

**APPLICABLE LAWS THAT GOVERN THE PROTECTION OF COPYRIGHT
WORKS: CHALLENGES AND ENFORCEMENT PROBLEMS.**

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FACULTY OF LAW

UNIVERSITY OF BENIN

BENIN CITY

MAY, 2021.

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW IN
PARTIAL FULFILMENT OF THE BACHELOR OF LAW (LL.B) PROGRAM,
UNIVERSITY OF BENIN, BENIN CITY**

MAY 2021.

CERTIFICATION

I, **Inuaghata Favour OGBODU** with **MAT NO. LAW1507832** hereby certify that apart from references made to other people's works as duly acknowledged herein, this entire study is the product of my personal research, and has neither in part nor in whole been presented for another degree elsewhere.

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APPROVAL

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DEDICATION

This research work is dedicated to the Almighty God, the source of true knowledge and the giver of good gifts and perfect presents.

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LIST OF ABBREVIATIONS

ALL ER	-	All England Law Report
Anor	-	Another
CD	-	Compact Discs
CFRN	-	Constitution of the Federal Republic of Nigeria
Ch	-	Law Report, Chancery
CMO	-	Collective Management Organisation
FHCLR	-	Federal High Court Law Reports
FSR	-	Fleet Street Reporters
GDP	-	Gross Domestic Product
ICT	-	Information Communications Technology
IP	-	Intellectual Property
IPR	-	Intellectual Property Right
IJLCLR	-	International Journal of Legislative Drafting and Law Reform
NCC	-	Nigeria Copyright Commission
NWLR	-	Nigeria Weekly Law Reports
Ors	-	Others
OECD	-	Organization for Economic Cooperation and Development

Q B	–	Queen Bench
STRAP	-	Strategic Action against Piracy
TLR	-	Times Law Report
TRIPS	-	Trade Related Aspect of Intellectual Property Rights
UCC	-	Universal Copyright Convention
UNDHR	-	Universal Nations Declaration of Human and Right
UNESCO	-	United Nations Educational, Scientific and Cultural Organisation
WIPO	-	World Intellectual Property Organization
WLR	-	Weekly Law Report
WTO	-	World Trade Organization

ABSTRACT

Society encourages research, exploration or attempt to discover new things that will benefit the society, the aspect of law that seeks to protect the product of such efforts is Intellectual Property Law (IPL). Intellectual property is an aspect of law which seeks to protect intellectual endeavour. It is divided into 4 fundamental classes of which, copyright is one of the fundamental classes. Copyright in intellectual property are exclusive rights granted by the law. They are bundle of intangible right granted by statute to the author or originator of certain literary or artistic productions, whereby, for a limited period, the exclusive privileges is given to that person (or to any party to whom he or she transfers ownership) to make copies of the same publication and sale. These rights are subject to certain statutory exceptions and the effects of these rights is that were sufficient efforts have been expended on making a work to give it an original character it becomes the sole property of the owner and the owner has exclusive rights over the work and it will be unlawful for any person to reproduce, publish, translate, perform, rent, lease, hire, broadcast, adapt or tamper with the work without the owner's license or assignment.

It is a truism that the greatest heritage of a country remains the creativity of its citizens and therefore one of the primary functions of law is to protect the ingenuity, resourcefulness and innovation of the citizenry. Since the beginning of the 20th century, the world has continued to experience developments and advancements which have changed the face of the modern society. Many persons has benefited immensely from the magnanimity of copyright product, notwithstanding the enormous benefit which has been derived from copyright related product, many artists, songwriters, photographers and other creators are robbed daily due to the fact that they are oblivious of the extent and effect of unauthorized use by the public therefore this work

is tailored towards raising the awareness of the laws that govern protection of copyright works and also state the challenges and enforcement problems associated with the protection of these works.

It should be noted that the creator of a work doesn't require registration of a work for it be protected reason being that as soon as an original work is reduced to a fixed and tangible form the author automatically has copyright over such works. In Nigeria, the applicable law that protects copyright works is the Nigerian Copyright Act Cap C28, Laws of the Federation of Nigeria 2004. However there are a number of international treaties and conventions that provides for the protection of copyrightable works once they are created therefore the protection and enforcement of copyright is pivotal to the development of creative works and only eligible works can be protected. However despite the role of the National copyright commission, there exist challenges and enforcement problems associated with the protection of copyright works.

CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

Copyright law is one of the two branches of intellectual property. Copyright is a form of legal protection for certain types of intellectual property. It grants ownership and control to creators of ‘original’ creative works that have been fixed in tangible form. Copyright law does not protect ideas or concept. Instead, it protects the creative expression of those original ideas and concepts. Only after an idea has been creatively expressed by fixing it in a tangible form, such as a written document or a recording, do copyright rights apply.¹ Copyright is a form of intellectual property. Intellectual property consists of tangible assets such as original works of authorship and business goodwill. Intellectual property law are specifically written to protect ownership rights in these intangible assets.²

Man by nature is creative; his product of his intellect is aimed at improving and adding value to the society. This product constitutes his intellectual property (IP) which the law recognises and seek to protect intellectual property rights (IPR) which is an area of law which has evolved and developed out of the conviction to prevent man’s creativity and ingenuity from being unduly harnessed and exploited. Intellectual property gives rise to rights and duties, it establishes property rights which gives the owner the right to do certain things in relation to the subject matter. Intellectual property basically is that area

¹ Introduction to Copyrights and Their Functions – Module 1-5

<https://lawshelf.com/videocoursesmoduleview/introduction-to-copyrights-and-their-functions-module-1-of-5/>. Accessed on the 08/05/2021

² An Introduction to Copyrights. [www. Kppblaw.com/copyright introduction](http://www.Kppblaw.com/copyright-introduction). Accessed on the 08/05/2021

of law which concerns legal rights associated with creative efforts or commercial reputation and goodwill.³

1.1 Background of study

Like other tangible property, copyright can be bought, sold, leased, licensed and assigned and the unfair taking of the result of the application of human intellect may infringe on more than one single right of a copyright owner, the need for copyright protection is therefore important so as to enable copyright works not to be infringed on but rather protected. The whole essence of intellectual property law, of which copyright is a form, is to prevent others from gaining unlawfully from someone else creation. Copyright works are protected through laws set in motion to safeguard the fruits of one's creativity and maintaining one's incentives to invest in innovations. Under this intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets such as literary and artistic works, discoveries and inventions, marks and names etc.

1.2 Statement of problem.

The advent of globalisation and the ever increasing advancement of technological know-how and other related means have posed great threat for owners of work who find the labour of their intelligence infringed upon.

This work therefore explores the various means by which eligible copyright works are being protected by various applicable laws and regulatory bodies put in place to protect

³ David I. Bainbridge, Intellectual property, (8th edition, Longman 2010).

the work of copyright owners. It also seeks to list and explain the challenges and enforcement problems that hinder the effective protection of works of copyright owners.

1.3. Objective of study

The objective of the study is to:

- Explain copyright as an intellectual property.
- State the justification for copyright protection.
- List and explain eligible works that are protected.
- Explain the applicable laws and also regulatory agencies or commissions that protect the works of copyright owners.
- Explain extensively the challenges and enforcement problems faced with the protection of these works.

1.4 Focus of study

In a country such as Nigeria, the importance of copyright can hardly be over-emphasised. This is a country where book piracy, film piracy and constant infringement of copyright works still reign supreme, with attendant losses of income to authors, publishers, film makers, musicians and many copyright owners. Effective laws to combat these and other copyright protection are therefore very imperative. ⁴ These works have to be immune against any form of infringement so as to keep its original and even encourage new creative works. Thus, building an industrial society.

⁴ F. O. Babafemi , Intellectual property: The Law and practice of Copyright, Trademarks, Patents and Industrial Designs (Justinian Books Limited 2007)

1.5 Scope of study

This study of this work will show that the protection of copyright work is important in any developed society. It will give credible reasons for the justification of copyright protection. This study will educate the public on the laws that governs copyright works and also seeks to state and explain the challenges and enforcement problems associated with the enforcement of these laws by the regulatory agencies and also give recommendations to enhance the more protection of eligible copyright works in Nigeria.

1.6 Research methodology

This method employed in this work involves utilising information from copyright laws. It employs both documentary and electronic materials retrieved from textbooks, journals, law reports, Internet materials.

1.7 Copyright as an intellectual property

Intellectual property very broadly means the legal rights which results from intellectual activity in the industrial, scientific, literary, and artistic field. It could be defined as a legal right conferred on those who engage in creative, inventive and promotional activities which results in original, useful or beneficial output, such input is classified as a form of property, albeit of an intangible, incorporeal variety.

Copyright is a legal right that protects the owner of an intellectual property from being exploited.⁵ Copyright in an intellectual work is the exclusive right of an author of an original work to control or enable the doing of a certain specifically stated acts, in

⁵ Onoyeyan, Glory, "Copyright Law and Photocopying Practice in Nigeria" (2018) Library Philosophy and Practice (e-journal) 2179

www.digitalcommons.unl.edu/libphilprac/2179. Accessed on the 09/05/2021

respect of the whole or a substantial part of the work either in its original form or in any other form recognisably derived from the original form but subject to certain statutory exceptions. Basically countries have laws to protect intellectual property for two main reasons:

1. To give statutory expression to the moral and economic right of creation in their creation and the rights of the public to access these creations.
2. To promote as a deliberate act of government policy, creativity and the dissemination and application of its results and to encourage fair trading which will contribute to economic and social development.⁶

Intellectual property law therefore encompasses the body of rules and regulations governing the creation, acquisition and protection of rights as well as adjudication over allegations of their infringement.⁷

1.8 Meaning of copyright

It is an undisputed fact that copyright is a monopoly of limited duration, but unlike most monopoly, it is a legitimate monopoly created by law and enjoyed by the author of an original work. Copyright, like several other legal terms do not lend itself to any precise definition, it is however necessary to attempt a definition by looking at those preferred

⁶ Understanding Copyright and Related Rights. <http://www.wipo.net/publication>

⁷ Femi Olubanwo and Oluwatoba Oguntabe 'Strengthening intellectual property rights and protection in Nigeria' <https://www.mondaq.com/nigeria/trademark/788714/strengthening-intellectual-property-rights-and-protection-in-nigeria> Accessed on 09/05/2021

by statutes and scholars alike in order to have a basic understanding of the concept.⁸ Nigerian Copyright Act simply defines copyright as “copyright under the Act”.⁹

Copyright is an area of law that provides protection to “original work of authorship “ including painting, sculpture, music, novels, poems, play, architecture, dance, instruction manual, technical documentation and software amongst other items.¹⁰ Asein suggests that the word “Copyright” evokes three possible meanings. First it suggests the right that a person has over the physical copy of his work. The second is the right to copy that is, the right that the owner of a work has to reproduce his work. The third connotation suggests that the work must be copied. This suggests a license to copy on the condition that the copying should be done in a manner prescribed or permitted by law leaving the copyright owner with a right to be remunerated.¹¹

Section 6 of the Act, under the title ‘General nature of copyright’ provides:

“That copyright in a work shall be the exclusive right to control the doing in Nigeria of any of the following acts. Such act includes reproducing the work in any material form, publishing or performing the work in public, translating, adapting, distributing or communicating the work to the public.”¹²

David Bainbridge defined copyright as a proprietary right that subsists in certain specified type of works as provided for by the copyright, designs and patent Act of 1998.

⁸ Ekpa, F .Okpanachi, “The precondition for copyright protection in Nigeria.” <https://oer.kogistateuniversity.edu.ng/read/the-preconditions-for-copyright-protection-in-nigeria?rdr=1>.

⁹ CAP C28, Laws of the Federation of Nigeria (LFN), 2004. [Hereinafter Copyright Act/the Nigerian Act], Section 51(1) thereof.

