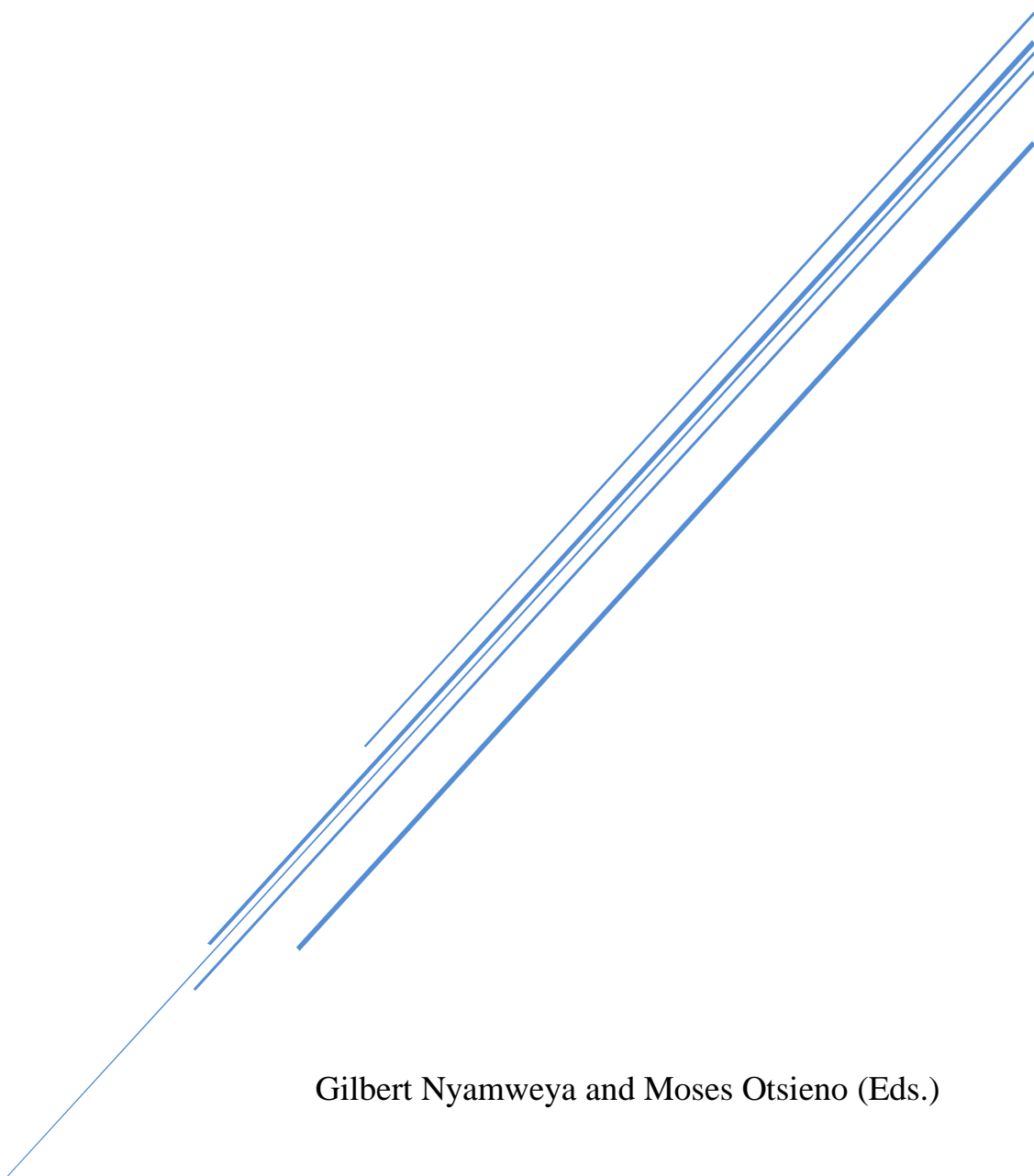


# The Utility and Viability of Digital Technologies in the Production and Distribution of Critical Content in East Africa

An Exploratory Study by Hivos



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## List of Abbreviations

3D	Three Dimensional
DST	Digital Service Tax
DSTV	Digital Satellite Television
EPOCA	Electronic and Postal Communications Act
BAKE	Bloggers Association of Kenya
BASATA	Baraza la Sanaa la Tanzania
CDEA	Culture and Development East Africa
CMO	Collective Management Organization
CPJ	Committee to Protect Journalists
IPR	Intellectual Property Right
KECOBO	Kenya Copyright Board
KFCB	Kenya Film Classification Board
LGBTIQ	Lesbian, Gay, Bisexual, Transgender/Transsexual, Intersex and Queer
ICT	Information and Communications Technology
NGO	Non-Governmental Organisation
OTT	Over-The-Top
ROOM	Resource Of Open Minds
SMT	Social Media Tax
TCRA	Tanzanian Communications Regulatory Authority
UNESCO	United Nations Educational, Scientific and Cultural Organization

## Executive summary

Hivos is an international development organization guided by humanist values. Together with citizens and their organizations, we aim to contribute towards just, inclusive and life-sustaining societies where people have equal access to opportunities, rights and resources. We work in partnership with others in the Middle East, Africa, Asia and Latin America on three impact areas: civic rights; gender equality, diversity and inclusion, and climate justice. Our approach is solution driven, and we build wider movements for change by amplifying and connecting voices. Under the new Strategic Compass, the organization work is focused around three thematic impact areas: Gender Equality, Diversity and Inclusion, Climate Justice, and Civic Rights in a Digital Age. The Civic Rights in a Digital Age thematic area addresses one main objective that informs the ROOM Project i.e. ‘to broaden the reach and influence of underrepresented voices in the digital sphere. Specifically, to enable creatives ‘express and widely share alternatives to hegemonic narratives in social, economic and political spaces’.

This present research explored the utility and viability of digital technologies in the production and promotion of critical audio-visual content by creatives. More specifically, it sought to establish regional trends in the creative sector with regard to uptake of technology in the development of critical content; highlight policy and regulatory frameworks for digital technologies and their implication to production, promotion and consumption of critical content in East Africa; identify opportunities for policy development and stakeholder engagement in the use of digital technologies in the production and promotion of critical content and provide recommendations to increase uptake of digital technologies for the production of critical audio-visual content by makers especially during the COVID-19 pandemic.

This research was informed by data collected using a combination of literature review and key informant interviews from selected ROOM partners.

Key findings from the research established that: in the current digital transformation age, creators that use digital technologies and equipment have greater advantage than those that don’t leverage it. There is great potential for all cadres of content creators including photographers, journalists, actors and even poetry or spoken art performers to seamlessly integrate their work with digital technologies to enhance their delivery. Key trends in uptake of technologies include; the increased speed in production as a result of the adoption of technologies and devices with reduced costs; the ease of revision and revisiting of content; improved accessibility and affordability of equipment by content creators; improved diversity in production methods and channels; more diverse options for audience consumption at any one time and; generally, digital technologies have led to continuity of production during the COVID 19 crisis.

In regard to policy and regulation related to digital technologies for content production, promotion and consumption, the research found that there exist laws in East Africa which inevitably impede creatives’ freedom of expression either directly or indirectly and ultimately lead to: reduced opportunities for monetization of creative content; and limited reach and distribution of content despite viability of digital technology. These laws relate mainly to social media and digital services tax, content regulations, communication and cyber-crimes.

With regard to IPRs for content creators, the research found that while digital technologies have simplified access to content through online platforms, this has equally caused creators to suffer a number of challenges such as copyright infringement which by its very nature, devalues creative work thus lowering the license fees that may be obtained from local content distributors who cannot compete with free sources. Also, increased cross-border movement of content and the jurisdictional challenges including potential incompatibility of national IPRs legal frameworks as most regional legal frameworks were developed before the spread of high-speed digital technologies.

Besides policy and regulatory limitations, there are several systemic problems and challenges that hinder the production and promotion of critical content in the region. These include; increased global competition for audiences for local critical content producers; managing audience expectations on limited budget; poor physical and digital infrastructure; high equipment costs and unfavourable digital tax regime and rise in online misinformation and fake news.

Several strategies to increase uptake of digital technologies were identified including; improving access to digital technologies used in production; establishing a digital technologies fund for creatives in the region for production purposes; capacity building focusing on digital marketing and intellectual property rights; strengthening collaboration amongst artists producing similar content using digital technologies in different countries; and improving internet access and energy infrastructure.

The following are the key recommendations from this report;

1. The governments of Tanzania, Kenya, and Uganda should amend all their legislations touching on freedom of expression and access to information in both offline and online contexts to bring them in line with international and regional standards on freedom of expression.
2. Artists should engage the East African Cultural Council as well as the East Africa Legislative Assembly on creative sector policy harmonization across Kenya, Uganda, and Tanzania.
3. The governments of Kenya, Tanzania, and Uganda should revise existing taxation regimes around the importation of hardware equipment for production of audio-visual content.
4. The governments of Uganda, Kenya, and Tanzania should cease all practices of interfering with internet and media access as these are important channels for creation, distribution and access to critical content.
5. There's need for capacity building programmes to creatives on digital technologies, use of social media platforms for creation and dissemination of content, engagement with global publishing platforms, navigation of global challenges such as COVID 19.

## Introduction

The Resource of Open Minds (R.O.O.M) is a project of Hivos that aims at diversifying dialogue and debate in society through the arts in light of a shrinking civic space globally.

The project believes in the power of digital technologies to facilitate production of more content that helps question dominant structures in society. Creatives using digital technologies challenge the dominant narratives and the status quo in society and provide alternative narratives around pressing issues in society. They strive for openness and imagine new realities around the world. In doing this, the digital space is a unique environment owing to the large, physically uninhibited audience sizes it introduces creatives to.

The project supports the creative work of a new generation of artists and makers working across diverse medium to produce content that is conscious and elicits debate, dialogue, and dissent in society. Specifically, it provides funding for production of new audio-visual content, and execution of capacity building, linking and learning activities for creatives across Kenya, Uganda, Tanzania, and other regions where the project is active in Southern Africa and the MENA (Middle East and North Africa) region.

Through the ROOM project, we build on the potential of young people (15- 35) as key drivers for free expression in the 21st century. As such, we have been able to identify and developed relationships with a new generation of change agents for free expression within its unique global network in the field of culture and media.

As digital natives, these young creatives explore and appropriate opportunities to develop new cultural and media content, thus contributing to a more thriving and dynamic cultural and media sector. This engages new audiences and contributes to diversification of dialogue, debate and dissent in society.



## The Research

The aim of the research was to explore the utility and viability of digital technology in the production and promotion of critical audio-visual content by creatives. Specifically, to establish regional trends in the creative sector with regard to uptake of technology in the development of critical content; highlight policy and regulatory frameworks for digital technologies and their implication to production, promotion and consumption of critical content in East Africa; identify opportunities for policy development and stakeholder engagement in the use of digital technologies in the production and promotion of critical content and provide recommendations to increase uptake of digital technologies for the production of critical audio-visual content by makers especially during the COVID-19 pandemic. The report explores the landscape of digital technology and the production and promotion of critical audio visual content by creatives. Key findings are clustered in five parts as follows:

Part 1: Regulatory frameworks for digital creative content

Part 2: Intellectual property implications for digital content creators

Part 3: Trends in uptake of technology for development of critical content

Part 4: Challenges and opportunities of using digital technologies

Part 5: Strategies to increase uptake of digital technologies

The last part of the report provides conclusions and recommendations for stakeholders in the creative sector.

