COPYRIGHT INFRINGEMENT IN NIGERIA: THE CHALLENGES OF ITS ENFORCEMENT

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JUNE 2024

CERTIFICATION

I, **Daniel Osan EDEDE**, with Matriculation Number **LAW1504299**, hereby certify that apart from references to other persons' works which have been duly acknowledged, the entire work is a product of my research, and this project has neither in whole nor in part been presented for another degree, elsewhere.

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APPROVAL

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DEDICATION

This project is dedicated to the Almighty God who saw me through my academic years in the Faculty Law, University of Benin. I also would dedicate this project to my patents, Mr. and Mrs. Edede for their love and support. Lastly I dedicate this project to myself for my passion and enthusiasm on the subject matter, as well as the legal field, Intellectual Property Law.

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LIST OF ABBREVIATIONS

UDHR	-	Universal Declaration of Human Rights

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ABSTRACT

The concept of Copyright has its foundational purpose on the reward for hard work, that one should reap where he sows and vice versa. However the achievement of this purpose has proven to be more challenging than envisaged. Ever since 1988, the Copyright has made provisions for bodies known as collective societies to go about this function of Protection of copyright, but it might be too generous to say they have done a job well done.

A comparison of the Copyright enforcement in Nigeria with that of other foreign states like the US would see that these foreign states have higher cases of litigation for copyright. This might beg the question of why this is the case in the first place. Nevertheless the challenges still persist in these foreign states. As far as Nigeria is concerned, would the Copyright Act, 2022 help to ameliorate these challenges, giving us better results in terms of enforcement or is this just another chapter from the past?

Supposedly, the advent of the internet would no longer be a burden on the administrrability and enforcements of copyright in Nigeria, especially with the newly promulgated Copyrights Act of 2022. However will this be a conclusion too early made? On the surface level we can see the steps being made by the Copyrights Commission in collaboration with the Nigerian legislature to ensure that these rights are better protected, a critical look will also show that the basic problems might still remain unsolved. Could it be that these laws along with the functions of the NCC and the Collective societies , even go against the wishes of the artist they claim to protect? In as much as the purpose for copyright is to reward creativity, these creatives can only be rewarded with respect to their popularity, but if the Copyrights Act works against this popularity how then can we achieve the aim of reward?

CHAPTER ONE

1.0 Introduction

The concept of Copyrights protection is in fact a global administrative concept and cannot be over emphasized. This is because of the advantages a country can enjoy due to its diligence on its efforts to protect innovation and creativity as well as the consequences it can suffer for not doing so. Nigeria as a country has an important responsibility in the protection of innovation and the creative capability of its citizenry if ever its hopes to compete fairly in the ever growing world economy. This of course can be done through the ambits of the legislation and statutory enactment such as we have with the copyrights act. Nevertheless, there is an even greater responsibility to see that the conditions, guidelines, and regulations in such enactment are followed up to ensure strict obedience, otherwise such enactments would only be a toothless bull dog. It can be said that there is nothing more criminal than the stealing of a man's ideas. That holds true as nothing can with greater propriety be called a man's property than the fruit of his brain. Therefore, the Nigerian legislative, executive and judiciary arm of government is at war, and even constantly so, against vices such as piracy, adulteration, unauthorized performances and publications as well as other copyright infringements which would seem to even evolve with time.

Specifically, Nollywood, Nigeria's film industry, is ranked to be the second-largest film industry in the world after Bollywood. It produces over 2,500 films annually and contributes about 2.3% to the country's GDP. Therefore, just as it is with the Agricultural sector, and the Oil sector which seem to be the major focus of the Nigerian government for the generation of both its internal and external revenue, a strategic look into the intellectual property sector would

ultimately see to the diversification of the Nigerian economy as well as the harnessing of all the resources it is potentially meant to reproduce, both internally and externally. Further, in recent years we have seen the rise of several Tech companies in Nigeria such as Flutter Wave, Opay, Moniepoint, Patricia and others which has aided in the upsurge of financially independent individuals in our society, but has also help in making life easier and better for the citizens at large. This feat should not just be encouraged, but it should be protected as well.

Now, Piracy and intellectual property theft have led to massive revenue losses for artists, producers, and distributors, making it difficult to recoup investments and make profits. This has also affected the industry's growth, discouraged creativity, and robbed talented artists of their livelihoods. Therefore, more enforcement is needed from the government to combat these issues.

1.1 Statement of Research Problem

Back in 2011, the most-read article on the whole of ABC Online, was "The Case for Piracy" which discussed all the reasons why people 'pirated' copyrighted content and how the content industry was partly to blame. Evidently it struck a chord with the internet world. But in some areas the content industry seems to be catching on. For a long time, many have said that having high numbers of "illegal downloads" equates to strong sales and now there are some compelling figures to back those claims up. It raises the question, would some content creators be better off not spending their time and money suing (and threatening to sue) everyone, and lobbying governments to pass controversial laws, and instead foster an environment where content went free and viral to some degree.[1]

[1] Nick Ross (8 April 2014). "Game of Thrones: Another case for piracy". ABC technology+games. ABC. Accessed 20, April, 2024.

The main aim of the Copyrights Act is the protection of the right of usage of creative works as well as being a platform for the enforcement of the financial rewards of those works. This has led to the establishment of the Nigerian Copyrights Commission (NCC) as well as the authorization of the Music Copyright Society Nigeria (MCSN), a collective society in Nigeria in charge of the protection and monetization of intellectual properties of copyright in Nigeria. In fact, the promulgation of the Copyright Act 2022, on the.... would go a long way to show that Nigeria does not just have a vision of protecting intellectual property and rewarding creativity, it is also keeping itself up to date with current Copyright protection challenges and working with its limits to tackle them. Nevertheless, we would see that what ordinarily was intended for the advantage of creatives would come with its own disadvantages. The fact that there is a restriction to the use and playing of artistic songs in public places might pose a challenge for artist who would want their songs to be played and heard. In fact, is would affect those who might refer to themselves as upcoming artists as the consciousness on the need for restriction in the playing and display of creative works might discourage consumers and this would, in the long run, discourage the creatives who want to " Blow ".

Nevertheless, we must not rule out the fact that a country like Nigeria still suffers from a high level of unawareness as to the policy of copyright infringement and its implications. This has led to an increased infringement rate on a daily basis from unsuspecting and oblivious consumers. To say that a repost of a water marked photograph for the sake of content creation might be an ambit of the law, far too wide in scope, considering our present day disposition of daily content on the internet. How then do you bring an infringer to court when the vast majority of the population are infringers?

That notwithstanding, we would not fail to commend the efforts of the Nigerian Copyrights Commission, as even though the policies rendered might not be in perfection, we can also say that steps are being made to ensure a forward and not a backward movement, and if for any reason this current law fails to meet the present demand, in terms of utility, feasibility and enforceability, then there are also statutory allowances that allow for a restructuring of the legal frame work.

1.3 The Ideology behind the Protection of Intellectual Property

The object of copyright is to protect creative individuals such as authors and artists from having their work copied or reproduced without their consent.[2] Section 1 of the Act states the objectives of this Act are to protect the rights of authors to ensure just rewards and recognition for their intellectual efforts. Therefore, under this sub-topic we would be answering the question of why it is important that intellectual property is protected in the first place? Therefore, this topic would be treated under Morality and Economy or Moral rights and Economic rights.

1.4 The Moral Theory / Moral Rights

The concept of Moral rights can be first traced to France (termed 'droit moral')[3] and Germany. These rights are said to include the right to publish, right to attribution, right to integrity and right to retract. Moral rights came to the fore globally following the review of the Berne Convention by the Rome Act in 1928.

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2 The British case of *LB (Plastics) Ltd. v. Swish Products Ltd* where the court held that "one man must not appropriate the result of another's labour". [1979] R.P.C. 551, [1979] F.S.R. 145 (H.L.)

3 *Carter v. Helmsley-Spear (S.D.N.Y. 1994)*

Now everyone should have the right to the ownership of property as well as the usage of such property. [4] It would suffice to note here that the concept of the right to property ownership is not just a national concept but it also is an international concept. Therefore, it has been clearly stated, according to the UDHR that " Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.[5] Also, we see the concept of moral rights of an author upheld by the Copyrights Act as it gives the author the right to claim authorship of his work and also to seek relief wherever such rights has been breached.[6] Therefore, just as the law would go against the stealing of property from the original owner, so also does the law go against the theft of intellectual property. [7] Moral rights protect the product of an author's genius and labour from harmful intrusions by publishers; that is, those who make the author's work-product public.[8] Under section 66 of the new Act, every performer should have the right to be identified as the owner of such performance or work.[9] It goes further to state that such identity should enable the performer to be able to prevent distortions or unauthorized manipulations of his work.[10]

Under the precepts of the moral theory it is posited that individuals who have taking out time to create works out of their own skill, using original and natural resources should enjoy some form

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4 This we would see, is in line with Sections 43 and 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

5 See Section 17 of the Universal Declaration of Human Rights, (UDHR) 1948

6 See Section 14 of the Copyrights Act 2022.

7 the concept of who a copyright owner is is discussed in the preceding chapter

8 Michael B. Gunlicks, (supra) p. 607-608.

9 Section 66 of the Copyright Act 2022

10 Section 66 of the Copyrights Act 2022

of autonomy in such works.[11] Kant and Hegel recognize a moral claim to property rights over an object because individuals exercise their autonomy and will through the object. Objects enable us to make choices, which is a compelling reason for giving us rights to control the object. Under this theory of property, then, rights exist to effectuate a person's basic human desires. This philosophy applies well to intellectual creations. Intellectual creations manifest a person's personality and exercise of will, even more so than a physical object. On this ground, you have a moral claim to control the use of the creative work. Therefore, autonomy theory recognizes an individual's moral claim to property rights in intellectual creations.

1.5 The Economic Theory / Economic Rights

Those who are good with what they do are most likely to be paid for their craft. This infact is an incentive to the time spent as well as the labour it took to achieve such work. If it is that every workman is deserving of his wages,[12] then we can also say that everyone who has put in some work in the attainment of intellectual property in deserving of some pay as well. Except, of course, this is rejected by the work man himself. Therefore, the main concern here is in the protection of the right of the intellectual property owner to make money out of his property. The owner of a copyright in a work can use the law to stop anyone else from stealing the fruit of his internal labour by copying the work, publishing it , selling or importing unauthorized copies.[13]

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[11] The writings of Immanuel Kant and Georg Wilhelm Friedrich Hegel have given rise to the autonomy-personality theory

[12] 1Thimothy 5 : 18, a reference from the Holy Bible

[13] see Paul Marett, Intellectual Property Law, pg 9

The protection of intellectual property is quite an important subject as it affects both the individual and the state as well. This is because, where innovation and creativity is discouraged due to theft, there would be some hindrance to the development of that state. This is why even the Criminal Code of Nigeria, penalizes such Act of infringement as it is not just a matter of individual responsibility but a matter of national concern.[14]

Therefore robust Intellectual Property rights must exist before economic exchanges can take place. Without rules on ownership and transfer of Intellectual Property it would be quite difficult to engage in voluntary commercial exchanges. Industries such as the Nollywood industry of Nigeria would have its major challenge as piracy, a copyright infringement strategy that goes ahead to not only rub such creatives of their financial reward, but goes ahead to rob the country at large of its possible IGR as the Nollywood industry is a major employer of labor in Nigeria.