¹⁰ Ibid 6

¹¹ Asein, J.O. Nigerian Copyright Law & Practice. 2nd ed. (Abuja: Books and Gavel Ltd., 2012), p as cited in Ekpa F. O.

¹² Ibid 7

Examples of the works in which copyright subsists are original, literary works, films and sound recordings.¹³

It is the intangible incorporeal property, which guarantees the owner the exclusive right to deal with his/her work within a stipulated time as provided by law.¹⁴

From the aforementioned various definitions as well as the description afforded to the concept of copyright under the Nigerian Copyright Act, it is quite apparent that beyond the making of copies, copyright is more akin to proprietary right, which confers exclusive right to authorise or prohibits a wide range of activities relating to qualified subject matters.

1.9 Nature of Copyright

Copyright is another form of property right. It falls under the spectrum of intellectual property. It is a branch of law that gives protection to the finest manifestation of human achievement and the protection of such right is aimed at preventing others from the unauthorised reproduction of an existing work.

It extends to the original protection of literary works which include dramatic, musical, and artistic works. It has been extended beyond the traditional protection of literary works, sound recordings, films, broadcast and artistic works to now cover online resources such as download of ringing tones, Internet based access to materials and movies amongst others. Copyright is best appreciated when one ponders on the

¹³ Ibid 3

¹⁴ Mary Imelda Obionuju Nwogu, "The challenges of the Nigerian Copyright Commission (NCC) in the Fight against Copyright piracy in Nigeria". <https://www.eajournals.org/journals/global-journal-of-politics-and-law-research-gjplr/vol-2-issue5december-2014/challenges-nigerian-copyright-commission-ncc-fight-copyright-piracy-nigeria/>.

confusion that would have been the order of the day if the law in this field didn't introduce orderliness by seeking to protect the fruits of people's intellectual sweat from undue exploitation by other people.

1.10 Justification for copyright protection

Generally people invest in intellectual property and also people who are rich are measured in the quantum of intellectual property so therefore copyright as an aspect of intellectual property has a higher economic value and the law is interested in any sector that generates money and the law is there to regulate the rights and protects the rights of persons who invest in intellectual property as the objective of most intellectual property law is to "promote progress". It is based on this reasoning that creators will not have sufficient incentives to invest unless they are legally entitled capture the full economic and social value of their inventions.¹⁵

Copyright protection from the view point of the creator of work, makes sense only if the creator actually derived benefit from such works and thus, cannot happen in the absence of publication and dissemination of his works. It is above all that one of the means of promoting, enriching and disseminating the national cultural heritage, involves the protection of every production in the literary, scientific and artistic domain, in whatever mode or form of expression. Copyright doesn't protect ideas but expression of ideas. This approach is best summed up in the words of Peterson J in *University of London press v. University Tutorial press Ltd*, where he said,

¹⁵ Uchechukwu Ngwabu, Intellectual Property and Development Perspective of African Countries: Chapter 2 (Harnessing the economic benefit of intellectual property: Towards a strategic development paradigm at page 65, Edited by Professor Epiphany Azinge(eds), cited in Adejoke Oyewunmi, " Nigerian Law of Intellectual Property" Unilag press 2015).

“There remains the rough practical test that what is worth copying is prima facie worth protecting.”¹⁶

Copyright works needs protection for the advancement and progress of science and to serve as an incentive for creativity. This dual purpose is encapsulated in the United Nations Declaration of Human Rights. Article 27(1) and (2) states that:

“Everyone has a right freely to participate in the cultural life of the community to enjoy the arts and to share in the scientific advancement and the benefit, everyone has a right to the protection of the moral and material interest resulting from any scientific, literary or artistic production of which he is the author.”¹⁷

Copyright is a fragile property which depends on the help of the law for protection.

1.11 Is registration a condition for copyright protection?

Generally, registration is not required for copyright protection, since copyright protection is automatically enjoyed upon creation and fixation of a work in a definite medium of expression. In addition, the Berne convention prohibits compliance with any formalities before the enjoyment of copyright protection in member states who are signatories to this convention. However in Nigeria, the Nigerian copyright commission has introduced an online notification database to assist authors and creators in protecting their works more effectively. Although registration of a copyrighted works is

¹⁶ (1946) 2 CH 610

¹⁷ 1948.

not a precondition for copyright protection, the benefit of lodging a notification of a work with the national depository far outweighs any perceived negatives.¹⁸

Unlike other forms of intellectual property like patent, designs and trademark a work that is eligible for copyright does not need to be registered in order for it to enjoy legal protection. An eligible work enjoys protection as soon as it is registered.¹⁹

1.12 Conclusion

Copyright encompasses an enormous economic and cultural field. As earlier observed it is one of the branches of intellectual property. It exist independently of the physical embodiment of the work and it does not arise until a creative work has been fixed or embodied in material or other definite forms.²⁰

¹⁸ Sandra Eke, 'Fundamental Elements of Copyright Ownership and Protection Under Nigeria Law'. <https://www.mondaq.com/nigeria/copyright/866284/fundamental-elements-of-copyright-ownership-and-protection-under-nigerian-law-sandra-eke> accessed on 09/05/2021

¹⁹ Davidson Oтуру, An overview of Copyright protection in Nigeria. <https://www.mondaq.com/nigeria/copyright/983450/overview-of-copyright-law-and-copyright-registration-in-nigeria>. Accessed on 09/05/2021.

²⁰ Adejoke O. Oyewummi, Nigerian Law of Intellectual Property (Unilag Press, 2015)

CHAPTER TWO

ELIGIBILITY OF COPYRIGHT WORKS

2.0 Determination of works eligible for copyright protection

Eligible works, simply put, means “works” of copyright which the law will protect. However it is not all “works” that enjoy statutory protection. Accordingly, the law has laid down specifically the types of “works” which are recognised and enjoyed statutory protection.¹

Section 51 of the Copyright Act² defines a 'work' to include translations, adaptations, new versions or arrangement of pre-existing works, and anthologies or collection of works which, by reason of the selection and arrangement of their content, present an original character.

The term 'works under section 1(1) of the Copyright Act C28 Laws of the Federation 2004 embraces literary, musical and artistic works, cinematography films, sound recordings and broadcast. The Copyright Act recognizes six broad areas of works eligible for copyright protection. These are:

1. Literary works.
2. Musical works.
3. Artistic works.
4. Cinematography films.

¹ F.O Babafemi, Intellectual property (The Law and Practice of Copyright, Trademarks, Patents and Industrial Designs (Justinian Books Limited 2007).

² Cap C28 Laws of the Federation 2004.

5. Sound recordings.

6. Broadcast

However there are ancillary works often termed as neighboring rights which are also capable of protection under the law. Our emphasis shall be on these specific works as contained in section 1 (1) (a) - (f) of the Copyright Act of 2004.

Literary works

The Act does not attempt to give a concrete definition of a literary work rather it provides a descriptive list of works falling within the scope of literary works. According to section 51 of the Act a literary work includes irrespective of literary quality, any of the following work or works similar thereto:

- (a) Novels, stories and poetical works;
- (b) plays, stage directions, film scenarios and broadcasting scripts;
- (c) Choreographic works;
- (d) Computer programs,
- (e) text-books, treatises, histories, biographies, essays and articles;
- (f) Encyclopedias, dictionaries, directories and anthologies;
- (g) Letters, reports and memorandum;
- (h) Lectures, address and sermons;
- (i) Law reports, excluding decisions of courts;

(j) Written tables or compilations.

To this extent however, this list is no exhaustive and maybe extended to cover other works. The definition preferred by Peterson J in the case of *university of London Press v. University Tutorial Press*³ appears to be more to the point,

In my view the word 'literary works cover work which is expressed in print or writing, irrespective of the question whether the quality or style is high. The word literary seems to be used in the sense somewhat similar to the use of the word literature in political or electioneering literature and refer to written printed matter.⁴

It can be summarized that literary works should be something or anything intended to afford some persons some forms of information, instructions or even pleasure.⁵

Musical works

According to the Act, it means any musical composition, irrespective of musical quality and includes works composed for musical accompaniment. This definition encompasses the combination of sounds that makeup the music as well as the works such as the lyrics of a song, which accompany the musical composition.

A musical work is protected irrespective of musical quality. Thus, what may appear as mere unpleasant noise with little more than nuisance value to some may nevertheless qualify for protection as a musical work.⁶

³ (1916) 2 Ch. 601

⁴ Ibid 3 at 608

⁵ J.O. Odion and N.E.O Ogba, *Essays on Intellectual Property Law*(1st Edition, Ambik 2010)

⁶ Adejoke O. Oyewunmi, *Nigerian Law of Intellectual Property* (Unilag Press, 2015).

Artistic works

It has been defined to include, irrespective of artistic quality, any of the following work or works similar thereto:

- (a) Painting, drawing, etching, lithographs, woodcuts, engraving and prints;
- (b) Maps, pens and diagrams.
- (c) Works of sculpture.
- (d) Photographs not comprised in a cinematography film.
- (e) Works of architecture in the form of building models.
- (F) works of artistic craftsmanship and also (subject to section 1(3) of the Act) pictorial woven tissues and articles of applied handicraft and industrial art.

Artistic works comprises a broad category ranging from varieties of graphic works such as plans and drawings to three dimensional works such as sculpture and models. These works are protected irrespective of artistic quality. Thus while some of the work have aesthetic value, others are largely functional, while yet others such as works of artistic craftsmanship, straddles both categorization. However these considerations are immaterial as all categories of artistic works, including works of artistic craftsmanship are eligible for protection, irrespective of artistic quality.⁷ Artistic works must satisfy the requirement of originality and expression before they can enjoy the protection of the law.⁸

⁷ Section 51 of the Act

⁸ Section 1(2) of the Act

Cinematography films

The Act defines cinematography films as including the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction and including the recording of a sound track associated with cinematography film. This definition is sufficiently flexible to accommodate a wide scope of visual images fixed in different media such as video tapes, as well as a more modern CDs, DVDs and other media (digital, analogue or otherwise) provide such visual images are capable of being shown as moving pictures and of being reproduced. This definition is thus broad enough to cover both old and modern techniques of fixation and fixations in different media.⁹ Although sound recordings are protected as a separate category of work, where the recording of a sound track is associated with a cinematography film, it is protected as part of and under the category of cinematography film and not sound recording.¹⁰ The copyright in a cinematography film is vested in the person who is responsible for its production.

Sound recording

The Act defines sound recording to mean the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced but does not include a sound track associated with a cinematography film. Thus, the fixation of any sound falls within the scope of the provision. For example, fixation of recitation of a content of a

⁹ Ibid 6

¹⁰ Section 51

book, as well as poem or other kind of sound is protected as a sound recording provided the sound is capable of being heard.

Broadcast

The Act defined broadcast to mean sound or television broadcast by wireless telegraphy or wire or both by satellite or cable programs and include re-broadcast. Thus, sound (radio) and audio visual (television) broadcast using different technological media such as wire or wireless telegraph are covered.

2.2 Requirement for the protection of copyright works

The major concern of copyright in these works is not the idea but the manner in which the idea but the manner in which the idea is expressed or represented.¹¹ Once it has been fully ascertained that a work falls within one of the six categories of works eligible for copyright protection, the next step is to determine whether the work fulfils the specific requirement which qualifies for its protection under the Act. Thus with regards to literary, musical, artistic works, the Act provides that the works must satisfy the twin requirement of originality and fixation.¹² In addition to these, all categories of works must satisfy these requirements of the requisite connecting factors.¹³ Works that satisfy these requirements enjoy automatic protection without the need for registration or compliance with any formal or procedural rules.

¹¹ Desmond O. Oriakhogba and Ifeoluwa A. Olubiyi, Intellectual Property Law in Nigeria' Emerging trends, theories and practices (Paclerd Press Limited, 2021).

¹² Section 1(2)

¹³ Section 2-5 of the Act.

