INTERNET RECYCLNG AND DOWNLOADS: ITS EFFECTS ON COPYRIGHT LAWS IN NIGERIA.

BY

Endurance ABILITY

LAW1504247

FACULTY OF LAW

UNIVERSITY OF BENIN,

BENIN CITY.

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A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW, IN PARTIAL, FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE

DEGREE OF BACHELOR OF LAWS (LL.B) OF THE UNIVERSITY OF BENIN, BENIN CITY, NIGERIA.

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CERTIFICATION

I, **Endurance ABILITY**, with Mat. No. **LAW1504247,** do hereby certify that apart from the references which have been made to the work of other persons that have been acknowledged, the entire work is the product of my research and that the project has neither in whole nor in par been presented for another degree elsewhere.

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We certify that this project was written and completed by **Endurance ABILITY** with Mat, No. **LAW1504247**, in partial fulfillment of the requirement for the award of the Bachelor of Laws (LL. B) Degree.

_____ _____

JULIUS EDOBOR, ESQ. SIGNATURE & DATE
(PROJECT SUPERVISOR)

_____ _____

BARR. D.T. ACHI SIGNATURE & DATE
(PROJECT CO-ORDINATOR)

_____ _____

PROF. V.O. AIGBOKAVEBO, Ph.D. SIGNATURE & DATE
(DEAN, FACULTY OF LAW)

DEDICATION

This work is dedicated to God Almighty who caused me to excel throughout my stay in the University of Benin, and for blessing me with two wonderful, immeasurable, inspiring and supportive parents who have never stopped believing in me. I love you both from the depth of my heart.

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TABLE OF ABBREVIATIONS

ECHR	-	European Convention on Human Rights
EFCC	-	Economic and Financial Crimes Commission
ICANN	-	Internet Corporation for Assigned Names & Numbers
ICT	-	Information and Communication Technology
IIPA	-	International Intellectual Property Alliance
NCC	-	Nigerian Copyright Commission
NCWG	-	Nigerian Cyber-crime Working Group
UNDRP	-	Uniform Domain Name Dispute Resolution Policy
WCT	-	WIPO Copyright Treaty
WIPO	-	World Intellectual Property Organization
WPPT	-	WIPO Performance and Phonogram Treaty

ABSTRACT

The relevance of Intellectual Property protection to our day to day activities has repeatedly been shown to be a settled matter. For this reason, the dawn of information age and the advancement of technology in the reproduction of information and intellectual goods has created a favorable tool for piracy; copying and selling of another's intellectual works have become easy and less expensive; Copyright theft; Production of fake, Sub-standard and unlicensed products are on the increase. Hence, Copyright Piracy is a global problem, although more prevalent in developingcountries like Nigeria. Copyright piracy has been recognized worldwide as an enemy of creative arts, intellectualism and creativity. It obstructs genuine investments and corrupts cultural value of a nation. Section / of the Copyright Act CAP C28 LFN 2004 makes provisions for the definition, protection, transfer, infringement of and remedy, and penalty thereof of copyright in forms of Literal, Musical, Dramatic and Sound recordings works. It is pertinent to observe that online generated materials can be classified under the category of literary works. Of greater importance, Sections 2 and 3 of the Copyright Act is to the effect that, copyright protection of any physical creative work is local, while the reach of the internet is international. The provisions of Sections 2 and 3 above presents a strenuous task for the protection of copyrights and enforcement of wrongdoings committed across the border. In respect of that, Section 2(1) of the Copyright Act provides that copyright shall be conferred by this section on every work eligible for copyright of which the authors or in the case of a work of a joint authorship, any of the authors is at the time when the work is made, a citizen, or is domiciled in Nigeria Nigeria's status as a favorable destination for foreign direct investment and a place where local creative talent can flourish is in jeopardy due to the activities of individuals who unjustifiably infringe on another's copyright works. It is in recognition of the above fundamental facts that the Nigerian Copyright Commission (NCC), which is saddled with the responsibility of monitoring,

administering and enforcing copyright laws and ensuring proper implementation of set out rules and regulations on the citizenry in the case of default seeks to fight against piracy.

CHAPTER ONE

INTRODUCTION

The primary function of Intellectual Property right under the law is to protect from exploitation, the rights of a person's work. This protection is of relevance to actors, playwrights, performers and other artists, to musicians, authors, publishers, to broadcasters, to makers of cinematograph films, photographers, producers of computer systems, manufacturers of goods and products, those who trade in goods and products using specified trademarks and trade names, technicians and technologies, pharmacists, engineers, lecturers, artists, lace designers, designers of other types of products, etc.[1]

1.1 Intellectual Property

Intellectual Property (IP) refers to the creations of the mind, such as inventions, literary and artistic works: designs, and symbols, names and images used in commerce.[2] It also refers to creations of the intellect for which a monopoly is assigned to designated owners, by law.[3]

Intellectual property rights (IPRs) are the protections granted to the creators of IP, and include trademarks, copyright, patents, industrial design rights, and, in some jurisdictions, trade secrets. Artistic works including music and literature, as well as discoveries, inventions, words, phrases, symbols, and designs can all be protected as intellectual property.

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1 Chudi C. Nwabachili, et al., "The Challenges of Enforcing Intellectual Property Rights across the Economic Community of West African States: The Nigerian Experience." *Journal of Law, Policy and Globalization* Vol. 34 (2015): 67.

2 "WIPO- World Intellectual Property Organization," http://www.wipo.int/about-ip/en/. Accessed March 8, 2021

3 Intellectual Property," www.en.m.wikipedia.org/wikVintellectual property. Last modified May 8, 2017 Accessed March 9, 2021.

While intellectual property law has evolved over centuries, it was not until the 19th century that the term "intellectual property" began to be used, and not until the late 20th century that it became common place in the majority of the world. The stated objective of most intellectual property law (with the exception of trademarks) is to "Promote progress"[4] by exchanging limited exclusive rights for disclosure of inventions and creative works, where society and the patentee/copyright owner mutually benefit, and an incentive is created for investors and authors to create their work, while disclosing it. Some commentators have judiciously opined that the objective of intellectual property legislators and those who support its implementation appears to be "absolute protection". "If some intellectual property is desirable because it encourages innovation, they reason, more is better. The thinking is that creators will not have sufficient incentive to invest unless they are legally entitled to capture the full social value of their inventions".[5]

1.2 Copyright

Copyright, as an aspect of Intellectual Property, operates to protect literary and artistic works in all associated products which will be thoroughly discussed in the process of this research. The law of copyright can be defined as the bundle of laws which seek to protect the rights of authors of such works which have been expressed or fixated in a specific medium from further

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4 United States Constitution, Article 1, Sec. 8, cl.8.

5 Mark A. Lemley, "Property, Intellectual Property, and Free Riding." Texas Law Review, Vol. 83 (2005): 1031. Available at SSRN: https://ssrn.com/abstract-582602 or Accessed March 18, 2017

reproduction by persons who are neither authorised nor licensed to so do. Copyright can be said to be another form of property right', as it is often referred to as a 'negative right' amongst legal scholars because it solely operates to fundamentally favour the work authors against their beneficiaries. Copyright involves the exclusive right to the production, printing and duplication

of copies of literary works and the protection of such rights; it is primarily aimed at preventing

random characters from the unauthorised reproduction of such existing work in more recent times, the basis of copyright protection has been extended beyond the traditional protection of literary works, sound recordings, film, broadcast, and artistic works to now cover online generated materials and resources such as downloading of ringtones, internet work, movies and a plethora of others which is informed from the unrelenting need to keep up with the technological changes adherent in the 21" century. Copyright is the branch of law that gives protection to the finest manifestation of human achievement.[6]

1.2.1 Definition of Copyright

According to the 8th Edition of the Black's law dictionary, Copyright is the right on literary property as recognised and sanctioned by positive law. It is also defined as a bundle of intangible rights granted by statute to the author or originator of certain literary or artistic productions, whereby, for a limited period, the exclusive privilege is given to such person or to any party whom he or she transfers ownership) to make copies of the same for publication and sale. The 8th Edition of the Black's law dictionary defines copyright in the following words:

> The right to copy specifically, a property right in an original work

[6] J.O. Odion and N.E.O. Ogba, *Essays on Intellectual Property Law* (Benin City: Ambik Press Ltd., May 2010), 1.

[7] "Copyright" The Free Dictionary by Farlex. www.legal dictionary.thefreedictionary.com/copyright Accessed January 15, 2017

> of authorship (Including literary, musical, dramatic, chorographical, pictorial, graphic, sculptural and architectural works, motion pictures, and other audio-visuals, recordings fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adopt. distribute, perform and display the work.

It is an ethereal right granted by a statute, and according to Sherard Osborn's concise law Dictionary, copyright in the exclusive right of printing or otherwise multiplying copies of, inter alia, published literary work, that is, the right of preventing all others from doing so. More no, by virtue of the acknowledged authority in Intellectual property, W.R. Comish[8], copyright is a right given against the copying of defined types of cultural, informational and entertainment production. Furthermore, in the English case of University of London Press v. University *Tutorial Press*[9], which for this aspect of low is the locus classicus case, copyright was summarily explained as the exclusive right of the author of the original work to control or enable the doing of specific acts in respect of the whole or a substantial part of the work in its original form, but subject to certain statutory exceptions. Also, according to the United States copyright office[10], the term 'copyright' is a form of protection by the laws of the United States for "original work of authorship" including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audio-visual creations. Copyright basically, means the right to copy, however, it has now come to mean that body of exclusive rights granted by law to copyright owners for protection of their work.

[8] W.R. Cornish, *Intellectual Property: Patents, Copyright. Trade Marks, and Allied Rights,8th Ed*. (London: Sweet & Maxwell Lid., 21 August, 2013), 5.

[9] (1916) 2 Ch.601.

[10] "US Copyright Office Definitions," www.copyright.gov/help/lug/definitions html. Accessed May 11, 2017.

From the foregoing, copyright is the right given to literary men, artists, musicians which exclude others from substantial copying of their work material. The term 'work' under Section 1(1) (a) – (*f*)[11] of the Copyright Act embraces literary, musical, artistic works, cinematograph films, sound recordings and broadcast. The Copyright Act goes further in Section 1(2) to state that literary, musical or artistic works shall not be eligible for copyright is sufficient effort has not been expended in giving the work an original character, the work has not been fixed in any definite medium of expression now known or later to be developed from which it can be perceived reproduced or otherwise communicated either directly, or with the aid of any machine or device. The innate philosophy behind copyright work is the reward of industrial intelligence, diligence and talent, coupled with the discouragement of laziness manifested in copying and reproducing existing works unlawfully. However, it is rather extant to say that like other rights, copyright is transmissible by way of an assignment and testamentary disposition, this is possible, provided the right procedure which includes majorly getting the owner's consent is adopted. Copyright protects intellectual creation expressed both in physical and non-physical forms. Thus, not only artistic works expressed in the forms of books, drawings and paintings protected, non-physical forms as choreography, sound recordings and such related endeavour are also protected.[12]

1.3 Historical Development of Copyright

The notion that an author should have copyright in his creation started in the beginning of the 18th century. Before the advent of the 18th century, the idea of protecting the copyright" was

alien to the orientation in the developing nations of the western hemisphere. This was more so because the era of printing had not yet began from the roots. The earliest form of copyright in

[11] Sec. (1) Copyright Act Cap 28 Laws of the Federation of Nigeria 2008.

[12] F.O. Shyllon, "Intellectual Property Law in Nigeria," Studies in Industrial Property and Copyright Law Vol. 21 (2003): 31. 12

England was the grant of royal licenses to printers (who were also original publishers), Prior to the time, there were attempts by Nations who were actually their pioneers in the printing Industry to nook for a measure of protection against copiers. In 1534, the Crown granted them protection against the importation of foreign book. This was followed by the grant of a royal charter to the company of the stationers in 1556 by Queen Mary. This development gave the company wide powers, including the authority to search and destroy books printed in contravention of statute or proclamation. The Company was further empowered to introduce a licensing system that placed an obligation on authors and publishers of lawfully printed books to register with the company. The main objective of doing so was to protect the monopoly of the licensed printers against those who had the license of raising money from license fees for the government and facilitating control of seditious material and anti-religious publications.

The Stationery Company which had earlier received a royal charter in 1556 acquired the Cambridge and Oxford Universities, the right to register all printed books which effectively gave a degree of monopoly to its members. This situation continued for a while, though, with changes in the system of administration, which meant from the start, copyright in England was primarily an economic right in a piece of commercial property. In considering the historical development of copyright, adequate importance must be paid to the evolution of copyright in England because of the historical Nigerian antecedent as a former colony of

Britain, Ergo, Nigerian copyright law is of a large variation, sourced from the intellectual statutes inherent in Great Britain: and for this reason, English law will be the basis of Nigerian Copyright law. However, from the early years of the 18th century, with much production of literary and artistic works becoming formally entrenched[13], the need for a definite measure of protection not only for stationers as their shield,

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[13] The Industrial Revolution that started in Europa engendered more production of goods.

but also, authors and printers of works that have the potential of mass production to protect those who have undertaken the risk to mass produce their works against the activities of illegal copiers arose.

The first real copyright Act came into existence in 1710, and is often referred to as the Statute of Anno, and it gave a 14 year monopoly in printing a book following which the right revered to the author, if still alive, a further 14 years. Although the term 'copyright' was in use before 1710, it did not appear in the *Statute of Anne*. This did give a measure of statutory protection but had the effect of ending common law copyright protection, which had certainly existed as a property right for the benefits of publishers which was finally extant for published books, (but not unpublished ones). This was stated by the United Kingdom House of Lords in the ruling in *Donaldson v. Becker*[14], and judiciously followed in the subsequent lawsuit of *Millar v. Taylor*[15]. In *Donaldson v. Becker*, it was held that copyright in published works was not perpetual and was instead subject to statutory limits. It must be pointed out that regarding the decision reached here, scholars disagree on the reasoning underlying the decision. Two argue that the House affirmatively rejected the notion that a common law copyright existed before the Statute of Anne. But, most other scholars who have studied the issue argue that, or better still, believe the case did not determine the issue. [161718] Why? One might be led to ask. This

was because by the mid-19th century, copyright had been extended to engravings and sculptures, and finally, in 1862, to

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14 (1774) 2 Ch. Pg. 53

15 (1769) 4 Burr, 2303, 98 ER 201

16 Tomas Gomex-Arostegui, "Copyright at Common Law in 1774. *Connecticut Law Review*, 47 (2014):1.

17 Mark Kone, "The Author as Proprietor: '*Donaldson v. Becker'* and the Genealogy of Modern Authorship". Representations, 23 (1988); 51.