## **Methodology**

The research was informed by data collected through a comprehensive and systematic literature review of key documents including project reports. Key informant interview questionnaires were used to collect information from key partners, including: Simma Africa Creative Arts Foundation, Kijiji Works, Culture and Development East Africa (CDEA), Pollicy Uganda, Nest Group Africa (Mettā) and Tribeless Youth amongst other ROOM grantees and wider creative sector stakeholders in East Africa . The final data was thereafter analysed using qualitative data analysis techniques. Thematic analysis and transcription were used to reduce qualitative data alongside the manual technique. From the existing documents, a synthesis approach was used. Information obtained from such analysis was vital in leveraging already collected data for use in the final analysis and reporting.



## Definitions

The following are contextual definitions as used in this research report.

- **Critical Content:** The Hivos ROOM program defines critical content as creative output, mostly audio-visual content that stimulates dialogue, debate, and dissent through challenging popular beliefs and opinions on issues. Examples of critical content productions in East Africa are:
  - *AfroQueer*: a podcast from None on Record telling the stories of queer Africans from across the continent and the diaspora.
  - *Legend of Lwanda Magere*: by ROOM partner Apes in Space. This is an animation of a popular folklore of the Luo peoples of Kenya which tells the story of a mighty warrior known as Lwanda Magere. This production has achieved international recognition with a selection to the Los Angeles Animation Festival in 2020.
  - *Makarao* (Swahili slang for Police): an animation series by Mfalme Productions from Kenya who use humorous videos to highlight police misconduct in different spaces. Their video series hit 100,000 views on YouTube in August 2021, a key milestone for this small outfit.
- **Dissent:** Taking an opposing view (after viewing critical content)
- **Dialogue:** Conversation or discussion between two or more parties (after viewing critical content)
- **Debate:** Formal or informal discussion on a particular topic (after viewing critical content)
- **Creative Economy:** The economic systems in which value depends on originality and creativity and not on traditional resources like land, labour and capital.<sup>1</sup>
- **Utility:** Utility in this report is defined as how digital technologies are of practical use in production and promotion of critical content.
- **Viability:** In the context of this study, viability refers to the extent to which after being practical options, digital technologies can actually be used for production and promotion of critical content.
- **Digital Technology:** Varied information technologies and digital platforms used by artists and makers for production and promotion of content
- **Platform:** information technology based tools used by artists and makers that facilitate commercial or social interactions between at least two different groups

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<sup>1</sup> Culture & Creativity Programme, 'Lecture 4. Creative Economy'  
<<https://www.culturepartnership.eu/en/publishing/course/lecture-4>> accessed 29 August 2021.

## Main Findings

### Scoping the landscape of digital technologies and the production and promotion of critical audio visual content by creatives

#### *Overview of the Creative Sector in East Africa*

The ongoing COVID 19 pandemic and the measures taken by government to limit the spread of the COVID 19 virus such as lockdowns and early closing of establishments have had a profound impact on creatives in East Africa.

On one hand, the pandemic has severely limited the movement of people thereby limited the work of creatives by restricting the use of avenues for holding performances, exhibitions, practice sessions and generally sites of physical interaction with their audiences in the region especially in Kenya, and Uganda. On the other hand, there have been significant financial losses. According to Ribio Nzeza Bunketi Buse, financial losses (turnover) in the cultural and creative industries in Africa during the second quarter of 2020 vary significantly from one country to another. Figures range between US\$134, 360, 15 for Uganda and US\$ 3, 559, 861, 40 and for Kenya.<sup>2</sup>

However, due to the deficit of venues for physical interaction with audiences, it has also led to a lot of creatives to innovate and adopt the use of digital platforms like YouTube, Facebook, Dundalive, Mdundo and Bandcamp to reach their old and new audiences.

#### *Kenya*

Kenya is known for its vibrant creative ecosystem attributed to many factors including far more developed creative industry systems, better creative industry infrastructure like theatres, production houses, and art galleries to mention a few, increasing private sector financing for the creative sector, and a government that is keen on digital delivery of government services.

Despite this, there is minimal support in funding from the government to support the sector. A report by British Council on the creative economy shows that the fear of reprisal from the state and the political class is likely the reason why advertisers do not support shows with critical content such as 'XYZ Show' which features critical content in a satirical manner that is problematic for politicians.<sup>3</sup> Equally, tendencies by state actors and to some extent private sector players to limit funding and support to voices that are critical of them continues to have a chilling effect on artists' exercise of their freedom of artistic expression. The net effect is that critical content by creatives in Kenya is largely funded by civil society organizations, international donors and creatives themselves out of their own revenue sources and as passion projects.

#### *Uganda*

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<sup>2</sup> Ribio Nzeza Bunketi Buse, 'Here's the First Africa-Wide Survey of the Economic Impact of COVID-19 on Cultural Industries' (*The Conversation*) <<http://theconversation.com/heres-the-first-africa-wide-survey-of-the-economic-impact-of-covid-19-on-cultural-industries-151400>> accessed 22 August 2021.

<sup>3</sup> Tom Fleming Creative Consultancy, 'Scoping the Creative Economy in East Africa' (British Council) <[https://www.britishcouncil.org/sites/default/files/creative\\_economy\\_scoping.pdf](https://www.britishcouncil.org/sites/default/files/creative_economy_scoping.pdf)> accessed 22 August 2021.

Uganda's creative industry is in a growth trajectory. Key findings from a survey conducted by Uganda Bureau of Statistics' in 2013 indicate that there are more than 12,460 Small and Medium Enterprise (SMEs) in culture and creative industries in Uganda, a figure certainly much higher at the time of this research. In 2017, the culture and creative arts were estimated to generate approximately Shs3.18 trillion to the economy in total business income based on analytical estimates. This income is approximately 3 per cent of Uganda's total GDP of \$27.6 billion.

Drawing from 2013 statistics when Uganda exported approximately Shs427 billion worth of creative goods and services (\$239 million), it can be inferred that the government's support for the creative and culture industries would strengthen the sector resulting to more employment/job creation for the country.

### *Tanzania*

In Tanzania, the cultural and creative industries are reported to be growing at a fast pace providing not only sources of vibrant cultural scenes but significant employment opportunities. According to an article by UNESCO, there is a rise in creativity which can be accelerated with a more robust supporting institutional and legal environment.<sup>4</sup>

The Tanzania music and film sectors are strong with stronger cultural content export owing to the fact that Swahili has over 130 million speakers and the Pan-African markets access that English provides. Despite this strength, growth is limited by the low confidence and experience of Tanzanian exporters of the music and film sector.<sup>5</sup>

According to the Baraza la Sanaa la Tanzania (BASATA) - the country's National Art Council, there are about 6 million Tanzanians who belong to creative sector representing 15% of the total population.<sup>6</sup> Just like the situation in Uganda, the creative industries in Tanzania especially film and music have great potential to bring about economic growth if the government would institute more supportive measures.

While there are key differences between the three East African economies, there are many shared opportunities and challenges holding the creative sector back.

Across all three countries the CCIs are a largely under studied and under researched sector leading to its alienation from the government itself and private sector who would otherwise spur its growth through strategic investment. It is this under studying of the sector that also perpetuates the many prevalent negative repellent narratives about the sector that make people view it as an alternative and not mainstream career venue.

### ***Digital Technologies in the Creative Sector***

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<sup>4</sup> UNESCO, 'Capturing the State of Culture and Creative Sectors in Tanzania' (*Diversity of Cultural Expressions*, 21 October 2019) <<https://en.unesco.org/creativity/events/capturing-state-culture-creative-sectors-tanzania>> accessed 22 August 2021.

<sup>5</sup> Tom Fleming Creative Consultancy (n 3).

<sup>6</sup> Vicensia Shule, 'Creative Industries: A Contributing Factor in the Revival of Tanzanian Economy' (CODESRIA Conference: The Renaissance of African Economies, 20 December 2010) <<https://codesria.org/IMG/pdf/papers17.pdf>>.

The creative sector applies a diverse set of technologies – both hardware and software. In considering hardware technologies, creatives use broad technological equipment's during content production that range from cameras, microphones, audio recorders to storage devices just to mention a few. With regard to software technologies, especially when distributing their content, creatives have adopted interactive digital platforms including but not limited to the following:

- Video sites, e.g. YouTube, Tiktok, Likee and Vimeo
- Social media sites, e.g. Facebook, Facebook stories, Facebook Watch and Instagram Reels, Instagram stories, WhatsApp stories, Twitter
- Podcast sites, e.g. Anchor FM, Google Podcasts, Apple podcasts and Spotify
- Video conferencing apps e.g. Zoom, Google Meet and Blue Jeans
- Gaming, e.g. Virtual Reality gaming and videos
- Interactive publishing, e.g. Issue and Magzter.
- Independent platforms, e.g. The Elephant and Hiistoriya

In terms of accessibility, international platforms like Netflix, HBO, Disney Plus, Hulu Amazon Prime Video, tend to be more difficult for local creatives to access due to a myriad of reasons including complex agreements in different jurisdictions of copyright content. Despite the unavailability of these global platforms in the East African Region there is an effort from Netflix and others to establish their presence in African. This has seen more local content curated from Africa placed on their platform.

Also, the emergence of national platforms such as Viusasa, by Royal Media Services in Kenya, Kalabara Tv, Showmax by DSTV and Buni Media have bridged the accessibility gap for East African critical content producers in the region. The download statistics of Viusasa against the international platforms such Netflix, ShowMax and iFlix show that they enjoy less than 10,000 local downloads each compared to Viusasa. Meanwhile, the video on demand platform, Viusasa, managed to rack in downloads between 100,000 and 500,000 in less than two months.<sup>7</sup> In addition to this, Viusasa claims to channel 40% of the revenue from the content to the content creators<sup>8</sup>. Due to the rising popularity of these platforms, critical content creators in East Africa can proactively reach out to the producers of these platforms and present their content and if accepted, this will enable them to reach wider audiences.

Further, as a way of making audio content easily available to audiences across the region, major telecommunication companies in East Africa offer short codes for distribution of music ring tones and downloads. These include: -

- SkizaTunes - Safaricom Kenya
- CallerTunez - MTN Uganda
- Tigo Ringback Tune - Tigo Tanzania

Another important aspect of access to music is that music distribution platforms in the region increase the reach of critical content creators towards their audience and enable monetization. Some of these platforms include:

- Mdundo, Boomplay – Regional

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<sup>7</sup> Odipo Riaga, 'The Three Things Viusasa Is Doing Right - Chetenet' (16 November 2017) <<https://chetenet.com/2017/11/16/three-things-viusasa-right/>> accessed 22 August 2021.

<sup>8</sup> Njenga Hakeenah, 'Citizen TV Strikes Chord with VOD Users on Viusasa' (*The Exchange*, 14 July 2018) <<https://theexchange.africa/money-deals/corporate-suite/east-africas-biggest-media-house-strikes-chord-with-vod-users-on-viusasa/>> accessed 22 August 2021.