The requirement for protecting copyright works is viewed from two perspectives:

1. Criteria by reference to the work.
2. Criteria by reference to the author.

CRITERIA BY REFERENCE TO WORK

There are two criteria by which a work is adjudged to be eligible for copyright protection. These are the criteria of originality and fixation.

1. Originality

This is a fundamental principle of copyright. It is regarded as the basis of the protection given by the law if copyright to particular forms of expression. A work must be original in character before they can be recognized and protected as a copyright work. In otherworld, a work must be original before it can be ascribed the status of copyright protection. Therefore if a work is a mere copy work, a reproduction of an existing work cannot enjoy copyright protection. The Act provides that a literary, musical or artistic work shall not be eligible for copyright unless sufficient effort has been expended in making the work to give it an original character.¹⁴

International copyright treaties do not define the scope of originality. But, the requirement of originality for protection may simply be presumed from treaties. One can be excused for believing that the word 'original requires that the work must be new or innovative in the same sense, but in copyright law, 'original doesn't have its ordinary dictionary meaning as a work does not have to be unique or even particularly

¹⁴ Section 1(2) (a) of the Copyright Act

meritorious. Rather originality is more concerned with the manner in which the work was created and is usually taken to require that the work in question originated from the author its creator and that it was not copied from another work. In *Ladbroke (Football) Ltd v. Williams Hill (Football) Ltd*, Lord Pearce said the word 'original requires..... only that the work shall not be copied but should originate from the author.¹⁵

Originality in copyright law simply requires that the form or expression of the work must have been the result of the author's intellectual creation, the outcome of expenditure of independent skills, labor or judgment in the creation of the work.¹⁶Peterson J gave the issue of originality detailed consideration in *University of London Press Ltd v. University Tutorial Press Ltd*, where he said;

The word original does not in this connection mean that the work must be expression of original or inventive thought.....the Copyright Act is not concerned with the originality of ideas but with the expression of thought..... the Act does not require that the expression must be in an original or novel form but that the work must not be copied from another work but it should originate from the author.¹⁷

A relevant question often asked is what is the level or degree of effort, skill or judgment that is required to have been expended on a work to qualify it as an original work that is eligible for protection.¹⁸In otherworld what is the yardstick for determine the sufficiency of the effort that is required to have been expended on a work to give it an original character, within the meaning of section 1(2) (a) of the Copyright Act ? Beyond

¹⁵ (1964)1 WLR 273 at 291

¹⁶ Adejoke O. Oyewunmi, *Nigerian Law of Intellectual Property* (Unilag Press, 2015).

¹⁷ (1916) 2 Ch 601 at 608

¹⁸ *Ibid* 16

stating that 'sufficient effort must have been expended on a work to give it an original character'¹⁹the Act is silent on it. As there is no defined rules regarding the exact quantum of effort or labor required as it is a question of fact and degree which is dependent on the circumstances of each cases. As observed by Atkinson LJ in the case of *Macmillan v Cooper*²⁰what is the precise amount of the knowledge, labor, judgment or literary skill or taste which the author of any book or other compilation must bestow upon its composition in order to acquire copyright in it within the meaning of the Copyright of 1911 cannot be defines in its precise term: in every cases it must depend largely on the special fact of that case and must be very much a question of degree. In the case of *University of London Press v. University Tutorial Press*²¹the court examined the question of originality or otherwise of examination question. The fact of the case was that the University of London has assigned to the planting who were publishers, copyright in examination papers. The defendants, without authority published some of the papers, alongside criticism and model answers, in an action for infringement, the issue of the existence of copyright in the examination questions came up for consideration. The lecturers proved to the satisfaction of the court that they had thought out the mathematics questions they had set, having drawn on notes and memoranda made by them. The defendant on their own part contended that the lecturers drew on the stock of knowledge common to mathematics and that the time spent in producing the work was small. However the latter argument was rejected. According to the court restraining scholars from drawing from the stock of knowledge common to their field

¹⁹ Section 1(2)(a) of the Copyright Act.

²⁰ (1923) 40 TLR 186 at 19

²¹ Ibid 17

would result in a situation where only historians who unearthed fresh historical facts would be entitled to copyright in their work. The court therefore held that the question where original works in which copyright subsists.

Originality in copyright work is best measured by its literary value. Literary value in the sense that the work must be of useful benefit to the society or to the members of the public. A work has a literary value if it serves three purposes.

1. It must be educative.
2. It must be informative.
3. It must be entertaining.

All copyright works must have literary value. Originality therefore consists in the skill and labor involved in selecting or arranging existing subject matter to give rise to new work. In *Macmillan v. Cooper*²², Lord Atkinson clarified the position by stating that it is my product of the labor, skill and capital of one man which must not be appropriated to another, not the elements, the raw materials... upon which the labor and skill and capital of the first has been expended to secure copyright for the product some quality or character which the raw materials did not possess, and which differentiates the product from the raw material. In the Nigerian case of *Masterpiece Investment Ltd v. Worldwide Business Media Ltd and ors*²³ the plaintiff an advertising company sued the defendant for infringement of copyright in a write up by the plaintiff on the images of its (plaintiff's) client, the Edison group. The write up had been published in the October

²² Ibid per Lord Atkinson at 188 (1923) 40 TLR 186

²³ (1997) F.H.C.LR 496

1989 edition of the business magazine published by the defendants, shortly afterwards the plaintiff's attention was drawn to a publication in the December 1989 edition of the same magazine, which was almost identical to the earlier write up by the plaintiff. The court rightly averred its mind to the need to determine whether the article in question was eligible for copyright protection. The defendant had contended that the article was a descriptive one whose format and language was in a generic form normally used in advertisement and the facts therein were true for every company been promoted. In other words, the language was common place and therefore lacked originality. However consistently with the low threshold of originality in copyright law, it was held that the said article was a literary work which qualified for copyright protection.

Where a work is one which involves a change of medium, such as the translation of a work into another language, this has held to satisfy the requirement of originality, as it involves the exercise of skill, labor, and judgment. Where however a work has simply been copied from another source, such work is not original and does not qualify for protection. In *I. C. I. C (Directory publishers) v. Ekko Delta (Nig) Ltd and Anor*²⁴ the plaintiff's who were publishers of the directory of incorporated companies in Nigeria, instituted action against the defendant alleging infringement of copyright in their work, the first and second editions of the national telephone directory of Nigeria. The alleged infringement by the first defendant consisted in the unauthorized reproduction of the directory. The court however, found that the plaintiff were not responsible for the contents of the said directories, having copied from the documents of the federal,

²⁴ (1977-1989) 2 IPLR 32

ministry of trade and the p and t and then turned round to claim authorship of what they had copied.

Furthermore, where the work in respect of which copyright is claimed is one which is extremely simplistic, common place or insubstantial the courts have declined to hold that such work satisfies the original requirement and copyright protection has been declined. In the case of *Adelusi and Anor v. A. Aromolaran and Anor*²⁵ the plaintiffs were denied exclusive rights to the title ' English and Verbal Aptitude Test' by the Western state court of appeal. However the case was instituted on the platform of an action for passing off, and the issue before the court bordered on whether it was proven by the plaintiff that the title of the book had acquired secondary significance in their favor as to entitle them to an exclusive use of same. The court held that the plaintiffs has failed to discharge the heavy burden of proving that the works in the title ' English and Verbal Aptitude Tests which were descriptive and belonged to the common stock of English Language had acquired a secondary meaning which was identified or exclusively associated with them.

The principle relating to originality still applies. Originality in the context of photographic works, for example, consists in the exercise of the photographic judgment as to what to photograph, the arrangement of scene, including positioning, lighting and other exercise of judgment, skill and labor in taking the photograph. In *Peter Obe v. Grapevine Communications Ltd*²⁶ the plaintiff a professional photographer was held to have copyright in his photographic works, consisting of photographs taken by him

²⁵ (1917 -1976) 1 IPLR 379

²⁶ (2003- 2007) 5 IPLR 354

during the civil War. Other artistic work such as drawing, maps, sculptures and other three dimensional works also qualify for protection provide they have resulted from the effort, labor and skill of the author.

Original in terms of musical works refer to the effort, skill and labor expended in creating a musical composition which according section 51 includes works composed for musical accompaniment. In the case of *Offrey v. Chief S.O Ola and Ors*²⁷ the plaintiff in 1963, while the head master of All saint school Oshogbo designed and put out for sale a school record book known as ' New Era Scheme Of Work And Record Book'. The plaintiff labor in the book consists mainly in the drawings of several horizontal and vertical lines. In 1967, the plaintiff realized that the second defendants who are publishers, printers and book sellers where producing and selling some record books which are materially the same as his books especially producing and selling some record books which are materially the same as his books especially at page 1 to 42. The second defendant knew of the existence of the plaintiff's books prior to 1967 through the first defendant who was then an administrative assistant of Anglican school in Oshogbo area, and the second defendant printed and published the record book on the instruction of the first defendant. The plaintiff claim against the first defendants an account of all the monies received by them either jointly or severally from various copying and printing and sales of the book from January 1967 to the date of judgment and the payment to the plaintiff of the amount found due on the account rendered as special and general damages for unlawful infringement of copyright. The court held that copyright would exist in a given product if the product is the result of some

²⁷ (Unreported suit No HOS/23/68(27th June 1969)

substantial or real expenditure of mental or physical energies of the product and the labor or skill was not a negligible or common place one. In the more recent case of *Spreevision Ltd and Anor v. Nestle Nigeria Plc and Ors*²⁸ the plaintiffs claim that they built a concept for the development of digital kiosk pavilion, which they stored in a compact disk and flash and sent to the defendants. They further alleged that the defendant asked them to build a kiosk for demonstration based on the concept for inspection. According to the plaintiffs, they did not hear from the defendants again but discovered later that the defendants had gone ahead to develop kiosk and displayed it at the premises of universities of Lagos and Ibadan respectively. Consequently the plaintiffs sought to enforcement the copyright in their concept for the development of digital kiosk pavilion as an artistic work through this suit. The defendants filed a motion of preliminary objection to the suit on the ground, among others, that the plaintiffs admitted in paragraph 7, 8 and 14 of their statement of claim that the subject matter of the suit was intended to be used as a model or pattern to be multiplied by industrial process. As such, the defendants rightly contended that on the basis of section 1(3) of the Copyright Act, the plaintiff labor have no copyright in the alleged artistic work. By virtue of section 1(3) of the Copyright Act, an artistic work is ineligible for copyright protection if, at the time of its creation it is intended by the creator to be used as model or pattern to be multiplied by any industrial process. The court upheld the defendant objection and in so doing commented on the subsistence of copyright under section 1(2) as follows,

²⁸ (Unreported Suit No: FHC/IKJ/CS/183/2012)

(r) recognition of copyright is premised on such sufficient effort having been expended on the work to give it an original character (...) for a work to be eligible for copyright protection, it must be original. The essence of originality is that the author of the work must have devoted skill and labor to its creation.

In essence, a determination of originality under the Copyright Act will involve a definition of the term 'sufficient effort is obviously a matter of degree, which would be determined on a case-by case basis.²⁹

2. Fixation.

In addition that a work must be original in character to attain the status of a copyright work, it must be expressed in a definite medium of expression as stated in section 1(2)(b) of the Act. This buttress the point that copyright does not protect ideas but rather how these ideas have been expressed. Therefore whoever takes a cognate step or final step in recording the work or reducing the work into writing or expressing the work in whatsoever manner enjoys copyright protection in the work. This position was briefly pronounced in the case of *YeniAnikulapo-Kuti and Ors v. Iseli and Ors*³⁰ The question of eligibility of certain musical work by the late music maestro, Felt Anikulapo Kuti for copyright protection was raised by the defendant, who argued that the work did not satisfy the requirement of fixation. The court held that a written lyrics, as well as the tapes containing yet to be published songs sufficiently reduced the work into a permanent form which could be perceived within the meaning of section 1(2)(b) of the Act.