18 W.R. Cornish, "The Author's Surrogate: The Genesis of British Copyright," In O'Donovan, Katherine, Rubin, Gerry, *Human Rights and Legal History* (Oxford: Oxford University Press, 2000), 254-270.

artistic works and photographs. In England, copyright developed from a system of privileges by the royal government of the day, into right of property. The same also happened in France, Consequently, in 1710, under the reign of Queen Anne, the parliament of Great Britain passed the first low in copyright; The Copyright Act of 1710. The main thrust of this legislation was the period of 14 years from the date of first publication, and thereafter during the lifetime of the author. The law was amended in 1814, by virtue of the incoming Copyright Act of 1814. By virtue of this new statute, the term of statutory right in published works was extended to a 28 year period of monopoly. The law was again amended in 1842, by virtue of the Copyright Act of 1842 to elongate the life span of the copyright to the life of the author, and to 7 years after his death, or 42 years from the date of the first publication of the book, whichever was longer. This elongation was to perfect the right of heirs and successors-in-title of the author. Meanwhile, those were the developments in the evolution of the law regulating other aspects of intellectual property

The 1842 Act was repealed, and replaced by the Copyright Act of 1911. It is significant to note that this 1911 statute became the first operative copyright law in Nigeria when it was adopted and made operational in Nigeria and other colonial dependencies as part of the larger British colonial administration. It was made applicable in Nigeria by virtue of Section 25

thereof which provides that the law shall "...subsist in all original, literary, dramatic, musical and artistic work in the entire British colony". It is interesting to point out that, although the Copyright Act of 1911 was repealed by the Copyright Act of 1956 in England, there was no attempt to change the situation until a while later. The Copyright Act of 1911 continued to govern copyright law in Nigeria until its first indigenous and autochthonous copyright legislation was the Copyright Act of 1970.[19]

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[19] As promulgated by the then Federal Ministry Government as Copyright decree.

1.4 Copyright in Nigeria

As a former British colony, Nigeria adopted most of its laws from its former parent nation, England, as Statutes of general application (SOGA). Copyright laws fall under such statutes. England, however, brought into law a new act in 1956, but this act was never applicable in Nigeria, and, as earlier stated, the country continued to apply the act of 1911, until 1970. In that year, the Copyright Act was promulgated as Decree No. 61, 1970; the first indigenous law, even though it substantially reproduced the provisions of the Act of 1911 which included some parts which have become rather obsolete. For instance, the tenure of the protection of the copyright owner against unauthorised copying of the right in literary, musical and artistic works was to last for 25 years (as was seen in the 1970 Act) after the year in which the author died. The 25 year protection period also applied to cinematographic films and photographs that were to be sustained 25 years after the end of the year in which it was published. The lifespan of broadcast and sound recordings is 25 years after the end of the year in which such broadcast was done or the recording was produced, respectively. Unfortunately, the 1970 Act did not provide for any statutory body for the administration and enforcement of copyright in Nigeria. As was naturally expected, the provisions of the Act were later found grossly

inadequate as a veritable or good enough response to the astounding rate of piracy in Nigeria. There was a massive outcry of complaints by all stakeholders in the creative industry, specifically publishers, authors and artists. The vibrant agitation for a more outlined review of the failing act led to its eventual repeal in 1988, of the 1970 provisions and its replacement with the Copyright Act of 1988.[20]

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[20] Promulgated as the Decree No. 47 of 1988 and became Cap C68 Laws of the Federal Republic of Nigeria, 1990. Now, Cap C28 Laws of the Federation of Nigeria, 2004.

The 1988 Act vigorously reproduced the already in place legislation on copyright law. This new act was promulgated to strengthen the existing regime of copyright law in Nigeria by broadening the scope of coverage for protectable works and instituting substantial mechanism for the enforcement of the law, and also prescribing adequate punishment, where necessary. The Act of 1988 was further mended in 1992, and subsequently, in 1999. Importantly, the 1988 Act can be said to be a clear withdrawal from what was considered the standard in the administration of copyright in Nigeria. The significance of the 1988 Act as amended by the legislation of 1992 and 1999 may be summarised thus:

1. The 1988 Act, for the first time in the history of copyright in Nigeria, introduced the creation of the Nigerian Copyright Commission[21] which repealed the copyright committee hitherto in existence under the erstwhile law.

2. The Act provided for the establishment of a governing board for the commission, a development which has the primary objective of effectively strengthening the administrative and enforcement functions of the commission.[22]

3. The provision for a measure of licensing scheme through the establishment of the copyright licensing panel.[23]

4. The provision for the appointment of copyright inspectors who have police-like enforcement powers.[24]

5. It allowed the introduction of twin procedures for right enforcement against copyright through civil and criminal proceedings.[25]

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21 Part III (Section 34-36) of the Copyright Act, 1988.

22 Section 35 of the Copyright Act, 1988.

23 Section 37 of the Copyright Act, 1988.

1.5 Types of Copyright Works

The Copyright Act of 1990 recognises six (6) distinct areas of work eligible for protection under copyright. The idea behind 'work' as stated above under Section 1(1)[26] of the act embraces the following:

- Literary

- Musical

- Artistic

- Cinematographic

- Sound recordings and,

- Broadcast

1.5.1 Literary Works

Section 51 specifically deals with the scope of literary works of copyright. This aspect is, without doubt, the most exhaustive. It is the gigantic umbrella where majority of the category of work requiring copyright protection may fall under. Literary works, as the name suggests,

refer to works with literary content. They are of didactic, informative and entertaining nature. The word literary under this head has a very restricted and peculiar meaning, and it certainly has no reference to what we should normally think of as work of literature.[27]

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24 Section 38 of the Copyright Act, 1988

25 Sections 12, 16, 18, 20, 21 & 24 of the Copyright Act, 1988.

26 Copyright Act Cap 28 Laws of the Federation of Nigeria, 2004

27 Paul Marrett, Intellectual Property Law (London: Sweet and Maxwell Ltd., 1996), 24.

Thus, according to Section 51 of the Copyright Act, "Literary work includes, irrespective of literary quality, any of the following work or works similar thereto;

A.) Novels, stories and poetic works

B.) Letter, reports and memoranda

C.) Written tables or compilations

D.) Computer programs

E.) Encyclopedias, dictionaries, directories and anthologies

F.) Lectures, addresses and sermons

G.) Choreographic works

H.) Textbooks, treaties, histories, biographies, essays and articles

1.) Plays, stage directions, film scenarios and broadcasting scripts, and

J.) Law reports, excluding court decisions.

The list is not exhaustive as other items that can be said to be informative, advocatory and entertaining can fit into the prescription. Also, this list cannot be said to be conclusive as reference to the word 'shall' is not used in the section expressly.

From the points discussed above, it may be inferred that a literary work can be any piece of information intended to grant instruction or indeed, pleasure. In *British Oxygen Co. v. Liquid Air Ltd.*[28], a letter written by manufacturers was issued to a trade custom offering their goods at a low price if the customer agreed to take such goods exclusively from them, in an original literary work within the meaning of Section 1(1) of the Copyright Act, 1911.

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[28] (1925) I Ch. 383

Here, a motion was filed by the plaintiffs restraining the defendant from publishing, exhibiting, circulating, or parting with the letter which set out the terms upon which the plaintiffs were willing to contract. Ramer J. held, in a brief address, that in the circumstances at hand, it seems to me that I must grant an order restraining the defendants from publishing, printing, circulating or exhibiting or authorizing to be published, printed, circulated or exhibited, the letter in question or from otherwise infringing upon the plaintiff's copyright therein."

1.5.2 Musical Works

This generally means any musical work or composition or expression, irrespective of its musical qualities and includes works set up for musical pleasure. Hence, in CFAO v. Archibold[29]. The Supreme Court in the nation of Ghana was expressly authoritative in their opinion that copyright with respect to musical works implied the existence and subsistence of a manuscript or a written matter describing a peculiar and distinctive combination of melodious tune. However, like literary works, musical works need originality in order for it to be proven to be in a precise medium before maximum protection be accrued to it in the

eyes of the law. The Digital and Media Association (DMA) in the United States of America is of the view that, a musical composition consists of the music written, including any accompanying words. The author of a musical composition is generally the composer and the lyricist, if there are lyrics. A musical composition can be in the form of a notated copy (sheet of a music, for example), or in a sound recording such as a master recording or a phone record "DPD", such as an MPS or other digital file.

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29 (1964) GLR 718

30 "Copyright in Music," http://www.digmedia.org/issues-and-policy/copyright-and-royalties/139copyright-in-musine. Accessed May 1, 2017

This above statement further defines the uniqueness which is channelled into musical work.

This was gratuitously followed in the case of Redwood Music v. Chappell.[30]

1.5.3 Artistic Works

The express provision of Section 51 of the Copyright Act limits artistic work to include:

(1.) Paintings, drawings, etchings, lithographs, woodcuts, engravings and prints

(II.) Sculptural works

(III.) Works of Artistic craftsmanship and also (subject to Sub-section (3) of Section / of this act, Pictorial woven tissue and articles of applied handicraft and industrial art.[32]

(IV.) Maps, plans and diagrams

(V.) Photographs not comprised in a cinematograph film, and

(VI.) Architectural works in form of building models.

1.5.4 Cinematograph Films

This deals specifically with visual fixation. The protection of the copyright engrosses the entire production of moving images and, the subsequent audio production. It covers silent movies, as well. The copyright in such cinematograph production vests in the person who is given its production responsibility, i.e., it may be the producer, director, treasurer, secretary or any other person affixed with this duty.

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31 (1982) RPC 109

32 Ifeanyi Okoye & Anor.v. Promptor Quality Services Ltd. & Anor. (1996) F.H.C.R. 814

1.5.5 Sound Recording

By virtue of the Act, 'sound recording' is defined to mean the first fixation of a sequence of sound, with the capability of being heard through the sense, and which is capable of being reproduced, but does not include a sound track of any sort.

For the purpose of this sub topic, the case of *CBS Incorporated v. Annes Records and Tapes Ltd.*[33] may come in handy. It was held that a person who provided the copying machinery or the equipment for eaves dropping or home taping will rarely be found to have the necessary authority over what is afterwards done, and such an instance cannot be deemed an authorization of copying, in any regard.

1.5.6 Broadcast

This may mean sound which is generated through a wireless system or wired network, as the case may be. It also encompasses broadcast through the satellite medium or through the cable.

This term also includes the reproduction of an existing broadcast: the right of journals and the right of the media house. In determining broadcast protection, the usual persons to be insured

particular protection are the script writers, producers, directors and the media houses, in general.

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[33] (1982) Ch.91.

CHAPTER TWO

COPYRIGHT INFRINGEMENT

2.1 Recognition of Copyright

The general idea of the copyright tenure traditionally strikes a peculiar and delicate balance between society, and the interests of authors and other right holders in the control and exploitation of their works. Also, competitive interests in the free flow of information and the dissemination of knowledge. However, this balance of copyright has never been much strained as it is today. For instance, the issue of copyright protection has never been so broad, rather, it is in terms of protectable subject matter which include photography, phonograms, films, digital works and computer programs, and in terms of the scope of exclusive rights covering new dissemination techniques such as radio, television, magnetic tape recorders, copy machines, video recorders, cable and satellite or in terms of the duration of protection.[1] Moreover, the customary lines between private and public acts are gradually fading away. Publishers and other producers are no longer intermediaries in the chain of work production and distribution, but become more active in the creation process. The use of digital technology is indeed modifying the production, distribution and consumption pattern of copyrighted works. Hence, not only can users easily regenerate works in countless perfect copies and communicate them to thousands of distribution is also simpler in the digital networked environment and instead of going through a more complex distribution, network users progressively seek a direct online contact with the producers. Simultaneously, in the digital networked environment, producers are in a better position to control their work.

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[1] In Europe and the United States, the duration of Copyright protection has been extended by 20 years bringing the total duration of copyright protection for the life of the other, plus 70 years after his death.

The method of Encryption and other similar technique validly allow the right holder block access to their works altogether or to monitor the actual use that a person makes of copyrighted work. At this point, it is imperative to ask "*What has now become of the extant balance of interests between right holders and use of protected online material in the digital networked environment*"? While the copyright rules and its neighbouring rights have as a whole been unequivocally declared applicable to the digital networked environment, the definition of limitations of these rights entail, however, one of the major astounding problems in relation to the environment, as a whole. This argument is based not only from the idea that copyright limitations and related rights have never, at international level, been in conformity, but also from the fact that there is no overriding consensus on how to adopt such limitations to the digital networked environment. Albeit, lawmakers and legal scholars seem to agree that the limitations that are applicable in the analogue world should not automatically be inferred in the digital networked environment. Furthermore, before inferring existing limitations or prescribing new ones, a delicate examination of their relevance and impact on the right holders must be duly carried out. Impeccably, copyright rules and related rights should ordinarily assure sufficient protection for work initiators to maintain their level of creativity and investment in the production of new works distributed online, while bearing in mind the right of the public to consume those works without the right holder's actual consent. The Arts and Cultural enterprise division of UNESCO (United Nations Educational, Scientific and Cultural Organization) examines the nature and scope of limitation of copyright and related rights and their possible adaptation to the digital networked environment. This broad examination is divided into two major parts. The first, being a number of general remarks made about the obligations arising under international conventions. The second focuses more on limitations allowing for the reproduction of works for parody and quotation purposes. The Second part follows with a short overview of recent developments in major areas such as

libraries, museums, educational and research Limitation. The provisions of technological protection measures are also discussed.

There is a third section which examines the limitations adopted for the benefit of educational

Institutions, as well as libraries and archives for handicapped persons. Copyright limitation is an integral part of the copyright system for they are the recognition in the positive law of the users' legitimate interests in making certain unauthorized uses of copyright material. Such legitimate interest may include the protection of the user's fundamental rights, the promotion of free flow of information and the dissemination of knowledge. However, one must remember that the notion of legitimate interest or 'public interest' is mostly a matter of national policy, as what is in the public interest of one country is not necessarily the same in another. Technically, limitations reflect each legislator's assessment of the need and desirability for society to use a work against the impact of such a measure on the economic interest of the right holders. The product of this evaluation will not often determine which limitations are laid down at National legislation level and the form each particular limitation takes.