1.6 Historical Background and Development Of Copyright

The historical development of Copyright in Nigeria would not be fully exhausted without first promising the discuss on the English law from which the Nigeria first derived its existence. This is sole because Nigeria was once a colony of England. This was the country in practice of English laws as we have it even with some of the Nigerian statutes today.

The Era of printing brought about the need for some protection in the area of literary and artistic works, but this was not until the 18th century during which the notion of copyright was birthed Stationers, pioneers of the printing industry, had to seek for measures of protecting their works

[14] see sections 491 and of the Criminal Code Act, Cap C. 38 Laws of the Federation of Nigeria, 2011

against copiers.[15] This led to the crown granting these Stationers some protection against the importation of foreign books, this happens in 1534. Following suit was a grant of a Royal charter to these Stationers by the Queen, in 1556. For this reason, these companies had the power and authority to search and destroy books which would be printed in contravention to the statutory stipulation as well as proclamation. A system of licensing came into being. By the empowerment given by the statute to these Stationers, authors and publishers were obligated to lawfully register printed books with the company.

Nevertheless, the mass production which took place during the early years of the 18th century, that saw a huge volume of literary and artistic works being adequately entrenched in statutes.[16] would foster the need for a broader scope of protection which would protect Stationers as well as those who intended to go into the business of mass production. The broadening of the legal scope of protection was duly needed by printing entrepreneurs who sought to protect their already published works authors who had already assigned the rights in the work to other persons with the risk of such works being reproduced unlawfully. Therefore, inasmuch as the Stationers where intended as the main beneficiaries of the provisions of copyright, as they were the pioneers for such protection, the authors themselves would enjoy a net advantage to this statutory invention.

In line with this development, the British Parliament passed the Copyright Act 1710 into law, the first law on copyright. This was carried out in during the reign of Queen Anne, the Queen of England. As it's main feature, this legislation gave authors the exclusive right to the Printing of their books for a period of 14years from the date of first publication. This law was amended by

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15 W Cornish and D Llewelyn, Intellectual Property: Patents, Copyrights, Trade Marks and Allied Rights, Sweet & Maxwell (2007) 375 .

16 The industrial revolution that started in Europe engendered mass production of goods.

the promulgation of the Copyright Act 1814, which extended the statutory right to publish books to 28 years or the author's life, whichever was longer. Again this law was further amended by reason of the enactment of the Literary Copyright Act, 1842. This Act further increased the life span of the copyright to the life of the author, and to seven (7) years after his death or 42 years from the date of the first publication. This extension in time had its premise on the consideration of heirs and successors-in-title.

Yet again the Act was amended and the Copyright Act of 1911 was promulgated. This became the first copyright law in operation in Nigeria. This statute was made applicable pursuant to section 25 of the Copyright Act 1911 and it saw the protection of all original literary, dramatic, musical and artistic works. Now even though this Act was further amended in 1956 to the Copyright Act of 1956, in England, Nigeria saw no need to replicate same as we could now exercise this power having been independent. Nevertheless by the year 1970 Nigeria would have the Act of 1911 repealed for a new one, as the first indigenous Copyright protection in Nigeria.[17]

1.7 The History of the Nigerian Copyright Act

The 1970 Copyright Act of 1970 was basically a representation of the provisions of the Copyright Act of 1970 as it provided the tenure of copyright protect of literary, musical and artistic works to last for 25 years after the end of the year in which the author died. This protection also cover the ambit of cinematograph films and photographs and was to last for 25 years after the end of the year in which it was first published. Sadly, there was no statutory recognized body for the protection of copyright but the 1970 Act made provisions for the life span of broadcast and sound recordings to be 25 years after the end of the year in which the

[17] This was promulgated by the then Federal Military Government as the Copyright Decree

broadcast or recording was made. Nevertheless, an outcry for a reform of this law was imminent as the statutory provisions could no longer cater for the Copyright needs of the changing society. This of course led to the repeal of the Act in 1988.

The Copyright Act of 1988 repealed the Copyright Act of 1970.[18] Though a substantial reproduction of the former Act, the 1988 Act was enacted with the sole reason to strengthen the existing regime of copyright Act. Therefore, through this Act the scope for protection and institution of enforcement mechanisms had a wider purview. A further amendment of the Act was carried out in 1992 and 1999.

1.8 International Treaties on Copyright

There are two principal international treaties which regulate copyright protection, although there are some complimentary treaties: The Berne Convention and the Universal Copyright Convention (UCC). These Conventions do not provide automatic global protection of an author's works supposedly under a supranational copyright law. Irrespective of what international agreement a country adopts, protection against infringement depends on its national laws. Although the conventions do not establish an international copyright regime, they provide simplified requirements for obtaining foreign copyright protection. These Conventions accomplished this goal by establishing convention rights which may be claimed in all member countries, regardless of any other national legislation

The UCC operates on the principle of "national treatment," which requires all member states to accord the same protection to foreign works eligible under the Convention as that granted its

[18] This was promulgated as Decree No.47 of 1988 and became Cap68 Laws of the Federation of Nigeria 1990, now Cape C28 Laws of the Federation of Nigeria 2004

own nationals' works. Additionally, the Convention specifies certain minimum legal obligations for each contracting state. There are six important elements of the Convention. The major one is under the national treatment principle which accords protection of the rights of authors and published works of nationals of a contracting state the same protection as that which the contracting state accords to works of its nationals. In addition, it ensures that the Berne principles are not undermined

Similarly, the Berne Convention is based on the principle of national treatment and compliance with the requirement of the convention. The Convention protects published or unpublished works of an author who is a national of a member state. The protection extends to a work of a non-national of a member state provided the author first published the work in a member state, or may have done so simultaneously in a non-member and member states.

Other complimentary treaties include the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, (Rome Convention). This convention provides international protection for record producers, as well as performers and broadcasters. Brussels Satellite Convention aimed at combating the misappropriation of satellite signals; Geneva Phonograms Convention which protects against unauthorized duplication of sound recordings; WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty aimed at bringing copyright protection into the digital age and the TRIPs Agreement which incorporates comprehensive enforcement of rights to deter piracy.

CHAPTER TWO

CONCEPTUAL CLARIFICATION

2.1 What Is Copyright?

Copyright can simply be defined as the right to copy a creative work. It has been defined as " The exclusive right to reproduce and authorize others to reproduce artistic, dramatic, literary or musical works .[19] However this definition would not sufficient in scope as the concept of copyright encompasses alot more. Perhaps a more encompassing definition can be given thus; According to the Black's Law Dictionary[20] copyright is defined as;

> " A property right in an original work of authorship (including literary, musical, dramatic, choreographic, pictorial, graphical, sculptural, architectural works and sound recordings, fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform and display the work."

Section 2[21] provides the eligibility criteria to enjoy the protection of the Nigerian Copyright Act thus:

a. Sufficient effort must have been expended on the work to give it an original character

b. the work must have 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

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19 Oxford Dictionary of Law, 6th Edition, Oxford University Press, 2006 .

20 Black's Law Dictionary, 8th edition ed Bryan Garner, Thomson West, 2004

21 The Copyright Act 2022

directly or with the aid of any machine or device. The Nigerian copyright law will not protect mere ideas/concepts but will protect product of ideas that are in the form of literary work, artistic work, musical work, cinematographic film, sound recording or broadcast, fixed in any medium of expression.

2.2 Who Is a Copyright Owner

Therefore, a copyright owner is someone with the property right to an original work of authorship. He is that person to which the copyright has been bestowed. According to the Copyright Act, the status of ownership is initially vested in the author of the work.[22] This status comes with its privileges and benefits as it is only such persons with the copyright in a work that can bring up an action for infringement. Furthermore, a copyright owner might not necessarily be the one who created the work, but is that person of whom the law recognizes as the statutory owner of such work taking for instance the employer and employee relationship. Therefore the Act [23] embeds the ownership of works done during the course of employment to the employer. Therefore, a copyright owner could be an individual, a Brand, a group of persons or a corporate body.

2.3 What is Copyright Infringement?

Copyright infringement is the use of a work protected by copyright without permission for usage. It is the use or production of copyright-protected material without the permission or authorization of the copyright holder. It entails the unauthorized or unlicensed exercise of the

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[22] Section 28 of the Copyrights Act 2022

[23] Section 28 (2) of the Copyright Act 2022

exclusive rights of the copyright owner.[24] Copyright infringement means that the rights afforded to the copyright holder, such as the exclusive use of a work for a set period of time, are being breached by a third party. Music and movies are two of the most well-known forms of entertainment that suffer from significant amounts of copyright infringement. Infringement is hence the improper use of a patent, writing, graphic or trademark without permission, without notice, and especially without contracting for payment of a royalty. Therefore, a work protected by copyright does not have to be registered with any government institution in order to gain legal protection. This is so because copyright is concerned with the copying of actual words or other physical material, as opposed to reproduction of ideas.[25]

2.4 Scope of Infringement

2.4.1 Direct Infringement

In copyright law, direct infringement occurs when a person, without authorization, reproduces, distributes, displays, or performs a copyrighted work, or prepares a derivative work based on a copyrighted work.

2.4.2 Indirect Infringement

Indirect infringement means dealing with unauthorized reproductions of works, rather than actually reproducing the material itself. It means dealing with works that are products of direct infringement. Its main forms involve infringing copies being imported without the license of the copyright owner, or sold, hired out or otherwise made the subject of trade. Therefore, someone

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[24] J.O Odion and N.E.O Ogba, Essays on Intellectual Property Law.

[25] Jantjies, 2007

who might have not made photocopies of the work but could have engaged in the selling or the buying of such works for commercial purposes, would be deemed, by law, an infringer.

2.5 Who Is A Copyright Infringer?

A copyright infringer is therefore any person who, without permission or authorization, uses or produces a work already protected by copyright. Put differently, anyone who does or causes someone to do an Act which violates the exclusive rights of a copyright owner like the importation of works which a infringing copies or the buying or selling of copies of works which are infringements of copyright would be deemed to be a copyright infringer.[26] This is in line with section 36 of the Copyright Act 2022

2.6 The Nigerian Copyrights Commission

This institution was established under section 34 of the Copyright Act (Cap C28, Laws of the Federation of Nigeria, 2004) the Nigerian Copyright Commission was inaugurated on 19 August 1989, first as the Nigerian Copyright Council.[27] It was elevated to the status of a commission in April 1996 and this administrative change was confirmed by the Copyright (Amendment) Decree 1999. Furthermore, this Department is responsible for enforcing the Copyright Act. the Act provides for criminal violation of the law. These are offences which are punishable by terms of imprisonment in most cases. Any person who violates these provision will be investigated by operatives of the Commission called Copyright Inspectors.