²⁹ Ibid 11

³⁰ (2003-2007) 5 IPLR 53

Thus it could be argued that any medium that makes perception, reproduction and/or communication of a work possible would be sufficient to satisfy the fixation requirement.³¹In *Donoghue v. Allied Newspaper Ltd*³²Farwell J stated that a mere amanuensis does not, by taking down word for word, the language of the author, become in any sense the owner of the copyright. This is however inconsistent with the wordings of section 1(2)(b) which does not include the requirement specifying that fixation must be by the author or under his authorization. Similarly in *University of London Press v. University Tutorial Press Ltd*³³Peterson J noted that Copyright Act is not concerned with the originality of the ideas but with the expression of thought and in the case of a literary work with expression of thought in print or writing. In *Tate v. Thomas*³⁴A conceived an idea for a play, B wrote down the lyrics and dialogues. The court held that B had copyright since he fixed the idea in a definite medium of expression.

Although most times, this requirement may appear unfair to the person that conceived the idea, it is necessary to prevent frivolous and unfounded litigation.

CRITERIA BY REFERENCE TO THE AUTHOR

The Copyright Act makes provisions relating to appropriate link that must exist between an eligible work, the maker of the work and the territory of Nigeria. A work is not automatic (*per se*) in Nigeria. A work may be eligible for copyright protection but may

³¹ Desmond O. Oriakhogba and Ifeoluwa A. Olubiyi, *Intellectual Property Law in Nigeria' Emerging trends, theories and practices* (Paclerd Press Limited, 2021).

³² (1938)Ch 106 at 109-110.

³³ (1916) 2 Ch 601

³⁴ (1921) 1 Ch 503

have been conferred with copyright protection. Section 2-5 of Copyright Act makes additional requirement with respect to the qualification of the author of a copyright work. By the tenure of the above sections to enjoy copyright protection, the author must satisfy the following additional requirements. This includes:

1. Citizenship, Domicile or Residence (Status of the Author)

Section 2 of the Copyright Act determines the status if the author of the work either as a citizen of Nigeria, or a person domiciled in Nigeria or a corporate entity incorporated in Nigeria and this is very important for the conferred of copyright on the work.

Citizenship may be by birth, naturalization or registration.³⁵ Domicile means a place at which a person is physically present. An author, who has requisite status as defined by these provisions, while also meeting the aforementioned requirements of originality and fixation, where applicable, becomes automatically entitled to copyright protection without more. Specifically the section vests copyright on every eligible work of which the author, in the case of joint authorship, any of the authors is, at the time the work is made, a Nigerian citizen, born domiciled in Nigeria. Once the author satisfies this requirement in respect of an eligible work that is original and fixed in an appropriate medium the court cannot accept extraneous factors to deprive such author of his/her copyright. In the case of *Ifeanyi Okoye and Anor v. Prompter and Quality Services and Anor*³⁶ the plaintiffs instituted an action for infringement of copyright in respect of their architectural drawings. However the defendant brought a notice of preliminary objection on the ground that the plaintiffs, not been registered architects under the

³⁵ Section 25-27 of the CFRN 1999.

³⁶ (2003-2007)5 IPLR 117

requisite laws regulating architectural practice in Nigeria were not entitled to practice as architects, and this could not have their drawings protected as architectural designs within the meaning of the Copyright Act. The court rejected the argument, ruling that the plaintiffs who were Nigerians satisfied the requirement regarding status and were therefore competent to institute the action.

2. Place of First Publication

Apart from the requirement of the status of an author as provided under section 2 of the Act, the place of publication is also very relevant in determining whether an author can enjoy copyright in his own work. Section 3 provides extensively that copyright protection shall be conferred on every literary, musical, artistic work or in a cinematography film, which is first published in Nigeria. Therefore copyright is conferred on every work if on the date of its first publication, at least one of the authors is an individual who is a citizen of, domiciled in, or a body corporate established by or under the laws of Nigeria. A work is deemed to have been published if copies of it have been made available in a manner sufficient to render the work accessible to the public.³⁷ In *Francis Day and Hunter v. Feldman and co*³⁸ a copy of work was sent to the British museum, one was filed at the London office of the plaintiff, 4 were sent to agents for university libraries and 6 were exposed on the counter in the retail department of the plaintiff business premises. It was held that these acts sufficed to constitute publication. It should be noted that the publication may take various forms including by way of sales, rentals, hires, and gift or is made available on a website accessed by the public.

³⁷ Section 51(2) (a) of the Act

³⁸ (1914) 2 Ch 728

Moreover, a work will still be regarded as published in Nigeria regardless of the fact that it has been published in another country insofar as the two publications occurred within a period of thirty days. Also, where a part of a work has been published, that part will be treated as a separate work under the Copyright Act.

3. International treaties/agreements

Section 5 of the Copyright Act takes care of situations where a work is made outside Nigeria by an author who does not fall under the categorization in section 2 and the work is not covered by section 3 provided the country from where the work or author originated is party to an obligation in a treaty to which Nigeria is also a party, among others.

Nigeria as a part to a number of international treaties extends reciprocal protection to works emanating from citizens of member countries of such international agreement or treaties. The Nigerian Copyright Act provides that copyright shall be conferred on every work if, on the date of its first publication, at least one of its author is a citizen of or domiciled in, or a body corporate established by or under the laws of a country that is a party to an obligation in a treaty or other international agreement to which Nigeria is a party.³⁹

Section 41 of the Act is also very relevant to the issue of protection by virtue of intellectual agreement. It provides that where any country is a party to a treaty or other international agreement to which Nigeria is a party and the minister is satisfied that the country in question provides for the protection of copyright in works which are

³⁹ Section 51(1) (a) of the Act.

protected under the Act, the minister may by order, in a federal gazette extend the application of the Act in respect of any of the categories of works eligible for copyright protection under section 1 (1) of the Act. Works published by international and regional bodies also qualify for protection under the Act. The issue of protection of foreign works came up for consideration in the Nigeria case of *Microsoft Corporation v. Frankie Associates Ltd*⁴⁰ here the appellant/claimant, Microsoft corporation instituted an action for infringement of copyright against the respondent in respect of the farmer's window operating system/software for computers. However a critical issue for determination was whether the matter fell within the jurisdiction of the court. The argument advanced against the exercise of jurisdiction was that the copyright in software was vested in the plaintiff, a USA corporate entity. The plaintiff although protected in the USA did not qualify for copyright protection in Nigeria in the absence of an order by the minister in the Federal Gazette. The court of appeal upheld the decision of the lower court that the application of the said foreign copyright in Nigeria was subject to reciprocal extension of protection. In accordance with section 41 of the Copyright Act but in absence of a duly gazetted order, the court could not exercise jurisdiction over the matter. Furthermore, to the extent that no certificate was presented or exhibited by the appellant from the Nigeria copyright commission pursuant to section 5(2) of the Act. For the purpose of extending protection to the foreign work, the court lacked jurisdiction to entertain the suit.

⁴⁰ (2012) 3 NWLR Pt 1287 Pg 301

4. Government and International Bodies Works

Section 4 of the Copyright Act confers copyright on every eligible work that is made by or under the control of the government, a state authority or a prescribed international body. However section 10(5) of the Copyright Act, expressly states that copyright in such works shall vest initially in the Governor on behalf of the Federal Republic of Nigeria, on the state authority on behalf of the state concerned, or in the international body in question, as the case maybe, and not on the author if the work. The work must also fall within the scope of eligible work and must satisfy the originality and fixation criteria.

2.3 Ownership of copyright

By granting ownership rights, copyright encourages intellectual creativity on the part of creators as the creations are protected from free riders.⁴¹Ownership is at the core of the right and privileges enjoyed by a person in respect of a property. By virtue of section 10(1) of the Copyright Act first presumption of ownership is created in the author of the work. Ownership may be vested by agreement in form of assignments, and exclusive or non-exclusive licenses between the author and the subsequent owner. Also, ownership of copyright may pass by way of succession: that is from the author to the beneficiaries of his estate.⁴²

Ownership of copyright in both commissioned works and works authored in the course of employment vests in the author. The author may waive this right by a written

⁴¹ Yusuf Ibrahim Arowosaye and Aishatu Eleojo Adams, 'Protection of Legislative Text under the Nigerian Copyright System' (2020) 9 IJDLR 142

⁴² Section 11 of Act

stipulation in the contract between him and his employer or the party commissioning the work.⁴³

2.4 Authorship of copyright works

Authorship is an important concept in copyright, the notion of originality as a requirement for copyright subsistence rests on the existence of an author who is expected to exercise requisite the skill and labor in the creation of an eligible work. Indeed, the author is the foundation of copyright ownership and the reference point for copyright duration in most cases. The author is the foundation and heart of modern copyright law.⁴⁴

An author can be defines generally as any person that creates, originates a copyright work. In otherworld, an author is any person that satisfy the requirement for the recognition and protection of copyright work listed out in section 1(2)(a)(b) of the Act. Under section 51(1) of the Copyright Act, the author of a literary, artistic or musical work is the person who creates the work.

2.5 Duration of copyright

A work that is qualified for copyright protection does not enjoy such protection in perpetuity. In otherworld, the author of a copyright work will not enjoy copyright protection forever.⁴⁵It is limited to the term if protection stipulated in the First Schedule

⁴³ Section 10(2) of the Act

⁴⁴ Desmond O. Oriakhogba and Ifeoluwa A. Olubiyi, Intellectual Property Law in Nigeria' Emerging trends, theories and practices (Paclerd Press Limited, 2021).

⁴⁵ Desmond O. Oriakhogba and Fenemigho Alero I: Development, Concept and Scope of Copyright Protection in Nigeria: An overview (2014) 5 Nnamdi Azikiwe University Journal of International Law and Jurisprudence.

of the Act, which provides for the duration of copyright in the different categories of work. Copyright in literary, musical and artistic works other than photography subsists for 70 years after the end of the year in which author dies. Where there are joint authors however, the 70 years period commences at the end of the year in which the surviving author dies. In cases of works owned by the government, or a body corporate, the duration is 70 years after the end of the year the work was first public.

Copyright in cinematography films and photographs are protected for 50 years from the end of the year in which the work was first published. Rights in broadcasting and sound recording subsist for 50 years after the end of the year in which the recording was made, or the broadcast took place as the case maybe.⁴⁶

The relatively long duration enjoyed by copyright owners may be justified on the basis that conferment of copyright doesn't lead to the kind of exclusionary effect resulting from the application of the other law.

2.6 Transfer of Copyright

Copyright is regarded as movable property under the Copyright Act. As, such, copyright is transmissible or transferable by the copyright owner through assignment, license (exclusive and non exclusive), by testamentary disposition or by operation of law. An assignment or exclusive license must be in writing for it to be effective. But a non- exclusive license need not be in writing as it may be oral or inferred from contract.

⁴⁶ First Schedule

An assignment, license or testamentary disposition may be in respect of the whole copyright in the eligible work.⁴⁷

2.7 Scope of protection of rights

Copyright owners are endowed with rights that are meant to protect their works. These are rights that protect the work of an author in any circumstance from invasion and infringement. Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets such as musical, literary and artistic works, discoveries and inventions, words, phrases, symbols and designs. These rights include moral and economic rights.