- Songa by Safaricom, Wabeeh, Dundalive in Kenya,
- Sauteez, MTN Tidal in Uganda
- Tigo music, Mziiki, Mkito in Tanzania

Mdundo is expanding its presence in 15 African countries and now features more than 60,000 African artists with more than 5 million active users, 22% of whom are from Kenya.

According to Wanjiku Koinange of Mdundo, “Music downloads have been rising steadily and COVID-19 was also changing the way creative content is being produced”.<sup>9</sup> Artists relying on digital platforms for income during the crisis have become more productive.<sup>10</sup> But profitability for both African producers and the platforms requires time and scale.

### *Impact of digital technologies on the creative sector*

Digital technology use has permeated all domains of the creative economy. According to Pew Research Center, cultural organizations like theatre companies, orchestras, and art museums are using the internet, social media, and mobile apps to draw in and engage audiences, provide deeper context around art, and disseminate their work beyond the stage and the gallery<sup>11</sup>. However, these technologies present both positive and negative implications as highlighted below:

#### Positives Impacts:

- Technologies such as social media are helping creatives and creatives-based organizations clarify what they do, and better describe how audiences can engage with their work. Moreover, mobile technology coupled with its connectivity to the internet has aided promotion of events and content, increasing not only awareness but also direct engagement between creatives and their audiences.
- In East Africa, mobile money technology has facilitated direct payment of artists cutting out the middleman and their related costs. Sendwave, an international money transfer platform has made it possible for local artists to receive payments from audiences in the diaspora, increasing their incomes significantly. This was evident during the COVID 19 pandemic where mainstream artists such as Nyashinki, Sauti Sol, Atemi Oyungu, Tetu Shani performed to 150, 000 + online crowds streaming on YouTube. This was evidence that digital technology can drive monetization for creatives and become a sure source of income. In the same breadth, critical content producers who are often left out of mainstream media ought to create alternative spaces for sharing their content online. This can be through popularizing their

<sup>9</sup> eTrade for all, ‘Digital Platforms Give Lifeline to Kenya’s Creatives amid COVID-19 | ETrade for All’ (18 August 2020) <<https://etradeforall.org/news/digital-platforms-give-lifeline-to-kenyas-creatives-amid-covid-19/>> accessed 22 August 2021.

<sup>10</sup> *ibid.*

<sup>11</sup> Kristin Thomson, Kristen Purcell and Lee Rainie, ‘Arts Organizations and Digital Technologies’ (Pew Research Center 2013) <<https://www.pewresearch.org/internet/2013/01/04/arts-organizations-and-digital-technologies/>> accessed 23 August 2021.

organizational websites from where they stream their content freely or in a pay per view format through social media.

- For critical content producers, digital technologies present a unique tool for co-creation of cultural products together with marginalized people in ways that were not possible before. For instance, ROOM project partner; Simma Africa Creative Arts Foundation adopted social media to document the injustices faced by creatives from refugee host communities in Uganda during the COVID 19 pandemic. This was necessitated by the fact that long distance travel and physical interactions had been restricted in the country at the time of production. As a result, this has broadened their audience, positioned their work and helped to amplify the voices of minorities and marginalized people in Uganda.

#### Negative Impacts:

- While the outlook of the technology on the arts has been great, it has been riddled by real concerns about creatives not reaping full value using the same platforms. For example, platforms like Skiza run by Safaricom, one of the leading telcos in Kenya, started by running a subscription service offering caller ring-back music at Ksh 5 (\$0.05) per song per week. Currently Skiza tunes have 11 Million+ subscribers with 132,000+ tunes on their database. However, according to 2018 statistics, despite Skiza's parent company receiving revenues upwards of KES 200 million (\$2 million), Music copyright holders were receiving between 8% and 15% with the rest going to content providers and aggregators. This low rate paid out to copyright holders undermines the artist's work compelling them to charge higher rates to compensate the effort put into producing their work.
- Digital technology has also blurred the lines between commercial entertainment and non-commercial art, forcing art organizations and artists to compete directly for "entertainment slots" in audiences' schedules. With so many online entertainment choices ranging from cable TV, Netflix, Video Games, podcasts etc., there is little to no time dedicated to live outdoor performances, which require effort on the part of both the creative and the audience especially in the context of the COVID-19 pandemic.
- Emerging competition and threats from immersive ability of digital entertainment - as the realism of participatory and immersive ability of digital entertainment (Virtual Reality movies and video games) permeates and becomes cheaper and more convenient, creatives who rely on live or outdoor performances only will struggle to compete and could disappear altogether.
- The use of digital technologies has increased risks such as misinformation, disinformation, state surveillance and censorship.

Beyond the broad spectrum of issues that cut across the industries, there are specific factors that affect creatives at a national and local level. The section below delves into four key areas of concern for creatives in East Africa.

## Part 1: Regulatory frameworks for digital creative content

The current legal and regulatory framework for digital rights in East Africa has a significant impact on creatives' bid to produce and promote critical content. This part provides an analysis of the limitations that some of the key legislations present in Uganda, Kenya and Tanzania.

### Uganda

#### *The Social Media Tax (SMT)*

The Ugandan Parliament enacted the Excise Duty Act (Amendment) Act in 2018, now popularly known as the Social Media Tax ("SMT"). This law requires users to pay a tax of UGX200 (US\$0.05) per day to access over-the-top (OTT) services. OTT services can be defined as "the transmission or receipt of voice or messages over the internet, including access to virtual private networks".<sup>12</sup> Some of the most notable examples are Facebook, WhatsApp, Twitter, LinkedIn, Instagram, Skype, Google Hangouts, and Tinder.<sup>13</sup>

This tax has had implications for creatives since its introduction in several ways. It has shrunk creatives' income. Research conducted by Pollicy found that one third of respondents used social media for business activities and of these respondents, 74% reported reduced income following the tax implementation.<sup>14</sup> The report also found that paying the social media tax for one-month accounts to more than 6% of their total monthly expenditure. Further, that the introduction of the tax had seen a reduced number of internet subscribers which dropped by over 3 million from 16 million to 13.5 million<sup>15</sup>. This has translated to a lower audience reach by creatives so far as the promotion and dissemination of audio-visual content using digital technologies that rely on the internet is concerned.

Beginning July 1, 2021, the government replaced the OTT tax with a direct 12% levy on the net price of internet data and 18% a value added tax (VAT).<sup>16</sup> The implication of these tax measures is that they will adversely affect internet access and audience access to critical content and information.

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<sup>12</sup> POLLICY, 'Offline and Out of Pocket: The Impact of the Social Media Tax in Uganda on Access, Usage, Income and Productivity' 4 <<http://pollicy.org/wp-content/uploads/2019/01/Offline-and-Out-of-Pocket.pdf>>.

<sup>13</sup> POLLICY (n 12).

<sup>14</sup> *ibid* 8.

<sup>15</sup> *ibid* 5.

<sup>16</sup> CIPESA, 'Uganda Abandons Social Media Tax But Slaps New Levy on Internet Data' (1 July 2021) <<https://cipesa.org/2021/07/uganda-abandons-social-media-tax-but-slaps-new-levy-on-internet-data/#:~:text=Uganda%20Abandons%20Social%20Media%20Tax%20But%20Slaps%20New%20Levy%20on%20Internet%20Data,-Jul%201%2C%202021&text=Introduced%20on%20July%201%2C%202018,Facebook%2C%20Twitter%2C%20and%20WhatsApp.>> accessed 29 August 2021.



*The Communications Act, 2013*

The Communications law prohibits broadcasting content<sup>17</sup> or operating a cinematograph theatre or a video or film library without an appropriate license<sup>18</sup>. The Uganda Communication Commission established under this law has been conferred with powers to monitor, inspect, license, supervise, control and regulate communications services, including internet platforms.<sup>19</sup> The downside of this provision is that the Commission is required to issue the license on discretionary terms i.e. on terms and conditions it may consider necessary and reserves the right to revoke a license.

#### *Uganda's Computer Misuse Act of 2011*

The law was enacted to provide for the safety and security of electronic transactions and information systems; to prevent unlawful access, abuse or misuse of information systems including computers and to make provision for securing the conduct of electronic transactions in a trustworthy electronic environment and to provide for other related matters<sup>20</sup>. However, this legislation proscribes “offensive communication.” This is communication which is construed to disturb the peace, quite or right of privacy of any person with no purpose of legitimate communication liable to conviction for a misdemeanor.<sup>21</sup> This is a vaguely worded provision which could turn creatives who use social media into fugitives of the law for merely expressing their views.

<sup>17</sup> The Uganda Communications Act, 2013 2013 s 27.

<sup>18</sup> ibid 37.

<sup>19</sup> ibid 5.

<sup>20</sup> ‘The Computer Misuse Act, 2011 – Ministry of ICT & National Guidance’ <<https://ict.go.ug/2019/12/03/the-computer-misuse-act-2011/>> accessed 19 August 2021.

<sup>21</sup> The Computer Misuse Act, 2011 2011 s 25.



## Kenya

### *The Digital Services Tax*

In an effort to generate additional revenue, the government introduced the Digital Service Tax (DST) through the Finance Act, 2019, the Finance Act, 2020 and Income Tax (Digital Service Tax) Regulations, 2020. DST became effective on 1st January 2021, thereby introducing new taxes on income from services provided through the digital marketplace at the rate of 1.5% on the gross transaction value.<sup>22</sup> The scope of digital services includes: supply of downloadable digital content; subscription-based media; software programs; supplies on online marketplaces; digital media content; data management services; search engine services, and any other supply as determined by the Commissioner<sup>23</sup>.

Though it was assumed that tax would mainly affect foreign companies which conduct business in Kenya such as Netflix, Facebook, and Apple amongst others, the reality is that the digital market place includes all creatives. Creatives' websites would be considered as market places. The DST tax would apply hence stifling free engagement online between creatives and their audiences. In particular, the lack of a turnover threshold for the tax could potentially lead to significant costs for content producers and distributors with low-value transactions.

### *The Films and Stage Plays Act*

The Films and Stage Plays Act, has been applied by the Kenya Film Classification Board (KFCB) to limit creatives' freedom of expression in Kenya. KFCB requires creatives to apply for film licenses which include prior vetting of their content to detect breaches<sup>24</sup>. The vetting criteria are subjective and arbitrary classification and consequent imposing age restriction on viewership. A case in point is *Softie*, the film about the life of the Kenyan political activist; Boniface Mwangi, whose film was given an adult rating due to claims of vulgar language. The adult rating was seen as a means to limit its airing and consequently its reach to wider audiences.

Consequences of breaching the law include fines and imprisonment. These provisions of the law have a chilling effect on the freedom of expression for critical content creators.

### *Other laws*

The other laws that the Kenyan government has introduced that limit creatives' bid to produce and promote critical content include the Computer Misuse and Cybercrime Act, 2018 which gives the government excessive powers to censor media content as well as the recently proposed Computer Misuse and Cybercrimes (Amendment) Bill, 2021, which enable

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<sup>22</sup> Ronalds LLP, 'Digital Service Tax Kenya' (6 February 2021) <<https://www.ronalds.co.ke/income-tax-digital-service-tax-regulations-2020/>> accessed 19 August 2021; Sovereign, 'Kenya's New Digital Services Tax Raises Concerns' (*The Sovereign Group*, 26 March 2021) <<https://www.sovereigngroup.com/news-and-views/kenyas-new-digital-services-tax-raises-concerns/>> accessed 19 August 2021; RSM Kenya, 'The Digital Service Tax Overview' (*RSM Kenya*, 6 February 2021) <<https://www.rsm.global/kenya/insights/tax-insights/tax-alerts/digital-service-tax-overview>> accessed 19 August 2021.