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[26] This is interestingly so as many people get involved in copyright infringement without even being aware of it. This is fact would be one of the challenges of copyright enforcement we would be looking at later in chapter 3 of this literature

[27] Section 34 has now been replaced by Section 77 of the Copyright Act, 2022

2.7 Collective Management Organizations (CMOS) and Collecting Society

These are corporations or a bodies which are in charge of the management of intellectual Property works to ensure its security from infringement as well as to fully utilize such works financial advantages.[28] Also we can describe a collecting society as an organization that licenses and manages copyrighted works on behalf of copyright owners. Song writers and composers become members of collecting societies to collect royalties from use of their works. Some examples of Collecting societies are the Performing and Mechanical Rights Society (PMRS), Reprographic Rights Organization of Nigeria (REPRONIG), Audio Visual Rights Society (AVRS). Before a corporation body can operate within the ambits of a collecting society, it must first be registered as such with the Nigerian Copyright Commission (NCC) [29].This registration empowers such Collecting society to bring actions of infringement on behalf of Copyright owners. [30]

2.8 Copyright and other Intellectual Property Rights

2.8.1 What is Intellectual Property?

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial

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[28] The Collective societies has been classified by the Copyrights Act, 2022 as Collective Management Organizations and we can see this under sections 88 of the same Act

[29] This is in line with the dictates of section 88 of the Copyright Act, 2022, as it also lists out the requirements to be met by such societies to achieve a successful registration

[30] This was held by the court in the case of *Musical Society of Nigeria (Guarantee) v Adeokin Records & Others* (2007) 13NWLR (pt 52)

benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.

Supporters of intellectual property laws often describe their main purpose as encouraging the creation of a wide variety of intellectual goods.[31] To achieve this, the law gives people and businesses property rights to certain information and intellectual goods they create, usually for a limited period of time. Supporters argue that because IP laws allow people to protect their original ideas and prevent unauthorized copying, creators derive greater individual economic benefit from the information and intellectual goods they create, and thus have more economic incentives to create them in the first place.[32] Advocates of IP believe that these economic incentives and legal protections stimulate innovation and contribute to technological progress of certain kinds.[33]

The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is "indivisible", since an unlimited number of people can in theory "consume" an intellectual good without its being depleted.[34]

Additionally, investments in intellectual goods suffer from appropriation problems: Landowners can surround their land with a robust fence and hire armed guards to protect it, but producers of

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31 Goldstein & Reese (2008), p. 17

32 Goldstein & Reese (2008), p. 17

33 "The Role of Intellectual Property Rights in Technology Transfer and Economic Growth: Theory and Evidence".

34 Moberly, Michael D. (2014). Safeguarding Intangible Assets.

information or literature can usually do little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of intellectual goods but not so strong that they prevent the goods' wide use is the primary focus of intellectual property law.

2.8.2 Types of Intellectual Property

2.8.2.1 Patent

A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document. One of the most notable patents was for the personal computer, filed in 1980 by Steve Jobs and three other employees of Apple Inc.[35] King C. Gillette patented the razor in 1904. It was dubbed a "safety razor."[36]

Garrett Morgan was granted a patent for the traffic light in 1923. The patent for the television was issued in 1930 to Philo Taylor Farnsworth for the first "television system."[37] At age 21, Farnsworth had created the first electric television image and went on to invent an early model of the electronic microscope. [38]

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35 https://patents.google.com/patent/USD268584S/en

36 https://patents.google.com/patent/US775134A/en

37 United States Patent and Trademark Office. “Of Courage and Caution.”

38 National Inventors Hall of Fame. “Philo Taylor Farnsworth.”

2.8.2.2 Trademarks

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when artisans used to put their signature or "mark" on their products.

Coca-Cola is one of the most famous trademarks in the world. The company was founded in 1886, and its distinctive red and white logo has been used since 1887. The company sells over 1 billion bottles of Coca-Cola a day, and the brand is worth an estimated $74 billion. Another example would be Nike, being a global leader in athletic apparel and footwear. The company was founded in 1964, and the Nike swoosh logo was introduced in 1971. Nike generates billions of dollars in revenue annually, and its products are worn by some of the world's most famous athletes. The relevant law that governs Trademark in Nigeria is the Trademarks Act, Laws of the Federation of Nigeria 2004 (LFN 2004). This article explains the procedure for the registration of trademarks, enforcement, and remedies for the infringement of trademarks in Nigeria. [39]

2.8.2.3 Industrial Designs

An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color. An excellent example of an industrial design is the Coca-Cola 'Contour' bottle which is recognized by millions across the globe and is used on a daily basis by many people every day. The design is immediately recognizable and this has been the case for over 100 years. The first design originated in the 1900's when it was first

[39] https://insights.afriwise.com/blog/trademarks. Acessed on the 5, may,2024

introduced to the public. This industrial design was initially created by Coca-Cola with the help of 'The Root Glass Company' of Terre Haute, Indiana and received an enthusiastic reception from Coca-Cola being released to the thirsty public in 1916.[40] Industrial design is generally protected by registration with the Nigerian Patents and Designs Registry. The Patents and Designs Act governs the registration of industrial designs and according to the Act, an industrial design is registrable if it is new and not contrary to public order or morality.[41]

2.8.2.4 Copyright

As has been earlier stated in the literature, Copyright in an intellectual work is the exclusive right of the author of the original work to control or enable the doing of the whole or a certain specifically stated acts in respect of the whole or a substantial part of a work , either in its original form or in any other form recognizably derived from the original form but subject to certain statutory exceptions.[42] Therefore anyone who has not obtained a copyright in a work is precluded from using such works as could only be used by a copyright owner. Let's take for instance, someone without authorization from the copyright owner, sells a work, broadcasts a work or makes multiple copies of that work, such a person would be liable.[43] Furthermore, Copyright is a property right. It is a piece of intangible personal property, just like every other

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40 https://www.imaginationfactory.co.uk/blog/post/16, accessed 5,may,2024

41 Adeola Austin Oyinlade, "How to Register Industrial Designs in Nigeria https://www.mondaq.com/nigeria/patent/1428036/ accessed on 6, may, 2024

42 J.O.Odion & N.E.O. Ogba, Essays on Intellectual Property Law, 2010.

43 See section 36 of the Copyrights Act 2022, which lists out the various ways by which a copyright can be infringed as it gives premium importance to authorization . This regulation applies to not just copyrights by to other intellectual properties as well. See Section 15 of the Patent and Designs Act 2004 as it deals with infringements on industrial designs

intellectual property and it also may be transferred to a new owner by sale, gift or bequest.[44] This right can also be licensed for other persons to use. Now, where two or more authors, in collaboration, produced an intellectual Property work worthy of a copyright, then there would be said to be a co-ownership. This could be another term for joint authorship. This is mostly the case where the contributions made by each author is not distinct or separable.[45]

2.8.2.5 Piracy

Originally piracy is an act of robbery or criminal violence by ship or boat-borne attackers upon another ship or a coastal area, typically with the goal of stealing cargo and other valuable goods and those who conduct acts of piracy are called pirates. However, with the advent of printing and printing presses, this word has seen a gradual process of change in its meaning and connotation.

Therefore, Piracy with respect to copyright and copyright infringement is simply the unauthorized use or reproduction of another's work. This is significantly prevalent mostly in the Literary and audio-visual industry in Nigeria.

Piracy traditionally refers to acts intentionally committed for financial gain, though more recently, copyright holders have described online copyright infringement, particularly in relation to peer-to-peer file sharing networks, as 'piracy'.[46]

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[44] . Paul Marett, Intellectual Property Law, pg 23.

[45] This amongst others was the reasoning of the court in the case of *Donoghue v Allied Newspaper Ltd* (1938) Ch 106

[46] Nwogu, 2015: p. 118

Piracy, infact, is a global problem, although more prevalent in developing countries like Nigeria, and has been recognized worldwide as an enemy of creative arts, intellectualism and creativity. Some various forms of piracy would include;

(i) Book Piracy

Book piracy is the reproduction and distribution of copyright books on a commercial scale without the consent of its owner. This we can see in the unauthorized printing and selling of books at cheaper rate, to the detriment of the original author. This in fact is very prevalent in Nigeria.

(ii) Music Piracy

Music piracy is the reproduction and distribution of copies of musical compositions and works composed for musical accompaniment protected under the copyright law on a commercial scale, without the authority of the copyright owner.

(iii) Cinematography Film Piracy

Hence, cinematograph film piracy is the unauthorized and illegal reproduction and distribution of copies of copyright protected films/movies. This is done by burning original movie copies into multiple disc and selling at cheaper rate. This is in fact one of the strongest challenges faced by the Nigerian Nollywood industry.

(iv) Broadcast Piracy

Broadcast piracy occurs when a person downloads copies or reproduces a substantial or the whole part of a radio or TV broadcast and sells to the public.

2.9 Criminal Liabilities for The Infringement Of Copy Right

The infringement of copyright is not just a moral wrong; neither is it just a civil offence. It is an offence punishable under the Criminal Code.[47] This is because, in most cases, the Act of copyright infringement is not just a mere act of theft from an individual or corporate body, it is also an act of theft from the state.

2.10 Judicial Remedies to the Infringement of Copyright

2.10.1 Court jurisdiction

When dealing with the question of jurisdiction, we ask ourselves the question of what court is legally recognized for the hearing of matters in relation to copyright and its infringement. The Copyrights Act clearly states that the Federal High Court shall have exclusive jurisdiction for the trial of offences and civil actions arising from the Act.[48] This mandate is further given legality through the Constitution as it states thus;

"Notwithstanding anything to the contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters...any Federal enactment relating to copyright, patent, designs, trademarks and passing-off, industrial designs and merchandise marks, business names, commercial and industrial

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47 Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2010 herein referred to as the Criminal Code (C.C)

48 See Section 103 of the Copyright Act 2022.

monopolies, combines and trusts, standards of goods and commodities and industrial standards..."[49]

2.11 Conclusion

This chapter gives us more detailed definitions and explanations about the various concepts surrounding the challenges of the protection of copyright. Through this chapter we have been able to distinguish various concepts from similar terminologies. This would include the difference between Intellectual property and copyright, copyright and other Intellectual property rights. Among what this chapter teaches I'd the fact that an infringer of copyright might not be knowledgeable about it but would be deemed so in as much as the activities carried out by such a person falls within the ambit of *section 36 of the Copyright Act 2022.*

[49] See section 251(1)(f) of the Copyrights Act 2022

CHAPTER THREE

CHALLENGES OF COPYRIGHT PROTECTION IN NIGERIA

3.0 Introduction

Ever since the statutory institution of intellectual property rights in municipal and international state entities, owners of intellectual property have enjoyed some form of recognition and financial compensation for their intellectual work. This had helped in curbing issues such as Piracy, plagiarism, passing off and so on, as now creatives are helped to enjoy the fruit of their labour as well as the fact that offenders are now more likely to pay for their infringement. The institutionalization of corporate bodies such as the Nigerian Copyright Commission, as well as collecting societies like the Musical Copyright Society of Nigeria (MCSN), Reprographic Rights Organization of Nigeria (REPRONIG), Audio Visual Rights Society (AVRS) , and so on, would be a major development by government in aiding and facilitating copyright protection. This is in fact a necessity as we have seen the contribution intellectual property has been able to make, not just in terms of boosting a county's GDP but also in terms of facilitating a better standard of living amongst citizens (as can be seen with technological innovations). This, more precisely, can be seen through commercialization of the Music industry as well as the development of movie and the fin-tech industry in Nigeria.