1. Moral rights

This is a right that grants the author paternity of the intellectual creation and protects the personal and reputational value of a work as opposed to its mere monetary value. This right is important, since the author has the right to decide whether he wants to disclose the work to the public. He can set the conditions of its commercial exploitation and defend its integrity.⁴⁸ Section 12 of the Act confers on author of works, in which copyright subsists, certain moral rights in the created works. The sacredness of moral right is evident in the fact that they are not transferrable and cannot be compromised on the altar of pecuniary gains. The Act provides that moral rights are exclusive to the author and are perpetual, alienable and imprescriptibly.⁴⁹ Two forms of moral right recognized under the Act are:

⁴⁷ Ibid 44

⁴⁸ Law 435 (Laws of Intellectual Property)

⁴⁹ Section 12(2) of the Act

1. RIGHT TO PATERNITY

Which is the right to claim authorship of a work and to have such authorship indicated in connection with any exploitation of the work ,be it by way of reproduction, publication, adaptation or otherwise , except when the work is included incidentally or accidentally when reporting current events by means of broadcasting.⁵⁰

2. RIGHT TO INTEGRITY

This refers to the right to object and to seek relief in connection with any distortion, mutilation or other modification of, and any other derogatory action in relation to a work, where such action would be or is prejudicial to the honour or reputation of the author. ⁵¹

2. ECONOMIC RIGHT

It relates to a creation's commercial value and grants the author a monopoly to exclusively exploit his creation for certain period. Under this right holders can prevent third parties from using, manufacturing and selling the creation without authorization.⁵²The rights are provided for under section 6, 7, 8 of the Copyright Act. They include

- i) Right to reproduction: "Reproduction" means the making of one or more copies of work, in the case of *Okoli v. Dick Francis And Anor*⁵³the defendant act of

⁵⁰ Section 12(1) (a) of the Act

⁵¹ Section 12(1) (b) of the Act

⁵² Ibid 46

⁵³ (2003-2007) 5 IPLR 234

duplicating the plaintiff master tape without due authorization was held to fall within the scope of the exclusive reproduction right of the plaintiff under the Act.

- ii) Right to publication: this right refers to the first and initial issuing of the work to the public. Section 51 (2) of the Act, publication was defined as the act of making of copies of a work available to the public.
- iii) Performing of work in public: The Act does not define public performance. Thus public delivery of literary works such as speeches, lectures or sermons, publicly acting a drama piece, public recitations of a poem are examples of ways that literary and musical works may be performed in public.
- iv) Producing, reproducing, performing or publishing of any translation of the work: A translation refers to the conversion of a work from one language to another, beyond producing a translation , making of copies of the translation, its performance or public presentation through drama as well as its publication all fall within the exclusive prerogative of the copyright owner.
- v) Making of any cinematography film or a record in respect of a work: The right of fixation of a work into a sequence of visual image capable of being shown as a moving picture is vested in a copyright owner exclusively.
- vi) Distribution to the public, for commercial purpose, copies of the work by way of rentals, lease, hire, loan or similar arrangement.
- vii) To broadcast or communicate the work to the public by a loudspeaker or any similar device: This deals with the right to make a sound or television broadcast of a copyright work, including satellite or cable programs.

viii) Making of any adaptation of the work: the Act defines adaptation as the modification of a pre-existing work from one genre of work to another, altering a work within the same genre to make it suitable for different condition of exploitation.

Part 11 of the Act introduced a different class of works falling under copyright protection. These works are termed Neighbouring rights. They are not copyright properly so called. They are rights that are so closely related to copyrighted works that need some form of protection hence they are called neighbouring rights they include, the works of performers and folklore.

2.8 Copyright Infringement

Copyright is infringed by a person who performs any of the acts restricted by the copyright Act without the license of the copyright owner. Copyright infringement entails the unauthorized use of a copyright protected work.⁵⁴section 15 of the Copyright Act provides that copyright is infringed by a person who without license or authorization of the owner of the copyright owner does, or causes any other person to do an act, the doing of which is controlled by copyright.

Section 6 sets out the controlled acts, which are reserved for the owner of the copyright and without due authorization from the owner of the copyright and outside the parameters of the exceptions provided for under the acts , the doing of any of the controlled act in relation to the protected work would constitute an infringement of

⁵⁴ Olumide Osundolire, Chinasa Uwanna and Oluwatobiloba Ojuri: ' Copycat or Coincidence; Establishing Copyright infringement in Similar Literary Work'.
<https://www.mondaq.com/nigeria/copyright/1002394/copycat-or-coincidence-establishing-copyright-infringement-in-similar-literary-works>.

copyright. To successfully prove infringement of copyright in a work, a claimant (after having established that the work is an original expression and therefore qualifies for the inherent protection guaranteed by the copyright must establish casual connection between his work and the alleged infringing work as well as the substantial taking by the alleged infringing work from his work .

1. Causal connection

The claimant must establish likelihood on the balance of the evidence available, that the infringed work was copied from his/her work. The copyright work must be a source from which the infringed work is derived. Where the claimant work precedes that of the defendant, the defendant had opportunity of access to the claimant's work and there are strong similarities between both works, there will be a prima facie assumption that the defendant copied the claimant work.⁵⁵ Establishing that the defendant had access to his work may be satisfied where for example, the claimant is able to show that his work – say a book ,poem or song was widely read and performed in areas and at that would make it highly likely that the defendant heard or watched it. Where the claimant can demonstrate access, he still needs to demonstrate sufficient similarities between the defendant and the claimant work to make copying more likely than independent creation. The claim could show that the defendant made a verbatim of his entire work or that a part of both works are similar or that both works have similar aesthetic appeal.⁵⁶

⁵⁵ Pleateau Publishing and Anor v. Adophy (1986) 4 NWLR (Pt 34) 205 at pages 615-616

⁵⁶ Masterpiece Investment Limited v. World- wide Business Media Ltd (1977) 1 FHCLR 496

2. Substantial Taking.

The plaintiff must establish that the substantial part of the copyrighted work was copied by the infringing work. This is often determined by the confirmation of the quality rather than the quantity of what may have been taken. In this regard, it is important to note that copyright law protects the particular original expression of a work and not the underlying idea behind the work. Copyright infringement arises when a defendant copied a substantial part of the copyrighted work and the question whether he has copied a substantial part depends much on the quality rather than the quantity of what he has taken. In the case of *Franklin Mint Corp v. National Wildlife Art Exchange Inc*⁵⁷ the plaintiff, the national wildlife art exchange, commissioned a well-known wildlife artist to produce a water colour bird painting of cardinals. The artist transferred the copyright to the plaintiff, who issued limited edition prints of the work. 3 years later, the defendant commissioned the same artist to paint a set of four bird picture, including one of the cardinals, and also issued prints of the pictures for sale. The plaintiff sued the defendant for copyright infringement of its cardinal points. The plaintiff had claimed that the painter had copied a substantial part of the earlier work. The painter replied that he had just taken the idea and that he should not be banned from ever painting pictures of cardinals again. The court noted thus, since copyright does not protect thematic concepts, the fact that the same subject matter may be present in two painting does not prove copying of infringement. Indeed an artist is free to consult the same source for

⁵⁷ 575 F. 2d 62 (U.S: Court of Appeal 3rd cir. 1978)

another painting. Copyright may be infringed vicariously; an aggrieved copyright owner can seek remedies for copyright infringement.⁵⁸

REMEDIES

A copyright owner work can be said to be infringed through any of those acts stated in section 15 of the Act, and can enforce such right through civil or criminal proceedings or both. It should be noted that remedies available to copyright owners whose copyright is infringed upon in civil proceedings are damages, injunction, Anton Piller order, accounts for profits and conversion.

1. Damages: They are divided into general and special damages, exemplary damages or punitive damages and nominal damages. General damages are losses which flow naturally from the defendant conducts and its quantum need not be pleaded or proved as it is generally presumed by Law. Special damages are damages which law does not presume but must be specifically pleaded. The remedy in *Oladipo Yemitan v. Daily Times*⁵⁹ is important but difficult.

2. Injunction: it is granted by the court to prevent a person from doing or continuing to do a wrong. It is also granted to compel a person to do an act. An injunction was granted in *Plateau Publishing Company v. Chief Chuks Adophy*⁶⁰ to restrain infringement of the plaintiff's copyright by the defendant.

3. Anton Piller order: it is an order which can be given for inspection, photographing and delivery up of infringing materials in the possession or control of an infringer. It is

⁵⁸ C.C Nwabachili, ' The Infringement of Copyright in Nigeria: An Overview. www.globalacademic.com.

⁵⁹ (1980) FCH 186

⁶⁰ (1980) 4 NWLR 205

an order which is obtained without notice to the other party, so as to remove evidence which ought to otherwise be destroyed. The order originated in Lord Denning Judgement in the case of *Anton Piller KG v. Manufacturing Processes Ltd.*⁶¹Wherein their lordship laid down the conditions for the granting of the order as follows:

- (a) That the plaintiff must show a very good prima facie case.
- (b) That the damage, actual or potential, to the plaintiff must be extremely serious.
- (c) That there must be clear evidence that the defendant(s) had in their possession incriminating documents or things and there is a real possibility of destruction of such materials if they are put on notice.

4. Account of profit: This is an order to produce and account for the profit in respect of the infringing material.

5. Conversion rights: it means that the intentional dealing with goods in a manner inconsistent with the right of a true owner. Section 18(4) of the Act provides that the infringing copies, machines, tapes, equipment or contrivances used are deemed to be property of the owner who may take proceeding for the recovery thereof.

CRIMINAL REMEDIES

Section 20 of the Copyright Act provides to the effect that any person who sells, hires, imports infringing works, materials or items (or facilitates the doing of any of the aforementioned) shall be liable to a fine not exceeding ten thousand naira for every

⁶¹ (1976) 1 All ER 779

infringing copy or a term of imprisonment not exceeding 5yrs or both. *Multi-choice Nigeria Limited (MNL) v. Musical Copyright Society Of Nigeria (MCSN)*⁶²the federal high court awarded the sum of NGN 5,900,000,000 (Five billion, Nine hundred million Naira) in damages to MCSN as counter caliment in the suit, after considering inter-alia, the unchallenged evidence of flagrant infringement of copyright in MCSN’S work by MNL, the frequency and long duration of the infringement, the financial benefit which arose and the need to ensure adequate reward for copyright owners in the Nigerian music industry.

2.9 Exceptions to Copyright Infringement.

1. Fair dealing.

It is a doctrine, unlike the concept of copyright. It is not traceable to any statutory enactment⁶³ rather it is a judge made. Thus Lord Denning stated in *Hubbard v. Vosper*⁶⁴that is impossible to define what “fair dealing” is. It is a question of degree. Fair dealing is entrenched under the Nigeria copyright Act;⁶⁵ ssimilarly section 107 of the United States Act has incorporated the fair dealing doctrine although it is referred to as “fair use.” It is a defence against the claim for copyright infringement.

The guiding principle in proving the defence of fair dealing is as follows:

1. The amount of portion copied in relation to the whole work.

⁶² Unreported Suit No FHC/L/CS/109/11 delivered 2018

⁶³ Johnson Bryant, The Defense of Fair Dealing in Nigerian Copyright Law : Trade Off between Owner and user. <https://www.mondaq.com/nigeria/copyright/754060/the-defence-of-fair-dealing-in-nigerian-copyright-law-tradeoffs-between-owner-and-user>.

⁶⁴ (1972) Q. B.84

⁶⁵ Section 6(1)

2. The type of use involved.

-The use for research, commercial, criticism or illustration.

-Incidental or background uses.

-The use of earlier works by writer.