<sup>23</sup> The Income Tax(Digital Service Tax) Regulations, 2020 s 3(1).

<sup>24</sup> Films and Stage Plays Act 2012 (CAP 222).

the government to classify certain websites as inaccessible from Kenya and recommend their access be blocked.<sup>25</sup>

In addition, in 2013, the government passed the Kenya Information and Communication (Amendment) Bill and the Media Council Bill (2013). According to Mutahi and Ruteere, these laws;

*‘...provide the government with extensive powers over the media. Specifically, the Kenya Information and Communication Act, 2013, created a government-appointed Communications and Multimedia Appeals Tribunal with unfettered powers to impose penalties on media practitioners, including revocation of accreditation, seizure of property, and heavy fines of up to 500,000 Kenyan shillings on journalists, and up to 20 million Kenyan shillings. These heavy fines have a chilling effect on freedom of expression and of the media’.*<sup>26</sup>

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<sup>25</sup> Sunday, ‘New Law Gives State Powers to Censor Media - The Standard’ *The Sunday Standard* (24 May 2021) <<https://www.standardmedia.co.ke/business/sci-tech/article/2001413717/new-law-gives-state-powers-to-censor-media>> accessed 29 August 2021.

<sup>26</sup> Patrick Mutahi and Mutuma Ruteere, ‘Country Context Analysis Report: Kenya’ (2019) 9.

## Tanzania

### *Electronic and Postal Communications (Online Content) Regulations, 2020*

The Electronic and Postal Communications (Online Content) Regulations, 2020 (EPOCA Regulations) came into effect on 17<sup>th</sup> July 2020. It effectively repealed and replaced the 2018 regulations<sup>27</sup>. Pursuant to the regulations, the Tanzanian Communications Regulatory Authority (TCRA) regulates online content and has immense powers to pull it down. Under the Regulations, TCRA is charged with the responsibility of keeping a register of bloggers, online forums, online radio and television, and the power to impose heavy fines for violations.

Also, the Tanzanian government can arbitrarily regulate and ban online content produced by bloggers, citizen journalists, forum administrators, social media users, as well as websites, television and radio stations. This applies to any resident in Tanzania and to any Tanzanian citizen living abroad.

Pursuant to the EPOCA Regulations, the Tanzanian Communications Regulatory Authority (TCRA) regulates online content and has immense powers to pull it down. Under the Regulations, TCRA is charged with the responsibility of keeping a register of bloggers, online forums, online radio and television, and the power to impose heavy fines for violations.

According to Media Council of Tanzania, the EPOCA Regulations limit freedom of artistic expression in the following circumstances:

- Under regulation 4(1), it negatively impacts editorial independence, press freedom, journalism practice, artistic freedom and the freedom of expression in general. Specifically the mandatory requirement of the license for provision of the online content service as per regulation 4(1). Mandatory licensing under the law is a tool for censorship which may be used to constrain creatives and press freedom; it may limit the scope of coverage in terms of both content and geographic location.
- The list of prohibited content under regulation 16(1) is overly broad, open to misinterpretations and manipulation. There are also unclear and open-ended definitions for some of the content that is listed as prohibited inviting subjective interpretation of the enforcers. For instance, it prohibits the publication online of content that causes annoyance, threatens harm of evil, encourages or incites crime, or leads to public disorder. This is a vaguely worded provision susceptible to abuse. Creatives often operate in abstract spaces of concepts and actual work which will be consequently muzzled.
- Unwarranted removal of content under Regulations 9(g), 11(3) & (4) and 15 by the Tanzania Communication Regulatory Authority (TCRA) and service providers (intermediaries) implies that TCRA or any party affected by the content published online may demand the licensee (online content service provider) or host (intermediaries) to remove the content within 2 hours. In the event of failure to

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<sup>27</sup> The Electronic and Postal Communications (Online Content) Regulations, 2020 2020.

remove such content within 2 hours upon notification the licensee has been empowered to suspend or terminate the subscriber's access or account under regulation 11(4).

- Restriction on the use of anonymity limits freedom of expression online for creatives. Under Regulations 9(e), 13(1) & (2), all online content providers are required to block anonymous users and to co-operate with law enforcement officers in pursuing their functions under the Regulations including identifying users, contributors and online content producers. This means that internet café providers must register users via recognized identifications (IDs), assign static Internet protocol (IP) addresses to their computers and put camera surveillance to record the activities in their premises.
- Freedom of expression is curtailed by the placement of the content filtering mechanism especially for internet café providers impacting an individual's right to seek or access information. Internet café owners and business centers are required to filter access to prohibited content and to monitor record and archive user activity including installing surveillance cameras and archiving footage for 12 months.
- Requirement for registration of all online blogs and forums.
- Mandatory licensing for blogging and citizen journalism activity.
- Annual licensing fee is hefty and potentially wipes away income.
- Requirement for renewal of user content by blog and forum administrators.
- TCRA is conferred with power to suspend or shut down blogs and forums at their discretion.<sup>28</sup>

### *The Cybercrimes Act, 2015*

The Cyber Crimes Act has a chilling effect on freedom of artistic expression in the following ways:

- Section 16 criminalizes some online activities including the publication of false, deceptive, misleading or inaccurate information.
- It confers law enforcement officials with wide powers to search and seize digital equipment and does not require warrants before carrying out surveillance or interception of communications.
- The statute lacks procedural safeguards and due process guarantees offenses are not clearly defined. Defenses are greatly diminished. Criminal sanctions are grossly disproportionate.
- The statute has been applied in targeting the independent online activities of bloggers, journalist and citizens<sup>29</sup>.

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<sup>28</sup> Media Council of Tanzania, 'Analysis of The Electronic And Postal Communications (Online Content) Regulations, 2020' (2020).

<sup>29</sup> The Tanzania Cyber Crime Act, 2015.



## Part 2: Intellectual property implications for digital content creators

This part analyses the intellectual property landscape in East Africa and its implications for content creators in light of technological developments.

### Background

The 21<sup>st</sup> century has seen the world experience technological revolution in various forms. Technology has both pros and cons but for digital content creators, they stand to experience both sides of the coin. With the worldwide adoption of technology through digital devices and services, the creative industry is transitioning from the physical market to the digital market. Consumption of creative's content is increasingly taking place online. For instance, consumers rarely watch movies at the theatre as they can access these movies easily from the comfort of their own homes using online platforms such as Netflix. Content creators also enjoy a wider audience compared to when people had to buy tickets and go to the theatres. Admittedly, the means of access and consumption of content has radically changed. The internet, improved wireless networks, mobile devices and cloud computing have delinked the concept of location and access.<sup>30</sup>

This simplified access to content through online platforms has also caused creators to suffer from corruption of their content and other people reaping the fruits of their labor. This brings the framework of intellectual property rights (IPRs) into sharp focus as it is central to the protection of created work. Creators of creative content should receive meaningful protection, recognition and compensation.

IPRs not only benefit content creators, but society as a whole.<sup>31</sup> A sound IPRs framework enables greater investment in products and services which invariably improves society. Leveraging the IPRs system for social and economic growth will broaden support for creatives in audio visual content production.

The digital space presents opportunities and challenges at the same time for the IPR system.<sup>32</sup> Distribution models are shifting towards instantaneous publication through social networks increasing the reach of content creators. New technologies have made it possible for content creators to engage directly with their audiences. These are considerable benefits for creatives.

The challenges posed to IPRs by digital platforms can have profound setbacks for creatives. First, increased cross-border movement of content raises jurisdictional challenges including potential incompatibility of national IPRs legal frameworks. The traditionally territorial frameworks for IPRs protection would be inappropriate. Second, most IPRs legal frameworks

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<sup>30</sup> World Economic Forum, 'Intellectual Property Rights in the Global Creative Economy' (2013) 7 <<https://www.weforum.org/reports/intellectual-property-rights-global-creative-economy/>> accessed 20 August 2021.

<sup>31</sup> World Economic Forum (n 30).

<sup>32</sup> *ibid.*

were developed before the spread of high-speed global communication networks.<sup>33</sup> Third, orphan works, i.e., works whose owners of associated copyrights are either unknown or unreachable cannot be effectively protected. Anonymous content creators would fall under this category<sup>34</sup>. Fourth, copyright infringement, by its very nature, devalues creative work thus lowering the license fees that may be obtained from local distributors who cannot compete with free sources.

Unlike physical products that can be managed and placed in inventory, practices for monitoring usage rights and copyright in the digital world are much more complex and the laws regulating this process is more vague than clear.<sup>35</sup> Governments are also reluctant to register copyrights to digital content as some of these platforms do not give time stamps and therefore it is not an easy task to tell the original creator of that content.

## **Intellectual Property Frameworks in East Africa**

### **Kenya**

#### *The Constitution*

The Constitution provides that the State shall promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information mass media, publications and libraries.<sup>36</sup> It further states that the State shall protect the intellectual property rights of the People of Kenya.<sup>37</sup> Article 34 of the Constitution states that freedom and independence of electronic print and all other types of media is guaranteed. It further states that the State shall not penalize any person for any opinion or view or the content of any broadcast, publication or dissemination.<sup>38</sup> Article 33 states that every person has the right to freedom of expression that includes freedom of artistic creativity.

#### *The Copyright Act*

Section 22 of the Copyright Act provides for the works that shall be eligible for copyright or related rights to include: literary works; musical works; artistic works; dramatic works; audio-visual works; sound recordings; and broadcasts. Section 22(5) of the Copyright Act provide that rights protected by copyright shall accrue to the author automatically on affixation of a work subject to copyright in a material form and non-registration of any copyright work or absence of either formality shall not bar any claim from the author. The Copyright Act was amended on 18<sup>th</sup> September 2019 in order to take into account the values

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<sup>33</sup> *ibid* 9.

<sup>34</sup> World Economic Forum (n 30).

<sup>35</sup> UNCTAD, 'Creative Economy Outlook: Trends in International Trade in Creative Industries' (2019) <[https://unctad.org/system/files/official-document/ditcted2018d3\\_en.pdf](https://unctad.org/system/files/official-document/ditcted2018d3_en.pdf)> accessed 20 August 2021.

<sup>36</sup> Constitution of Kenya, 2010 Article 11.

<sup>37</sup> *ibid* Article 11(2) (c).

<sup>38</sup> *ibid* Article 34(2) (b).

and principles of governance entrenched in the Constitution of Kenya, 2010. The amendment also sought to take into account the changes brought about by technological advancement. An internet service provider (ISP) will be required to action any takedown notice received from a copyright holder relating to infringing material and to provide information to investigative agencies where necessary. The Act also establishes a dispute resolution mechanism through the Copyright Tribunal which has jurisdiction to hear and determine a dispute over copyright registration. It also establishes an institutional framework in the form of the Kenya Copyright Board for the administration of copyright matters under the Act.

