through copyright due to the inherent nature of copyright law (Narciso). In Mauritius creators have often argued that the legal protection of folklore raises questions about the boundaries of copyright and the need for a more adaptable approach to address cultural diversity effectively. The 'National Heritage Fund' is being used to enable indigenous peoples to share and conserve their cultural history, and other alternatives to copyright are being investigated. Examples of these include the adoption of customary laws.

International legal frameworks such as the 'UNESCO Convention on the protection and Promotion of the Diversity of Cultural Expressions' underscore the significance of fostering a culture of prosperity while upholding Mauritius' autonomy in fostering cultural diversity in a global context. Keeping in mind the provisions of 'Chapter of the Mauritian Constitution' on the development of cultural diversity and individual freedom of expression.

Cultural Provisions in Mauritian Copyright Law

The safeguarding of intellectual property, monetary rewards for authors, promotion of creativity, ease of licencing and dissemination, and cultural preservation are some of the benefits of copyright protection in Mauritius. By paying artists for their unique ideas, copyright protection promotes innovation by motivating people and businesses to push boundaries, investigate novel

ideas, and produce ground-breaking material. This desire for innovation propels advancements across a range of industries, including science, literature, entertainment, and technology. Additionally, by safeguarding ‘traditional music, folklore, literature, and other cultural expressions’, copyright protection is essential to maintaining and advancing cultural legacy. It makes sure that these priceless components of society are not lost or misused without due credit.

Pitzek said that copyright legislation restricts the evolution of the usage of cultural symbols and texts and solely serves corporate interests (Pitzek). According to him, copyright law misuse results in political and economic inequalities, but it may be avoided by enabling citizens to give cultural value to cultural works through the use of new digital technologies (Pitzek).

Nevertheless, ‘copyright law’ also has drawbacks, including extended term, financial hardship for small businesses, monopolistic control, digital problems, ambiguity around fair use, and constraints on innovation. For instance, the severe enforcement of copyright laws might inhibit creativity since it may discourage artists from expanding upon, modifying, or incorporating parts from other works because they fear violation. Furthermore, copyright holders are given a brief monopoly over their creations, which can result in a concentration of power among a small number of people and restrict access to and dissemination of creative works.

Comparative Analysis of Copyright Protection: India vs. Mauritius

India’s the Copyright Act of 1957 provides a robust registration (*The Copyright Act, 1957 (14 of 1957)*) system for copyright materials, with a Registrar and a Deputy Registrar overseeing the process under section 10. This system ensures a complete control and evolution of copyrighted materials, with section 26 and 27 granting 60 years of copyright protection for films and sound recordings from the date of their creation.

On the other hand, Mauritius’ Copyright Act of 1986, 1997 and 2014 does not provide for the registration of works, following the Bern Convention regime that requires no formalities for copyright to subsist in a work. This lack of registration can lead

to challenges in evidencing the dates of creation of works and identifying the authors or right owners.

In the absence collective management organisation in Mauritius, there would be no record to establish the creation dates of works and their respective author/s or right owners. Therefore, it can be argued that the India’s Copyright Law provides more extensive protection of cultural materials compare to Mauritian Copyright Law.

Comparative Analysis of Copyright Protection: France vs. Mauritius

The Copyright law of France serves as a significant tool for cultural development in the country. French copyright law, known a ‘droit d’auteur’, emphasizes the moral rights of authors and creators, reflecting the importance attached to creative thought and cultural heritage with French society (Peeler). This legal framework not only protects the economic interest if creators but also upholds the moral rights associated with their works, ensuring that authors are recognised and respected for their contributions to the cultural landscape. The French copyright law has been influential since the time of Napoleon Bonaparte in shaping international authors’ rights laws and has its roots in the 16th century, reflecting a long-standing tradition of protecting creative expressions and fostering cultural development.

On the other hand, the Mauritian Copyright law automatically grants protection to eligible works without the need for registration. It safeguards folklore. Traditional cultural expressions, and works of joint authorship, providing economic and moral rights of authors during their lifetime and for 50 years after their death. While Mauritian Copyright Law protects folklore and traditional cultural expressions, it focuses more on the economic aspects of copyright, ensuring that authors have exclusive rights to reproduce, distribute, and perform their works (JETRO).

In comparing the two systems, the French copyright system places a stronger emphasis on moral rights (WIPO, *The Copyright Act 2014 (Act No. 2 of 2014)*) and the interests of authors, fostering a culture that values creativity and recognizes the importance of protecting cultural heritage beyond economic considerations. In contrast, Mauritian

Copyright Law provide robust protection for works but leans more towards the economic aspects of copyright, ensuring that authors have exclusive rights to their creations and addressing copyright infringement through legal measures (Gunpath).