3. Effect of the use on the original work.

4. The amount of user labour involved.

The strong justification for the doctrine of fair dealing is entrenched under section 18 of the Constitution of the Federal Republic of Nigeria 1999. Fair dealing is provided under Section 6, 7 and 8 of the Act. It is limited to the use of the work for research, private use, criticism and the review or reporting of current events. It is quite agreeable that it is not possible to lay down any acceptable definition of what fair dealing is the Act as mentioned earlier also failed to define fair dealing or what amounts to fairness for it to depend on a fact, degree, impression and circumstance of each particular case.⁶⁶

Article 9, Paragraph 2 of the Berne Convention states that

It shall be a matter for legislation in the countries of the union to permit the reproduction of such works in certain special cases, provided that such reproduction of such works in certain special cases, provided that such reproduction does not conflict

⁶⁶ Chika Eucharia Chinweze, PHD: 'Statutory Defenses to Copyright Infringement in Nigeria: A Contextual Approach'. Chukwu Emeka Odumeju University of Journal of Commercial and Property Law; Vol 2, No 1, 2019

with a normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the owner.⁶⁷

2. Use for Educational purpose and other use.

This exception contained in the second schedule of the ACT is also for certain uses which are education or instructional in nature. These includes collection of a short excerpt of work,⁶⁸ approved educational broadcasts,⁶⁹ of the educational institution.⁷⁰

3. Ephemeral use of Artistic Work.

This means the using creative work for a short period in other word the incidental use of artistic work. They are exempted from copyright control in the following instances inclusion in film or broadcast of artistic work situated in a place that is viewable by the public.⁷¹ In *Fraser- Woodward Ltd v. BBC and Brighter Picture* ⁷² the defendant broadcast of a program showing images of newspaper pages containing the plaintiff's celebrity photograph was held not to be incidental inclusion. However the court found that there was no infringement as the use otherwise qualified as fair dealing for the purpose of criticism and review.

⁶⁷ 1886.

⁶⁸ Second Schedule of the Copyright Act, Paragraph (f)

⁶⁹ Ibid 67 Paragraph (g)

⁷⁰ Ibid 67 Paragraph (h)

⁷¹ Second Schedule of the Copyright Act, Paragraph (c)

⁷² (2005) F.S.R 36

4. Parody, pastiche or caricature.

These exceptions are provided for in paragraph (b) of the second schedule and apply only to literary, musical and artistic work as well as cinematograph film. Parody is the transformative use of a well-known work for purposes of satirizing, ridiculing, criticism or commenting on the original work as opposed to merely alluding to the original to draw attention to the latter work. Pastiche is a work of art created by deliberately copying the style of somebody/something. Caricature is a funny drawing or picture of somebody that exaggerated some of their features or the descriptive of a person or thing that makes them seem ridiculous by exaggerating some of their characteristics.

2.10 Conclusion

Only eligible works which satisfies the twin requirement for the protection of copyright work will be awarded copyright protection. Where a work has been infringed upon, the owner can in an action for infringement claim adequate remedies which include both civil and criminal remedies.

CHAPTER THREE

LEGAL FRAMEWORK FOR THE PROTECTION OF COPYRIGHT WORKS IN NIGERIA.

3.0 Introduction

At the end of the Nigeria civil war of 1970 which coincide with Nigeria's oil boom which brought immense wealth to Nigeria with lots of money to spend and people needing to get back to their lives, entertainment offered comfort and further developed into an important industry in Nigeria. Highlife was in high demand and in the midst of all these development in the entertainment industry, technological development enabled the invention of a lot of things which includes the cassette player which further brought about cheaper and easier copying. A proliferation of facilities to mass produce works on cassettes brought about piracy challenges in the entertainment industry. Producers, authors and performers are all concerned with the high level of piracy. This same effect was still felt in the publishing industry as well. This lead to setting up an anti -piracy vanguard made up of music and publishing industries. Despite several anti –piracy raids and collaborations with the police, piracy was no teeth to bit and therefore did not deter the pirates from their acts.¹

The Nigeria copyright Industry frustrated and agitated identified legislative reform as one of the cardinal issues in combating the challenges posed by piracy. After series of meetings and lobbying the 1988 Copyright legislation was passed and became a part of

¹ Kunle Ola 'Evolution and Future Trends of Copyright in Nigeria (2014) 2 J Open Access L 1

the Nigeria legal system.² The 1988 Copyright legislation was passed and promulgated under a military administration and was therefore passed as a decree. The Act has been amended twice, first in 1992 and secondly in 1999. In 2004, the laws were re-codified under the laws of the federation of Nigeria. The re-codification changed the numbering of the sections but contents are still the same. Although effort has been made to protect copyright both national and international level and both are governed by national and international laws. In Nigeria, infringement of copyright was governed until 1970 by the English Copyright Act of 1911 which was made applicable to Nigeria.³

Although a new copyright Act was enacted in England in 1956, Nigeria still continued to apply the 1911 Act until 1970 when the copyright was promulgated as decree no 61 of 1970.⁴The Act was however found to be defective in so many aspects.⁵ However in 1988, a new Copyright Act was enacted and it was embodied in the Laws of the Federation 2004.

3.1 Nigeria Copyright Act 2004

It is the law that governs copyright within Nigeria. Under the Nigeria copyright Act of 2004, intellectual creations that are eligible for copyright protection are broadly classified into six. These are:

² Cap C28, Laws of the Federation of Nigeria 2004.

³ By virtue of an Order in Council, No 912 of 24th June, 1912, made pursuant to section 25 of the Copyright Act of 1911 of Great Britain. It came into operation on the 24th December 1970.

⁴ It came into operation on the 24th of December 1970.

⁵ Michael Sunday Afelayan, 'Legal Challenge of Intellectual Property and Copyright Protection of Online and Digital Data in Nigeria' (2018) 79 JL Poly and Globalization.

1. Literary works.
2. Musical works
3. Artistic works.
4. Cinematograph films.
5. Sound recordings.
6. Broadcasts.

A non-exhaustive list of works that could fall in any of the categories is contained in section 51 of the said Act. For instance, literary works consists of a wide variety of intellectual creations including novels, poetical works, plays, broadcasting scripts, computer programs, text books, essays and articles, encyclopaedias and dictionaries, letters, reports and memoranda, lectures, addresses and sermons, law reports, excluding decisions of courts and compilations.

The copyright Act protect works that are created or authored by a Nigerian or persons that are not Nigerians but domicile in Nigeria. It also protects works of other persons that are first published in Nigeria.⁶The protection offered by copyright is available to both published and unpublished works of authors. The owner of a copyright work in Nigeria has the right to do the following ‘reproduce the work. Prepare other works based upon the work, distribute other copies of the work by sale or other transfer of ownership or by lease, perform the work publicly, display the copyrighted work

⁶ Section 2 of the Nigeria Copyright Act 2004

publicly and authorize others to do the above.⁷ Copyright is therefore possessed as a 'property and the owner is known as the copyright holder. The criteria for the protection of copyright in Nigeria includes the requirement of fixation , originality of the work, reference to the author, reference to the country of origin.

While copyright protection extends to a work irrespective of its quality.⁸ Certain categories of works such as literary, musical and artistic works are required to pass the dual tests of originality and fixation in order to be protected.⁹ The requirement of originality, entails that sufficient effort must have been put in the making of the work as to give it an original character. Fixation is the physical form in which the work is expressed. It is only when a literary , musical or artistic work has been fixed in any definite medium of expression known or later to be developed , from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device that it becomes eligible for copyright protection.¹⁰ Also the work must be created by a person who is a citizen of Nigeria or domicile in Nigeria and in the case of a body cooperate, must have been incorporated under the Act.¹¹

3.2 Domestic Regulations

The copyright Act of 2004 is the principal legislation regarding copyright protection in Nigeria and it is supplemented by various implementing rules/regulations, which includes the following:

⁷ Section 10 (1) of the Copyright Act 2004

⁸ Yusuf Ibrahim Arowosaye and Aishatu Eleojo Adams, 'Protection of Legislative Texts under the Nigerian Copyright System'(2002) 9 IJDLR 142

⁹ Section 1(2) of the Copyright Act 2004

¹⁰ Section 1(2) (b) of the Copyright Act 2004

¹¹ Section 2(1)(b) of the Copyright Act 2004.

1. The Copyright (Security Device) Regulation 1999
2. The Copyright (Optical Disc Plant) Regulation 2006
3. The Copyright (Video Rental) regulation of 1999
4. Copyright (Collective Management Organization) Regulation 2007
5. Annual Copyright Forum
6. Copyright (Levy on Materials) Order 2012.
7. Copyright (Reciprocal Extension) Regulation 1972
8. Copyright Notification Scheme
9. The Copyright Bill of 2015

1. Copyright (Security Device) Regulation 1999

This regulation was made pursuant to the powers conferred on the commission by section 21 of the Copyright Act. It is one of the regulations that has helped to some extent, in fighting piracy in the movie and music industry in general. It provides for the use of hologram, seal and stamps on sound recordings and cinematography films. This therefore helps the public to identify genuine products which would bear the seal therefore curbing the menace of piracy. Section 21 of the Nigeria Copyright Act empowers the commission to prescribe the use of any anti-piracy device for use on any work which copyright subsists. The intention was dual; first of which is to help the general public identify genuine products and secondly to curb the menace of piracy thereby providing authors an additional incentive for further creativity and for copyright

owners to recoup their investments.¹² The commission issued the copyright (security device) regulation which majorly focused on the issuance of hologram stamps.

2. Copyright (Optical Disc Plants) Regulation 2006

This regulation is made pursuant to section 37(4) of the Copyright Act. This regulation directly addresses the very important issue of optical disk piracy as one of the most prevalent of all the sources of piracy. It regulates the operation of optical disk plants in relation to the storage of copyrighted materials in optical disks. The regulation becomes imperative to address the issue of piracy from the point of productions. The aim of this regulation was to therefore to identify the sources of production and provide a legal regime for optical disc manufacturers and producers to operate within a regulated legal framework.

3. Copyright (Video Rental) Regulation of 1999

It was enacted to regulate film and video rentals. As the hiring and renting of video cassettes, CD's and DVD's became common in most parts of Nigeria, the need to consider the issue of sells, rentals and hiring of cinematograph films became imperative as they were being infringed on. In addressing this, the commission came up with the copyright (video rental) regulation. This regulation prescribed the issuance of a rental copy, which copy is meant to be produced by the copyright owners and would be purchased by the rental shop.

¹² Kunle Ola, Evolution and Future Trends of Copyright in Nigeria (2014) 2 J Open Access L 1

4. Copyright (Collective Management Organization) Regulation

This regulation was made pursuant to the powers conferred on the commission under section 39(7) of the Act, to address the issue of collective administration. It was made with the aim of fostering better negotiation of copyright licenses on behalf of copyright owners.

5. Annual Copyright Forum

It was enacted in 1999 to provide a platform for interaction among the various stakeholders of copyright on ways to better protect copyright.

6. Copyright (Levy on Materials) Order 2012

This law imposes a compulsory levy on materials capable of being used to infringe copyright in a work. Section 40 of the Act provides that ‘there shall be paid a levy on any material used or capable of being used to infringe copyright in a work.’¹³ The money collected goes to the fund of the Nigeria copyright commission from where it is distributed to the collecting societies in accordance with the regulations made by the commission. The rationale for this scheme lies in the need to ensure that right owners are properly remunerated for their work whilst at the same time enabling users, exploit their work without any fear of contravening the legal provision of any Law(s).

¹³ Copyright Act, Cap 28 Laws of the Federation of Nigeria 2004.

7. Copyright (Reciprocal Extension) Regulation 1972

This regulation was issued to enable extension of copyright protection in works protected under the Act to countries to which Nigeria shares treaty obligation. This obligation was issued on the 1st of February 1972.

8. Copyright Notification Scheme

The notification scheme of the commission is the mechanism through which a national copyright databank of authors and their works are kept.¹⁴ The Nigeria copyright commission through the copyright notification scheme provides copyright owners the option to register their work and deposit a copy of the work in a data base maintained by the Nigerian copyright commission. This registration is a mere formality but its importance lies in the fact that it serves as public notification of the exercise of the work.