#### *Kenya Copyright Board (KECOBO)*

KECOBO is established under section 3 of the Copyright Act. It is mandated to administer and enforce copyright and related rights. Thankfully, KECOBO is conscious that it has a duty towards creatives.<sup>39</sup> It undertakes that the public can get free legal advice from the team of lawyers at KECOBO by seeking appointment through their email.<sup>40</sup> KECOBO lawyers can also guide creatives on drafting of contracts, evaluating contracts entered by creatives among other legal matters touching on copyright. KECOBO was mandated to maintain a register of all works registered pursuant to the Copyright Act. The register is accessible to the public, which underscores the need to institutionalize a verifiable record of registered works for an author, owner, assignee or exclusive licensee.

#### *Collective Management Organizations (CMOs)*

The amendment to the Copyright Act in 2019 introduced core values of good governance, proper management, transparency and accountability which ought to be observed by collective management organizations.<sup>41</sup> The governance framework of CMOs, which shall have the power to manage copyrighted works on behalf of owners and the distribution of royalties that accrue from exploitation of copyright works, has been entrenched with a keen eye for good governance and accountability.

### **Tanzania**

#### *Copyright and Neighbouring Rights Act*

The Copyright and Neighbouring Rights Act defines copyright as a property right which vests in the authors of original literary, dramatic, musical, artistic works, sound recordings, films, broadcasts, cable programmes and typographical arrangements of published editions<sup>42</sup>. As far as creative works go, the Act offers protection by inference. It protects communication to the public, which is defined as the transmission by wire or without wire of the images or sounds or both of a work, a performance, a sound recording or a broadcast in such a way that

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<sup>39</sup> Kenya Copyright Board, 'Kenya Copyright Board Strategic Plan 2017 – 2022' (2018) <[https://copyright.go.ke/sites/default/files/downloads/KECOBO%20Strategic%20Plan%202017\\_22.pdf](https://copyright.go.ke/sites/default/files/downloads/KECOBO%20Strategic%20Plan%202017_22.pdf)> accessed 21 August 2021.

<sup>40</sup> KECOBO, 'Get in Touch With Us' <<https://copyright.go.ke/contact-us>> accessed 21 August 2021.

<sup>41</sup> Esther Omulele, 'New Dawn For Creatives in Kenya' (*Without Prejudice*, November 2019) <<https://www.withoutprejudice.co.za/free/article/6725/view>> accessed 21 August 2021.

<sup>42</sup> Copyright and Neighbouring Rights Act.



the images or sounds can be perceived or accessed by persons outside the normal circle of a family.<sup>43</sup> The term “without wire” may include transmission through cyberspace. Arguably, the publication of the copyrighted work through cyberspace is accepted and by extension protected in terms of digital infringement even though not directly or clearly stated.

#### *The Cybercrime Act, 2015*

The Cybercrime Act defines intellectual protection rights to include among other things, copyright.<sup>44</sup> The provision defines property as including information produced information or data electronically. The Act prohibits infringement of intellectual property rights.<sup>45</sup>

#### *The Judiciary:*

Tanzanian Courts have demonstrated a strong appreciation of intellectual property as something of value, something that ought to be safeguarded and protected. In *Hamisi Mwinjuma, Ambwene Yessayah V Mic (T) Ltd* the plaintiffs in this case were two famous hip hop artists who make music popularly known as *Bongo Flava* in Tanzania. They sued the defendant, a telecommunications company, over the unauthorized use and sale of caller or ring-back tones based on songs that the plaintiffs jointly own. The District Court of Ilala held in favour of the plaintiffs, and made the largest award ever to have been granted by a District Court: TZS 2 160 million as special damages (approximately USD 1.08 Million), and TZS 25 million as general damages. The absence of consent by the plaintiffs for the defendant to use their work was key in the decision of the Court.

A telecommunications company was held liable for the selling of caller ringtones thus vindicating music artists’ complaints that their rights were being violated. The amount of the award was unprecedented. The case settled that under the Copyright and Neighbouring Rights Act the District courts have originating jurisdiction in copyright infringement cases and that their pecuniary jurisdiction is not limited.<sup>46</sup> In *Republic V Ajay Amarsh Chavda* the accused were charged under the Copyright and Neighbouring Rights Act for illegal reproduction, translation, adaptation and distribution of copyrighted work from India. The prosecution brought evidence of reproduced or duplicate Digital Versatile Disks (DVDs) and Video Compact Disks (VCDs) which were found in a shop being sold by the accused. The accused were found guilty of the charges brought against them. The importance of this decision is that it dealt with the question of enforcement of foreign copyright in Tanzania.

## **Uganda**

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<sup>43</sup> *ibid* Section 4.

<sup>44</sup> The Tanzania Cybercrime Act, 2015 Section 3.

<sup>45</sup> *ibid* Section 24.

<sup>46</sup> Copyright and Neighbouring Rights Act and The Copyright Act defines the word “court” to mean a District Court established under the Magistrates’ Courts Act. Sections 36 and 37 allow for actions to be filed in court to enforce civil remedies applicable to copyright owners. Since the word “court” has expressly been defined in the Copyright Act to mean a District Court, the High Court in Civil Case no. 38 of 2011 ruled that the District Courts have exclusive, unlimited original jurisdiction to entertain copyright infringement cases regardless of the value of the claim.

*Copyright and Neighbouring Rights Act, 2006*

The Copyright and Neighbouring Act protects digital works in the same version as the Tanzanian statute. Copyright include original literary, dramatic, musical, artistic works sound recordings, films, broadcasts, and electronic data. Digital works may be said to be protected under electronic data. Communication to the public, which is defined as means by which images or sounds or both of a work are transimitted to the public whether through broadcast, performance or other means and “public” excludes a family setting or function is also protected.<sup>47</sup>

In Uganda, there is no specific body charged with the role of copyright administration and protection. This function has been assigned to the Uganda Registration Service Bureau, a body that deals with a range of other government services.



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<sup>47</sup> The Uganda Copyright and Neighbouring Rights Act, 2006.

### **Part 3: Trends in uptake of technology for development of critical content**

This part discusses the findings of the research in relation to key regional trends on critical content production, promoting and disseminating digital content and consumption.

#### **Content production**

In the current digital transformation age, creators with access to the latest digital technology and equipment have greater advantage than those that don't leverage it. All cadres of content creators including photographers, journalists, actors and even poetry or spoken art performers can seamlessly integrate their work with digital technologies to enhance their delivery.

One of the key trends observed is the increased speed in production as a result of the adoption of hardware and software technologies and devices with reduced costs such as three – dimensional(3D) printers, faster computer processors, smartphones with enhanced camera features, High Definition(HD) digital cameras etc. Capturing raw content in digital formats allows for faster sharing, editing and distribution. Content creators are now able to turn simple photos into engaging formats like gifs which are then embedded with music files within minutes compared to a time when it took days to see the success of their work. Advanced digital technology equipment goes a long way in capturing audience interest; from digital pictorial backgrounds, to 3D audio-visual effects that augment live theater to powerful holographic projectors and light-emitting diode (LED) screens able to project digitally curated background content.

In addition to the above, there is also the ease of revision and revisiting of content. Digital technology offers today's content creator's long shelf life for their work, easy retrieval and instant revision. For example, obituaries of prominent figures or historic events e.g. independence struggles are now easily amended immediately fresh information becomes available. Previously this took much longer and required a lot more effort especially where traditional media such as newspaper, books, encyclopedias and magazines, were the only option.

Further, there has been improved accessibility and affordability of equipment by content creators. The miniaturization of electronic equipment has contributed to increased portability of content production. Technologies such as photo/video cameras, sound recorders, computers etc. have become smaller and more portable. The falling price of the equipment means that creatives have the freedom and ability to produce any audio-visual content without having to access a physical studio. Currently with the affordability of digital electronic equipment, music studios are found everywhere including people's homes. Any creative with a computer and phone with a camera can produce audio-visual content, edit, distribute and collect payment.

Equally, there has also been improved diversity in production methods and channels. The smart phone technology combined video and audio recording in a singular device which is portable and easy to use. Access to free software/apps has accelerated and increased the frequency of production and diversity of content. In Kenya the Alliance Francaise has held Smartphone Film Competitions since 2016 with the aim of encouraging the creation of

content for and by smartphones<sup>48</sup>. This is inspired by the improved internet access and connectivity coupled with an increasing number of affordable smartphones that make it possible to record and produce high quality videos. Also, smartphones have provided platforms for music content production. For example, gospel artist: Kymo and Stigah recorded their first music video version of their popular hit song *Thitima* using a cell phone mounted on a selfie stick<sup>49</sup>.

Digital technologies have led to continuity of production during the COVID 19 crisis. Creatives have leveraged digital technology during the Covid-19 pandemic in different ways to entertain, educate and inspire audiences globally. In Kenya, numerous music and drama concerts have been held online. Artists such as Maïmouna Jallow have innovatively produced and aired a three part audio drama titled *Tales of the Accidental City* that tells the story of four Nairobi residents stuck together in an anger management class<sup>50</sup>. The play was written, directed and rehearsed on the Zoom platform due to the COVID-19 containment physical meeting restrictions.

Further, there have been more diverse options for audience consumption at any one time. With creatives producing content more frequently, audiences in the digital age are spoilt for choice. This has compelled the creatives to curate specialized content that resonates with audience interests. For example, PAWA 254 has cut a niche as a bold 'activism' organization that creatively integrates art and activism to promote active civic engagement. Audiences aligned to PAWA 254's values opt in by following their social media pages, attend events and participate in activities that keep them engaged on their areas of interest<sup>51</sup>.

### **Promoting and disseminating digital content**

The ongoing digital transformation has expanded content reach. In particular, it has allowed content creators to access audiences they would never have reached before through traditional media channels. This is exemplified by Mfalme Productions who have created the Makarao videos series to reach non-Swahili speaking audience, their content reach expanded beyond East Africa to countries like Nigeria, South Africa and Ghana.

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<sup>48</sup> Alliance Française Nairobi, 'Kenya Smartphone Film Competition' <<http://www.smartphonefilmcompetition.co.ke/about-us/>> accessed 8 August 2021.

<sup>49</sup> GSengo, *Kymo and Stigah Thitima Christmas Rendition OFFICIAL VIDEO* <<https://www.youtube.com/watch?v=4Z7qevjI-SI>> accessed 8 August 2021.

<sup>50</sup> Positively African, *Film Trailer - Tales of the Accidental City* <<https://www.youtube.com/watch?v=9HjuFkxRHRY>> accessed 8 August 2021.

<sup>51</sup> PAWA254, 'Activism' (PAWA254, 14 January 2020) <<https://pawa254.org/2020/01/14/activism/>> accessed 8 August 2021.



New technologies such as Artificial Intelligence (AI) and Machine Learning are enabling content creators to accurately analyze the kind of content that audiences want, as well as target and expose specific content to segmented audiences.

Also, the divide between audiences and broadcasters has been narrowed or blurred. For instance, Design Hub's Face Book page quickly gained 364 page likes in just 14 days of launching their social experiment *Talk On It*. The followers and posts reached 1200 up from 400. Their campaign experiment used Facebook and Instagram platforms to re-share provoking messages created by the public who were given an opportunity to express themselves on social matters affecting them. Design Hub's campaign which reached 1200 people within two weeks was accelerated by the re-sharing of the content by the audiences who engaged with the *Talk On It* social experiment.