The Crucial Role of Collective Management Organisation in Mauritius' Cultural Promotion

The safeguarding of cultural activities is imperative in the contemporary world, and one of the pivotal mechanisms employed for this purpose is the Collective Management Organisation (CMO) (Kretschmer). Daniel Gervais described a CMO as an organisational formwork where licenses are obtainable from a singular entity (Gervais). A CMO's primary responsibilities include obtaining the right to licence and/or collect fees, setting prices, licencing users, obtaining pertinent usage data by means of surveys or similar statistical methodologies, creating and implementing a system for allocating funding to the referred right holders, and disbursing payments in conjunction with relevant data tracking.

In Mauritius, the CMO was institutionalised under the Copyright Act 1986 operating under the banner of the Mauritius Society of Authors (MASA). Despite its active role there exists a divergence of opinions suggesting that MASA should evolve into a private body rather than functioning as a governmental department.

MASA serves as a vital intermediary between creators and users, ensuring fair and equitable compensation for the use of copyrighted material while concurrently preserving cultural diversity (Zhang). MASA's responsibilities under the Copyright Act 2014 encompass managing licensing agreements, collecting royalties, and monitoring the use of copyrighted works to prevent unauthorised exploitation. Additionally, CMOs actively champion cultural initiatives, such as nurturing emerging talents, establishing social pension funds, and orchestrating educational programs to raise awareness about copyright protection (Kefelas).

However, there remains a palpable need for advancement in this domain, especially considering the absence of a regulatory framework to govern the extent to which limitations and exceptions in copyrighted materials operate. It is noteworthy that

copyright protection has predominantly focused on the music sector, with minimal emphasis on other categories. Consequently, there exists significant potential for the MASA as the sole Collective Management Organisation to further fortify the protection of the Mauritius' diverse cultural heritage.

Balancing Copyright Protection and Public Interest

In his paper, Senftleben made the case that rightsholders' interests should take precedence over other considerations when drafting copyright laws, but he also acknowledged the value of restrictions and exceptions for objectives pertaining to public health, education, and research. Senftleben stressed that when defining the public interest in copyright law, consensus among persons free from conflicts and evidence-based analysis are essential (Senftleben).

This strategy is especially pertinent in light of Mauritius's copyright laws. Because copyright law in Mauritius protects intellectual property, offers financial incentives to authors, fosters innovation, makes licencing and distribution easier, and conserves cultural heritage, it is essential to the promotion and preservation of cultural variety in the country. The drawbacks of copyright law, however, also include extended duration, financial hardship for small businesses, monopolistic control, digital problems, constraints on creativity, and unclear fair use.

For the sake of society as a whole, it is crucial to find a balance between upholding the rights of artists and permitting academic and research organisations to access copyrighted content. This balance can be attained by acknowledging the significance of restrictions and exceptions for the benefit of public education, research, and other endeavours, as well as by making certain that copyright legislation is founded on impartial, fact-based analysis and consensus among parties. This indicates that, in actuality, copyright legislation need to be sufficiently adaptable to meet the requirements of many parties, such as intermediaries, users, and producers. For instance, copyright legislation might guarantee that authors are appropriately rewarded for the utilisation of their works while also allowing for more comprehensive exceptions and limits for educational and scientific reasons.

Furthermore, our copyright legislation has to be updated for the digital era, taking into consideration the unique opportunities and difficulties presented by the online world. This might involve taking steps to address problems like ‘online infringement and digital piracy’ in addition to making it easier to licence and distribute digital works.

All things considered, Senftleben’s method offers a helpful foundation for considering how copyright may support and maintain cultural variety in Mauritius. Recognizing ‘restrictions and exceptions’ in copyright law is crucial in maintaining a balance between safeguarding artists’ rights and facilitating society’s wider good.

Conclusion

In conclusion, a thorough and up-to-date grasp of the generation of value mechanisms and the numerous stakeholders’ responsibilities is essential for a functional copyright system in Mauritius. Authors, artists, performers, users, and politicians must be able to adjust to these obstacles and change with the times in order for Mauritius to successfully adopt a national copyright system that supports culture. A well-designed and balanced copyright system may be a valuable asset to the nation’s cultural variety, making it an essential instrument for promoting and safeguarding its cultural legacy.