9. Copyright Bill of 2015

As part of the reformation of the copyright system in Nigeria, the Nigerian Copyright Commission (NCC) constituted a committee to draft a new copyright bill. According to the introductory note to the bill, the main objective of the reform is to ‘reposition Nigeria’s creative industries for greater growth, strengthen their capacity to compete more effectively in the global market place and enable Nigeria to fully satisfy its obligations under the various international copyright instrument, which it has earlier ratified or indicated interest to ratify. The introduction of the bill was necessitated by the need to repeal the outdated Copyright Act of 1988¹⁵ and to upgrade the copyright

¹⁴ Section 34(2) Cap C28 of the Laws of the Federation of Nigeria.

¹⁵ Cap 28 Laws of the Federation of Nigeria 2004.

legislation in Nigeria to catch up with the constant development of digital technologies and current needs of copyright protection in the world.

The bill took into consideration some modern exigencies which has since affected and are still affecting copyright protection since the enactment of the copyright Act of 2004.

10. The Judiciary

The Copyright Act has made available two provisions with regards to enforcement proceedings. First section 16(1) of the Act provides, inter alia, that copyright Infringement shall be actionable at the suit of the owner, assignee or exclusive licensee of the copyright as the case maybe, in the Federal High Court, exercising jurisdiction in the place where the Infringement occurred. Secondly, section 46 gives exclusive jurisdiction for the trial of offences and disputes under the Act.

11. The Nigerian Police Force

The general duty of the police force is to maintain law and order in the society. The Copyright Act has expressly listed the police force among those organs charged with the responsibility of copyright administration in the country. Through the collaborative strategies of the copyright commission, the Nigerian Police is expected to play a vital role in curbing the activities of the pirates. The effect of section 38 of the Copyright Act in appointing copyright inspectors is to compliment the duties of the police force.

3.3 Various International Treaties that Protect Copyright Works

Intellectual property is territorial in nature and effective within the national boundaries of a state.¹⁶ However, much of the national legislation on intellectual property promulgated by a state is derived from rules of international application, hence the domestic law on copyright in Nigeria encapsulated in the Act¹⁷ derives its minimum standard of protection from international conventions, given the loopholes in the Nigeria Law, it is apposite to review the minimum standard of protection proffered internationally. Copyright is based on the understanding that a labourer is worthy of his wages. Treaties that create copyright laws aim at the universal protection of copyright. However the element of the universality of copyright protection extends to international conglomerate of states that sign a particular copyright treaty.¹⁸ In international law copyright is protected within the motive of making the producer of a literary work to benefit from his mental exploits which translated into a material form to benefit the human society in one area or the other. Globally and regional mechanism exists for the protection and development of intellectual property. These mechanism help to create a convergence between the territorial and national treatment principles on intellectual property protection.¹⁹

1. BERNE CONVENTION OF 1886

¹⁶ Dorcas A. Odunaike. *The Entertainment Industry in Nigeria and Challenges for Protection of Intellectual Property in a Changing Society*

¹⁷ Copyright Act Cap C28 Laws of the Federation of Nigeria 2004

¹⁸ G.N. Okeke and Kennet Uzor, 'An Appraisal of the Protection of Copyright Under International Law' *Journal of Law and Conflict Resolution*. Volume 6 (1) pp-7-16. April 2014.

¹⁹ Desmond O. Oriakhogba and Ifeoluwa A. Olubiyi, 'Intellectual Property Law in Nigeria, Emerging Trends, Theories and Practice (Parclerd Press Limited 2021).

It is otherwise known as the Berne convention for the protection of literary and artistic works. It is an international agreement governing copyright. It governs matters and issues relating to copyright which could be best described in its original form as the right of the author. It requires its signatories to recognize the copyright work of others from other signatory countries.²⁰

The Berne convention, adopted in 1886, deals with the protection of works and the right of their authors. It provides creators such as authors, musicians, poets, painters with the means to control how their works are used, by whom and on what terms. It is based on the three basic principles and contains a series of provisions determining the minimum protection to be granted as well as special provisions available to developing countries that want to make use of them.²¹ Article 11 paragraph (ii) of the Berne convention authorizes the authors of an original work to broadcast the same by any means whatsoever including satellite or cable and to authorize others either for consideration or not to broadcast or rebroadcast their work or programs. It provides a minimum standard of copyright protection and establishes a system where no formal registration is required for copyright protection. It uses the principle of ‘national treatment’ where countries are required to recognize the copyright of foreigners without any further formalities.

As to the duration of protection, the general rule is that protection must be granted until the expiration of the 50 years after the author’s death.²² The core of Berne convention is its provision that each of the contracting countries shall provide automatic protection for

²⁰ Article 5

²¹ www.wipo.int/treaties/en/ip/berne/summary-berne.

²² Article 7

works first published in other countries of the Berne union and for the unpublished works whose author are citizens or resident in such other country.²³

Literary and artistic works, the subject matter protected under the Berne convention are stated as including every production in the literary scientific and artistic domain, whatever maybe the mode or form of their expression.²⁴ Reasonable access to and use of works are permitted without authorization in certain special cases, provided these do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interest of the author.²⁵ Article 20 of the Convention reserves the countries of the union the right to enter into special agreement amongst themselves with a view to extending or Strengthening the rights granted to authors beyond those granted by the convention.

2. WIPO COPYRIGHT TREATY (WTC) 1996

It is a special agreement which deals with the protection of works and the rights of their authors in the digital environment, they are also granted economic rights. Furthermore, the WCT mentions two subject matters to be protected by copyright:

- (i) Computer programs, whatever mode or form of their expression.
- (ii) Compilation of data or other material (database) in any form, which, by reason of their selection or arrangement of their contents, constitute intellectual creations.

²³ Article 5(4)

²⁴ Article 2

²⁵ Article 9(2)

As to the duration of protection of work of authors, the term of protection must be at least 50 years for any kind of work. The enjoyment and exercise of the rights provided for in the treaty cannot be subject to any formality. It limits the enjoyment of copyright protection to the member states which ratified or acceded to the treaty, it also protects the arrangement and selection of materials in database.

3. WIPO PERFORMERS AND PHONOGRAMS TREATY 1996

It deals with the right of two kinds of beneficiaries particularly in the digital environment:

- i. Performers (actors, singers, musicians, e.t.c) and
- ii. Producer of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds.

These rights are addressed in same instrument, because most of these rights granted by treaty to performers are rights connected to their fixed purely aural performance (which are the subject matter of phonograms). As far as performers are concerned, the treaty grants performers economic rights in their performers fixed, in phonograms(not in audio visual fixation, such as motion pictures): i.) the right of reproduction, ii.) the right of distribution iii) the right of making available.

The treaty also grants performers moral rights, that is, the right to claim to be identified as a performer and the rights to object to any distortion, mutilation or other modification that would be prejudicial to the performer's reputation.

4. UNIVERSAL COPYRIGHT COMMISSION 1952

The Universal Copyright Convention (UCC), adopted in Geneva, Switzerland, in 1952 is one of the two principles of international convention protecting copyright. It was developed by the United Nations, Education, Scientific and Cultural Organization (UNESCO) as an alternative to the Berne Convention for those states that disagreed with aspects of the Berne Convention but still wished to participate in some form of multi lateral copyright protection. Article 1 provides that each contracting state undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writing, musical, dramatic and cinematographic works, and paintings, engraving and sculpture’.

Its main features are as follows;

- i. No signatory nation should accord its domestic author more favourable copyright treatment than the authors of other signatory nations, through no minimum protection for either domestic or foreign author is stipulated.
- ii. A formal copyright notice must appear in all the copies of a work and consist of the symbol, the name of the copyright owner, and the year of first publication; a signatory nation, however must require further formalities provided such formalities do not favour domestic over foreign works.
- iii The minimum term of copyright in member nations must be the life of the author plus twenty five (except for photographic works and works of applied art, which have a ten year term).

iv. All adhering nations are required to grant an exclusive right of translation for a seven year period, subject to a compulsory license under certain circumstances for the balance of the term of copyright.

The preamble did not introduce the aim of protecting the rights of the authors ‘in an effective and uniform manner as possible’ but only intended to assure in all countries copyright protection. The universal copyright convention (UCC) was designed to assist citizens of developing countries.

5. ROME CONVENTION OF 1961.

The Rome convention secures protection in performance for performers, in phonograms for producers of phonograms and in broadcast for broadcasting organizations. ‘‘phonograms’’ means any exclusively aural fixation of sound of a performance or of other sources. The duration as to the protection must last for at least until the end of the twenty years period computed from the end of the year in which

- i. The fixation was made, for phonogram and for the performance incorporated therein.
- ii. The performance took place, for performance not incorporated in phonograms.
- iii. The broadcast took place.

It however recognizes that the use of literary and artistic works is usually implicit in works falling within these categories and thus establishes a link with copyright protection by providing that protection granted under the convention shall leave intact and in no way affect the protection of copyright in literary and artistic work.²⁶

²⁶ Adejoke O. Oyewunmi, *Nigerian Law of Intellectual Property* (Unilag Press 2015)

Performers are defined as including actors, singers, musicians, decess and other persons, who act, sing deliver, declaim, play in or otherwise perform literary or artistic work.²⁷ There are some exceptions to the protection granted under the Rome Convention are permitted in certain circumstances. These are for private use, use of short excerpts in connection with the reporting of current events, ephemeral fixations and use for teaching or researching purpose.²⁸

6. TRADE RELATED ASPECT OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

It establishes minimum standards for the availability, scope and use of the seven forms of intellectual property. It came into force in 1995, as part of the agreement establishing the world trade organization (WTO). TRIPS incorporate and builds upon the latest version of the primary intellectual property agreement administered by the world intellectual property organization (WIPO).

TRIPS, applies basic international trade principles to member states regarding intellectual property, including national treatment and most favoured nation treatment. The rights of authors of literary and artistic works (such as books and other writings, musical compositions, painting, sculptures, computer programs and films) are protected by copyright for a minimum period of fifty years after the death of the author. The trade related aspect of intellectual property gives adequate reasons why intellectual property rights should be protected. It sets out the minimum standards of protection to be provided by members. Article 11 makes it clear that members may, but are not obliged to, implement in their laws more extensive protection than required by the agreement

²⁷ Article 3

²⁸ Article 15

provided that such protection does not contravene its provision. Article 9 clearly states that copyright does not cover any info or ideas contained in a work; it only protects original expressions. The minimum term of copyright protection stipulated is the life time of the author and fifty years after his death. The most significant feature of the TRIPS agreement is that where a state is in breach of its requirements, another displeased state may initiate the WTO dispute settlement procedure. The key feature of the TRIPS agreement is the member obligation to introduce border measures for the protection of intellectual property rights. The TRIPS agreement deals with five broad issues, namely;

- (i). the general provision and basic rules of the multilateral trading system applicable to international intellectual property.
- (ii). the minimum standards for the protection of intellectual property by member states.
- (iii). the intellectual property rights enforcement procedures that member states should provide.
- (iv). intellectual property dispute settlement mechanisms between member states.
- (vi). Special transitional arrangement for the implementation of TRIPS Agreement provision.²⁹

7. WORLD INTELLECTUAL PROPERTY ORGANISATION (WIPO)

²⁹ Ibid 19

The world intellectual property organization (WIPO) was signed at Stockholm on July 14 1967, entered into force in 1970 and was amended in 1979. The origin of WIPO goes back to 1883 and 1886 when the Paris convention for the protection of literary and artistic works respectively were concluded. WIPO two main objectives are.

1. To promote the protection of intellectual property worldwide
2. To ensure administrative cooperation among the intellectual property unions established by the treaties that WIPO administers.

In order to attain these objectives, WIPO, in addition to performing the administrative tasks of the union, undertakes a number of activities. This includes;

- i. Normative activities, involving the setting of norms and standards for the protection and enforcement of intellectual property rights through the conclusion of international treaties.
- ii. Program activities, involving legal and technical assistance to states in the field of intellectual property.
- iii. International classification and standardization activities, involving cooperation among industrial property officers.