Competition for audience engagement is driving quality productions. The research found that digitization compels local content producers to raise the standards of their work in terms of depth, presentation and design, to international levels, for audiences to engage.

Video content is preferred over print. The research found that digital technology continues to alter consumer behavior with shorter attention spans driving consumption of audio-visual content. In Tanzania, critical content producers relying on print channels must work harder to gain audience interest.

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*'Content is consumed using mostly mobile devices and other devices  
(iPad and laptops)'*

Respondent - Culture and Development East Africa (CDEA)

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Online publishing has simplified content distribution and made published articles to be more accessible to the audiences. It has also increased flexibility of consumption of content<sup>52</sup>. In Kenya, dialogue and debate around the 2010 Constitution was unlocked by content creators' ability to share ideas, knowledge and feedback instantly.

Today online publishing enables journalists to produce and publish elaborately packaged content across platforms such as the Elephant in Kenya, Bukedde and The Independent in Uganda, and Mtanzania, and Jamii Forums, and Mwanahalisi Online, in Tanzania.

### **Consumption**

Digital technology has eliminated barriers to accessing creative content. This implies that provided an artist's work is captured and shared on a digital media platform, it becomes available to anyone with internet access.

Creatives are involving their audience in the production process. The current digital context has enabled audiences to become more visible, mainly through social media, and have more tools and platforms to participate in the production process. More so, audiences can revisit content as many times as they like, it's easy for them to provide useful feedback to critical content makers.

For example, Mfalme Productions built a community of online fans that watched over 50,700 hours of their show and reached 103,000 unique viewers on YouTube with an average of 50,000 views per episode every month on Viusasa. The community moved from being just fans of the show to advocates of the content, both online and offline, enabling Mfalme Productions to have wider channel reach for more civic engagement. Through their Makarao web application, Mfalme Productions had more control over their content as well as direct reach to their audiences.

Also, Clavers Odhiambo, an artist from Kenya has been savvy in showcasing his work on platforms such as Twitter, Facebook, Instagram, and YouTube<sup>53</sup>. Odhiambo has a huge following that includes upcoming artists, enthusiasts interested in creative work processes, art connoisseurs and newsmakers looking for content to broadcast<sup>54</sup>.

When the Kenyan musician Kennedy Ombima, known as King Kaka, produced the critical hit *Wajinga Nyinyi* on YouTube, through the use of social media, he was able to reach one of his record setting views while at the same time calling on improvement in how the country is governed and how citizens relate with the political class<sup>55</sup>. The song, falling in the category of critical content, had more than 58,000 views within six hours of launch when it first premiered on YouTube on 14 Dec 2019 and 3,160,272 views as at 29<sup>th</sup> August 2021.

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<sup>52</sup> 'The Publishing Industry in a Digital Age' (April 2020) <<https://digitalmarketinginstitute.com/blog/the-publishing-industry-in-a-digital-age>> accessed 10 August 2021.

<sup>53</sup> Clavers Odhiambo, *Most Challenging Painting I've Done* <<https://www.youtube.com/watch?v=WCXIvWXNjCA>> accessed 10 August 2021.

<sup>54</sup> Clavers Odhiambo, *'Reflections' Painting of a Swimmer Underwater* <<https://www.youtube.com/watch?v=nUi5qbuG0HU>> accessed 10 August 2021.

<sup>55</sup> King Kaka, *WAJINGA NYINYI* <<https://www.youtube.com/watch?v=WIuMZmagvUk>> accessed 10 August 2021.

Like King Kaka, Tanzanian musician Naseeb Abdul Juma, Known as Diamond Platnumz took on his country's politicians through this hit song *Acha nikae kimya*<sup>56</sup>. The song broke the silence on Tanzanian government crackdown on artistes. This was after the arrest of Tanzanian rapper Emmanuel Elibariki, known as Nay Wa Mitego whose song was listed as anti-establishment for exposing graft within the Tanzania government. By releasing the music on YouTube, the content creators were able to avail critical content independently whilst reaching a wider audience.

Grantee	Audience Target	Audience Reached
Culture and Development East Africa (CDEA)	607,600	947,755
Creative Education and Empowerment Zanzibar (CEEZ)	100,000	450,628
Kijiji Productions	100,000	1,461,642
Nest Group Africa Limited	2,600,000	3,134,192
Pollicy	520,000	125,090
Simma Africa	100,000	200,000
Tribeless Youth	4,000,000	1,900,000
Total	8,027,600	8,219,307

*Table showing ROOM 2020-2021 partners online audience target vs reach figures for the period October 2020-October 2021 as of August 1, 2021.*

### Other ways in which digital technology affects consumption

The research investigated opportunities through which digital technologies can increase access and appreciation of visual arts, whether digital technology can increase awareness and understanding of contemporary visual arts work – whether lasting or ephemeral, and how digital technology can grow the potential market for the visual arts.

The research findings indicate that:

The contemporary art infrastructure in East Africa is underdeveloped. For instance, this underdevelopment has limited audience's appreciation for the rich artistic collections that museums carry and the informative exhibitions they host. Except the usual patrons such as schools and foreign tourists, footfall to these establishments remains wanting. Notably, it remains unclear why critical content producers are reluctant to engage museums or even use their exhibition spaces to create awareness on their work.

In addition:

- Critical content producers should leverage digital technology to facilitate artistic exchange and collaboration. As already highlighted in this research report, this has great benefits for the community in stimulating, identifying and sharing connections within and beyond the region. This is especially important in building confidence within the sector especially with the limited movement caused by the COVID-19 pandemic.

<sup>56</sup> Diamond Platnumz, *Acha Nikae Kimya* <<https://www.youtube.com/watch?v=qGGvd4vRUuo>> accessed 10 August 2021.

- There is scarcity of art publishing in East Africa. Digital technologies present a new opportunity in both self-publishing for creatives and more inclusive publishing on the part of publishing institutions. In Kenya for example even the most notable Kenyan artists, who have contributed significant intellectual input into the creative sector, remain largely unpublished<sup>57</sup>. Hence, the need for wider utilization of digital technology as a cost-effective means for creatives to reach wider audiences where censorship or low permeation exists.
- When deployed effectively, digital technology can enhance awareness of contemporary visual arts work – whether lasting or ephemeral for new audiences. This improves exposure of artists work to audiences such as expats and tourists who already have a deeper appreciation of contemporary visual arts, enabling them to earn an income as critical content creators.

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<sup>57</sup> Kathryn Standing, 'Scoping The Visual Arts Scene In East Africa' (The British Council) <[https://www.britishcouncil.co.ke/sites/default/files/visual\\_arts\\_scoping\\_report.pdf](https://www.britishcouncil.co.ke/sites/default/files/visual_arts_scoping_report.pdf)>.



## Part 4: Challenges and opportunities in the use of digital technologies by creatives in East Africa

Digital technologies can make great impact in the production and promotion of critical content. However, there are opportunities and several systemic problems and challenges that hinder this development. This part discusses the main systemic problems and structural challenges that exist and their impact, and opportunities for stakeholder engagement in the use of digital technologies in production and promotion of critical content.

### Challenges:

#### *Increased competition*

The fact that digital technology makes it easier and less costly to produce, means that the barrier to entry for new artists is reduced, allowing more artists to put their content online. While this offers audiences variety, it means that artists are obligated to produce higher quality and more expensive outputs that will capture the ever-decreasing audience attention spans.

Global competition for audiences has negative outcomes for local critical content producers who may attract less interest from their own audiences who are tuned into content from international creators.

Similarly, social media promotion is powered by algorithms which favour well packaged content. Consequently, this increases audience reach for international critical content producers. By the time local critical content creators go through their learning curve local audiences would have been exposed to international content hence more predisposed to purchasing international as opposed to local content.

#### *The challenge of managing audience expectations on limited budget*

The public expects creative content to be provided free of charge. However, there is a lack of awareness of the resources that are required and or deployed to produce, promote and distribute content<sup>58</sup>. A ROOM Project partner working on interactive live streamed content production summed up the problem of meeting audience expectations within limited funding as follows:

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*'It's hard to sell the content because people are used to free streaming shows'.*

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<sup>58</sup> KRISTIN THOMSON, KRISTEN PURCELL and LEE RAINIE, 'Section 6: Overall Impact of Technology on the Arts' (4 January 2013) <<https://www.pewresearch.org/internet/2013/01/04/section-6-overall-impact-of-technology-on-the-arts/>> accessed 13 August 2021.

### *Poor physical and digital infrastructure*

Access to digital technology in the region is constrained by infrastructure set backs such as highly interrupted and fluctuating power supply and low internet density, and broadband penetration particularly in rural areas. This limits how far the content can reach audiences in those underserved regions<sup>59</sup>.

Therefore, closing the physical connectivity gap, especially of fiber-optic networks as well as the interoperability of virtual platforms is important not only in improving digital technology in East Africa, but also for reaching and lowering unit costs for the underserved audiences.

### *High equipment costs*

The cost of equipment for content production and distribution is real challenge for creatives. For instance, when Cultural Video Productions, one of the ROOM project partners produced their critical content series using virtual reality (African Space Makers project), they realized that distribution would be difficult because the technology required to view the series is expensive, making it out of reach for many distributors and viewers.

### *Unfavourable digital tax regime*

The introduction of digital taxes in Kenya and Uganda as highlighted under the regulatory frameworks section (above) imply that critical content creators bear additional tax cost just for use of the digital technology particularly social media. Taxation increases the cost of accessing the internet or digital content and also decreases the income that critical content creators can make. When consumers are unable to access content due to increased costs of accessing the internet due to tax, it limits the audiences that eventually access the content, creating a disincentive for critical content creators because they make less money, which is also taxed by the same authorities. Consequently, this limits the amount of information that is generated by critical content creators.

Besides the high costs presented by the digital tax, human rights activists view the introduction of social media tax and bloggers licence fees as means to repress freedom of expression. In May 2018, the Ugandan government introduced a social media tax of US Dollars .05 cents per day to access the internet and related streaming media services and applications such as WhatsApp, Facebook, Twitter, Skype and Viber ostensible to curb social media “gossip”. Global Voices underlines the fact that given that these social media platforms were the content distribution platforms, there was a significant reduction in the level of engagement with audiences<sup>60</sup>.

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<sup>59</sup> Njuguna Ndung’u and Landry Signé, ‘The Fourth Industrial Revolution and Digitization Will Transform Africa into a Global Powerhouse’ (*Brookings*, 8 January 2020) <<https://www.brookings.edu/research/the-fourth-industrial-revolution-and-digitization-will-transform-africa-into-a-global-powerhouse/>> accessed 14 August 2021.

<sup>60</sup> Sandra Aceng, ‘Taxing Dissent: Uganda’s Social Media Dilemma’ (*Global Voices*, 12 December 2019) <<https://globalvoices.org/2019/12/12/taxing-dissent-ugandas-social-media-dilemma/>> accessed 15 August 2021.

Musician and lawmaker Bobi Wine led Ugandans in a protest against social media tax without much success<sup>61</sup>. Similarly, in 2018, Tanzanian bloggers and social media users were required by the government to pay an annual \$930 license fee before engaging in any online operations<sup>62</sup>.

### *Rise in online misinformation and fake news*

Digital technology has simplified content creation, moving it from a practice undertaken by qualified professionals to an action that anyone with a camera can execute. This has led to production of content of low quality.