An 8.8% CAGR is predicted for the Nigerian media and entertainment sector's yearly consumer growth rate. According to PwC, Nigeria's film industry made up 2.3% of the country's GDP in 2021 ($660 million, or 239 billion naira). PwC, a business consulting firm, reports in its MSME Survey 2020 that SMEs make up nearly 99 percent of Nigerian businesses and contribute a

staggering 49 percent of the country's GDP. In fact, studies conducted by the European Union have revealed that SMEs with intellectual property rights can make up to 68 percent more money than those without.

However, the problem of copyright infringement has been present for intellectual property in general and works related to copyright in particular. This will be covered in more detail later in the chapter when we examine how fraud, poverty, manpower shortages, and illiteracy impact Nigeria's use of copyright.

3.1 Copyrights Infringements in Various Entertainment Industries: Quick Examples

3.1.1 Infringement in The Nigerian Movie Industry

With Bollywood being the largest movie producer in the world, the movie industry, also referred to as "Nollywood," produces an average of 50 films per week and releases over 2500 films annually. All other film productions, regardless of genre or style, are under the purview of Nollywood, which is the only movie industry in the country. According to a 2021 report by PwC, Nigeria's film industry contributed 2.3% of the country's GDP, or about 239 billion Naira ($660 million). The report also included a forecast that the industry would increase its export revenue earnings to over $1 billion.

Barely a day after the first episode of the Uche Ikejimba Series, "Dilemma," debuted on the pay-TV channel Africa Magic in 2021, word leaked out that the series was already airing to the public through an unofficial pirate page on the messaging app Telegram. Filmmakers in two-thirds of African countries reported that piracy costs them up to 50% of their expected earnings, according to a 2021 industry survey carried out by UNESCO. Sure, there are places that are well-

known for being hotspots for film piracy, like Port Harcourt in Rivers state, Onitsha in Anambra, Aba in Abia, and Alaba market in Lagos, where bootlegged DVDs are openly sold in booths. The Journal of Film and Media Arts reports that unregistered marketers are responsible for 93.8 percent of Nigerian film piracy cases, with traders responsible for 87.5 percent of the cases where illicit copies are printed for retail stalls.

3.1.2 Infringements In The Nigerian Music Industry

In looking at the issue of infringement from the perspective of the music industry, the issue between Blackface and Tuface, both firmer members of the popular band, plantation boys,, comes to mind.. Blackface, using Twitter in January 2016, accused his former teammate of copyright infringement and claimed ownership of the songs African Queen and Let Somebody Love You. To which 2face responded with a N50 million libel suit. However, the case never went to court. The resolution package included Blackface promising to desist from accusing 2face of plagiarism, and the latter agreeing to give Blackface his due royalties from the songs.

In 2017 there was the popular issue of the now-late highlife deity Sir Victor Uwaifo, accusing the singers, Simi and Jaywon of remixing his 1965 classic song Joromi without his permission. He was, of course, referring to the former's song of the same title, off her Simisola album, and the latter's single Jomi Joromi, both songs released in 2017. This matter was settled out of court.

Also In 2019, Ajibola Muyiwa Danladi, popularly known as 'Danny Young' brought copyright infringement proceedings against Tiwa Savage, a popular Nigerian singer, and her then record label, Mavin Records, on the grounds that Tiwa Savage allegedly lifted lyrics from his 'Oju Tiwon' song and used same in her 2018 song One.[50]

[50] *Okorie, Danladi v Tiwalope Savage and another*

In that instance, the defendant was a well-known fashion retailer, and the plaintiff was Rihanna, a well-known pop star and style icon. Rihanna brought an action against Topshop(defendant) for passing off after Topshop started selling a t-shirt bearing her image. The image was licensed from an independent photographer who took the original photograph during a video shoot for Rihanna's single "We Found Love." Topshop did not request permission or license the use from Rihanna. Rihanna argued that sale of the t-shirt without her permission infringed her rights on the grounds of passing off because there was a strong likelihood that a substantial number of customers would be deceived into thinking Rihanna herself had authorized the image and would purchase the t-shirt because of that mistaken belief.[51]

By virtue of Section 15(1)(a) of the Nigerian Copyright Act, 2004, (which is equivalent to section 36 of the Copyright Act 2022) any person who without the authorization of the copyright owner, does or causes another to do any act, which is controlled by copyright would be liable for copyright infringement. The acts controlled by copyright depend on the category of protected work (i.e. whether it is a literary, musical or artistic work or a sound recording, broadcast, cinematograph film etc.). However, acts of reproduction, copying, distributing, communicating to the public, performing etc. are usually applicable to all categories of protected works and are exclusive to the author or copyright owner.

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[51] Akinyoade, Danny Young and Tiwa Savage Settle Copyright Lawsuit Out Of Court, The Guardian Newspaper, November 21, 2019

Now although the parties reportedly settled the matter out of court and the suit was consequently discontinued, this occurrence is a clear example of the need for artists to take steps to avoid potential liability when creating/producing their musical works.[52]

3.1.3 Copyright Infringement on Journalism

" Oloture " is a Nigerian film which was released on Netflix in October, 2020. The film tells the heart breaking story of millions of Nigerian women who have been exposed to the inhumane world of human trafficking. However, shortly after the movies release, a woman named Tobore Ovuorie came out to claim that the story portrayed in the movie was hers and was adopted without her permission. In her words; " Oloture is my life story, it is an adaptation of my work and my life story ". The CEO of Ebony life, on the other hand, who is also the producer of the movie, denied such allegations as she claimed that such kind of story was too popular and common to have been influences by a particular person. Nevertheless, Tobore Ovoure went ahead to demand the sum of 2.5billion naira as compensation as she claimed that story was written in 2014 during her investigative report.

3.2 Reasons for Copyright Infringement in Nigeria

3.2.1 High Poverty Rate of the Citizenry

In Nigeria, the poverty rate is estimated to have reached 38.9% in 2023, with an estimated 87 million Nigerians living below the poverty line — the world's second-largest poor population after India. With this kind of data we can easily conclude that the issue of poverty is a serious

[52] https://www.pulse.ng/entertainment/movies/netflixs-oloture-is-a-copy-and-paste-of-my-life-story-investigative-journalist-tobore/82ywpqg, accessed may,17,2023

concern in the Nigerian state. Nevertheless, how does this affect intellectual property and copyright infringement?

According to Omoni Oboli, a popular Nigerian actress and movie producer; " you have to be full before you can buy a ticket to go to the movie ".[53]

This means that someone facing the challenge of having a daily square meal would nearly think of the luxury of buying a ticket for the cinemas.

As of 2013, Nigerian cinema is rated as the third most valuable film industry in the world based on its worth and revenues generated. Brown.[54]

Pirated copies of movies strive in the street because of high cost of valuable and original books that have become unavailable and scarce especially where the demand for such commodity is very high. However the poverty rate in Nigeria would see that this status is challenged. [55]

The cinemas would not be the only industry to face this challenge of poverty which has led to a long chain of piracy. We see this challenge even in the production of literature and books. According to Olukoju (2010) The Nigerian book industry has myriads of problems ranging from the absence of a national book policy to provide a legal regulatory framework for the industry; low returns on capital, investors' (banks) unwillingness to commit their funds to such an enterprise when areas of higher returns exist in the economy; government's inadequate funding of education; professional incompetence within the industry; poor reading culture in the country;

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53 This she said during her interview with channels television. She speaks about how poverty hinders movie lovers from purchasing tickets to the cinemas as this affects the funding in the industry.

54 Funke Osae (24 December 2013). "Nollywood improves quality, leaps to N1.72trn revenue in 2013". Business Day Newspaper. Business Day Online. Archived from the original on 31 December 2013.

55 This is stated in an article titled " Curbing Piracy in the Nigerian Entertainment Industry: Prospects and Challenges Research Clue.com56This is stated in an article titled " Curbing Piracy in the Nigerian Entertainment Industry: Prospects and Challenges Research Clue.com

absence of good libraries; general poverty and the prevalence of piracy in spite of copyright laws.[56]

3.2.2 Lack of Awareness Or Ignorance

In an unscheduled visit to some bookshops in caliber, the Nigerian Copyright Commission (NCC) discovered various pirated copies of books especially the Holy Bible and the English dictionary. These pirated copies were estimated to be worth over three (3) million naira. NTA.[57]

According to Augustine Amodu, the then director, Enforcement NCC, many of the people who are involved in this act of piracy do not even know what piracy means. He says; " It is quite unfortunate to note that the Nigerian society do not understand what Piracy is all about. " Apart from the problem of piracy, the advent of the internet and technology has led so `much more people to be engaging in the Act of copyright infringement and innocently so.

The trend of internet memes and other pictures, both motion and non-motion, for social content, would see to it that almost everyone might have been involved in this drama, and ignorantly so. Therefore, to the ignorance of so many, when a meme is posted with an intent to profit from the expression (such as printing the meme on shirts and selling the shirts) without permission or license from the rightful owner, such activity is far less protected.[58]

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[56] This topic was succinctly discussed in the article titled; " Book Piracy in Nigeria : Issues and Strategies " by Christopher Nkiko. https://www.sciencedirect.com/science/article/abs/pii/S0099133313001171

[57] News report, 23, sep, 2014, YouTube broadcast.

[58] This was discussed by THE NATIONAL LAW REVIEW, in an article written by Benjamin D. Schwar, titled " WHO Owns Memes ?"

This too would affect the music and film industry as many internet users are unaware that by Copying materials you own and sending them to friends electronically; circumventing software that prevents you from downloading material on a website that charges for downloading its files; downloading material from a site that is illegally making the files available, would amount to copyright infringement. Again this affects music, software applications, video files, as well as art, text, graphics and photographs that are copyrighted. Wahid (2011) also asserts that the issue of illegal photocopying and plagiarism could lack of awareness.

3.2.3 Negligence

We would not be ruling the fact that some people feel above the law. Due to the height they might have attained financially and in popularity, they might feel no reason to respect the Copyright to works produced by "the ordinary man" as they nurse a conviction that any case, if such ever arises, would be adequately dealt with by power and influence.

In the year 2017, the popular musician, Burna Boy is hit with a 20-million-naira Law suit from an Art studio based in Lagos, Insects. Here Insecta Studios claims that Burna Boy made use of its artistic work for commercial gains without its consent or remuneration. The story has it that Burna Boy, the Artiste reached out to Insecta Studios to design a zombie artwork. The sketch was made but not yet sold as both parties had not reached a final agreement. However without any acknowledgement or remuneration, Burna Boy's cruel was said to have used the image for their concert which held in 2016.

In analyzing this situation, we see a clear case of negligence on the part of the offender as this is someone with a lot of experience in the music industry and could be rightly presumed to have sufficient knowledge on the principles of copyright and its infringement.