2.2 Protection of Copyright and Online Generated Resources

2.2.1 Reason for Protection

In *America Online, lnc. v. AT&T*[2], The Court of Appeal in the United States stated as follows:

"At the bottom, the law of trademark, which intends to protect the goods, will be represented by marks and the valid property interest of entrepreneur in that goodwill against those who would appreciate it for their own use". From the foregoing, it may be implied that the law, that is, appropriate legislations should provide intellectual property right owners a remedy even in

[2] (2001) 1S USC 1125,

appropriate legislations should provide intellectual property right owners a remedy even in technologically less developed countries like Nigeria. The push for a more radical legislative approach is inevitable as this has been the practice in other jurisdictions as the changes on the internet are evolving day by day. It is now extant knowledge that copyright generally aims to protect the expression of the human mind by ensuring that the particular work or subject matter is protected from unfair plagiarism or copying, without the owner's free given consent. Online plagiarism today, is the highest form of copyright infringement, and it rises every minute. In *Millar v. Taylor*[3], Willes J. observed that: "It is certainly not agreeable to natural justice that a stranger should reap the beneficial pecuniary produce of another man's work" This case represented a major victory for the bookseller monopolies, and it paved a way for subsequent leading cases on copyright law. Such other cases include *Corelli v. Grey*[4], *Dick v. Yates*[5], *Re*

Dickens[6], *Ladbroke (Football) Ltd. v. William Hill (Football) Ltd*[7]. *Feist Publications v. Rural*

Telephone Service[8]. In addition, the 1889 legislation in Massachusetts summarily expressed that there is no property, more peculiarly a man's own than that which is produced by the labor of his mind. If there is a good reason for law to protect any property, it should start with copyright". For this purpose, four arguments have been adopted, as they pertain to the further extension of copyright of online generated material. They include:

[3] (1776) 4 Burr 2903, 2334, 98E2201, 218.

[4] (1913) 29 TLR 570

[5] (1881) 18 Ch. D 76,

[6] (1934) 1 Ch. 267.

[7] (1964) I WLR 273.

[8] (1991) 499 U.S 340.

1. Reward Theory: By virtue of this theory, copyright protection is granted simply because it is only fair to reward an author for the effort expended in creating a work and giving it to the public. Copyright is a legal expression of gratitude to an author for doing more than the society naturally expects from him. However, some have argued about the rationale behind this award. First, the basis for granting such an exclusive right and the circumstances in which people deserve rewards.[9]

2. Disclosure Theory: This is based on the idea that disclosure, which is a prelude to the registration and grant of monopoly in some types of intellectual property is highly beneficial to both the owner and society in general, disclosure provides the public with information about the invention in return for a monopoly for a stated duration after which members of the public will be entitled to utilize the information for their personal benefit.[10]

3. Natural Right Debate: These natural law proponents believe that the reason why copyright protection is granted is not because the public will benefit, but because copyright protection is the right and proper thing to do while, at the same time, safeguarding sabotage. More specifically, it is right to recognize property input in intellectual production because such productions are derived from the mind of the individual author himself. For instance, a novel or an online graphic is seen as the intellectual product of the author's mind. It has been argued that this theory is too 'individualistic', emphasizing the social nature of writing and painting.

[9] Nigerian Copyright Commission, "First semester course material on copyright for Nigerian Universities" (2008-2009), Published by Nigerian Copyright Commission

[10] Adebambo A., "Promoting trade and the challenges of Intellectual property in Nigeria" (August 27, 2008) Business Law session of the NBA Conference held at the International Conference Centre, Abuja.

4. Incentive Based Theory: This shares a common root with the Reward theory. The basis of this theory is that the creation and exploitation of intellectual property enhances industrial development. In order to encourage people to commit their time and resources into creating something useful from their intellect, it is pertinent to give them a push, or better still, an incentive. The right of monopoly placed over the product of a creative activity to the creator will thereof serve as a deterrent of further interest. This incentive based theory has been adopted by many nations."

2.2.2 Author of a work

It must be understood that a person who merely suggests the plot of a novel or play to the writer or the subject of a picture to an artist is not the author of such novel, play or picture. This point was clearly discussed in Farwell J. in *Donoghue v. Allied Newspapers Ltd.*[12] where the idea- expression dichotomy was explained to limit the scope of copyright protection by differentiating an idea from the expression or manifestation of that idea. The European Union Software Directive, for example, expressly excludes from copyright ideas and principles that which underlie any element of a computer program, including those that underlie its interfaces. It is now extant knowledge that there is no copyright idea, and subsequently, if a person who has an idea for a story, or a picture, or for a play or an online picture or material, communicates it to another, the production which is the result of the communication of the idea is the copyright of the person who has clothed the idea in a fixed form. On the other

hand, if an author makes use of a shorthand writer to document a story word for word in short hand, the author is the owner of the copyright and not the short hand writer.

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11 Article 1 of the United States Constitution of 1787.

12 (1938) Ch. 106

13 The European Union, "Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs," Official Journal of the European Union. (2009).

This is also applicable where a person posts an online work or material of another online. Such act does not make the poster the owner of the work in any way. However, between these two extremes, it must be graciously explained that the author of a literary piece is the person who originates the language used and the owner of an online material, whichever form it may take. By this, If A's manuscript is corrected and improved by B, it will probably be a question of the amount and value of the corrections and improvements as to whether the author is A or B or whether they are joint authors.

2.2.3 Joint Authorship

A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.[14] In *Neil Gaiman v. Todd McFarlane*[15], these were the facts in summary version: The defendant McFarlane was a writer and illustrator and publisher of comic books. Plaintiff was a writer and was engaged by the defendant to write the scripts for some of the comic books which McFarlane then illustrated and had illustrated. There was no written agreement between the parties for the services of Gaiman. McFarlane argued that the contributions of Gaiman did not rise to the level of being protectable by copyright and thus, that Gaiman had no claims to any rights in and to such contributions. McFarlane contended that the characters became copyrightable only after McFarlane worked on them doing his illustrations but that as submitted by Gaiman, they were not copyrightable. Gaiman was not contending that he was

the sole owner of exclusive rights in and to his work subject to any unwritten license on the part of McFarlane. Gaiman instead contended that, by virtue of his writing of the scripts including as the same described the characters that were then illustrated by MeVarlane, thet Oniman was a

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14 Section 101 of the United States Copyright Law.

15 (2004) 360 F.3d 644.

equal owner of all rights in and to the characters created by those scripts combined with the illustrations created by McFarlane, The Count found that since there was no work made for hire relationship and that the work of Gaiman was copyrightable, as a result Salman and McFarlane word Joint authors on all the characters. Also, in the case of *Barfeld v. Nicholson*[16], Sir John Leach said "I am of the opinion that under the statute, the person who forms the plan and embarks on the speculation of a work, and who employs various persons to compose different parts of it, adopted to their own peculiar requirements, that he, the person who so forms the plan and scheme of work and pays different artist of his own selection, who upon certain conditions contribute to it, is the author and proprietor of the work. If not within the literal expression, at least within the equitable meaning in the Statute of Anne, which is a remedial low to be constructed liberally." The case above must not be taken as an authority that he becomes the author of the separate contributions. The person who plans a collective work may perhaps be the author of the work as a whole, although he makes no actual written contribution to the work. Collective work such as encyclopaedia, where there are distinct copyright, namely, the copyright in the entire work and the copyright in the various separate contributions, were being referred to in this case. According to JO. Odion and NEO Ogba[17], there must be evidence that both authors worked together to prove co-authorship or joint-authorship in a work. What should be the amount of input, mental or physical contribution of each other, which is the basis for justifying co-authorship, depends

on the facts and circumstances of each case, Joint authorship occurs where two or more authors collaborate to produce an intellectual work worthy of copyright protection.[18]

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16 (1824) 2 Sim. & S.I

17 JO Odion and NEO Ogba, Exneyw on Intellectual Property Law, (Benin City: Ambik Press Ltd., May 2010), 22

18 Laura G. Lape, "A Narrow View of Creative Co-operation: The Current State of Joint Work Doctrine", 61 Albany Law Review, 43 (1997), Comprehensive discussion of current legal treatment of joint works, especially works created through internet transmission and contribution.

As stated earlier, there must be adducible evidence that each author worked hand in hand in the prosecution of a common purpose, that is, in the writing or production of the work. Each must have a significant input in the creation and expression of the finished work which is not distinct from the contribution of the other. In editing cases, correcting a text in the course of production will be treated as a joint work if there is evidence that the contribution is sufficient to sustain a copyright. Also, it does not arise if one author writes a play, and another does the script thereof, rather does it arise if a graphic designer produces a work of art and another modifies same on the internet in an agreement prior. The authors of a joint work are co-owners of copyright in the work20. Sections 101 and 207 taken together, mean that unless each author's contribution is distinct, discrete and separately distinguishable within the collaborative work, (i.e. they each write separate chapters, for example), the law has to examine what the intention of the authors were. However, often that intention is not clearly stated, it is up to the court to decide what the authors intended. Thus, unless the authors specifically express (hopefully in some form of written collaboration agreement), that they intend to keep their contributions separate, then if their contributions are indistinguishable one from the other, the law may deem them to be joint owners of the whole.

[19] See *Donoghue v. Allied Newspaper Ltd.* (1938) Ch.106,

[20] Section 201 of the United States Copyright Law.

2.2.4 Author of a Song / Musical Play

It was held in *Fisher v. Dees*[21] that the parody of a song performance is legitimate fair use and, also in *CBS Records v. Gross*[22], it was held that a cover version of a song can be an original work itself capable of copyright protection. Also, in *Bridgeport Music, Inc. v. Dimension Films*[23], the court stated that there was no *de minimis*[24] exception for sampled music. "Get a license or do not sample. We do not see this as stifling creativity in any significant way." The cases of *Wallenstein v. Herbert*[25] and *Hatton v. Keane*[26] also discuss one person composing music for a play arrayed by another. They decide that the composer cannot in the circumstances, complain of the performance of his music in conjunction with the play, by a person deriving title from the arranger of the play, on the basis of his consent to its use thereafter with such; but they do not decide that such composer is not the owner of the copyright.

2.2.5 Author of a Plot

Eve J., in the case of Tate v. Thomas??, opined that a person who contributed suggestions for the plot and arrangement of the musical play of which the plaintiff were authors of the music and lyrics was not a joint author with them, and had no copyright therein. It was also held that where persons have provided true stories from their own lives as the basis of an article or

story, such person providing the incident is not the author of the written matter on the ground that he

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21 (1986) 794 F.2d 432.
22 (1989) 15 IPR 385.
23 (2005) 410 F.3d 792 6th Cir.
24 De minimis non curat lex ("The law does not concern itself with trifles"): a legal doctrine by which a court refuses to consider trifling matters.
25 (1967) 16 L.T. 453.
26 (1859) 8 W.R. 7.
27 (1921) Ch. 503.

did not take any part in producing the express matter which is the original literary work, the subject matter of copyright.[28] With regards to online based works, such as PDF Files, images, etc. Authorship can be said to rest in the maker, writer, encoder, or designer of the work (as the case may be) irrespective of who initiated the post on the internet. However, the cyber space in general places conditions as regards ownership and authorship articles featured on their timeline. Such conditions may include the ability of the website maker to take down or delete pornographic, seditious, hate language or morally offending substance. It must be duly noted on this point that, the writer of an original version of a dramatic sketch is the sole author, notwithstanding the revision and alteration of another person, for performance. This point of law was seen in the case of Samuelson v. Producer's Distributing Co. Ltd.[29]

2.3 Ownership of Copyright

Ownership, otherwise termed Proprietorship, refers to the possession or command of the proprietary right to works covered by copyright. This may belong to the author or creator of the work. Copyright comes into play immediately after the work is created. More so, unlike trademarks, patents, industrial designs, there is no formal structure to register copyrighted material. Hence, there is no debate as to initial ownership. What may require determination in any event of ownership of work would be who the creator of such work is. Nevertheless, the

courts may be faced with the difficulty of ascribing who the real work owner is. This is so because there are no formal records of the ownership of the copyright in a work.

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[28] *Donoghue v. Allied Newspapers Ltd.* (1938) Ch. 106.

[29] (1932) 48 R.P.C 580.

2.4 Copyright Infringement

To infringe, simply put, means to wrongly limit or restrict something, such as another person's rights.[30] By virtue of Section 15 (1). Copyright Act, Copyright is infringed by another person who, without the license or authorization of the owner of the copyright;

I. Does, or causes any other person to do an act, the doing of which is controlled by copyright;
II. Imports or causes to be imported into Nigeria any copy of a work, which if it had been made in Nigeria would be an infringing copy under this section of this Act.

It should, at this point, be said that, for an infringement to be actionable, it must be proven that the act of violation against the statutory provisions of Section 2, 3 & 10 of the Copyright Act which discusses what would qualify for copyright protection. Sub Section 1(c)-(g) also specifies, in clear terms, other acts that qualify as infringements in accordance with the statutory intendments. Furthermore, the owner of copyright in a work is entitled to the enjoyment of such ownership interest. He may however transfer his interest to the assignee or to an exclusive licensee. Infringement of Copyright may take two forms:

2.4.1 Direct Infringement

This may occur in an instance where the copyright violator does any act which is naturally prohibited, provided that such a person fails to show that he was licensed or authorized by the copyright owner, or that he was allowed by statute to so do. In Francis Day and Hunter Ltd. & *Anor. v. Bron Publishing Co. & Anor*[31], an action for breach of copyright in a work titled "In a

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30 "Infringe." https://www.merriam-webster.com/dictionary/infringe. Accessed March 1, 2017.

31 (1963) 2 WLR 868

little Spanish Town" was filed. The trial judge held that his infringement of the copyright in the work was not established. On appeal, the trial court judgment was upheld. The appellate court concluded that in order to constitute reproduction within Section 2(5), Copyright Act of 1956, there must be sufficient objective similarity between the work infringed and the infringer's work. Also, some casual connection should exist.

2.4.2 Indirect Infringement

An indirect infringement would occur where a person deals with works that are themselves products or direct infringements of works protected by copyright without adequate authorization and such violation is not allowed by statute. A classic example would be the importation and sale of pirated works or the sharing of plagiarized work online. Except for private use, copyright infringement will occur when a person acts in a way that violates or offends the owner of copyright. The nature of this permission involves a grant or license, or by authorization.

2.4.3 Distribution of Infringed Articles

It is an indirect infringement to distribute any article in respect of which copyright is infringed by a way of offer for sale, hire, and trade or otherwise or for any purpose

prejudicial to the owner of the copyright. An action was brought in *Pharmaceutical Society of Great Britain v. Boots Cash Chemist Ltd*[32] where the plaintiff alleged infringements, as well as the violation of Section 18 (1) of the Pharmaceutical and Poisons Act, 1933 by the defendants. The Court held the defendant's self-service system not gratifying of an offer, but merely an invitation to the customers to offer to buy, and that there was therefore neither an infringement nor a violation of this section.