While it is necessary to have copyright laws in place. To balance the interests of producers and users, it is equally crucial to update and regulate them on a constant basis. Through efficient use of the exclusive Collective Management Organisation, the MASA, Mauritius can guarantee that copyright regulations serve to both safeguard the rights of authors and provide public access to cultural works for the greater good of society. This strategy protects the various cultural expressions that make up Mauritius society while promoting innovation and creativity. In summary, Mauritius’s vibrant and well-founded copyright system is essential to promoting artistic expression, maintaining cultural variety, and safeguarding country’s distinctive legacy for future generations. Mauritius’ copyright system ought to be more accommodating, easily amendable, transparent, and flexible enough to change to meet the changing demands of its authors, users, and cultural milieu.

References

- Gervais, Daniel J. “The Economics of Collective Management.” *Vanderbilt University Law School Research Paper Series*, 2018.
- Gunputh, Rajendra Parsad. “The Mauritian Legal System and Research.” *GlobaLex*, 2022.
- JETRO. *Report on Mauritius’ Intellectual Property System and Operation*. Japan External Trade Organization, 2023.
- Kefelas, Andreas. *The Relevance of Traditional Collective Management Organisations in the Digital Age: Current Challenges and Future Possibilities*. University of Agder, 2017.
- Koskinen-Olsson, Tarja, and Nicholas Lowe. *Management of Rights for Visual Arts and Photography*. World Intellectual Property Organization, 2014.
- Kretschmer, Martin. “Access and Reward in the Information Society: Regulating the Collective Management of Copyright.” *CIPPM Working Paper*, 2007.
- Lefever, Nathalie. “How does Copyright Affect Culture?.” *Center for Cultural Policy Research*, 2017.
- Moller, Malcolm, and Sharmilla Bhima. “The Government of Mauritius Updates its Law on Copyright.” *Mondaq*, 2014.
- Narciso, Alessandra. *The Legal Protection of Folklore: Can Copyright Assist or is a Sui generis Right Necessary?.* University of Leeds, 2007.
- ORAMA. “An Overview of the cultural Aspects of Mauritius.” *Orama Corporate Services*, 2024.
- Peeler, Calvin. “From the Province of Kings to Copyrighted Things (and French Moral Rights).” *Indiana International & Comparative Law Review*, vol. 9, no. 2, 1999, pp. 423-56.
- Pitzek, Kris. “Copyright Law and the Democratization of Cultural Value.” *Global Societies Journal*, no. 1, 2013.
- Seftleben, Martin, et al. “Ensuring the Visibility and Accessibility of European Creative Content on the World Market: The Need for Copyright Data Improvement in the Light of New Technologies and the Opportunity Arising from Article 17 of the CDSM Directive.”

- Journal of Intellectual Property, Information Technology and E-Commerce Law*, vol. 13, no. 1, 2022.
- Sunlife. "Understanding the Cultural Diversity and History of Mauritius." *Your Sun Life*, 2018.
- The Copyright Act, 1957 (14 of 1957)*. Copyright Office, Government of India.
- Tseung-Wong, Caroline, and Maykel Verkuyten. "Multiculturalism, Mauritian Style: Cultural Diversity, Belonging, and a Secular State." *American Behavioral Scientist*, vol. 59, no. 6, 2015, pp. 679-701.
- UNESCO. *2005 Convention on Diversity of Cultural Expressions*. United Nations Educational, Scientific and Cultural Organization, 2005.
- van der Werf, Femke, et al. "Balancing National and Ethno-Cultural Belonging: State Recognition and Perceived Government Performance in Mauritius." *International Journal of Sociology*, vol. 50, no. 3, 2020, pp. 163-78.
- WIPO. *Berne Notification No. 123*. World Intellectual Property Organization.
- WIPO. *Summary of the WIPO Copyright Treaty (WCT) 1996*. World Intellectual Property Organization.
- WIPO. *The Copyright (Amendment) Act 2017 (Act No. 13 of 2017)*. World Intellectual Property Organization.
- WIPO. *The Copyright Act 2014 (Act No. 2 of 2014)*. World Intellectual Property Organization.
- Zhang, Zijian. "Rational of Collective Management Organisations: An Economic Perspective." *Masaryk University Journal of Law and Technology*, vol. 10, no. 1, 2016.

Author Details

Gerard Louise, Institut Escoffier, Saint Pierre, Mauritius **Email ID:** gelou2063@gmail.com

Kumar Dookhitram, Department of Applied Mathematical Sciences (AMS), School of Innovative Technologies and Engineering (SITE), University of Technology, Mauritius (UTM), Mauritius, **Email ID:** kdookhitram@utm.ac.mu

Michael Blakeney, Faculty of Law, University of Western Australia, Australia, **Email ID:** michael.blakeney@uwa.edu.au

Patrick Allen, Independent Scholar, United Kingdom, **Email ID:** patallens@gmail.com