Besides the quality of content, the emerging digital context for content creation and distribution, the ubiquitous social media environment and the influence that content creators face particularly the need to be constantly visible to larger audiences, and to gain followers in the process, has led to a context where misinformation and fake news is almost everywhere. In particular, the free and real-time distribution of content through social media has provided fodder for the online misinformation to grow. Further, this has been accelerated by the fact content production and distribution operates largely in unregulated environment and driven by advertising. The incentive for quality content development is often outweighed by the incentive for revenue.

### *Stringent regulatory oversight*

As already highlighted in the regulatory frameworks section, In Kenya, the Kenya's Films and Stage Plays Act (Cap 222) restricts content distribution by requiring one to obtain Kenya Film and Classification Board (KFCB) approved licenses. The submission for classification before licensing process subjects the content to either complete banning or restricted viewership. Examples of content that has been banned include *Rafiki* which features lesbian, gay, bisexual, transgender and queer (LGBTQ) content and *Softie* a film about activist Boniface Mwangi was given an adult rating instead of PG 13. The activist expressed his disagreement with the rating on Twitter arguing that: *This film was rated Adults only by @InfoKfcb because it contains scenes that you see every day on prime news'*<sup>63</sup>.

In Tanzania, the guidelines by Tanzania Communication Regulatory Authority (TCRA) that stipulate a two-hour removal of 'offensive' content to the regulator or third party have left content providers perplexed and at constant risk of breaking this regulation. Moreover, the

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<sup>61</sup> Deutsche Welle (www.dw.com), 'Uganda: One Year of Social Media Tax' (DW.COM) <<https://www.dw.com/en/uganda-one-year-of-social-media-tax/a-49672632>> accessed 15 August 2021; 'MP Bobi Wine Starts Online Petition against Social Media Tax' *Daily Monitor* (15 September 2020) <<https://www.monitor.co.ug/uganda/news/national/mp-bobi-wine-starts-online-petition-against-social-media-tax-1767978>> accessed 15 August 2021; 'Bobi Wine Social Media Tax Case Hits a Snag over Lack of Witnesses' *Daily Monitor* (15 September 2020) <<https://www.monitor.co.ug/uganda/news/national/bobi-wine-social-media-tax-case-hits-a-snap-over-lack-of-witnesses--1842508>> accessed 15 August 2021.

<sup>62</sup> 'Tanzania: Blogger Required to Pay \$930 Annual Licence Fee' (*East Africa Monitor*, 11 April 2018) <<https://eastafriamonitor.com/tanzania-blogger-required-to-pay-930-annual-licence-fee/>> accessed 15 August 2021; Giles Chris, 'Tanzania's Bloggers Fight Back against \$930 Fee as Court Grants Injunction' *CNN* <<https://www.cnn.com/2018/04/12/africa/tanzania-blogging-internet-freedoms-africa/index.html>> accessed 15 August 2021.

<sup>63</sup> *Kahiu v Mutua* [2020]; 'Kenyan Court Refuses to Lift Ban on Acclaimed Lesbian Romance Film' *Reuters* (29 April 2020) <<https://www.reuters.com/article/us-kenya-lgbt-film-trfn-idUSKBN22B260>> accessed 15 August 2021; Brian Ocharo, 'Kenya: Another Judge Refuses to Lift Ban on Rafiki Film' *allAfrica.com* (21 April 2021) <<https://allafrica.com/stories/202104210081.html>> accessed 15 August 2021.

Authority does not prescribe mechanisms for a licensee to appeal. These legal lacunae presented itself in the case of Nay wa Mitego who was arrested for releasing a song titled *Wapo* which was perceived as criticizing the government<sup>64</sup>.

### *Increased censorship*

According to Committee to Protect Journalists (CPJ) Africa, creatives like renown cartoonist Gado, have experienced pressure from government for producing critical content that criticises state and leaders' conduct<sup>65</sup>.

In Tanzania, following the enactment of the Media Services Act in 2016, three Tanzanian non-governmental organizations filed applications in the East African Court of Justice (EACJ) to dispute multiple sections of the Act which restricts press freedom and freedom of expression. In addition to filing the dispute, the organizations called on the Tanzanian government to repeal the Act which threatens tough criminal sanctions for vaguely-worded offences of "sedition" and publishing "false statements". On 28th March 2019, the East African Court of Justice delivered the judgment in favour of the applicants despite an appeal by the Government of Tanzania which was struck out<sup>66</sup>.

The ROOM project partner: Design Hub encountered a similar challenge during their African Expression Lab social experiment, '*Talk On It*' which involved putting up boards in public toilets where citizens would write on the boards exercising their right of freedom of expression. The Ugandan police in Katwe Market raided the toilets taking away the boards and arresting a community worker for being an 'accomplice to a crime'. The project leader of African Expressions Labs who went to negotiate at the police station was also arrested for the 'crime' of inciting political violence; hate speech and insulting the president, which is an offence in the country. It took legal intervention for the charges to be dropped but the boards remained confiscated by police. The authorities ordered that the activities of '*Talk On It*' be halted and promised to monitor Design Hub's activities.

### *Internet and media shut downs*

Internet shut down refers to an "intentional disruption of Internet or electronic communications, rendering them inaccessible or effectively unusable to a specific population or within a location, often to exert control over the flow of information"<sup>67</sup>

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<sup>64</sup> George W Gathigi, 'How Artistic Expression Is Being Stifled in East Africa' (*The Conversation*) <<http://theconversation.com/how-artistic-expression-is-being-stifled-in-east-africa-96028>> accessed 15 August 2021.

<sup>65</sup> 'Gado Blames Government Pressure as Cartoonist's Contract at Kenya's Nation Ends' (*Committee to Protect Journalists*, 17 March 2016) <<https://cpj.org/2016/03/gado-blames-government-pressure-as-cartoonists-con/>> accessed 15 August 2021.

<sup>66</sup> 'Application No. 5 of 2019 Media Council of Tanzania & Others v The Attorney General of the United Republic of Tanzania' (*East African Court of Justice*) <<https://www.eacj.org/?cases=application-no-5-of-2019-media-council-of-tanzania-others-v-the-attorney-general-of-the-united-republic-of-tanzania>> accessed 15 August 2021; Committee to Protect Journalists, 'East African Court Rules That Tanzania's Media Services Act Violates Press Freedom' (28 March 2019) <<https://cpj.org/2019/03/east-african-court-rules-that-tanzanias-media-serv/>> accessed 15 August 2021; *Landmark ruling from the East African Court of Justice upholding media freedom* [2019] EACJ Application No. 5 of 2019.

<sup>67</sup> KICTANET, 'Building Trust between the State and Citizens: A Policy Brief on Internet Shutdowns and Elections in Kenya 2017' (2017) 10 <[https://www.kictanet.or.ke/mdocs-posts/kenya\\_policy\\_brief\\_on\\_internet\\_shutdowns-2017/](https://www.kictanet.or.ke/mdocs-posts/kenya_policy_brief_on_internet_shutdowns-2017/)>.

Internet shut down in East Africa appears largely to occur around the time of elections thus limiting the freedom of expression of critical content creators who are also commenting on this important process. In Uganda, the government ordered the shutdown of internet access on the eve of the presidential elections voting day, citing “national security”, as well as during the inauguration in May 2016, affecting social media platforms including Facebook, WhatsApp, Twitter and mobile money transfer services<sup>68</sup>. This was not the first occurrence of repressing content perceived as controversial during the swearing in event. Similarly, in January 2021, on the eve of Uganda’s general elections, the Uganda Communications Commission suspend all internet gateways until further notice. According to Unwanted Witness, this was in retaliation for Facebook taking down some pro government accounts<sup>69</sup>. In Tanzania, major social networks were blocked across Tanzania on the eve of 2020 general election, with users relying on virtual private networks (VPNs) to send messages and access information.<sup>70</sup>



### **Opportunities for multi stakeholder engagement to solve mentioned challenges**

The research has revealed a number of challenges in the adoption, use, and regulation of digital technologies for both audiences and creators. Hivos has a long track record of leveraging on its networks to solve societal challenges through inclusive multi-stakeholder approaches. In this regard, a few proposals are mentioned below.

Hivos has supported various critical content creators with funds to improve their production in various ways. This has included; funding of production infrastructure and processes, training in the use of digital technologies and digital security, and business training and

<sup>68</sup> <https://advox.globalvoices.org/2016/05/11/social-media-blocked-in-uganda-ahead-of-president-museveni-inauguration/>

<sup>69</sup> Unwanted Witness, ‘Uganda 2021 General Elections: The Internet Shutdown and Its Ripple Effects’ <<https://www.apc.org/en/news/uganda-2021-general-elections-internet-shutdown-and-its-ripple-effects>> accessed 15 August 2021.

<sup>70</sup> Delali Sakpa, ‘Tanzania Restricts Social Media during Election’ (*DW.COM*, 29 October 2020) <<https://www.dw.com/en/tanzania-restricts-social-media-during-election/a-55433057>> accessed 29 August 2021.

support to strengthen creative's internal systems and processes. While these efforts have borne fruit, access to even more critical content producers remains limited. There are opportunities to reach a larger pool of critical content creators in East Africa. However, this requires partnerships with a broader spectrum of stakeholders. Some of the stakeholders identified by the research for potential partnerships within the region are as follows:

#### *Independent media houses*

East Africa has numerous TV and radio stations that provide critical content creators opportunities for self-expression. Whilst most dominant media houses are owned by well-powerful persons (both politically and financially), a few stations offer alternative voices. Creatives should challenge media houses to publish more critical content in addition to the entertainment focused content that is dominating their airwaves.

#### *Civil society actors*

Civil society organisations that share similar values with some of the critical content creators, can offer their media channels as platforms to amplify the reach of these organisations. For example, ARTICLE 19 Eastern Africa has worked together with artists like Javan the Poet and Mufasa, the Social Justice Centers Working Group to produce right to protest positive messaging in the form of spoken word pieces, poetry, and theatre performances.

Critical content creators could potentially monetize their art forms by offering creative service that can amplify the voices of similar organisations and their campaigns.

#### *Donors and funding organisations*

Organisations in East Africa that have programs aligned to themes that critical content creators are engaged in such as social accountability, increasing the democratic space, freedom of expression amongst others include; Africa Unfiltered, Open Society Foundation, British Council, Ford Foundation, Luminate and National Endowment for Democracy.

#### *Blogger communities, podcasters and social media influencers*

Bloggers tend to be more independent and easier to partner with than mainstream media houses. While some of these influencers are costly, partnerships with blogger and influencer communities could help critical content creators reach more audiences independently and commercialise their work when they command larger followings. There has to be an alignment in vision and purpose between the creatives and bloggers though for such partnerships to be impactful.

For example, Midundo Radio in Tanzania has been partnering with popular artists and social media influencers to increase the popularity of its online radio station. In Kenya, the Bloggers Association (BAKE) has categorised their members and could be a great stakeholder for critical content creators. In Uganda and Tanzania, the bloggers associations did not take off due to fears of government retaliation, but key bloggers could coordinate efforts to reach influential bloggers in selected thematic areas.