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[32] (1953) I QB 401

2.4.4 Infringement of Computer Generated Programs

In *Stern Electronics, Inc. v. Kaufman*[33], the court was of the opinion that copyright on computer programs includes images and sounds as well as the computer code. The problem facing the court in online generated infringement cases are highly formidable. Source codes, when printed, may be very lengthy and incomprehensible to the ordinary thinking man. It would require expert witnesses on each side to assist the court, but will inevitably focus on the factors most favourable to them. Marrett[34] says that infringement of copyright in a computer program can take the form of the whole program, or more probably, a part of it. Also, it may be discovered that literal similarity may not be found, yet similarity of ideas, structure and other elements may lead to the incontrovertible fact that the work has been copied. Certain phrases have been quoted, such as "look and feel", "structure", "sequence and organization" which can provide a frame work for analysis. The court would in these situations search for the similarities of key elements in the programs to find infringement. For this reason, the famous case of *Whelan v. Jaslo*[35] would come into play. Here, the structure was paid due focus to see whether the 'look and feel' of the two programs were quite similar. It was further held that copyright protection of computer programs may extend beyond the programs' literal code to their structure, sequence and organization. In *MS Association v.*

Power[36], a UK court first looked at the structure sequence and organization of the program in the issue, rather than making a systematic comparison by reading through the lines. It was however held in *Ibcos Computer v. Barclays Mercantile Highland* Finance.[37] that in cases of claimed copyright infringement, it is

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33 (1982) 669 F.2d 852.

34 Paul Marrett, Intellectual Property Law (London: Sweet & Maxwell Ltd., 1996), 55.

35 (1986) 797 F.2d 1222

36 (1988) FSR 242.

37 (1994) FSR 275

not the function of the expert to decide the question of substantiality. In cases of simple visual comparison, the court can, and should do the visual comparison for itself. The case of *Computer Associates Int. Inc. v. Altai Inc.*[38] further buttresses this point of law where the court reached the finding that 'Substantial similarity' is required for copyright infringement to occur. It also established the Abstraction- Filtration-Comparison test, which lays out the steps to follow when extricating copyrightable expression from uncopyrightable elements of the same work.

[38] (1992) 982 F.2d 693

CHAPTER THREE

INTERNET RECYCLING AND DOWNLOADS

3.1 The Internet

On October 24, 1995, the Federal network Council (FNC) passed a resolution defining what is known today as "Internet". The FNC came up with a standard definition of the term "Internet".

Internet refers to the global information system that is logically linked together by a globally unique address space, based on the internet protocol (IP) or its subsequent communications using the transmission control protocol/internet protocol (TCP/IP) suite or its subsequent extensions and/or other IP compatible protocols. The Internet is the global system of interconnected computer networks that use the Internet protocol suite (TCP/IP) to link devices worldwide. It is a network of networks that consists of private, public, academic, business, and government networks of local to global scope, linked by a broad array of

electronic, wireless, and optical networking technologies. The Internet carries an extensive range of information resources and services, such as the inter-linked hypertext documents and applications of the World Wide Web (WWW), electronic mail, telephony, and peer-to-peer networks for file sharing. The origins of the Internet date back to research commissioned by the United States federal government in the 1960s to build robust, fault-tolerant communication via computer networks[1]. The term *Internet*, when used to refer to the specific global system of interconnected Internet Protocol (IP) networks, is a proper noun and may be written with an initial capital letter. In common use and the media, it is often not capitalized, viz. the internet. Some guides specify that the word should be capitalized when used as a noun, but not capitalized when used

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1 William Stewart, "IPTO- Information Processing Techniques Office." *The Living Internet,* (January 2000).

as an adjective. The Internet is also often referred to as the *Net*, as a short form of *network*. Historically, as early as 1849, the word *internetted* was used uncapitalized as an adjective, meaning *interconnected* or *interwoven*. The designers of early computer networks used internet both as a noun and as a verb in shorthand form of internetwork or internetworking, meaning interconnecting computer networks. The primary precursor network, the ARPANET, initially served as a backbone for interconnection of regional academic and military networks in the 1980s. The funding of the National Science Foundation Network as a new backbone in the 1980s, as well as private funding for other commercial extensions, led to worldwide participation in the development of new networking technologies, and the merger of many networks[2]. The linking of commercial networks and enterprises by the early 1990s marks the beginning of the transition to the modern Internet[3], and generated a sustained exponential growth as generations of institutional, personal, and mobile computers were connected to the

network. Although the Internet was widely used by academia since the 1980s, the commercialization incorporated its services and technologies into virtually every aspect of modern life. Internet use grew rapidly in the West from the mid-1990s and from the late 1990s in the developing world. In the two decades since then, Internet use has grown 100 times, measured for the period of one year, to over one third of the world population[4]. Most traditional communications media, including telephony, radio, television, paper mail and newspapers are being reshaped or redefined by the Internet, giving birth to new services such as e-mail, Internet telephony. Internet television music, digital newspapers, and video streaming websites. Newspaper, book, and other print publishing are adapting to website technology, or are reshaped into blogging, web feeds and online news aggregators.

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2 Will Stewart, "Internet History: One Page Summary," The Living Internet, (January 2000).

3 lan Peter, "So, who really did invent the Internet?" The Internet History Project, (2004).

4 "Internet World Stats" http://www.internetworldstats.com/index.html. Accessed May 5, 2017

The entertainment industry was initially the fastest growing segment on the Internet. The Internet has enabled and accelerated new forms of personal interactions through instant messaging, Internet forums, and social networking. Online shopping has grown exponentially both for major retailers and small businesses and entrepreneurs, as it enables firms extend their "bricks and mortar" presence to serve a larger market or even sell goods and services entirely online. Business-to-business and financial services on the Internet affect supply chains across entire industries.

The Internet is a global network comprising many voluntarily interconnected autonomous networks. The Internet has no centralized governance in either technological implementation or policies for access and usage; each constituent network sets its own policies. The technical underpinning and standardization of the core protocols (IPv4 and IPv6) is an activity of the Internet Engineering Task Force (IETF), a non-profit organization of loosely affiliated

international participants that anyone may associate with by contributing technical expertise. To maintain interoperability, the principal name spaces of the Internet are administered by the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is governed by an international board of directors drawn from across the Internet technical, business, academic, and other non-commercial communities. ICANN coordinates the assignment of unique identifiers for use on the Internet, including domain names, Internet Protocol (IP) addresses, application port numbers in the transport protocols, and many other parameters. Globally unified name spaces are essential for maintaining the global reach of the Internet. This role of ICANN distinguishes it as perhaps the only central coordinating body for the global Internet[6].

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5 Jonathan Strickland, "Who owns the Internet?" http://computer.howstuffworks.com/internet/basics/who- owns-internet.html. Accessed March 27, 2017

6 Hans Klein, "ICANN and Non-Territorial Sovereignty: Government without the Nation State." Internet and Public Policy Project, Georgia Institute of Technology (2004)

Only the overreaching definitions of the two principal name spaces in the Internet, the Internet Protocol address space and the Domain Name System (DNS), are directed by a maintainer organization, ICANN. The terms *Internet and World Wide Web* are often used interchangeably in everyday speech, it is common to speak of "going on the Internet" when invoking a web browser to view web pages. However, the World Wide Web or the Web is only one of a large number of Internet services. The Web is a collection of interconnected documents (web pages) and other web resources, linked by hyperlinks and URLs[7]. As another point of comparison, Hypertext Transfer Protocol, or HTTP, is the language used on the Web for information transfer, yet it is just one of many languages or protocols that can be used for communication on the Internet[8]. The term Interweb is a portmanteau of Internet and World Wide Web typically used sarcastically to parody a technically unsavvy user. Research

into packet switching[9] started in the early 1960s[10], and packet switched networks such as the ARPANET, CYCLADES,[11] the Merit Network,[12] NPL network,[13]

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7 The link (or hyperlink, or Web link) is the basic hypertext construct. A link is a connection from one Web resource to another. Although a simple concept, the link has been one of the primary forces driving the success of the Web.

8 "The Difference Between the Internet and the World Wide Web." http://www.webopedia.com/DidYouKnow/Internet/Web_vs_Internet.asp. Accessed December 14, 2016.

9 A digital networking communications method that groups all transmitted data into suitably sized blocks, called packets, which are transmitted via a medium that may be shared by multiple simultaneous communication sessions. Packet switching increases network efficiency and robustness, and enables technological convergence of many applications operating on the same network.

10 "Brief History of the Internet," http://www.internetsociety.org/internet/what-internet history-internet/brief history-internet. It happened that the work at MIT (1961-1967), at RAND (1962-1965), and at NPL (1964-1967) had all proceeded in parallel without any of the researchers knowing about the other work. The word "packet" was adopted from the work at NPL". Accessed April 9, 2017

11 James Pelkey, "CYCLADES Network and Louis Pouzin 1971 - 1972". Entrepreneurial Capitalism and Innovation: A History of Computer Communications 1968-1988. (2007).

12 John Mulcahy, "A Chronicle of Merit's Early History". (1989).

13 Mark Ward, "Celebrating 40 years of the Internet" http://news.bbc.co.uk/2/hi/technology/8331253.stm. Accessed March 8, 2017

Tymnet and Telenet, were developed in the late 1960s and 1970s using a variety of protocols[14].

The ARPANET project led to the development of protocols for internetworking by which multiple separate networks could be joined into a single network of networks[15]. ARPANET began with two network nodes which were interconnected between the Network Measurement Center at the University of California, Los Angeles (UCLA) Henry Samueli school of Engineering and Applied Science directed by Leonard Kleinrock, and the NLS System SRI International (Sk) by Douglas Engelbart in Menlo Park, California, on 29 October 1969. The third site was the Culler-Fried Interactive Mathematics Centre at the University of California, Santa Barbara, followed by the University Of Utah Graphics Department. In an early sign of future growth, fifteen sites were connected to the young ARPANET by the end of 1971[17]. These early years were documented in the 1972 film:

Computer Networks: The Heralds of Resource Sharing. Early international collaborations on the ARPANET were rare. European developers were concerned with developing the X.25 networks. Notable exceptions were the Norwegian Seismic Array (NORSAR) in June 1973, followed in 1973 by Sweden with satellite links to the Tanum Earth Station and Peter T, Kirstein's research group in the United Kingdom,

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14 Byung-Keun Kim, Internationalizing the internet The Co-evolution of influence and Technology (Cheltenham, Edward Elgar Pub., November 2003), 51-55.

15 Barry M. Leiner, et al., "Brief History of the Internet: The Initial internetting Concepts, Internet Society.5, (October 2009). http://www.internetsociety.org/internet/what-interncU'history-internet/brie.history-internet. Accessed March 27, 2017.

16 Gregory Gromov, "Roads and Crossroads Of 1nternet history, History of Internet and World Wide Web (1995).

17 Katie Hafner and Matthew Lyon, Where wizards Stay Up Late: the Origins Of The internet. (New York: Simon && Schuster Ltd., 1998),

18 An ITU-T standard protocol suite for packet Switched Wide area network (WAN) communication. An X.25 WAN consists of packet-switching exchange (PSE) nodes as the networking hardware, and leased lines, plain old telephone service connections, or ISDN connections as physical links.

initially at the institute of Computer Science, University of London and later at University College London[19].

3.1.1 World Wide Internet Users

	2005	2010	2016
World Population[20]	6.5 billion	6.5 billion	7.3 billion
Not using the Internet	84%	70%	53%
Using the Internet	16%	307%	47%
Users in the developing world	8%	21%	40%
Users in the developed world	51%	67%	81%

Source: International Telecommunications Union.[21]

3.1.2 Internet Users by Region

	2005	2010	2016
Africa	2%	10%	25%
Americas	36%	49%	65%
Arab States	8%	26%	42%
Asia and Pacific	9%	23%	42%
Europe	46%	67%	79%

Source: International Telecommunications Union.

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[19] Peter T. Kirstein, "Early experiences with the ARPANET and Internet in the UK", History of the UK APRANET Internet links, Department of Computer Science, Systems and Networks Research Group. University College London. (July 18, 1998).

[20] Total Midyear Population for the World: 1950-2050,

https://www.census.gov/population/international data'idb/worldpoptotalphp. Accessed February 13, 2017

[21] "ICT Facts and Figures 2000-2015" Telecommunication Development Bureau, International Communication Union (1T0). https:/www.itu.int/en/TTU-

D/Statistics/Documents/facts/lTFactsigures.z019,pd1, Accessed February 13, 2017.

[22] "ICT Facts and Figures 2000-2015," Telecommunication Development Bureau, International

Telecommunication Union (ITU), https:/www.tu.intenvT

D/Statistics/ Documents/facts/1ClFactsrigurcsz019,pdf. Accessed February 13, 2017.

3.1.3 List of Highest Internet Users

Country or area	Internet Users	Rank	Percentage
China	692,152,618	1	50.30%
India	340,873,777	2	26.00%
United States	239,882,242	3	74.55%
Brazil	122,796,320	4	59.08%
Japan	118,131,030	5	93.33%
Russia	105,311,724	6	73.41%
Nigeria	86,436,611	7	47.44%

The Internet continues to grow, driven by ever greater amounts of online information and knowledge, commerce, entertainment and social networking.[23] During the late 1990s, it was estimated that traffic on the public Internet grew by 100 percent per year, while the mean annual growth in the number of internet users was thought to be between 20% and 50%[24]. This Brown is often attributed to the lack of central administration, which allows organic growth of the network, as well as the non-proprietary nature of the Internet protocols, which encourages vendor interoperability and prevents any one company from exerting too much control over the network[25]. As of 31 March 2011, the estimated total number of Internet users was 2.095 billion (30.2% of world population)[26]. It is estimated that in 1993, the Internet carried only 1% of the information flowing through two-way telecommunication, by 2000 this figure had grown

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23 "Brazil, Russia, India and China to Lead Internet Growth Through 2011,"https://ww clickz.com/brazil- russia-india-and-china-to-lead-internet-Browin-tnrougn-z01 10 70, ACcessed May 4, 2017

24 K.G. Coffman and A.M. Odlyzko, "The Size and growth rate of the Internet" ntp:7/www.dtc.umn.edu/-odlyzko/doc/internet.sizepar (October 2, 1998.) Accessed January 25, 2017.

25 Douglas E, Comer, *The Internet Book*. (London: Pearson Pic., 2006), 64

26 The Future of Internet Marketing Careers, http:/communityvoices.post-gazette.com/digital you/item/s1204-the-future-of-internet-marketmg-carcers. Accessed February 28, 2017.

to 51% and by 2007 more than 97% of all telecommunicated information was carried over the internet[27].

3.14 Access

Common methods of internet access by users include dial-up with a computer modem via telephone circuits, broadband over coaxial cable, fibre optics or copper wires, WiFi, satellite and cellular telephone technology (3G, 4G). The Internet may often be accessed from computers in libraries and internet cafes. Internet access points exist in many public places such as airport halls and coffee shops. Various terms are used, such as public Internet kiosk,

public access terminal, and web payphone. Many hotels also have public terminals, though these are usually Tee-based. These terminals are widely accessed for various usages, such as ticket booking, bank deposit, or online payment. Wi-Fi provides wireless access to the Internet via local computer networks. Hotspots providing such access include Wi-Fi cafes, where users need to bring their own wireless devices such as a laptop or PDA. These services may be free to all, free to customers only, or fee-based.