Therefore, the reasons for copyright infringement in Nigeria might bear close similarities with the Challenges of enforcement as one leads to the other. Taking the issue of Unawareness or ignorance for example; the fact that certain people have no reason to believe that their act constitutes an infringement on another person's right might be a reason that stifles the prosecution process, as part of the element that constitutes crime is the knowledge of the fact that such Act is a crime as well as the intention.[59]

However, where someone is ignorant of the fact that he commits a crime, and has no reason to believe that he commits such crime, it would be quite difficult to prove that person guilty. This has led to the wide range and spread of copyright infringement cases on a day to day basis, as innocent citizens, carrying put their daily hustle, like the DJs, the live bands, and even SMEs doing some form of content creation on the internet would now be deemed to be copyright infringers if in anyway their actions go against the dictates of the Copyrights Act. However, this is not the only challenge.

[59] This has to do with the Actus reus and Mens rae which have been classified as legal elements of an offence. See Okonkwo and Naish, Criminal Law in Nigeria, 2012.

3.3 Challenges of Copyright Enforcement

3.3.1 The Challenges of the Nigerian Copyright Commission

The Nigerian Copyright Commission which is established under the Act is the only government agency responsible for copyright administration in Nigeria.[60] The mandate of the Commission would include administration, enforcement and regulation of copyright activities in Nigeria, of which fight against piracy is inclusive. The Nigerian government has adopted a zero tolerance for acts of piracy. In line with the zero tolerance for piracy, the copyright Act33 in its wisdom provides for anti-piracy measures to assist the commission effectively and efficiently carry out its functions. This would be quite a challenging role to play as the issue of rampant infringement is a daily affair, and in fact might have become a "societal norm."

Since the establishment of the NCC in 1989,[61] it has worked tirelessly to clamp down on piracy and reduce it to the barest minimum. This would involve Campaigns such as the Strategic Actions Against Piracy (STRAP) and the Copyright litigation and mediation programme (CLAMP) launched in 2005 are testimonies to this. Since December 2010, however, the NCC has intensified its copyright fight (enforcement) and anti-piracy activities. The Prosecution Department of the Nigerian Copyright Commission (NCC) filed seven copyright cases based on the concluded case files of nationwide anti-piracy raids conducted in various parts of the country in September 2011.

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[60] See Section 77 and 78 of the Copyright 2022

[61] The Nigerian Copyright Commission was inaugurated on 19 August 1989, first as the Nigerian Copyright Council. It was elevated to the status of a commission in April 1996 and this administrative change was confirmed by the Copyright (Amendment) Decree 1999

A) The Problem of Enforcement

The enforcement of intellectual property laws is a very crucial to curbing piracy and other copyright infringement activities in Nigeria. As a result, it is impossible to overstate the importance of law enforcement organizations such as the army, police, customs, and other relevant government officers. These workers face a number of difficulties in most developing nations, including Nigeria. These include inadequate training, inadequate understanding of the relevant issues, inadequate funding for enforcement efforts, a lack of useful tools for post-arrest operations or detection, and even a lack of knowledge about copyright protection laws. Nonetheless, there is a troubling belief that piracy is a minor offense with minimal real repercussions that is shared by the general public, the judiciary, and occasionally law enforcement organizations. The police lack general will, according to members of the International Intellectual Property Alliance (IIPA), and the Economic and Financial Crimes Commission (EFCC) views copyright as a secondary issue in their mandate and prefers to support the NCC in carrying out its mandate rather than taking the lead. Copyright enforcement and litigation are discouraged by the court system's delays and the enforcement system's opaqueness. Right holders are impacted by this lack of transparency because they are typically kept in the dark about the cases and ongoing investigations.

B) Corruption

This in fact is another hindrance to the enforcement of copyright infringement through the Nigerian Copyright Commission (NCC) as some of the NCC officials who are charged with the responsibility of carrying out raids on infringed works engage and abate the infringement of these works for financial or socio-political benefits having been 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 these infringers. This is quite unfortunate situation considering the fact that these were supposedly trusted officials, who were sent on this raid in confidence.

C) Poor Financing

The issue of financing can not be overemphasized as every institution needs money to function and do so effectively. 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 commissions optimum performance.

3.3.2 The Challenge of Poverty

On Tuesday, November 30th, 2018, Dr Goodluck Jonathan, the formal president of Nigeria celebrated his birthday. On that same day he launched his much awaited book " My Transition Hours ", published on the 5th of November that same year. The book was met with so much enthusiasm as the public was eager to know the thoughts he, the former president, who is generally popularly referred to as the " father of democracy in Africa" had been able to convey through his book. However, just two days after the launch, though not too surprisingly, there were already circulations of pirates copies of the books which sold at a far cheaper rate. This was not just in printed format but was also in PDF format.

PREMIUM TIMES checked through the pirated PDF copy trending on WhatsApp and observed it has 254 pages against the original which has 194.[62]

The hard copy of the books sold at #10,500 for the hard back covers and #5000 naira for the paper back covers, however the pirated copies were sold for a far cheaper rate and in some cases, free (as it was with the PDFs). In fact a certain presenter on YouTube, in analyzing this tread informed the audience that the books had been sold for as low as #2500 in some stores and probably less by street hawkers.

Apart from the fact that this is pure theft, we can also imagine the physical and psychological trauma being faced by the author as he sees the object of his labour and sweat being taken advantage of by strangers who care about nothing more than their profit. The fact that not just time, but money must have been expended to see that this feat of a written book comes to live, is being harnessed by unauthorized individuals is quite a painful scenario. Unable to hold back, Goodluck Jonathan made an outcry on his Twitter social media account as at 11:34AM, November 22nd, 2018, stating in quote “We have just been informed that a fake document contrived by mischief makers is being passed on as the e-version and hard copy of the just launched. #MyTransitionHours", but what has been done about this?

Therefore, in criticizing and condemning the attitude of the Pirates, we must also critically look at the attitude of the general public to pirated copies as well do they really care? Still on his tweet, Goodluck Jonathan advised the general public to ignore publications of the book which was not

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[62] This was according to the article written by Adejumo Kabir for the Premium Times News Paper, on the 22nd of November , 2018

original as the contents of the separate books were not the same, but it's hard to say if this advice was effective.

With the current inflation rate in Nigeria it would be expected that there would be an increased need for survival. As at January, 2024, Nigeria's inflation rate was tagged to be at about 29.90%—the highest ever experienced in about two decades. As was stated by Omini Oboli in one of her interviews on channels television. "you have to be full before you can buy at ticket to to the movies ". Same applies for expensive books; you would have to be buoyant enough to be able to afford such books. Yes, it might be easy to say that copyright infringement is wrong and that everyone should desist from it, but this might to be the notion of the general public as an avenue to get a needed product at a much cheaper or less expensive rate might be a welcome idea. In fact, these pirates might even be seen as heroes to the common man for making available products which would have ordinarily cost an arm and a leg.

Let us now take the issue of photocopying in schools as an example. We have seen case of infringement by students as they go ahead to photocopy a substantial part or even the whole of a textbook for reasons of indulgence as they would need materials to study and pass. It might even be worse in the cases of books which haven't been made available in the school library. Indulgence would not justify this behaviour but it poses a great challenge.

According to the World Bank Report (2021), number of poor persons in Nigeria for year 2020 was 89.0million. about 6. 1million people relapsed into poverty in 2021 alone. In fact as the

time of writing this literature Nigerians would be seen to be facing, what could arguably be referred to as the most perilous times in Nigerian due to the removal of fuel subsidy.[63]

The removal would see a sudden hike in the prices of goods and services as the cost of living would rise to more than a 100% increase. This would also lead to the high production rate of substandard goods like food and other consumables the need for survival.

3.3.3 The Challenge of Unawareness and Ignorance

How many Nigerians actually know about the concept of intellectual property and copyright infringement?

In an unscheduled visit to some bookshops in caliber, the Nigerian Copyright Commission (NCC) discovered various pirated copies of books especially the Holy Bible and the English dictionary. These pirated copies were estimated to be worth over three (3) million naira. NTA. According to Augustine Amodu, the then director, Enforcement NCC, many of the people who are involved in this act of piracy do not even know what piracy means. He says; " It is quite unfortunate to note that the Nigerian society do not understand what Piracy is all about. " Apart from the problem of piracy, the advent of the internet and technology has led so `much more people to be engaging in the Act of copyright infringement and innocently so.

The trend of internet memes and other pictures, both motion and non-motion, for social content, would see to it that almost everyone might have been involved in this drama, and ignorantly so. Therefore, to the ignorance of so many, when a meme is posted with an intent to profit from the

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63 On May 29th, 2023, President Bola Ahmed Tinubu announced the removal of Feul subsidy. According to him such expenditure was not contained in the Federal Government's budget

expression (such as printing the meme on shirts and selling the shirts) without permission or license from the rightful owner, such activity is far less protected.

This too would affect the music and film industry as many internet users are unaware that by Copying materials you own and sending them to friends electronically; circumventing software that prevents you from downloading material on a website that charges for downloading its files; downloading material from a site that is illegally making the files available, would amount to copyright infringement. Again this affects music, software applications, video files, as well as art, text, graphics and photographs that are copyrighted. Wahid (2011) also asserts that the issue of illegal photocopying and plagiarism could lack of awareness.

Now if those who are deemed to be offenders or infringers are hardly aware of the Criminal consequences of their actions or its illegality, how then can one prosecute?, what would be the moral justification for such prosecution? Sections 44 of the Copyrights Act spells out the instances for which one could be deemed an infringer enough to face its criminal liability. It states that such individual must have made for sale or caused to be made for sale, infringed copies of a copyrighted work, amongst others. It goes ahead to stipulate a fine of #10,000 for every infringed copy or an imprisonment term of at least five (5) years or both. Nevertheless that same section went ahead to state that a person would not be guilty of an offence of infringement under the Act if he proves to the satisfaction of the court that he did not know and had no reason to believe that the copy was an infringing copy.[64]

[64] See sections 44(3) of the Copyright Act,2022

3.3.4 The Internet

The emergence of the internet and digital technology would be the major enablers of the activities of copyright infringers in our society today. However, there is no denying that this emergence has played a significant role in the advancement of society through the accessibility and availability of information, as well as the opportunity that digital technology and electronic networks present to advance public interest by promoting access to online resources for academic and research purposes, leisure aid, and other uses. This innovation has made it possible for copyright holders to upload and distribute copyrighted works without the required license, authorization, or legal justification, which presents new and unusual challenges.

It is important to note that people find it simpler to manipulate, replicate, and distribute copyrighted materials online without the proper license or permission from the owner thanks to the unique features of digital technology. Unfortunately, identifying the infringer and locating them is always nearly impossible in cases of this kind of infringement. Because of this, artists who work in the digital sphere face a significant threat to their creations as increasingly advanced technologies advance, encouraging intellectual property infringement while simultaneously providing cover for those who engage in it.