#### *Hubs and collectives*

There are several creative hubs and collectives in Kenya, Uganda and Tanzania that run programs which support critical content creators as well as other creatives. These hubs include; Creatives Garage – Kenya; The Nest Collective – Kenya; Mortiv Hub – Uganda; Baraza Media Lab – Kenya, and CDEA – Tanzania. These would serve as valuable partners in running programs that upskill and support critical content creators across East Africa.

#### *Digital Platforms Owners (Private Sector)*

Owners of large platforms have been running free education programs for small business owners on how to use digital tools to engage their customers targeting. These companies can be approached to develop tailor made programs for critical content creators at no cost. Examples of these platforms include Facebook, WhatsApp, Instagram – Boost with Facebook program and Google, YouTube – Google my business program.

#### *Academics*

As has been mentioned before in this research, there is need to conduct more in-depth research into more particular areas of the creative sector. One of these can be more comprehensive research on the lived experiences of creatives across the three countries on how they are using different digital technologies.

#### *State Actors*

As policy makers, state actors from the three countries need to work with the above-mentioned stakeholders to amongst other things amend all legislations touching on artistic expression to be in line with regional and international standards.



## Part 5: Strategies to increase uptake of digital technologies

This report's analysis of trends in digital technologies shows the clear advantages it offers critical content creators. This part highlights strategies that creatives can leverage to increase uptake, production, training, collaboration, and financing of digital technologies infrastructure in the creative sector.

### 1. Improving access to digital technologies used in production

According to data collected by Africa Digital Media Foundation, creative entrepreneurs' need access to and ownership of relevant hardware and software as critical in producing quality content efficiently<sup>71</sup>. 94% of respondents reported having access to or owning smartphones and computers which could count as basic hardware for digitally produced creative work. However, when asked whether they have access to all the equipment needed, a majority said they had access to software but not ownership, often needing to either borrow or rent to use it.

Further evidence of the benefits arising from the uptake of digital technologies in production was drawn from the R.O.O.M project partners. For instance, *Kijiji Works* attributed the high quality of their short puppet skits and podcasts to digital technology. In Uganda, *Motiv Media Lab*<sup>72</sup> is working with budding creatives to enhance quality of their productions by providing access and know-how to expensive electronics such as cameras, sound equipment, lighting gear etc.

To boost the uptake of digital technologies by critical content creators, there's need to increase access to production equipment. For example, CDEA indicated that they would need to own technological items such as Canon 6D Mark II with 24-105mm lens, camera Light for video, Zoom voice recorder and H6 Hand 6CH recorder – in order to become more independent. In additionally, 'Dedo Turbo Felloni LED 45 (degree) beam angle, portable microphone set (lapel), live streaming Black magic Ultra studio mini, video capture adapter cable, camera stand cable, 64 GB memory cards 4K UHS Extreme pro, 32 GB memory card and transport for outreach programmes'.

### 2. Carrying out sensitization for artists on the use of digital technologies to produce content and reach wider audiences:

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*(We need) 'More knowledge about the different tools available and proper use of those tools'.*  
-Anonymous respondent

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<sup>71</sup> Africa Digital Media Foundation, 'Mobilizing Skills, Finance & Policy Change to Create Jobs for Youth in Africa's Creative Economy' (Africa Digital Media Foundation) <<https://admf.or.ke/>> accessed 16 August 2021.

<sup>72</sup> [https://motivug.org/facility/media\\_lab](https://motivug.org/facility/media_lab)



The high rate at which technology evolves requires critical content creators to keep learning how to use the platforms, monitor performance and understand how to monetize content. The interviewed R.O.O.M project participants confirmed the importance of regular training on how to use available platforms and tools as a way to increase audiences reach. *Kijiji Works* felt that a part from training it would be good to see some case studies on what and how other successful content creators made it through and what tools and technology they were using.

In terms of support required to make more income, Pollicy of Uganda indicated that creating engaging websites or applications that have a 360 e-commerce platform would enable the artists sell content:

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*'Creating engaging websites that have 360 e-commerce platforms that enable the artists sell off their content. For the musicians, exploring platforms that are selling content like iTunes, Spotify. Engaging and lobbying e-commerce platforms on issues of copyright'.*

Respondent -Pollicy

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The research found that the training by Hivos on Social Innovation and Business Canvas was a great source of information on value addition and how to monetise online services. The key training areas include:

*Training on digital marketing through social media.* The interviewed R.O.O.M project participants, specifically *Simma Africa Creative Arts Foundation* and *Kijiji Works* highlighted the use of social media for marketing their content as important to help them access wider audiences. Tanzania's *Eco Sanaa Hub* preferred engagement with social media expert to mentor *Midundo* Online Media interns and volunteers on how to increase their audience reach.

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*'Increased budget for social media influencers to increase reach and engage a social media expert to mentor Midundo Online Media interns and volunteers the on how to reach a wider audience, impressions and replies on social justice issues from our four programmes'.*

Respondent -CDEA

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*'As an organisation we conducted a survey and realised that majority of our members lack digital skills, there is need to hold trainings on the use of various digital technologies to enhance content creation, distribution and social media'.*

Simma Africa Creative Arts Foundation,  
participants

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*Training on intellectual property and copyright.* Easy access to online content infringes on intellectual property rights of creatives. Creatives need to learn about copyright law to protect their work and prevent breach of copyrighted content. Hivos intellectual property rights' training was greatly appreciated by the R.O.O.M project participants who said it was insightful and shed light on how critical content creators can secure online content and how to draft simple contracts. For instance, as a result of the training, the Design Hub team were able to create clear publishing agreements for their *Start Journal* project contributors.

### **3. Promoting Collaboration in production of content**

Collaboration amongst artists producing similar content using digital technologies in different countries will lead to more critical content creators taking up the use of digital technologies at different levels of production. This idea exchange improves quality of production and shortens learning curves, allowing for in-depth analysis of critical content subject areas such as politics, education, culture, literature and ethnicity etc. Collaborative initiatives of creatives in diverse fields such as literature and film or academia and art produce rich critical content that permeates further unlike when it is left in one form.

### **4. Improving internet and energy infrastructure**

Reliable electricity and internet access across the East African countries would undoubtedly promote increased uptake of digital technology in the creative sector and allow more inclusivity in terms of audiences accessing critical content. A Harvard Business Review's research article on how digital technology could promote growth in six African countries among them Kenya recommends investment in basic infrastructure to reduce power outages and other disruptions<sup>73</sup>.

## **5. Promoting Use of social media and its tools**

The use of the internet has allowed content creators and artists a platform for exposure that stretches far and wide allowing content to gain audience even at a global scale. One of the biggest pillars is social media. For example, Facebook as an application can be used for advertising at a fairly affordable cost compared to the option of main stream media.

Creatives can use this to their advantage to get critical content promoted through boosting their social media posts with the option of specifying the target audience based on demographic characteristics. These features are commonly available on most social media platforms.

The research found that both Uganda's Pollicy and Tanzania's CDEA found that setting aside a budget for advertising on social media and engaging influencers complemented the training received on how to capitalize on social media as a means to reaching a wider audience. In addition to training creatives on how to leverage social media, interviewed R.O.O.M project participants, confirmed that engaging with their audiences on social media helped them clarify their messages. When CDEA ran the *Ki-katuni Critical Debates Project* with the goal of deepening CDEA's work on social justice, the audiences brought forth important viewpoints by cartoonists, allowing the organization to respond to their feedback. Similarly, Midundo's Online Radio presenter was able to moderate public commentary on the social justice themes arising from the cartoon of the week through their Facebook page.

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<sup>73</sup> Bhaskar Chakravorti and Ravi Shankar, 'Research: How Technology Could Promote Growth in 6 African Countries' *Harvard Business Review* <<https://hbr.org/2019/12/research-how-technology-could-promote-growth-in-6-african-countries>> accessed 16 August 2021.

## Conclusion

From the research, it is clear that digital technology in the production and dissemination of critical content is viable and it already in use in various ways. With it come the advantages of content creators reaching wider audiences, producing at faster rates and more content enabling content creators to become more self-sufficient through commercializing of content digitally.

This transformation is made possible because the penetration of mobile and internet in East Africa is growing, despite taxation. Also, costs are coming down for equipment and use of the various channels for distributing the content.

Policies in the region have increasingly curtailed reach and independence of the creatives and taxation policies have also decreased the affordability of accessing content online. However, people are still able to access the content.

To reach wider audiences, partnerships can be built with other stakeholders in the creative sector in areas such as funding to enable critical creators overcome the barriers they face while producing or disseminating their content.

However, in order to to increase uptake of digital technologies for the production of critical audio-visual content by makers especially during the COVID-19 pandemic, the following recommendations made based on research findings.

## Recommendations

This report recommends that:

1. The East Africa governments revise all their legislations touching on freedom of expression and access to information in both offline and online contexts to bring them in line with international and regional standards on freedom of expression as set by bodies like the United Nations and the African Commission on Human and Peoples Rights.
2. At the East Africa level, creatives and the industry associations should engage the East African Cultural Council as well as the East Africa Legislative Assembly, whose mandate is to harmonise policies that foster regional reintegration.
3. There is need for concerted effort in advocacy for amendment of limiting regulations that make it difficult for content creators to thrive. The existing tax regimes are deterrents to importation of quality equipment which is needed by creatives for them to be able to produce their work. The East Africa governments should revise their existing taxation regimes around the importation of hardware equipment for production of audio-visual content.

4. The East Africa governments should also cease all practices of interfering with internet and media access through either partial or complete media and internet shutdowns at different degrees as this affects both the production and access to critical content by creatives and their audiences respectively.
5. Capacity building programmes on digital technologies, use social media platforms, engagement with global publishing platforms and how to navigate global challenges such as COVID 19 should be provided to creatives to help them maximize the gains they get from the use of digital technologies for production and promotion of content.
6. The East Africa governments should undertake regular reviews of copyright frameworks in the digital era. There is need to update IPRs frameworks to adapt to the digital era. This will accord consumers greater flexibility in terms of access of content while protecting the interests of right holders.
7. Policymakers should develop frameworks which increase lawful access through the internet platform to discourage pirated content.
8. Licenses for content access in place of ownership of copies of content- it would be beneficial for creatives if consumers paid for access rather than ownership. Digital content creators should manage their intellectual property using digital certificates, user identification and permission control.
9. Establish an environment that fosters creativity and innovation, enables competition, protects free speech and exploits the transformative potential of digital technology that both stimulates and protects all the different stakeholders.
10. Future research should focus on the in depth use of social media platforms and how such tools can be used as a medium for achieving the ROOM outcomes. Specifically on monetization, use of Virtual Private Networks and how content creators can form communities that enhance their independence; and increase their audience reach and self-sufficiency.
11. Critical content creators are encouraged to belong to associations based on their craft. The engagement of representative bodies could offer more coordinated lobbying efforts with the policy makers in the region.

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The Uganda Communications Act, 2013 2013

The Uganda Copyright and Neighbouring Rights Act, 2006

## Annex 1: ROOM 2020-2021 Partners

The following ROOM partners (among others respondents) participated in the research:

- ## 1. Simma Africa Creative Arts Foundation



- ## 2. Kijiji Works



### 3. Culture and Development East Africa



#### 4. Pollicy Uganda



5. Nest Group Africa (Mettā)





## 6. Tribeless Youth



## 7. Duuka Productions





8. Creative Education and Empowerment Zanzibar Ltd