Grass root efforts have led to wireless community networks. Commercial Wi-Fi services covering large city areas are in place in New York, London, Vienna, Toronto, San Francisco, Philadelphia, Chicago and Pittsburgh. The Internet can then be accessed from such places as a park bench[28]. Apart from Wi-Fi, there have been experiments with proprietary mobile Wireless networks like Ricochet, various high-speed data services over cellular phone networks, and fixed wireless services. High-end mobile phones such as smart phones in general come with

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27 "The World's Technological Capacity to Store, Communicate, and Compute Information," htttp:/www.martinnoert.networidintocapucity-nmi. Accessed May 1, 2017.

28 Toronto Hydro to Install Wireless Network in Downtown Toronto, http://www.bloomberg.com/apps/newsprd-hewsulrCniveacsid a0znMa4xGQ&reter-canada. Accessed May 15, 2017.

Internet access through the phone network. Web browsers such as Opera are available on these advanced handsets, which can also run a wide variety of other Internet software. More mobile phones have Internet access than PCs, though this is not as widely used.[29] An Internet access provider and protocol matrix differentiates the methods used to get online.

3.1.5 Structure

Many computer scientists describe the Internet as a "prime example of a large-scale, highly engineered, yet highly complex system".[30] The structure was found to be highly robust to

random failures," yet, very vulnerable to intentional attacks.[32] The Internet structure and its usage characteristics have been studied extensively and the possibility of developing alternative structures has been investigated.[33]

3.1.6 Communication

Email is an important communications service available on the Internet. The concept of sending electronic text messages between parties in a way analogous to mailing letters or memos predates the creation of the Internet. Pictures, documents, and other files are sent as email attachments. Emails can be cc-ed to multiple email addresses

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29 "By 2013, mobile phones will overtake PCs as the most common Web access device worldwide," http://www.gartner.com/newsroom/id/1278413. Accessed May 19, 2017

30 Willinger, et al., "Scaling Phenomena in the Internet: Critically examining criticality". Proceedings of the National Academy of Sciences. Vol. 99 (2002), Supplement 1.

31 "Resilience of the Internet to random breakdowns,"

https://journals.aps.org/prl/abstract/10.1103/PhysRevLett.85.4626. Accessed April 7, 2017

32 "Breakdown of the Internet under intentional attack," https://arxiv.org/pdf/cond-mat/0010251.pdf. Accessed April 8, 2017

33 "Internet Makeover? Some argue it's time,"

http://old.seattletimes.com/html/businesstechnology/2003667811_btrebuildnet16.html. Accessed April 8, 2017

Internet telephony is another common communications service made possible by the creation of the Internet. VoIP stands for Voice-over-Internet Protocol, referring to the protocol that underlies all Internet communication. The idea began in the early 1990s with walkie-talkie-like voice applications for personal computers. In recent years many VoIP systems have become as easy to use and as convenient as a normal telephone. The benefit is that, as the Internet carries the voice traffic, VoIP can be free or cost much less than a traditional telephone call, especially over long distances and especially for those with always-on Internet connections such as cable or ADSL. VoIP is maturing into a competitive alternative to

traditional telephone service. Interoperability between different providers has improved and the ability to call or receive a call from a traditional telephone is available. Simple, inexpensive VolP network adapters are available that eliminate the need for a personal computer.

Voice quality can still vary from call to call, but is often equal to and can even exceed that of traditional calls. Remaining problems for VoIP include emergency telephone number dialing and reliability. Currently, a few VoIP providers provide an emergency service, but it is not universally available. Older traditional phones with no "extra features" may be line-powered only and operate during a power failure; VoIP can never do so without a backup power source for the phone equipment and the Internet access devices. VoIP has also become increasingly popular for gaming applications, as a form of communication between players. Popular VoIP clients for gaming include Ventrilo and Teamspeak. Modern video game consoles also offer VoIP chat features.

3.1.7 Data Transfer

File sharing is an example of transferring large amounts of data across the Internet. A computer file can be emailed to customers, colleagues and friends as an attachment. It can be uploaded to a website or File transfer protocol (FTP) server for easy download by others. It can be put into a shared location or onto a file server for instant use by colleagues. The load of bulk downloads many users can be eased by the use of 'mirror' servers or peer-to-peer networks. In any of these cases, access to the file may be controlled by user authentication, the transit of the file over the Internet may be obscured by encryption, and money may change hands for access to the file. The price can be paid by the remote charging of funds from, for example, a credit card whose details are also passed-usually fully encrypted across the Internet. The origin and authenticity of the file received may be checked by digital

signatures or by MDS or other message digests. These simple features of the Internet, over a worldwide basis, are changing the production, sale, and distribution of anything that can be reduced to a computer file for transmission. This includes all manner of print publications, software products, news, music, film, Video, photography, graphics and the other arts. This in turn has caused seismic shifts in each of the existing industries that previously controlled the production and distribution of these products.

3.1.8 Usage

The Internet allows greater flexibility in working hours and location, especially with the spread of unmetered high-speed connections. The Internet can be accessed almost anywhere by numerous means, including through mobile Internet devices. Mobile phones, data cards, handheld game consoles and cellular routers allow users to connect to the Internet wirelessly. Within the limitations imposed by small screens and other limited facilities of such pocket-sized devices, the services of the Internet, including email and the web, may be available. Service providers may restrict the services offered and mobile data charges may be significantly higher than other access methods.

Educational material at all levels from pre-school to post-doctoral is available from websites. Examples range from CBeebies, through school and high-school revision guides and virtual universities, to access to top-end scholarly literature through the likes of Google Scholar For distance education, help with homework and other assignments, self-guided learning whiling away spare time, or just looking up more detail on an interesting fact, it has never been

easier for people to access educational information at any level from anywhere. The Internet in

general and the World Wide Web in particular are important enablers of both formal and informal education. Further, the Internet allows universities, in particular, researchers from the social and behavioural sciences, to conduct research remotely via virtual laboratories, With profound changes in reach and generalizability of findings as well as in communication between scientists and in the publication of results.[34]

3.1.9 Telecommuting

Telecommuting is the performance within a traditional worker and employer relationship when it is facilitated by tools such as groupware, virtual private networks, conference calling, videoconferencing, and voice over IP (VOIP) so that work may be performed from any

location, most conveniently the worker's home. It can be efficient and useful tor companies as it allows workers to communicate over long distances, saving significant amounts of travel time and cost. As broadband Internet connections become commonplace, more workers have adequate bandwidth at home to use these tools to link their home to their corporate intranet and internal communication networks.

[34] ULF-Dietrich Reips, "How Internet-mediated research changes science," http://iscience.detusto contentuploads/2010/03/reaips5.pdf. Accessed May 5, 2017 In Azy Barak (Edited), one 2012), of CYBERSPACE: Theory, Research, Applications, (Cambridge: Cambridge University Press 268-294

3.1.10 Crowdsourcing

The Internet provides a particularly good venue for crowdsourcing, because individuals tend to be more open in web-based projects where they are not being physically judged or scrutinized and thus, can feel more comfortable sharing

3.2.1 Internet Recycling

Internet technology is developing faster than the laws that govern it. New laws that apply to the Internet have been established cither by legislation or the courts; copyright laws are among them. A common myth about the Internet is that anything posted online can be copied or downloaded.

In truth, anything you see on the Internet has the same potential of being protected by copyright as anything you see in the library or bookstore. Under modern copyright law, the formalities of registration and copyright notice are no longer required. As long as material satisfies three elements[35], copyright protects the work automatically. Internet Recycling (as a combination of two words) refers to the reproduction of copyrighted material by persons who are unauthorized or allowed by law to so do.

In education, there are many Internet materials that could be used as teaching aids for a class or for an application in research. But it is not always possible or economically feasible to get or pay for permission. If you qualify for using materials without permission under the TEACH Act, then you also can use online materials in a face-to-face classroom setting[36].

[35] 17 United States Code Section 102, *Feist Publications, Inc:. Vs, Ural Telephone Service Co*., 499 U.S. 340 (1991).

[36] 17 United States Code Section 110(1)

3.2.2 Ownership of Online Works

Copyright in every work 1s generally owned by the individuals who create the works of expression albeit with some exceptions, also any tangible medium of expression, i.e., books, articles, artwork, music, software, traditional or electronic correspondence and materials placed or found on the internet may be protected by copyright. Eligible materials are automatically protected upon their creation, ownership of online works can reside in specific individuals, team, organization, instructional design, and graphic artist and indeed, all those who contribute to the final product may have a claim to some legal rights in the work[37]. However, it is extant to note that copyright law is territorial, meaning that the fact that a work as in the public domain in Nigeria does not necessarily mean that it is in the public domain in the U.S. This means that once a work is fixated in a definite medium (the internet inclusive), it is already protected, however, as regards internet works, an author of a literary piece or any piece whatsoever that is ported on the internet holds the right to deal with such material as his/her own and enjoy all benefits, economic and otherwise that accrues to holding such right.

When an online material is posted, acceptance is said to be "across border" as this makes it very hectic to curb infringements or exploration of an author's work without prior consent. In the United Kingdom, an author of a literary piece can choose to register his copyright through approved online services and once registered, the state protects through the various online Owner's protection mechanism. In addition to this, the introduction of the Digital Right Management system (DRM) has been of great help to owners of online works as it is used to

control access to information and invariably protect the owner's economic interest in a particular work online.

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[37] Rodney Petersen, "Ownership of Online course Materials, *EDUCAUSE Center for Applied Research, University of Maryland.* Vol. 2003 (January7, 2003) Issue 1

However, the DRM scheme has been tagged highly controversial as it is said hinder free access to Knowledge. DRMs could be in the form of embedded technology e.g. sensors as in the case with electronic b0ok seller such as Amazon and over drive. There, sensor

monitors and control usage are further used to enforce terms and conditions of the E-book seller. Thus, owners or online materials can control the use, modification and distribution or copyright works; Right management could take various forms which may include:

1. Restriction to Access Control

2. Restriction to Frequency of Use

3. Devices Restriction

4. Number of Use Restriction

5. Password Protection

6. Regional Locks/ Codes

7. Data Restriction

8. Restriction on Usage

9. Encryption

3.2.3 Developing Internet Based Works

A large number of business transactions can be initiated and concluded on the Internet. The Internet therefore provides a veritable ground for all studies of intellectual property right invasion in the ultra-modern world. It has also done a lot in terms of creating bad impressions, emotions in the minds of people in various aspects.

The Geographic Information System (GIS) is one very important mechanism through which works are developed online. A GIS combines geographic features, information with partially resolved data enabling display, analysis and modeling of environment. Internet based GIS applications provide a resource to display and disseminate air quality and admission data to broad audience.

3.3 Trademarks

A Trademark is a distinctive mark, motto, device, or emblem, which a manufacturer stamps, prints, or otherwise affixes to the goods he produces, so that they may be identified in the market, and their origin be vouched for[38]. Trademark has also been defined simply as a word, syllable or other signifier used to distinguish a good or service produced by one firm from the goods or services of other firms,[39] Thus, XEROX the dry copier made by XEROX CORPORATION; a distinctly shaped brown bottle is a trademark of GUINNESS BREWERY

NIGERIA PLC. A more simplified definition is given by the WIPO which states that a trademark is a distinct sign to identify the goods offered by a manufacturer or a salesman and the services offered by a provider of services[40]. They further defined a trademark as any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its

competitor[41]. A trademark is therefore a distinctive sign which identifies certain goods or

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38 "Trademark" http://thelawdictionary.org/trade-mark/. Accessed April 30, 2017.

39 Peter Grooves J.Source book on Intellectual Property (London: Cavendish Publishing limited, 1997), 14-16.

40 Ibid

[41] "WIPO Intellectual Property Hand Book. ”http://www.wipo.int/edocs/pubdoes/en/intproperty/489/wipo_pub_489.pdf. Accessed December 1, 2016.

services as those produced or provided by a specific person or enterprise[42]. Its origin dates back

to ancient times, when craftsmen reproduced their signatures or mark' on their artistic or utilitarian products[43]. It is therefore a badge of origin and it prevents one trader appropriating the reputation of another. It is as such concerned with preventing unfair competition. Trademarks are by products of market enterprise and market place competition and it has come all the way from the use of trademarks by potters in Roman times to internationally known marks such as McDonald's (McD) or Coca-Cola used today, it is evident that the use of trademark is not static, but rather continues to respond as new means of unfair competition evolves. Trademark law also legislatively recorded a rapid development especially in the UK from the Trade Marks Act of 1938 which was old and fell behind trading practices, to the new Trademarks Act.[45] Historically, the habit of making marks on ones goods goes back to the very ancient times as a mark of ownership to recognize ones property especially where there were similar goods. The earliest known use of trademarks occurred in Pro-Roman Times when it became common for Potters to put their names on each item of pottery for identification purpose. In Nigeria. The history of trademarks and its legislation dates back to the history of Nigerian legal system itself. The trademarks law came into existence by proclamation in 1900, and was applicable in Nigeria before independence as a corresponding English law. The first case reported was *Lagos Stores Lid vs. Black Stock & Co.*[46] when the Southern and Northern protectorates of Nigeria were amalgamated, an ordinance was promulgated which made the

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42 For the Statutory definition of Trademark see Section 67 (1) of the Trade Marks Act, 1965 Cap T13. LFN, 2004.

43 "Mark" is defined in the Trade mark Act as anything which includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof". See also Section 67 of the Act.

[44] Frank Isaac Schechter, *The Rationale Basis of Trademark Protection,* (Harvard University: Harvard Law Review, 1927)

[45] The Trade Marks Act, 1994.

[46] (1901) 3NLR 20

British trademarks applicable to the entire country. The ordinance provided for proprietors or trademarks registered under 1900 proclamation in southern protectorate who wanted their trademarks to be applicable to the entire country and to the registrar of trademarks for re-registration.

3.3.1 Registrable Marks

For a mark to be protected, it has to be duly registered. Hence, a system of registration evolved to grab for the owner the required exclusivity. Trademarks offices therefore exist in most

countries where an application for trademark is filed such offices could be national or regional as the case may be. In the case of U.K, the *Trade Marks Act of 1994* simplified the application

procedures. Any person can apply, and the contents of the application are specified by *Section 32 of the Trade Marks Act of 1994*. For instance, the application must contain clear reproduction of the sign filed for registration including any colours, forms or three dimensional features. It must also contain a list of goods and services to which the sign will apply. Some of the conditions such a sign must fulfil include distinctiveness and must neither mislead nor deceive others or violate public order or morality. A grant of right would follow some search and examination and the absence of third parties who claim similar or identical rights. However it is pertinent to add that the effect of such registration is limited to the country where its national or regional office maintains the records of all registration and renewals. Trade Marks registration and protection in Nigeria is regulated by the *Trade Marks Act, 1965*.[47] Application for registration of a Trade Mark is usually made by the applicant or his authorized agent to the Registrar of Trade Marks at the Trade Marks Registry.[48] The Trade Mark application is then advertised in the Nigerian Trade Mark Journal published by the Registrar of Trade Mark[49].