According to Marybeth, [65] the ease of replication, the ease of sharing or disseminating media contents, and the increased storage capacity of digital devices are some aspects of digital technologies that have an impact on copyright protection. The ease and low cost of manipulating and replicating copyrighted content is another feature of digital technology. Users can create, modify, distribute, and present information on a scale never before possible thanks to the features

[65] P Marybeth, 'The Challenge of Copyright in the Digital Age', Revista La PropiedadInmaterial (2006)

of digital works and the network.[66] Because it is expensive to sue any single person and there are many unauthorized uses of their works, copyright owners become discouraged and stop suing people who trade their works online. Instead, they direct their complaints towards the creators of the facilitating technologies and direct facilitators like Napster. [67]

When it comes to digital content, copyright violations can take many different forms. These include downloading, reposting, uploading, sharing, hot-linking, circumventing digitally protected works, using digital resources without giving due credit or acknowledgment, using proprietary software and databases without authorization, and copying CD content for profit. The Internet's global reach indicates that the works are easily accessible to a global audience. A quick online search reveals that several well-known Nigerian artists' works are carelessly posted on websites and social media platforms all over the world. For their own financial benefit, some of these infringers offer the works for free download on the internet. People have even gone so far as to make fictitious accounts under the names of these artists, particularly musicians and skit creators, in order to share their works and thereby pass for them.

Regretfully, the majority of Nigerians view anything posted online as "free to use," which is why it is typical to witness people—especially Nigerians—copying and utilizing celebrity images to advertise their brands and businesses—both online and offline—without any constraints or limitations. While some people might find it entertaining, helpful, or successful to use images of politicians, athletes, or celebrities in their advertisements or promotional materials, this inventive

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66 Atanasova, 'Copyright Infringement in Digital Environment', *The Journal of Law and Economics* (2019) Vol. 1 Issue 1, P. 17

67 Ibid, p. 18.

use could result in serious legal ramifications. Many well-known people may want to license their rights for commercial use since they are aware of the value of their names and likenesses. They may eventually file a lawsuit for misappropriation of name or likeness and violation of right of publicity if they find that someone has used their likeness or name without their consent to promote goods or services or to suggest that they have endorsed the goods or services.

Despite the lack of legal protection for photographs or images of people in Nigeria, the degree of carelessness with which the majority of Nigerians copy, share, or use any content they come across online demands prompt action and caution. Although Nigeria does not yet recognize the image right, in certain areas it is considered a serious infringement with dire consequences. Technology that Encourages Violation of Copyright. The fight against digital piracy appears to be ongoing as long as technology keeps developing and changing on a daily basis.

A source has disclosed that the technologies which promote digital piracy manifest in the form of; illegal streaming of content, cyber lockers, peer-to-peer sites, linking websites, and film release groups.

(i) Illegal streaming of content

This is a process that allows a user to view unauthorized copyrighted content online without actually downloading the file. A website may either provide links to content hosted on other websites or provide access to streams directly. The act of hosting unauthorized content or providing links to unauthorized content is illegal and should be actionable.

(ii) Cyberlockers

These are third-party online services that provide file-storage and file-sharing services for various media file types, such as photos, videos, and sound files. They also offer fast, convenient and anonymous distribution of content, which can be downloaded or streamed. Cyberlockers are some of the worst sources of piracy worldwide when it comes to turning a mainstream audience into illicit distribution channels, and their actions can cause a number of problems for companies. These websites almost always make a sizable profit from subscription services. Because cyberlockers frequently lack search capabilities, which renders them unsearchable, illegal content is freely shared on blogs, forums, and social media sites.

(iii) Peer-to-peer Sharing (P2P) Sites

This is a technology that enables a person to share music, video and documents, play games, and facilitate online telephone conversations. Thanks to this technology, computers running similar or compatible P2P applications can join a network and exchange digital files directly with other networked computers. These platforms facilitate the sharing of digital files between "peers"; a user permits other users to copy files that are saved on his computer. Peer-to-peer networks have equal numbers of workstations on the network, each of which can access resources and data. This is a basic kind of network where computers can talk to each other and share files on their computers or devices with other users38. The exact copies of these files can be transferred from one computer to another thanks to technology. Although it is legal to share large amounts of data or files, it is now commonly used to illegally transfer copyrighted materials.

(iv) Linking websites

These websites collate thousands of links to pirated content often stored on external cyber lockers. In a website, a hyperlink (or link) is an item like a word or button that points to another location. When you click on a link, the link will take you to the desired destination, which may be a webpage, document or other online content. Websites use hyperlinks as a way to navigate online content.40These sites facilitate copyright infringement because cyber lockers are usually not identifiable. Linking websites are common with Blogs, Affiliate marketing platforms, product marketing sites, company websites, etc.

(v) Film Release Groups

These groups upload and share content on private torrent sites that rely on donations from members. The materials eventually make their way onto public torrent sites, where they can be downloaded by unauthorized persons. Apart from the above forms of digital piracy, the sharing of media files and books through other technologies or platforms such as WhatsApp, Facebook, YouTube, LinkedIn, Telegram and other social media platforms has promoted online piracy a great deal. Once a work; book, image or drawing is uploaded to the web, it can be infringed upon in several different countries simultaneously with just a couple of clicks.

In fact, many Internet users have a strongly misguided idea that copying and posting of copyrighted material to the Internet is allowed, and that they have implied license to do with the works as they please. Nigerian being a developing country is plagued with even more severe challenges, owing to its low level of technological awareness and exposure of the citizens. The unique challenges posed by digitalization are as follows:

a. Tracing the infringer

Finding the identity and precise location of the infringer is one of the biggest obstacles to enforcing copyright violations committed online. The problem still exists that because the Internet is virtual and anonymous, those who violate it can typically continue their illicit activities without being detected. Because of privacy concerns, it is even more difficult to identify infringers. In the past, it has not been as difficult to identify an infringer as it is in the Internet context. Enforcement only needs to be diligent, and with the right security intelligence, the task is completed. Once a copy of any work is determined to be pirated, all that is needed to apprehend the infringer is to track down the source to a person, business, or location. The process of enforcement is however more complicated under the internet regime. The larger problem of whether there is adequate protection against infringement remains an issue for debate.

There should be a more defined means of linking each identified account with an act of infringement in a particular location or jurisdiction. There is a dire need to devise a technological means of identifying the real persons or individuals behind every activity on the internet. This issue has great implications on the success of cases that are taken to the court for determination. Naturally, the court in dealing with cases of infringement committed over the internet will be confronted with issues such as the real identity of the infringer, the subject matter of infringement, date, location, and so on. The proof of any of these facts will require digital evidence. Digital evidence is always in the digital form until perhaps printed or presented in a way that can be demonstrated to the court. In fact, the situation transcends the issue of copyright infringement and cuts across the length and breadth of the activities on the internet.

b. Evolving Nature of Technology:

The dynamic nature of internet-based technology, often found in software and codes, presents a formidable challenge to the enforcement of copyright. Copyright laws are getting harder to enforce as a result of recent advancements in digital technology. As the digital era progresses, users of digital technology have access to an increasing number of options for recording, downloading, and transmitting data of higher quality faster than with analog systems, which take a long time to download and transmit data. Thus, the result would be that more and more copyrighted work would be prone to infringement, at less cost and it will be more difficult to prevent.

c. Cross-border Violation of Copyright:

The precise place where the breach can be deemed to have happened and which court should have jurisdiction over the case are frequent problems when it comes to copyright infringement on the internet. This issue raises the question of which law and court should have jurisdiction to entertain a case of online infringement of copyright. Which law applies? Which court has the competence to adjudicate over the case? The answers to these questions are almost as infinite as the Internet itself. International copyright law does not provide a consistent and satisfactory resolution for such issues.

It would suffice to note that, concerning copyright enforcement, there is no Unified Copyright Court in the world to adjudicate over copyright related disputes. Therefore, when it comes to disputes about, for instance, an unlawful use of a photo on the internet or social network, or unlicensed streaming of football matches, or downloading of a pirated copy of a movie, that

dispute has to be brought before domestic courts. From this, the issue arises as to which of the domestic courts, among the courts of the several countries that may be involved with the dispute, has jurisdiction over the matter. And given that the internet is versatile and accessible by all, then the countries involved may be many.

Again, the activities of the online service providers in looking in the other direction, when accounts hoisted in their network are being hacked into and the copyright in the works published therein infringed upon is regrettable. Unfortunately, the latest Nigerian Copyright Act, does not expressly make any imposition of crime on any person other than a direct infringer. The Act expressly exonerates service providers from liability on a minimal conditional of expression of good faith. It does appear therefore, from the generality of the provisions relating to the provision of works published online, that the bulk of the task of proving the existence of an infringement and also filing a litigation, is shoved on the owner, as there are no dire consequences or criminal sanctions against the service providers in the likely event of their non-compliance.

The Cyber Crimes Act56appears to offer a kind of reassurance. Section 29 (1) Act makes it an offence for any person or organization who being a computer based service provider and or vendor does any act with intent to defraud and by virtue of his position as a service provider, forges illegally used security codes of the consumer, with the intent to gain any financial and or material advantage or with intent to provide less value for money in his or its services to the consumer. It is believed that with adequate collaboration with other security agencies, the NCC can, under the regime of the Cyber Crimes Act, gain access to the evidence needed to prove copyright infringement.57 This work advocates for owners of copyright to devise personal

measures such as Digital Right Management (DRM) such as encryption system58 and digital watermarking.59The level of advancement in Digital Right Management technologies (DRM) has moved to the stage that it can track the length of time a user might spend online or offline. Therefore, the online secrecy of users cannot be guaranteed. Decryption of encrypted material and other forms of circumvention of DRM is punishable

3.3.5 Cultural Relativism and Public Acceptance Of Copyright Enforcement

On the surface of it one could easily assume that no one under the surface of the Earth would have a problem with letting a man reap the fruit of his labour. This in fact is the ideal situation as anyone one who attempts to contradict this principle would be taken to be a thief and treated likewise. Therefore, a man who has put in effort concerning a work would be encouraged by the general public to reap the financial benefits of such effort. Anyone one who would therefore attempt to reap the financial reward of such work without putting in efforts is most likely to be reprimanded by the public and law enforcement agencies in that state or community. We can see an example under the ambit of **Section 419 of the Criminal Code** as it explicitly condemns the act of Fraud and proffers punishments in cases of such activity.

Nevertheless, just as people differ from place to place, so also cultural patterns and acceptable behaviour differs too. What might be seen as a grievous crime to the general public on a particular domain might not be taken to be much of a crime in other places. Therefore, it is less about the laws and more about the people's attitude to the laws. In as much as the protection of copyrighted works is novel and quite a concept instrumental to the development of any society, we must also marry the enforcement of this concept with its effect on the society.

A country like Nigeria is a federal entity blessed with so much diversity as well as creativity. This is even more so considering the ever growing percentage of educated citizens. We indeed an say that has led to the rise of literary works, especially in literature, in Nigeria. To mention a few, are the likes of Chimamanda Ngozi Adichie, China Achebe, Wole Soyinka, and others, who are not just nationally recognised but also internationally regonised as well. Nevertheless, this same country faces grievous challenge to its creativity and artistic expressionism in terms of its high poverty rate. As they say, " a hungry man is an angry man. “In a state where people can barely eat, the struggle for survival becomes even more vicious. This would in turn affect producer and customer relationship as the purchasing power of the populace would have reduced.

Sincerely speaking, poverty has its way of changing human behaviour as what ordinarily would have be necessary becomes unnecessary—this would go ahead to affect the sale of books and other results of productive efforts and creativity. Therefore, in a bid to get things cheaper, if they must be purchased at tall, consumers do not mind going for the low quality versions of such products as, to some extent, these low quality versions would be see, bu the populace, as an escape route from the horrors of the harsh economy—the acceptance of pirate copies of books and other copy protected articles.

3.3.6 Artificial Intelligence and Copyright Infringement

AI stands for artificial intelligence, which is the simulation of human intelligence in machines. Basically, it's about getting computers to perform tasks that normally require human intelligence, such as decision-making, problem-solving, and learning. AI is a very broad field, and it includes everything from simple algorithms that play games or recognize speech to advanced systems that can drive cars or diagnose diseases. The first person to conduct substantial research on the field

of Artificial Intelligence was Alan Turing as he called it machine intelligence. Artificial intelligence was founded as an academic discipline in 1956.The field went through multiple cycles of optimism, followed by periods of disappointment and loss of funding, known as AI winter. Funding and interest vastly increased after 2012 when deep learning surpassed all previous AI techniques, and after 2017 with the transformer architecture. This led to the AI boom of the early 2020s, with companies, universities, and laboratories overwhelmingly based in the United States pioneering significant advances in artificial intelligence.

The promise of generative AI to revolutionize creativity—particularly in reducing obstacles to content creation—has been widely praised. Although generative AI tools' creative potential has frequently been emphasized, their widespread use raises concerns regarding intellectual property and copyright protection. Foundational AI models, or AI models trained on enormous amounts of data, are the engine behind generative AI tools like ChatGPT. Billions of textual and image scraped data points from the internet are used to train generative AI.

Generative AI leverages extremely potent machine learning techniques, like deep learning and transfer learning, on enormous data repositories to comprehend the relationships between those data points, such as which words typically follow other words. This makes generative AI capable of carrying out a wide range of tasks that resemble thinking and reasoning. One issue is that AI tool output sometimes resembles content that is protected by copyright. Apart from the training process for generative models, the problem with generative AI becoming widely used is the potential for liability for people and businesses whose products violate copyright.

Companies that specialize in generative AI have presented a legal case that claims using AI trained on copyrighted works does not violate copyright because the models are not replicating

the training data; rather, they are trained to identify correlations between the elements of written works and images, such as words and pixels.

Computers have been creating crass art since the 1970s, and this trend is still going strong today. The majority of these computer-generated artworks were primarily dependent on the programmer's artistic input; the machine was merely an instrument or a tool, much like a brush or canvas. However, the technological revolution we are currently experiencing may force us to reconsider how computers and the creative process interact. The fast advancement of machine learning software, a branch of artificial intelligence that creates self-governing systems with the ability to learn without explicit human programming, is the foundation of this revolution.

A new portrait called The Next Rembrandt was unveiled in 2016 by a consortium of Dutch museums and researchers. The artwork was created by a computer that had examined thousands of pieces by the 17th-century Dutch artist Rembrandt Harmenszoon van Rijn. A Japanese computer program's short novel made it to the second round of a national literary prize that same year. Interestingly, Deep Mind, an artificial intelligence startup owned by Google, has developed software that can produce music simply by listening to recordings.

This in fact already poses a challenge to both creatives and consumers. Who would be in breach of copyright if for any reason a work similar to that which is already in existence is generated?, the user or the AI? The issue of Artificial Intelligence and its usage is becoming an ever growing societal event as its use would have both short and long term consequences on the economy of any State. However it would seem that this has failed to catch the attention of the Nigerian Copyrights Commission as the most recent state (the Copyrights Act 2022) failed to address this issue.

CHAPTER FOUR

COMPARATIVE ANALYSIS BETWEEN THE NIGERIAN COPYRIGHT LAWS AND OTHER LAWS

4.0 Introduction

Under this chapter we would be taking a glance at other jurisdictions and the copyright enforcement mechanisms. This is because the concept of intellectual property and copyright protection is a global concept. Therefore, herein in this chapter we would taking a brief look at the jurisdictions of that of Ghana, the United States and the United Kingdom respectively, as well as their attitude towards the enforcement of copyright.

4.1 Copyright in Ghana

Here the Copyright Act is the legal framework that protects the use of an individual's work once the idea has been physically expressed. It is a form of intellectual property that protects original works of authorship of literary, dramatic, musical and artistic works such as poetry, novels, movies, songs, computer software and architecture. Copyright does not protect facts, ideas, systems or methods of operation, although it may protect the way these things are expressed. Ghana's current copyright law is Act 690 issued by the Parliament of the Republic of Ghana. The Copyright law affords protection to a variety of works, grants Copyright holders rights to their work and defines the duration of that Copyright protection.

4.1.1 Duration of Copyright in Ghana

Of course the right to copyright does not subsist forever. There is a duration of copyright to every work that is worthy of copyright protection, after which the public is free to use it in any way it pleases. The Act gives the durations for works protected under copyright. This part of the Copyright Act covers, individual's bodies corporate anonymous works audio visual work, sound recordings, expressions of folklore and moral rights. The moral rights of authors under Section 6 of the Act exist in perpetuity while the others mentioned above are limited to a certain time frame.

4.1.2 Permitted uses

Despite providing exclusive protection to copyright holders, the Copyright Act permits certain uses of such works that do not violate the author's copyright. Works protected by copyright can be used for a variety of purposes, including private study (source citation required), reviews, reporting on recent and current events, and teaching. These are however subject to fair practice. The Act in dealing with computer programs allows for a copy of the program to be made by the lawful owner for the purposes of using it for the reason for which it was purchased or for archive purposes, this will not amount to infringement. An infringement will not arise on the copying of a work if it is a single copy and it is to be used in a library or archive purposes.

A performer's right is valid for 70 years from the end of the calendar year that the performance was recorded on a physical medium, or, if none was, from the end of the year that the performance actually occurred. The performer's moral rights are described in Section 31.

Section 32 stipulates the need for authorization in relation to broadcasting. It says that the provisions of section 28.[68]

shall not be interpreted as implying consent to, among other things, (a) license other broadcasters to transmit the performance, (b) make a fixation of the performance, (c) reproduce the fixation if the authorization granted is to broadcast and make a fixation of the performance, or (d) broadcast the performance from a previous fixation or from the reproduction of the fixation where initial permission was granted solely to enable the broadcasting of the performance. This is true regardless of whether a law or contract says otherwise. Broadcasters have the right under Section 33 to rebroadcast their broadcast, obtain a fixation of their broadcast, reproduce said fixation, and notify the public of their broadcast.

The restriction of performers' and broadcasting organizations' economic rights is explicitly provided for in Section 35. Section 36 states that broadcasting rights are perpetual, meaning they last for forty years after the date the signal was broadcast. In the event of a public performance and use of a work protected by copyright, Section 37 grants royalties to the approved performer and producer.

4.2 The UK Copyright Law

The Copyright, Designs and Patent Act of 1988 (henceforth referred to as the UK Copyright Act 1988) governs copyright law in the United Kingdom. The following works are protected by copyright under the UK Copyright Act of 1988:

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[68] Section 28 of the Act (Ghana) vests every copyright on the government to hold on Trust for its citizens

a) Literary works (such as song lyrics, manuscripts, manuals, computer programs, commercial documents, leaflets etc.)

b) Dramatic works (such as plays, dance,)

c) Musical works (recordings and score)

d) Artistic (photography, painting, sculpture, architecture, etc)

e) Typographic arrangements of published editions (magazines and other periodicals)

f) Sound Recording (this may be recordings of other copyright works.

g) Film (video footage, movies, and cable programming).

The UK Copyright Act 1988 defines literary works as any written, spoken, or sung works as well as computer programs and databases, with the exception of dramatic or musical works. Until copyright is attached to a specific medium, it does not exist. Stated differently, copyright is not established until it is documented, whether through written or oral means. Only the portion of literary works and other works that are original are protected. Though there are some exceptions, they should not have been completely.[69]

4.2.1 Qualification For Copyright Protection Under The UK Copyright Act of 1988

One of the fundamental conditions for a work to qualify for copyright protection under the Act is that it must either be fulfilled by the author or by the country in which it was first published. This applies to broadcast as well. In this context, anyone who is a British author or a citizen of a

[69] In the case of *R. Griggs ltd and ors v Evans and ors*, the court that for computer data basis to qualify for protection, the author/creator must have exhibited an element of skill and labor in them.

nation to which the UK Copyright Act of 1988 applies qualifies. A qualifying county a country where the UK copyright A t of 1988 is applicable.

4.2.2 Application Of Copyright Protection Under The UK Copyright Act Of 1988

In the United Kingdom Copyright is automatic. The author can successfully file a lawsuit for copyright infringement of his work without having to write a formal registration application. If the authors can demonstrate that they used skill and labor and the work is original, then protection will apply. An author may decide to use the UK copyright service to register his works. This may be done via online registration or via mail. Nevertheless, copyright protection does not require registration, nor is it mandatory. The owner of a copyright has the authority to decide how his creations are used, broadcast, reproduced, altered, or otherwise changed. Along with the ability to object to any misrepresentation of the work, the author also has the right to be recognized as the author. A copyright infringement case may only be brought before a UK court by the copyright owner or a licensee of the work.

4.2.3 Copyright Anti-Piracy Law in The United Kingdom

Individuals found guilty of copyright infringement or the distribution of copyright material may face a sentence of three (3) to six (6) months in prison and/or a fine of £5,000 to £50,000 under the UK copyright Act. Penalties were proposed for repeat offenders under the Digital Economy Act 2010 (DEA 2010), the first significant legislative attempt to stop widespread illegal downloading. These penalties included slowing down internet connections, blocking websites, and suspending or disconnecting accounts.

The latter, the DEA and CAS, differs from the former in that it allows an infringer to send up to six electronic warnings to subscribers whose actions constitute infringement. If this warning is disregarded, the subscriber may face consequences like temporary internet speed reductions or landing page redirections until they get in touch with their ISP to resolve the issue or reply to copyright education materials. In contrast, the former would send out up to four letters, with each alert resulting in a more severe message. Penalties are applied if this warning is disregarded. Talk Talk, Virgin and Sky who are the UKs biggest ISPs, have signed up for Vcap. In addition to the Cap initiative, the UK government has also pledged to contribute £3.5 million to an educational campaign promoting legal ways to listen to music and watch.

4.2.4 Comparison of the Nigerian and the United Kingdom Copyright Law

Nigeria was a British colony until 1960, when it attained independence. Her copyright laws are largely based on those of the United Kingdom. Her copyright history can be traced back to Great Britain, her former colonial master, as she was once a British colony. There is majorly no difference between both copyright laws.

Some of the similarities in both Copyright Laws are the following;

a) Both countries have the same terms of duration of copyright.

b) The works that are eligible for copyright protection are the same under both laws.

c) I'm both countries registration is not required or mandatory for the enforcement of Copyright.

There is however a clear difference between both laws. The two laws' primary distinction lies in how they are enforced. The laws and their enforcement mechanisms are held to a high standard

in the United Kingdom. In comparison to the Nigerian Copyright law, the UK imposes a heavier penalty for copyright infringement. Furthermore, the UK and Nigeria adopt very different levels of technology to prevent copyright infringement.