47 Cap T13, LFN, 2004

48 Section 18 (1) of the Trade Marks Act, 1965, Laws of the Federation of Nigeria, 2004

49 See Section 19 (1) of the Trade Marks Act, 1965, Cap T13. Laws of the Federation of Nigeria, 2004.

The application will then be open for opposition for a period of 2 months from the date of the advertisement[50]. Opposition proceedings are heard by the Registrar and there is a right of appeal to the Federal High Court[51]. Where no objections are received within the stated period, the Registrar will issue a certificate of registration with the date of the initial filing as the date of registration.[52] The certificate is usually issued within an average of 4 weeks from the end of the opposition period or the disposition of the opposition. The duration of registration is 7 years but renewable from time to time[53], but the Registrar may remove the trade mark from the register for non-payment of renewal fees.[54] Trade mark registration in Nigeria will not cover any other African country. Separate applications are required for other countries. There is no provision by which one application in an African country will cover the rest of Africa. It is worthy of note also, that in order to avoid the need to register with each national or regional office. The World Intellectual Property Organization (WIPO) administers a system of international registration of marks. This system is governed by two international treaties- namely, The Madrid Agreement Concerning International Registration Marks of 1891 and the Madrid protocol of 1989. A registered trade mark is assignable and transmissible in respect of either all or some of the goods.

50 Section 20 of the Trade Marks Act, 1965, Cap T13, Laws of the Federation of Nigeria, 2004

51 Section 21 of the Trade Marks Act, 1965, Cap T13, Laws of the Federation of Nigeria, 2004.

[52] Section 22 (2) of the Trade Marks Act, 1965, Cap T13, Laws of the Federation of Nigeria, 2004.

[53] Section 23 (1) of the Trade Marks Act, 1965, Cap T13. Laws of the Federation of Nigeria, 2004.

[54] Section 23(3) of the Trade Marks Act, 1965, Cap T13, Laws of the Federation of Nigeria, 2004.

3.3.2 Cybersquatting

The term is derived from "squatting", which is the act of occupying an abandoned or unoccupied space or building that the squatter does not own, rent, or otherwise have permission to use.

Hence, Cybersquatting (also known as domain squatting), according to the United States federal law known as the Anti-Cybersquatting Consumer Protection Act, is registering, trafficking in, or using an Internet domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else. The cybersquatter then offers to sell the domain to the person or company who owns a trademark contained within the name at an inflated price. The subsequent cases on the disagreement between trademarks and domain names will effectively place the issue of Cybersquatting in its proper perspective for the purpose of this work. *People for the Ethical treatment of Animals v. Doughneys*[55]

In 1995, Michael Doughney registered the domain name peta.org and created a website called "People Eating Tasty Animals". The site described itself as a resource for those who enjoy eating meat, wearing fur and leather, hunting and the fruits of scientific research.[56] People for the Ethical Treatment of Animals (PETA) sued Doughney, alleging trademark infringement, trademark dilution, and Cybersquatting. The case was initially heard in the United States District Court for the Eastern District of Virginia, and both parties cross-

appealed. The circuit court affirmed the district's court ruling, which had granted summary judgment to PETA.

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55 263 F 38 359 (4th Cir. 2001)

56 Sonja Barisle, "Court orders owner of PETA parody site to relinquish address, "https://www.newspapers.com/newspage/200513926/. Accessed March 14, 2017.

However, the court denied PETA's cross-appeal for attorney's fees and costs, because it held that Doughney's action was not malicious.[57]

Microsoft v. Mike RoweSoft

The domain name MikeRoweSoft.com was initially registered by Mike Rowe, a 12th grade Canadian student, in August 2003. Rowe set up the site as a part-time web design business, choosing the domain because of the phonetic pun by adding the word "soft" to the end of his name.[58] Microsoft saw the name as trademark infringement because of its phonetic resemblance to their trademarked corporate name, and demanded that he give up the domain[59]. After receiving a letter on January 14, 2004 from Microsoft's Canadian legal representatives Smart & Biggar, Rowe replied asking to be compensated for giving up the domain[60]. Microsoft offered to pay Rowe's out-of-pocket expenses of $10, the original cost of registering the domain name. Rowe countered asking instead for $10,000, later claiming that he did this because he was 'mad' at Microsoft for their initial $10 offer. Microsoft declined the offer and sent a cease and desist order spanning 25 pages. Microsoft accused Rowe of setting up the site in order to try to force them into a large financial settlement, a practice known as Cybersquatting. A settlement was eventually reached, with Rowe granting ownership of the domain to Microsoft

[57] Wired, "Ethical Treatment of PETA Domain http://archive.wired.com/politics/law/news/2001/08/46313. Accessed February 23, 2017.

[58] CBS News, "Microsoft Not Soft on Mike Rowe," http://www.cbsnews.com/news/microsoft-not-soft-on-mike-rowe/. Accessed February 23, 2017

[59] CNN, "Teen fights to keep MikeRoweSoft.com"

http://edition.cnn.com/2004/TECH/internet/01/20/rowe. fight/. Accessed February 23, 2017

[60] "MikekoweSoft sell-off bids going, going...down," https://www.cnet.com/news/mikerowesoft-sell-off-bids-going-going-down/. Accessed February 23, 2017

[61] ZdNet, "Software giant threatens mikeroweson." http://www.zelnet.com/article/software-giant-threatens- mikerowesoft. Accessed February 23, 2017

in exchange for an Xbox and additional compensation[62].

3.3.3 The Uniform Domain- Name Dispute-Resolution Policy

The Uniform Domain-Name Dispute-Resolution Policy (UDRP) is a process established by the Internet Corporation for Assigned Names and Numbers (CANN) for the resolution or disputes regarding the registration of internet domain names. When ICANN was first set up, one of the core tasks assigned to it was "The Trademark Dilemma",[63] the use of trademarks as domain names without the trademark owner's consent. By the late 1990s, such use was identified as problematic and likely to lead to consumers being misled. In the United

Kingdom, the Court of Appeal described Such domain names as "an instrument of fraud".[64] One of ICANN's first steps was to commission the United Nations World Intellectual Property

Organization (WIPO) to produce a report on the conflict between trademarks and domain names. Published on 30 April 1999, the WIPO Report[65] recommended the establishment of a mandatory administrative procedure concerning abusive registrations", which would allow for a neutral venue in the context of disputes that are often international in nature." The procedure

was not intended to deal with cases with competing rights, nor would it exclude the jurisdiction

of the courts. It would, however, be mandatory in the sense that "each domain name application

would, in the domain name agreement, be required to submit to the procedure if a claim was

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[62] BBC News, "Boy swaps MikeRoweSoft for Xbox," http:/news.bbe.co.uk/2/hi/technology/3429485.stm, Accessed February 25, 2017.

63 US Government white Paper, http/www.icann.org/en/about/agreements/white-paper Accessed January

64 British Telecommunications Plc w. One in a Million Lad (999) 1 WkLR 903, Aldous LJ at 920.

65 "The Management of Internet Names and Addresses: Intellectual Property Issues," http://www.wipo.int/exporu'sites/www/amc/en/docs/report-finall.pdf, Accessed January 19, 2017.

initiated against it by a third party. The WIPO Report sets out the now 1amiliar three stage of the UDRP Following adoption by ICANN, the UDRP was launched on 1 December 1 and the first case determined under it by WIPO was *World Wrestling Federation Entertainment*, Inc. v Michael Bosman, involving the domain name worldwrestlinglcderation.com.[67] A complainant in a UDRP proceeding must establish three elements to succeed:

- The domain name is identical or confusingly similar to a trademark or service mark in which

  the complainant has rights;
- The registrant does not have any rights or legitimate interests in the domain name, and
- The domain name has been registered and the domain name is being used in "bad faith".

UNDRP proceedings are decided by a panel comprised of one or three individuals. Parties are not precluded to submit the dispute to the regular courts. Both the complainant and respondent

are given the opportunity to elect the type of panel and where a three man panel is chosen by the respondent, the application fees are divided evenly between the parties. In all other cases, the complainant bears the fees. The available remedies are limited to the cancelation of the domain name, or its transfer to the complainant.

[66] "WIPO Mandatory Uniform UDRP Administrative Dispute Procedure," hpwww.wipo.int/amc/en/Processes/process1/report/finalreport.html#IV. Accessed January 19,2017

[67] "WIPO Arbitralion and Mediation http//www.wipo.inUamc/endomainsoteonsn a U n. Accessed April 27, 2017.

3.4 Downloads and Streaming

3.4.1 Download

A Download is defined as the transmission of me from one computer system to another usually smaller computer system. From the Internet user's point-of-view, to download a file is to request it from another computer or from a Web page on another computer) and to receive it.

3.4.2 Uploading

Uploading is transmission in the other direction: from one, usually smaller computer to a different computer. From an Internet user's point-of-view, uploading is sending a file to a computer that is set up to receive it. People who share images with others on bulletin board systems (BBS) upload files to the BBS.

3.4.3 File Transfer Protocol

The File Transfer Protocol (FTP) is the Internet protocol for downloading and uploading files and a number of special applications can furnish PTP services for you. However, if you are downloading through a Web page, the FTP request is set up for you by the web page. You are usually asked where you want the downloaded file placed on your hard disk, and then the downloading transmission takes place.) When you send an attached file with an e-mail note, this is just an attachment, not a download or an upload. In practice, many people use "download" and "upload" rather indiscriminately so you just have to understand the context. For example, if someone says to you "Download (or upload) such--und-such a file to me by e-mail." They clearly mean "Send it to me as an attachment." In general, from the ordinary workstation or small computer user's point-of-view, to download is to receive a file and to upload is to send a file.

3.4.4 Streaming

Streaming media is multimedia that is constantly received by and presented to an end-user while being delivered by a provider. The verb 'to stream' refers to the process of delivering or obtaining media in this manner; the term refers to the delivery method of the medium, rather than the medium itself, and is an alternative to file downloading, a process in which the end-user obtains the entire file for the content before watching or listening to it.

3.4.5 Live Streaming

Live streaming refers to Internet content delivered in real-time, as events happen, much as live

television broadcasts its contents over the airwaves via a television signal. An example of live streaming is Metropolitan Opera Live in HD, a program in which the Metropolitan Opera streams an opera performance 'live', as the performance is taking place; in 2013-2014, 10 operas were transmitted via satellite into at least 2,000 theatres in 66 countries[68]. Live internet

streaming requires a form of source media (e.g. a video camera, an audio interface, screen capture software), an encoder to digitize the content, a media publisher, and a content delivery

network to distribute and deliver the content. Live streaming does not need to be recorded at the origination point, although it frequently is, Streaming and downloading (or saving) of media files involves the use of linking and framing Internet material, and it relates to copyright law.

[68] "Met Opera Standoff Threatens $60 Million Theater Business," http://www.hollywoodreporter.com/news/met-opera-standoff-threatens-60-723614. Accessed November 19, 2016

Streaming and downloading can involve making infringing copies of the works in question; organizations running such websites may become vicariously liable for infringement by actively inducing infringement by others. In Europe, the Court of Justice of the European Union

(CJEU) has ruled that it is legal to create temporary or cached copies of works (copyrighted or

otherwise) online[69]. The ruling relates to the *British Meltwater* case settled on 5 June 2014.[70] The judgment of the court states that: "Article 5 of Directive 2001/29/EC of the European Parliament" and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society must be interpreted as meaning that the copies on the user's computer screen and the copies in the internet cache' of that computer's hard disk, made by an end-user in the course of viewing a website, satisfy the conditions that those copies must be temporary, that they must be transient or incidental in nature and that they must constitute an integral and essential part of a technological process, as well as the conditions laid down in Article 5(5) of that directive, and that they may therefore be made without the authorization of the copyright holders."[71]

[69] "Good news everyone: after 5 years, we now know that what we do every day is legal... No, seriously." http://copyright4creativity.eu/2014/06/13/good-news-everyone-after-5-years-we-now-know-that-what-we- do-every-day-is-legal-no-seriously/. Accessed January 28, 2017.

[70] "You can't break Copyright by looking at something online, Europe's top court rules," https://gigaom.com/2014/06/05/you-cant-break-copyright-by-looking-at-something-online-europes-top-court-rules/. Accessed January 28, 2017

[71] "Case C-360/13," http://freecases.eu/Doc/CourtAct/4397014. Accessed January 28, 2017

CHAPTER FOUR

SAFEGUARDING ONLINE WORKS AND CURRENT LAWS

4.1 Protection of Copyright in Internet Based Works

The incidence of copyright infringement on the internet has assumed an exceptional dimension.

Every work subject to copyright protection can be said to have been violated on the internet. This ranges from music, literary, artistic work and broadcast, all which have become highly susceptible to the infringing activities of pirates.

In dealing with global pervasiveness of copyright infringement through the internet, two treaties which were the WIPO Copyright Treaty (WCT) and WIPO performance and Phonogram Treaty (WPPT) 1966 may attract due attention. The treaties require each country to provide in its law for a copyright owner exclusive right of making available its work to the public for demand access. In order to foster the growth of the e-commerce industry, countries must ratify and implement the WIPO treaties as soon as possible. There are technological protections to prevent unauthorized access to or use of copyright material or illicit dissemination of copyright works on key enabling technologies for the global electronic marketplace. These protections may take various forms and serve many related purposes. Some

of these protections are familiar like the "scrambling" of cable television premium service

signal in order to limit access to paid subscribers. Other protective technologies are more complex like encryption of text or software transmitted over the internet. Technology can be used to encapsulate copyright material in hampering existent electronic envelope. It can be designed to allow time limited access, so that a customer can test drive a software program

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[1] Collin Tapper, *Computer Law* (London and New York: Longman, 1978).

before acquiring, or buy the right to watch a movie in time basis. Technology can inscribe an electronic watermark in digital material, so that the source of authorized copyright is presented[2]. Thus, technology is inviolable to pirates, who have also developed circumventing technology to back through encryptions, and steam open electronic envelopes of obliterate digital watermarks so that valuable intellectual property can be stolen from, and electronic commerce disrupted. In recognition of this, the requirement to outlaw the circumvention of these technologies is a central feature in WIPO treaties,

4.2 Examination of Existing Legislation in Nigeria

Nigeria's major copyright law which is the Copyright Act of 1988 derives its validity from the

Constitution. And, by virtue of Section (1) of the Copyright Act, it identifies (a) Literary works, (b) Musical works, (c) Artistic works, (d) Cinematograph films, (e) Sound recordings and (1) Broadcast as copyrightable material.