The UK government has promised to donate £3.5 million to an educational campaign that promotes legal ways to watch movies and listen to music in addition to the Cap initiative.

Nigeria was a British colony until 1960, when it attained independence. Her copyright laws are largely based on those of the United Kingdom. Her copyright history can be traced back to Great Britain, her former colonial master, as she was once a British colony. There is majorly no difference between both copyright laws. Some of the similarities in both Copyright Laws are the following;

a) Both countries have the same terms of duration of copyright.

b) The works that are eligible for copyright protection are the same under both laws.

c) I'm both countries registration is not required or mandatory for the enforcement of Copyright.

There is however a clear difference between both laws. The major difference between the two laws is in their enforcement mechanism. The United Kingdom places a high standard for the laws in enforcement mechanism. The penalty imposed on Copyright infringement in the UK is weightier than that of the Nigerian Copyright law. Furthermore, the adoption of technology to combat copyright infringement in the UK is a great gap, far away from that of Nigeria .

4.3 The United States Law

4.3.1 An overview of the US Copyright Law

The US system seem to take a public-interest approach to the protection of works of copyright. The public interest debate regarding the benefit of copyright protection was given prominence in the US case of *Fox Film v. Doyal* where the US Supreme Court said that although, individual copyright owner derives the benefit of the work during the tenure of the copyright, the ultimate benefit is the public by virtue of carrying out the general policy framework in the use of the property.

This idea was emphasized by the US Supreme Court when it declared that artistic endeavors ought to be valued and encouraged. The public interest must ultimately be served by the private motivation derived from these works, though, by guaranteeing that music, literature, and other arts remain accessible.[70]

In addition to being a subject of civil litigation, copyright infringement is also a criminal misdemeanor or felony.

This part of copyright law is enforced by the US Department of Justice through criminal prosecution.[71]

A violation of copyright would include, reproducing or distributing a copyright work within 180 days of one or more copies or phone records that retail for more than $1,000, as well as

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[70] *Twentieth Century Music v. Aiken*

[71] A person who willfully violates a copyright may face criminal charges under Section 506 of the Copyright Law if the infringement was done for financial gain or commercial advantage.

distributing work that was being prepared for commercial distribution by making it available to the public on a computer network when the violator knew it was meant for commercial distribution. Forfeiture, destruction, and restitution are possible punishments in addition to others.

Since the US was once a British colony, copyright law originated in England. The same circumstances exist in Nigeria. Since the Statute of Anne was passed nearly three centuries ago, the US legal system has undergone revisions to address new technologies, change the terms of copyright protection, and broaden the scope of copyright. The US has been debating a copyright reform act for a while. The US Congress is able to enact laws protecting authors' interests thanks to the US Constitution of 1787.

According **Article, Section 8, Clause 8 of the US constitution**, "the congress shall have power...to promote the progress of science and useful Art, by securing for a limited time, to authors and inventors, the exclusive right to their respective writings and discovering." The US copyright law took root with the engagement of the copyright Act 1790. This Act granted authors the exclusive right to publish and sell maps, charts and books for term of 14 years. The Act had a number of limitations which include registration as a requirement for proper protection. This resulted in the enactment of the copyright Act of 1831 thus; extended the original term from 14 to 28 years with an option to renew and change the requirement for formality. This was renewable for one additional term, provided the author was alive at the end of the first term. Subsequently, the US copyright law went through a number of reviews leading finally to the copyright Act of 1976 which regulates the current copyright regime.

4.3.2 United State Copyright Protection Under The Copyright Act of 1976

Ideas are not protected by the US Copyright Act of 1976; rather, it only covers the expression of a work in a fixed and recognized form. Works protected under the United States Copyright Act of 1976 are:

a) Literary works

b) Dramatic works

c) Musical works, and

d) Artistic works, such as poetry, novels, movies, songs, computer software and architecture.

Although it may protect these things' expressions, US copyright law does not protect facts, ideas, systems, or operational procedures. Before a work in the US can be granted copyright protection, certain prerequisites must be fulfilled. The first is that when the author makes their first corrections to the copy, copyright is established. The second is that the works can be fixed in any tangible medium of expression, but they have to be original to the copyright holder.

CHAPTER FIVE

5.0 Introduction

This study was about the protection of copyright as an intellectual property in Nigeria as well as the challenges that imped this development. We were also able to do a brief comparison of the Nigerian copyright law alongside other international laws which brought to the fore the fact that the challenges of copyright infringement are a thing of global concern and it's enforcement strategy is not a job for just one particular local legislation. Hence the need for both local and international collaboration.

5.1 Summary

To achieve this, we divided this work into four chapters reflecting the objective of the study.

1) To give a comprehensive definition of the concept of infringement as it relates to the modern society

2) To state and examine the challenges of copyright protection in Nigeria as well as an appraisal of the efforts being made by the necessary authorities.

3) A brief comparison of the Nigerian legislation and other legislation that help to appreciate the steps being taken by the Nigerian legal system as well as other bodies like the Nigerian Copyright commission in tackling the menace in question.

4) A summary as well as a suggestive approach as to how the various copyright protection agencies can do better in terms of meeting the current demand of copyright protection in Nigeria.

The chapters would now be summarized fully herein thus;

In chapter one we were given a holistic as well as a descriptive view of the concept of Copyright and copyright protection. We, through this study, have been able to acknowledge that the concept of copyright protection is a global concept and the need for its protection has its global foundation on the need to protect and reward labor and innovation. Under this chapter we looked at the history of copyright as well as the ideology behind this concept

Chapter two gave us a more intricate view on the on the various concepts and yet monologues surrounding copyright protection. In this chapter we are given a more detailed explanation as to the concept of infringement, who an infringer is, piracy, criminal liabilities and other intellectual property rights such as trademarks and patents.

Chapter three was where the main issue was dealt with. In chapter three we looked at the problems and challenges facing the protection of copyright in Nigeria, with examples through case law and published articles. Through chapter three (3) we get an intricate analysis on the reality of copyright infringement as we compare this reality with the practicality of new enforcement mechanisms.

Chapter four was basically a comparative analysis between the Nigerian copyright enforcement system and other systems like that of Ghana, US, and UK. Here we are given an understanding of the universality of the need for copyright protection and the need for various jurisdictions to work together to ensure the actualization of this goal.

5.2 Findings

1) Through this study we have been able to acknowledge that the problem of copyright infringement is still a prevalent issue in our society today. In fact the advent of the internet has made it even more so considering the need for quick access and dissemination of information.

2) We would also see an attempt to cushion the adverse effect of the usage of the internet through the ambit of section 54 to 60 of the Copyright Act 2022, as it deals with provisions relating to online content. It in fact is already going a long way in check-mating the reckless duplication and usage of online materials which are being used without any credit to the authors. This we would see reflecting in the usage of certain phone applications, especially those that have to do with the social media, like YouTube, Instagram and so on. These statutory provisions give authors the right to report any infringement to the service provider who in turn has an obligation to take down such infringing contents. This however is not peculiar to Nigeria as it is more or less a global policy. Nevertheless, by the insertion of such provisions as are inscribed through section 54 to 60 of the Act, the Nigerian legal authority gives strength to this global policy.

3) We would also discover, through this study that it is one thing to declare a policy and it is another thing to be able to enforce it. The Nigerian Copyright Commission would be taking the right step in influencing the promulgation of these laws which help combat copyright infringement, but it would also have to fix the problem of enforcement as the laws are useless if they cannot be enforced. A look back on time would give a reason for an appraisal of the efforts of the NCC in combating this crime as on certain occasions surprise raids have been carried out

on infringers with the aid of intelligence report, but the statistics would also remind us of the fact that there is more that needs to be done.

4) Through this study we would discover that that not every creative is in support of the recent online anti-infringement policies being put in place as they, the authors and creators, contest that these mechanisms make them somewhat less popular and accessible to their audience and it establish a barrier against a free flow relationship. This would go a long way to help us discover that the anti-infringement policies might as well have two sides; the advantages and the disadvantages.

5) Through this study we can categorically say that the Nigerian Judiciary and it's judicial process has not been too encouraging. The need for a quick actualization of justice when needed cannot be over emphasized as justice delayed is justice denied.

5.3 Conclusion

The fact that in 2022, Nigeria had a Zero percent attempt case of piracy goes to a large extent to show that the idea of reaching an optimum victory against Copyright infringement is highly possible. Nevertheless, this is something of strategy and a function of collaborative efforts of stake holders involved. This is necessary because it would ensure a healthy economic environment for creatives to thrive. Apart from the efforts needed to be made by law enforcement agencies, there is also a need for citizens to be cooperative for the purpose of achieving the optimum goal of rewarding hard labor and creativity. Citizens and consumers should put themselves in the shoes of the creatives who would have labored so hard only to have

someone take advantage of such efforts. Therefore, consumers should desist from engaging in acts such as the purchase of these adulterated copies, this little Act would go a long way.

5.4 Recommendations

The Judiciary: The main purpose of the judiciary is for the interpretation of laws for the dissemination of justice. Therefore, justice is not only necessary to be done, it must also be seen to have been done. Bringing the issue of delay in the judicial process to the fore, one can say that without effectively tackling this issue the main purpose of the establishment of the judiciary might not be achieved. This for it is recommended that this judicial arm of government not only improves on its man power but should also seek out ways to decentralize this process to ensure faster results.

The NCC: The NCC though it can be said that they are putting in some effort, it is however clear that they need to do more if in any way they intend to achieve the goal of copyright protection. To achieve this there is, first all, the need for more public sensitization to help grow the awareness of copyright and the disadvantages of its infringement. There is also need for collaborative efforts between the NCC and other local

Good Governance: If the idea of society free from copyright infringement is to be achieved or at best brought to its minimum, then the government has a role to play. We have been able to see from previous study that one of the leading causes of copyright infringement is the high poverty rate of citizenry. This is so much so that activities of copyright infringement such as piracy, in the high side, or the simple of photocopying an author's text book for educational purposes, has been seen as a norm in the society and probably a way of survival. In this way, fighting this

practice of piracy or theft might be mistaken for a harsh or Anti-societal policy by government. Therefore, the government of Nigeria, from the local to the federal government level has an ultimate obligation of elevating it's citizens out of the grips of poverty. A country with a more stable economy would enjoy a safer environment.

Also there is need for collaborative efforts between the Nigerian law enforcement agencies and other international enforcement agencies. In the past we have witnessed attacks against merchant ships despite being in the immediate vicinity of naval vessels, and often, the naval vessels have not had the national mandate to intervene. The notable exception has been the deployment by the Danish Navy in 2021/2022 and the deployments in the past couple of years by the Italian Navy. These two navies have actively interrupted several attacks, and the Danish Navy even went all the way and apprehended a group of Nigerian pirates following a gunfight which resulted in the unfortunate death of five Nigerian pirates. A significant drop in pirate activity coincided with the deployment and proactive antipiracy efforts by the Danes and the Italians and since the interventions in 2021 and 2022, attack numbers have been significantly lower than preceding years.

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