Section 6 of the Act confers a wide variety of right on the copyright owner. These rights to wit

include the following exclusive rights: (a) Reproduce the work in any material form, (b) Publish the work, (c) Perform the work, (d) Distribute the work to the public for commercial

purposes, (e) Translate or make adaptation of work, (1) Broadcast or communicate the work to

the public, (g) Make any cinematograph film or a record in respect of the work. It must be stated that unless and until the original copyright owner confers permission, any publication, reproduction, performance, translation and broadcasting, and certainly, distribution

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[2] *Ibid.*

of a work, is considered an infringement. This is the express view of the law on this note. Nevertheless, it will be abrasive to assume that all is well especially with regards to modern copyright protection. In Esso West African Inc. v. Oyegbola[3], the Supreme Court, per Coker JSC stated that the law cannot be, and is not ignorant of modern business methods and must not short its eyes to the mysteries of the computer". The reasoning of the Supreme Court is rather perfect. It will be highly delusional to state that the law and computer are extricable. The

truth is that they are inseparable in this modern age. The stance of the Nigerian government in

challenging cybercrime must be questioned at this point in this work.

When President Olusegun Obasanjo inaugurated the Nigerian Cyber-crime Working Group (NCWG) on March 10, 2004, the intentions were noble. However, most critics observed at that time, that there was likelihood for resource duplication. Particularly, the statutory and functional composition of the NCWG shared similar mandates with those of the Economic and

Financial Crimes Commission. It has now become obvious, that the creation of the NCWG was

purely a case of financial resource duplication For example, in the 2004 budget; the EFCC received only N300,000,000 in allocated fiscal funding. Although it is possible that the total sum of financial allocation to the EFCC were later revised, many of the proposed Financial Crime projects proposed by the EFCC, simply got zero funding. On the other hand, although the NCWG did not have any formal budgeting funding allocated for fiscal year 2004, it somehow managed to receive an initial allocation of N100,000,000 from the Nigerian Government. The bottom line is clear: both agencies received funding for similar objectives.

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[3] (1969) N.S.C.C. 350.

Nigeria is full of financial and statutory inconsistencies; the EFCC was under-funded, whilst the NCWG receives new funding. Ironically, both EFCC and the NCWG have similar strategic objectives. Statutorily, the EFCC was created to combat Advanced Fee Fraud, which by the way, also includes the Nigerian 419 Email. Similarly, the proposed Nigerian Cybercrime Bill likewise, mandates functions of the NCWG to include fighting Nigerian Cybercrime[4].

However, on February 25, 2017, Acting President, Professor Yemi Osinbajo, who was represented by his Senior Special Adviser on Information and Communication Technology, ICT, Mr. Lanre Osibona, stated that the Federal Government had set up a 31-member Cyber crime Advisory Council to work closely with the private sector to curb the menace of cyber crime. The acting president (duly represented) stated that effective management of risk

associated with cyber crime required collaboration between the government and the private sector. This information was disclosed at the maiden edition of the Cyber Security conference with the theme: "Monitoring, Detection and Prevention: Keys to Organizational Growth" held at the Federal Palace Hotel, Lagos, South West Nigeria, where it was discovered that challenges of cyber crime globally were high and, as a nation, the government must develop the necessary capacity to tackle cyber crime, which required that avenues which would give room to cyber criminals be blocked thoroughly. Mr. Lanre Osibona further stated that the government was keen on enthroning a digital economy. According to him, government would establish the right environment that is secure for businesses to thrive, especially as it related to

ICT development in the areas of smart cities and cyber security, among others.

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[4] Femi Oyesanya, "Review of Draft Nigerian Cybercrime Act," http://www.gamji.com/article3000/NEWS3549.html. Accessed January 17, 2017.

(f) Function, and provision of the agency,

(g) Management and staff of the agency,

(h) Financial provisions.

The distinctive nature of this kind of legislative intervention was thoroughly encompassed by Phil-William in his brilliantly written article entitled "Organized Crime and Cybercrime; Synergies, Trends and response" where he expressed his view thus:

> *"Harmonization is necessary for both substantial and procedural laws. All countries have to reappraise and review rules of evidence, search and seizure, electronic eavesdropping and the like to cover digitized information, modern computer and*

communication of procedural laws therefore would facilitate cooperation in investigations that cover multiple jurisdictions."[5]

In battling the never ending menace of online theft of copyrighted works and cybercrime generally, harmonization of global and domestic administrative procedural laws is grossly important. For this reason, the Committee on cybercrimes set up by ex-Nigerian President Olusegun Obasanjo failed to do so, and hence, it is regarded as a major flaw in their books.

4.2.2 The Cyber Security Bill 2011

This bill is partitioned as follows:

PART I - GENERAL PROVISIONS

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[5] Phil Williams, "Organized Crime and Cybercrime: Synergies, Trends, and Responses," http://www.crime-research.org/library/Cybercrime.html. Accessed January 8, 2017

1. Objects and scope

(1) The objects and scope of this Act are to –

(a) Provide an effective legal framework for the prohibition, prevention, detection, prosecution

and punishment of cybercrimes in Nigeria, and

(b) Enhance cyber security and the protection of computer systems and networks, electronic communications; data and computer programs in Nigeria

(2) The provisions of this Act shall be enforced by law enforcement agencies in Nigeria to the

extent of the agency's statutory powers.

Part II deals with offences and penalties, while Part III talks on critical information infrastructure protection Part IV statutorily explains arrest and prosecution and Part V and VI provide for information cooperation and miscellaneous respectively.

From the foregoing, it is my unequivocal opinion that Nigeria, as a nation is not legally ready to combat online exploiters because the relevant laws on ground are not potent enough to efficiently protect online generated materials. Some of the reasons given by the government to

defend this lackluster attitude towards the major area of copyright protection are that Nigeria is primarily a consumer of technology and not a producer. Furthermore, since the Internet" is formally grounded in technological exploitation, it becomes a question for consideration whether a nation which does not fully know the internal regulations of modern technologies can vigorously tackle the challenges associated with such level of technology. The answer is obviously far from the affirmative.

4.3 The Nigeria Copyright Commission

The Nigerian Copyright Commission is a body corporate with the primary function of monitoring, administering and enforcing copyright laws in Nigeria. In fulfilling this responsibility the NCC has taken giant strides in the fight against piracy, by dividing the commission into departments that perform varying functions and also aligning with some

organizations like Google for efficient and effective fight. Google is a global search engine; therefore it assists the NCC to fight against Internet piracy. The Nigerian government has advocated and adopted methods to fight piracy, such as providing for the antipiracy measures under the copyright Act to assist the NCC in its fight against piracy. Piracy has so much ravaged the creative arts and entertainment industry that there is clarion cry about its effect on the economy. Nigeria has lost so much income, employment, investments and tax revenues to piracy. In summary the negative effect of piracy cannot be overemphasized, it is social, economical and political, hence the need for the fight to curb it. The Nigerian Copyright Commission established under the Act[6] is the only government agency responsible for copyright administration in Nigeria. The Nigerian government has adopted a zero tolerance for acts of piracy. In line with the zero tolerance for piracy, the copyright Act[7] in its wisdom provides for anti-piracy measures to assist the commission effectively and efficiently carry out its functions. The Prosecution Department of the Nigerian Copyright Commission (NCC) filed 7 copyright cases based on the concluded case files of recent nationwide anti-piracy raids conducted in various parts of the country in September 2011. In Lagos, four new criminal cases

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6 Section 34 of the Copyright Act

7 Section 21 of the Copyright Act.

were filed at the Federal High Court, Ikoyi Lagos, and they are NCC v. John Bright; N.C.C. Obisam Bookshop Lid & Ors: NCC Tecomy & Ors, and NCC Paragon Technologies Ltd & Ors[8]. The four accused/defendants were charged for illegal reproduction of musical works

cinematography films and sound recordings. The Director, Prosecution Department of NCC, Mr. Kohol , added that two criminal charges on broadcast piracy, NCC . Akhaguayın E. Famous and NCC v. Harrison Ugute were filed at the Federal High Court Asaba and Benin respectively.[9] The Nigerian Copyright Commission (NCC) is the highest body regulating, advising, and monitoring matters of copyright law in Nigeria, per Decree No. 61 of 1970 in the Nigerian constitution.[1011] The Commission is guided by the following core values: COMMITMENT: Commitment to the mandate. O-OPENNESS: Openness and transparency, R-RESPONSIVENESS: Responsiveness to stakeholder needs. E -EFFICIENCY: Efficiency in service delivery. The major aim of the Commission is to harness the potentials of creativity for national development and to advance the growth of the creative industry in Nigeria through the dissemination of copyright knowledge, efficient administration and protection of rights.

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8 "NCC, Notice Board, September 11, Issue No. 2, P.4," http://www.copyright.gov.ng/noticeboard. Accessed January 16, 2017

9 Ibid. 10

10 "NCC Impounds 29 laptops, arrests 14 suspected pirates in Aba," http://www.copyright.gov.np/index.php/news-events/item/390-ncc-impounds-29-laptops arrests-14-suspected-pirates-in-aba, Accessed January 13, 2017

11 "NCC raids seven warehouses, confiscates N600 Million pirated books" http://www.copyright.gov.ng/index.php/news-events/item/387-ncc-raids-seven-warehouses-confisentes.1600-million-pirated-books. Accessed January 13, 2017

For administrative, enforcement and regulatory purposes, the Commission has its Headquarters

in Abuja, the Federal Capital Territory, with nine 9) Zonal Offices and five (5) Liason Offices

spread across the six (6) geopolitical regions of Nigeria .

4.3.1 Establishment of the Commission

Decree No. 61 of 1970 was the first indigenous legal instrument regulating, issues relating to copyright in Nigeria. This Decree was promulgated just after the Nigerian dial civil war ended but salient provisions in the law did run foresee the rapid socio-economic development, as well as influx of products of advanced technology into the country, which made illegal reproduction

works protected by copyright much easier. The consequence of the inadequacy of Decree 6l to

protecting creativity and scholarship was high scale piracy that robbed areas, organizations and individuals who helped produce or disseminate creative works as well as the study of potential income.

As a result of increased pressure from artistes, authors and creators who are originally the copyright owners, the then Federal Military Government promulgated into law, the Copyrigła Decree No. 47 of 1988, which now exists as Copyright Act Cap C28 Laws of the Federation of Nigeria, 2004. The Act which has been aptly described as one of the best of its kind, not only created most favorable conditions for actualization of authors potentials through comprehensive protection of creative works, but also incorporated establishment for the first time, of a machinery for the administration of copyright and neighboring rights matters in Nigeria, i.e, Nigerian Copyright Commission. On March 31, 2017. The Federal High Court, Ikoyi presided over by Honourable Justice Buba sentenced an accused pirate Mr. Chekwesiri Chukwuamaka Josephat to one year imprisonment for Copyright Infringement with an option

of fine on both two count charge in *NCC vs Chikwesiri Chukwuamaka Josephat (FHC/L/409C/2015).*

4.3.2 Challenges and Shortcomings of the Commission

The Nigerian Copyright Commission, like any other body entrusted with some responsibilities,

has some challenges. This is seen in its fight against piracy. These challenges include:
(A) Poor Financing[12]

The NCC by its function and enforcement procedure needs adequate fund to operate and carry

out its responsibilities efficiently. Sadly, and surprising too, the NCC is not adequately funded.

This automatically hinders necessary and comprehensive investigations and reduces the quantum of information gathered and as a result affects the commission's optimum performance.

(B.) Corruption

Some of the NCC officials who are charged with the responsibility of carrying out raids on infringed works are corrupt, so they are compromised by the pirates. The officers at times have

private dealings or transactions with the infringers (pirates), and consequently, they deliberately refuse or find it difficult to find them out during their regular raids. By this, these officials close their eyes to the evil being perpetrated by the pirates. This is quite unfortunate and unbecoming of such trusted officials, who were sent on this raid in confidence.

(C) Enforcement

Effective enforcement of intellectual property laws is a key to curbing piracy, consequently, the position and role of law enforcement agencies like the police, army customs and officers

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12 A. Odoh, "Factors Militating Against Enforcement and Administration of Copyright and possible Solutions": A paper Presented at the In-House Training Organized by Enugu zonal office of the NCC, 11th March, 2013

of other relevant government agencies is crucial. In most developing countries, like Nigeria, these personnel are faced with various challenges such as, poor understanding of the issues involved; poor training, poor funding of enforcement activities, and absence of good working tools either to aid detection or in the conduct of post arrest operations.[13] However, a disturbing attitude also exists in the minds of the public and sometimes in the judiciary and in law enforcement agencies, that piracy is a low level of mischief with little real

consequence. The members of the International Intellectual Property Alliance (IIPA) reported

that the police lack the overall will, and the EFCC generally considers copyright as a secondary

issue in their mandate and will rather assist the NCC to carry out its mandate rather than take the lead.[14] Delays in the judicial system and lack of transparency in the enforcement system discourage copyright litigation and enforcement. This lack of transparency is as it affects right holders, for they are generally in the dark about the cases and ongoing investigations.

[13] NCC, Survey of Nigerian Copyright Piracy. (Abuja: Nigerian Copyright Commission and Food Foundation, 2008)

[14] International Intellectual Property Alliance, (IIPA), LIPA Report, Published by the Nigerian Copyright Commission, June 2008, P. SI.

(D.) Culture

Culture is the way of life of the people within a given community, Culture of the people is a strong factor challenge militating against the enforcement of anti-piracy measures, because the

way and manner people behave affect their lives and will definitely determine the extent of the behavior of NCC officials who are on anti-piracy raids. For example, in the hinter-lands where

the people patronize and are used to buying pirated copies of works at reduced prices, it will definitely be difficult to convince them about the negative impact of piracy and carry out raids.

(E.) Mobility of Officials

This is one of the major and fundamental constraints in the fight against piracy. The NCC departments and units, especially the enforcement departments should have strong, good and mobile vehicles that the officers will use to go on raids. Without these vehicles, effective

surveillance and raids will be a mirage and nearly impossible, especially where the officials should cover more than one locations during the raid.

(F.) Insecurity

Importantly, the NCC officials find it difficult to successfully carry out raids without the police.

This is because of the fear of the unknown in the field of operation. At times the copyright pirates may be aggressive and armed with different harmful instruments, that the officers need

security and protection. Also the issue of insecurity in the country has made it difficult at times

for the police hierarchies to release their men to NCC, and so they give the excuse that they do

not have enough manpower on the ground. This definitely hampers the raid operations, because the officers find it difficult to go alone. This makes the fight against piracy difficult and

consequently the pirates flourish and thrive in their rash doings.

(G.) Language Barrier

This is another challenge facing the NCC in its enforcement programs. Nigeria is a multi-lingual state and there are instances where officers are deployed to operate in an area where they do not understand the language of the natives, consequently, they will not understand each other and the raid operations will be practically impossible because of lack of communication.

(H.) Information and Communication Technology (ICT)

ICT is the world leading technology today, it includes the Internet. The Internet is a global network; it is a network of computer networks and has made the world to become a global village. The Internet by its very nature has vast information in it and various activities take place on the Internet including crimes and torts. Copyrighted works uploaded on the Internet are plagiarized and copied with impunity. It is always common to see surfers at the cyber cafes or in their houses or offices, with few clicks on their computer distributing a copyrighted work to the entire world; some even downloading the works and selling them. This anomaly must be checked. However, to check the above method of piracy which is global and very vast, the NCC officials must be ICT compliant. The commission should train their officers on ICT, so as to use their expertise to curb piracy on the net. Most of the NCC officials are not computer literate. Each of them should have a functional computer connected to the global network, the Internet, so as to go through the Internet from time to time detecting infringers. The NCC has also taken a step in the right direction by forming an alliance with Google, which is one of the largest search chines on the Internet to fight Internet piracy Provision on Punishment under the Copyright Act The penalties on criminal infringernent as provided under S. 2002) of the Copyright Act are to small and may not even be a deterrent to an infringer. This also makes it difficult to convince the police that piracy is a crime that needs immediate and maximum attention.

Section 2002) provides this. Any person who

- a) sells or lets for hire or for the purpose of trude or business, exposes or offers for sale or hires any infringing copy of any work in which copyright subsists or

b) distributes for the purposes of trade or business any infringing copy of any such work:

Or,

c) has in his possession, other than for his private or domestic use, any infringing copy

of any such work, or

d) has in his possession, sells or lets for hire or distribution for the purposes of trade or

business, or exposes or offers for sale or hire any copy of a work which, if it had been made in Nigeria, would be an infringing copy. Unless he/she proves innocent infringing

is guilty of an offence und liable on conviction to a fine of N100 for each copy dealt with. or to a term of imprisonment not exceeding two years or in the case of an individual, to both such fine and imprisonment.[15]

(J.) Favouritism

This is a cankerworm that has eaten deep into the fabrics of the Nigerian society. A competent

official who is good in a particular area of fighting infringement may be left out and the incompetent official sent, because he/she is related to a high ranking person in the government of Nigeria. This definitely hinders successful raids. Also the pirate may be a well known person, that the NCC officer may find it difficult or impossible to enforce the anti-piracy measures. Hence, piracy will continue and remain. The NCC its officers and the government must be firm in this fight and do it without fear or favour.

4.3.3 Achievements of the Commission

In year 2012, the Commission in Lagos, carried out a public burning of seven hundred and twenty two million (722,000,000) units of seized pirated copyright works and contrivances

estimated at six billion, five hundred million Naira (N6,500,000,000). Comprising literary, musical, film works and contrivances, including those from the broadcast industries. In addition, ten million and fifty thousand (10,050,000) assorted confiscated pirated copyright works and contrivances seized from Kaduna State, Kano State and environs with an estimated market value of One billion, four hundred million Naira (N1,400,000,000) were publicly destroyed by burning in Kaduna on 22nd October, 2015. Similarly, Seventeen million, two hundred and sixty six thousand, one hundred and eighty seven (17,266,187) units of pirated copyright works and contrivances seized from Enugu State, Abia State and environs with an estimated market value of Two billion, four hundred million Naira (N2,400,000,000) was destroyed publicly by burning in Enugu on 2nd March, 2016. In the First Quarter of 2017 alone, there were 25 Anti-Piracy Surveillance conducted, 8 Anti-Piracy operations, 1,241,769 in quantity of seizures, N879,835,000 in the market value of the seizures, 3 arrests, 2 secured convictions, 3 Containers (2 containing pirated books, while I had CDs/VCDs/DVDs) all validly seized in Nigeria. This is a succinct analysis of the enforcement and prosecutorial efforts of the Nigerian Copyright Commission, and so far so good, the Commission has done some work worthy of commendation.

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[15] Section 20(2) of the Copyright Act.

4.4 Justification for Copyright Protection

The sole purpose or better still, the major idea behind copyright protection, is to provide incentive for the dissemination of works. This is achieved by granting the owner an exclusive right to exploit his work in a material form. The lay man ideology is that man is entitled to the

fruits of his creative labor as the sweat of a man's brows, and the exudations of a man's brain, are as much as a man's own property as the breaches upon his backside. According to Michelman,[16] "wherever one mingles his efforts with the raw stuff of the world, any resulting product simply ought to be his". Two traditional motions have been moved as the policy basis for copyright protection. These motions have been identified as:

Economic Justification

Under this head, the author has the right to commercially export his work for a limited time free from the burden of competition by the copier. According to Macaulay[17], he explained economic justification as:

> *The principle of copyright is this; it is a tax on readers for the purpose of giving a bounty to writers. The tax is an exceedingly bad one, it is a tax on one of the most innocent and most salutary of human pleasures, and never let us forget, that a tax on innocent pleasures is a premium on vicious pleasures.*

Macaulay's view is based on the social cost analysis, and is rather is rather imprecise as to the question of what the value for the work is. Fisher[18] discussed 4 major theoretical approaches to intellectual property which applies to copyright protection. They are:

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16 Frank Isaac Michelman, "Property, Utility and Farmers: Comments on the Ethical Foundations of Just Compensation Law," Harvard Law Review Vol. 80(6) (1967): 1165-1258.

17 Thomas Babington Macaulay, "Copyright, A Tax on Readers (1841)." http://blog.granneman.com/2006/07/28/macaulay-in-1841-copyright-a-tax-onreaders/. Accessed May 8. 2017

[18] William Fisher, Theories of Intellectual Property In Stephen Munzer (edited), New Essays in the Legal and Political Theory of Property (University of Cambridge: Cambridge University Press, 2001), 168-199.

1. Utilization Approach

Attributed to David Hume, it centers on maximization of net social welfare. In reaching this goal, lawmakers are expected to strike an optical balance between the partially offsetting tendencies to curtail widespread enjoyment of those creations,

2. Labor Theory

This approach focuses on the idea that a person who labours upon resources which not his may have a natural property right to the fruits and the state has a duty to expect and enforce that natural right.

3. Theory of Personality

It is strongly believed that private rights are crucial to the Satisfaction of some fundamental human needs, and as such policy makers should strive to allocate entitlements to resources that best enable people fulfil those needs.

Non-Economic Justification

This is channelled on the hinges of morality. It insinuates that the author of a work is entitled to the fruit of his labour. 'To Breyer[19], the author of the work has 3 basic rights accruing to him by virtue of the fact that he is the creator of the work. He calls them moral justification. These basic rights are

1. Paternity rights: identified as the creator of a particular work and not subject to plagiarism.
2. Integrity rights; the right to protect the alteration of the work by the third party.

[19] Stephen Breyer, "The Uneasy Case for Copyright, A Case study of copyright n Books, Photocopies, and Computer Programs," Harvard Law Review. Vol. N4 (2) (970)) 281-JS5.

3. Publication rights: the right to determine whether or not to publish at all. Brayer argued that the law of torts could provide adequate protection. According to De Francis, the purpose of copyright protection to the copyright system is first and foremost, to encourage creative minds to disseminate these works, and this is achieved by allowing the exclusive right to exploit the work in material form. Breyer's postulation was a challenge to copyright expansionism, which was just entering its modern phase, and was still largely unquestioned in the United States. It became one of the most widely cited sceptical examinations of copyright. In this piece, Breyer made several points:

1. That the only defensible justification of copyright is a consequentialist economic balance between maximizing the distribution of works and encouraging their production.

2. That there is significant historical, logical, and anecdotal evidence which shows that exclusive rights will provide only limited increases in the volume of literary production, particularly within certain sections of the book market.

3. That there was limited justification for contemporary expansions in the scope and duration of copyright Summarily, the whole point of copyright protection is hinged on moral grounds such as the Labour theory and the economic grounds of tax on reader or users of copyright works. In a closer and more articulate view, one might discover that these arguments show little or no difference at all, and it would seem that one justification explains the other. For this purpose, Justification for copyright protection, if succinctly explained, would mean that the copyright owner has a moral right to reap the economic reward for his vagrant intellectual labour.

CHAPTER FIVE

CONCLUSION

3.1 Summary of Findings

Technology has come to stay, Denial of its existence a strong point and worst of all, blanking our human minds against its aftermath makes us vulnerable to the deleterious consequences of this modern time. Consequently, all ramifications of life are strongly affected by the computer, Intellectual property, due to this, has witnessed a new wave of practice. This wave has both positive as well as negative impact on intellectual property, copyright to be specific. It is therefore sacrosanct that the law and the court move alongside the modern wave of technology for justice to be efficiently dispensed. Ron Oliver said:

> *Information and communication technologies (ICT) have become common place entities in all aspects of life. Across the past twenty years, the use of ICT has fundamentally changed the practices and procedure of nearly all form of endeavor within business and governance. Within education, ICT has begun to have a presence but the impact has not been as extensive as in other fields Education is a very socially oriented activity and quality education has traditionally been associated with strong teachers having high degrees of personal contact with learners. The use of ICT in education leans towards more student-centered learning settings and often, this creates some tensions for some and students. But with the world moving rapidly into digital media and information, the role of ICT in education is becoming more and more important and this importance will continue to grow and develop in the 21st century.*

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1 J.O. Asein, "Protection of Computer software under Nigerian Copyright" A decade of Copyright law in Nigeria. Published by Nigerian Copyright Commission (N.C.C).

2 Ron Oliver, "The role of ICT in Higher education for the 21" century: ICT as a change agent for Education." Or http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.83.9509. Accessed January 18, 2017

Nigeria's stance was expressed in the Supreme Court case of Esso West Africa Inc. v. Oyegbola

when his Lordship Coker JSC affirmed without restriction: "The law cannot be and is not Ignorant of modern business as methods and must not shut its eyes to the mysteries of the computer". Furthermore, the thorny subject of copyright in the prevalent digital universe will certainly continue to be the top of hot debate More so, given the small market size of many developing countries, the availability of copyright protection may be most significant from a commercial standpoint in export market rather than domestically, notwithstanding the fact that

author and companies from developing countries may face insurmountable costs when actions to enforce their rights in such market is required. And, on this point, being that the world is now a global village, and countries are extending the ambit of protection on work that are on the cyberspace, it would be rather abnormal and irrational if the largest black country in the world does not join this moving train as fast as possible.

5.2 Recommendations

At this point, it would be important, flowing from the major discourse of copyright and copyright infringement in this work, to discuss and provide very essential recommendations which may validly assist in copyright protection as a matter of undying relevance in the fast evolving Nigerian society. These recommendations are:

1. Creation of Awareness Program on Intellectual Property Rights (IPR)

Efforts worthy of recognition are slightly being introduced to create adequate awareness on intellectual property issues in the nation, through the inclusion of the subject matter as a course of study in syllabus of most institutions of learning and the dissemination contained in patent documents to researchers and scientists. The assistance of the WIPO is

however, still needed in the area of training, and the provisions of facilities for enhanced program delivery. The role of the media in the realization of this goal cannot be over emphasized, as they hold in their hands, the most potent instrument of information distribution and dissemination,

2. Enforcement of Intellectual Property Laws

The WIPO and other International agencies are enjoined to collaborate with developing countries like Nigeria in the enforcement of the legal regime on IPR, as this will assist in combating infringements, piracy, counterfeiting, passing off and product faking that have bedeviled the economies in developing nations and has forced some intellectual property owners out of business.

3. Review of Intellectual Property Laws

The WIPO and WTO should continue their assistance in a bid to further help Nigeria review and update their domestic laws on intellectual property right (IPR) to international standards. Much is being desired in this respect, especially now that Nigeria is making the move to review its Laws. The Nigerian Legislature must brace up and face the challenge of copyright piracy and the protection of online generated materials in general. It is highly ridiculous to note that the documents being referred to under this head are merely persuasive and not binding on courts in Nigeria.

4. Provision of Incentives for Investors

A lot of great and brilliant potential exist within this nation, and a lot of individuals are ready to come up with unique inventions, if only better incentives are put in place to help develop their inventions. The Nigerian government is already making adequate effort in this regard,

but assistance is also needed from the International communities in form of grants and other financial support.

On a final note, it should be said that lows to enforce property rights work only when property owners take reasonable steps to protect their property in the first instance. If a homeowner fails to buy looks for his front door, should towns solve the problem by passing more laws or hiring more police? Even when there are adequate and efficient laws, firms dependent on the network must make their own network, information and computer systems secure. And where laws are months or yours away, as in most countries like Nigeria, this responsibility is even more significant

5.3 Conclusion

From the propositions in this discourse, it is pertinent to propose that a culture of respect of copyright should be built and it should address the problem of reliability, integrity, transparency and responsibility. This must be done also from the perspective of the necessity to respect the rights of the users, consumers, and of course, the responsibilities of each one of the actors of the digital chain. The scope and nature of the exceptions to copyright protection should be defined so that the balance reached in the analogical environment be preserved and re-affirmed in the cyberspace.

It is obvious from this work that intellectual Property regimes are generally complex arrangements that seek to satisfy interests which are rather tripartite in nature. On one hand, it strives to satisfy the inventor or the owner by providing adequate protection for his work or invention and conferring on him absolute right to exclude others from making unauthorized benefit from it. It is this right that permits the owner to take action against any person exploiting his invention without agreement. This is primarily because, as we have seen in the course of this work, the right allows him to derive material benefits to which he is entitled to

as reward for his intellectual efforts and work and a times as compensation for the expenses which his research and experimentation leading to the invention had entailed. Secondly, it aims at ensuring that nations stand to benefit immensely by waxing stronger in the global economy as a result of the intellectual wealth of their nationals.[3] In other words, while the individual right to his work or invention is guaranteed, the industrial and technological base of the nation is also assured. There is no doubt that the rat race for development in industry and technology as a result of globalization affects and is affected by intellectual property; a country's economic and social development nowadays is directly hinged on the strength of its intellectual property protection. After all, encouragement of intellectual creation is one of the basic perquisites of all social, economic and cultural development. This explains the various national laws and the general interest of nations especially developing ones, in harnessing as much as possible the economic rewards of the intellectual activism of their nationals.[4] Then on the last end of the tripartite structure stands the ultimate consumer, whose interest too would have to be taken in to consideration especially as the use of, and the protection of inventions and creations, is a key means of ensuring better and more enriching life for instance, the Patent system that does not respect and balance the need of the creators and consumers is likely to deny the later some essential resources and services. So, striking a balance between and among these various interests has been the major preoccupation of the intellectual property regimes. The ultimate goal. is to build a better world for all, where technologies are at the optimum service of human beings and where our creative diversity is so recognized, respected and protected.

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[3] WIPO Intellectual Property Hand Book".http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf. Accessed December 1, 2016.

[4] Ibid

[5] J. Peter Grooves, Source book on Intellectual Property (London: Cavendish Publishing limited, 1997). 14-16

On a final charge, one would have to hope that the government of the day would make it a major priority to guarantee copyright protection in Nigeria, otherwise, it would result in an ill-fated affair for the intelligent minds that have painstakingly and purposefully created something new, and most importantly, unique.

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