WIPO helps promote intergovernmental cooperation in the administration of intellectual property. It has as its mission, the promotion of "the creation, dissemination, use and protection of works of the human kind for the economic, cultural and social progress of all mankind" through international cooperation and to " contribute to a balance between the stimulation of creativity worldwide, by sufficiently protecting the moral and

material interests of creators on the one hand, and providing access to the socio-economic and cultural benefits of such creativity worldwide on the other". To this end, WIPO carries a number of functions, which includes serving as a platform for member states to develop, establish and harmonize rules and practice relating to the protection of intellectual property.³⁰

8. WORLD TRADE ORGANIZATION (WTO)

The WTO was established on 1 January 1995 under the Agreement Establishing the World Trade Organization 1994 (WTO Agreement), as a culmination of the Uruguay Round of negotiations that took place between 1986 and 1994. Its headquarters is in Geneva, Switzerland and it currently has over 169 member states including Nigeria. The WTO was conceived and established as the global body concerned with global trade a global system of trade rules. Thus, it is a global forum for the negotiation of trade agreements, the settling of trade disputes between its members and for supporting the needs of developing countries. The WTO agreement is a premier agreement introducing intellectual property principles into the system of multilateral trade.³¹

Copyright law owes much to international conventions since these have often the channel for the creation or revision of domestic legislation. Intellectual property is territorial in nature and effective within the national boundaries of a state. However much of the national legislation on intellectual property promulgated by the states derived from the rules of international application; hence the domestic law on copyright

³⁰ Ibid 19

³¹ Ibid 19

in Nigeria encapsulated under the Act derives its minimum standard of protection from international conventions.

Rights of authors of copyright works are recognized because their creativity gives life to musical, dramatic and choreographic works to mention a few. Hence the need to provide the legal support mechanism that is needed to protect individual interpretation of these works and thereby reap the fruits of their labour.

3.4 The Role of the National Copyright Commission

Section 34(1) of the Copyright Act establishes the Nigeria Copyright Commission hereinafter referred to as NCC. It is a body corporate with perpetual succession and common seal. It is saddled with the following functions and responsibilities. They include the following;

1. Responsibility for all matters affecting copyright in Nigeria.
2. Monitor and supervise Nigeria's position in relation to international conventions and advise government thereon.
3. To advise and regulate conditions for the conclusion of bilateral and multilateral agreement between Nigeria and any other countries on copyright affairs.
4. To enlighten and inform the public on matters relating to copyright.
5. To maintain an effective data bank on authors and their work.
6. Responsibility for such other matters relating to copyright in Nigeria.

The administration of copyright law is carried out majorly by the Nigerian Copyright Commission in conjunction with copyright societies specialize the legal practitioners

and the judiciary. There are also other stakeholders such as the Nigerian Police and the custom and excise department who assists in the implementation of the mandate of the NCC, in carrying out the above functions the commission over the years has adopted several strategies.

The Copyright Act confers the NCC with both general and specific tasks. The general tasks set out section 34 of the Copyright Act. The NCC specific tasks are gleaned from sections 5, 10,13, 17, 21, 31, 37, 38, 39, 40, and 50 of the Copyright Act. In this regard, the NCC is required to issue certification of countries that are parties to treaty obligations for the purpose of determine whether an eligible work may be enjoyed copyright by virtue of such international obligation. Also, the NCC has a duty to regulate the conditions for the exercise of author's resale rights in respect of graphic works, three- dimensional works and manuscripts, issue exemption certificate to enable an unapproved CMO to commence action for the infringement of copyright or any right under the Copyright Act.³²

Section 36 of the Copyright Act provides for the governing board of the NCC. Under section 38 of the Copyright Act, the NCC is empowered to appoint copyright inspectors as it deems for. When appointed the copyright inspector is vested with all the powers, rights and privileges of a police officer as defined under the Police Act and under any other relevant enactment pertaining to investigation, prosecution or defence of a civil or criminal matter under the Copyright Act. ³³

³² Ibid 19

³³ Ibid 19

In 2005, the commission launched the Strategic Action Against Piracy (STRAP) which have 3 core components namely mass enlightenment, right administration and enforcement.

The NCC has played an important role in enlightening many copyright owners on their right. Who do not understand what it is and how it works and hence do not know what rights they have and what users can do without the need for authorization. Under STRAP the commission in furthermore of its vision to disseminate copyright knowledge set up the training arm of the commission called the Nigeria Copyright Institute which is responsible for training both the members of staff and the general public on issues of copyright. The commission uses enforcement mechanism in tackling the challenges of the industry.

3.5 Conclusion

Having established the scope of copyright protection laws in Nigeria. The current Nigeria copyright law is been influenced by standards sets out in international instruments. In all these the law still retains its localness, pondering to our local circumstances. The main objective of this frameworks discussed above is to combat all forms of piracy and other forms of copyright abuses and to create conducive environment for the protection of copyright for all categories of work, where innovation can thrive and empower local industries, create opportunities for legitimate distribution of protected works and so on.

CHAPTER FOUR

CHALLENGES AND ENFORCEMENT PROBLEMS ASSOCIATED WITH COPYRIGHT PROTECTION

4.1 Introduction

When God created the framework of the earth with all its appurtenances, he gave man the freedom to re-design its contents as preferred. The world as it looks today is therefore the result of man's recreation process. But while some bury themselves in the genuine labour of making the world a better place for mankind and the generation to come, some in a lazy manner always lurk around the corner, waiting to reap where they did not sow by stealing the glory of another man.¹In spite of the provisions of the law, practical reality shows that it is still difficult for authors and right owners to gain the full benefit of the copyright system. The ideas of copyright protection developed as an aftermath of the invention of printing, which made copying easier, cheaper and faster as intellectual works became susceptible of exploitation in a manner that could jeopardize the interest of the original producer, some form of protection had to be designed.²

4.2 Challenges

The challenges associated with protection of copyright work includes but not limited to the following;

¹ Michael Sunday Afalayan, 'Legal Challenges of Intellectual Property and Copyright Protection of Online and Digital Data in Nigeria (2018) 79 JL Pol'y & Globalization 139

² J.E Esezobor, 'Concepts in Copyright Protection' (1976) 23 Bull Copyright Soc'y USA 258

4.1.1 Piracy

The greatest resources and bedrock of every civilization is its creativity, innovation and invention. All these boost the economy of a Nation. The goal of copyright protection is to encourage dissemination of information, provide employment and economic benefits to the owner and reserve the ownership of the right in it to the creator of the work. But this right has been constantly bastardized and infringed upon by unauthorized acts of reproduction and distribution on a commercial scale called piracy. Piracy is a menace that has negativity impacted on Nigerian economic, social and political wellbeing.³ The practice of labelling the infringement of exclusive right in creative works as 'piracy' predates statutory copyright law.

Prior to the statute of Anne 1709, the stationers company of London in 1557 received a Royal Charter giving the company a monopoly on publication and tasking it with enforcing the charter. Those who violated the charter were labelled pirates as early as 1603. The term 'Piracy' has been used to refer to the unauthorized manufacturing and selling of works in copyright. Piracy traditionally refer to the acts intentionally committed for financial gain, it is a cankerworm that has eaten deep into the fabrics of the society. It is a clog in the wheel of the production and growth of copyright works, for it has led to counterfeiting and fake products, which has contributed in no small measure to intellectual property theft and this has affected negatively the good will of the original creator of a work. In Nigeria today, piracy hits all sectors of copyright

³ Mary Imelda Obianuju Nwogu, 'Copyright Law and the Menace of Piracy in Nigeria' (2015) 34 JL Pol'y & Globalization 113.

industry, but the worst hit is the entertainment industry.⁴ Copyright piracy is a global problem, although more rampant in developing countries such as Nigeria. It had been recognized universally as an enemy of creative arts, intellectualism and creativity. It thwarts genuine investments and corrupt cultural value of a Nation.⁵ Piracy constitutes a serious threat to the sustenance of creative industries. As a result of piracy, the creators who have put their energies, time and money into producing sound recordings, films, books, computer programs suffer huge losses in revenue.

Piracy has now grown from a mere offence of infringement to a big time industry where the infringer carries on activities which siphoned the gains which was supposed to accrue to copyright owners to themselves.

The causes and motivation for piracy are myriad but the most significant appears to be the scarcity and high cost of genuine products and inadequate enforcement of Intellectual Property Law. Other factor include inadequate public awareness, poor distribution network for entertainment products, slow judicial process, poor funding of regulatory bodies and agencies and lack of organized entertainment industries in private sector.

Piracy occurs when unauthorized reprints can improve on the Authorized Version in terms of prices or immediate availability. Piracy of copyrighted works has put on the toga of ubiquity making it possible for copyright owners to suffer loss in terms of

⁴ Ibid 3

⁵ Alaba Ibironeke Kekere and Akin Olawale Oluwadayisi, 'In the Realm of Intellectual Property: Cyber fraud as a Major Challenge to a Copyright Protection in Nigeria (2018) 70 JL Pol'y & Globalization 24.

material wellbeing even though they enjoy fame from the popularity of their works through acts of piracy.⁶

Implications of Piracy

Piracy continues to pose the greatest threat to publishing as a business in Nigeria. The following dangers aptly illustrate the point;

1. Loss of revenue to government.
2. Loss of royalties to authors.
3. A major disincentive to both authors and publishers.
4. Drop in sale of authentic works.
5. Offer of fake copies to the public.
6. Loss of jobs.
7. Collapse of publishing industries.

4.1.2 High level of ignorance

It has become a challenge to educate most copyright owners and also individuals at large in order to dispel this notion and create awareness on copyright and the benefit of its protection. The holy book⁷ has stated that people perish for lack of knowledge. Ignorance is like a fatal ailment afraid of the piercing needle of knowledge to be cured. No right can be enforced by a person who does not know that he has such right.

⁶ Desmond O. Oriakhogba and Ifeoluwa A. Olubiye: Intellectual Property Law in Nigeria; Emerging Trends, Theories and Practice. (Parclerd Press Limited 2021)

⁷ Hosea 4:6.

4.1.3 Massive abuse of performers and producers right

The massive abuse of performers and producers right is a cankerworm that discourages investment in the music and drama industry resulting in economic loss of producers of sound recording and performers of musical and dramatic performance thereby constituting a drain on the national economy.⁸

4.1.4 Infringement

Infringement of copyright is said to occur where any person, without the license or authorization of the owner, does or cause any other person to do an act, the doing of which is controlled by copyright; imports or causes to be imported into Nigeria any copy of a work which, if it had been made in Nigeria, would be an infringing copy under the Copyright Act; exhibits in public any copyright infringing article; distributes by way of trade, offers for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any copyright infringing article; makes or has in their possession plates, master tapes, machines, equipment or contrivances used for the purpose of making infringing copies of copyrighted works; permits a place of public entertainment or of business to be used for a performance in the public of the copyrighted work, where the performance constitutes an infringement of the copyright, unless the person permitting the place to be used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright; or performs or causes to be performed, for the purposes of trade or business, any work

⁸ Dorcas A. Odunaike, ' The Entertainment Industry in Nigeria and Challenges for Protection of Intellectual Property in a Challenging Society.'

in which copyright subsists.⁹ Infringement can be direct or indirect. It can be instituted by the owner, assignee or licensee.¹⁰ It was instructive in the case of *Adenuga v Ilesanmi* (1991) 5 NWLR (Pt. 189) 82). In that case, the appellant, as plaintiff at the high court, claimed damages for infringement of his book titled "West African School Certificate Examination: Objective Chemistry", an order of delivery up of all copies of the said book, which were in the respondent's possession, and an injunction restraining the respondent from reproduction of his book. The appellant's case was that in 1977 he submitted the manuscript of the book to the respondent for printing. Although there was no written agreement between them in relation to publication of the book, he discovered during 1980 that the respondent has published the book and copies of it were being sold to members of the public. However, there was evidence of a letter written to the respondent by the appellant asking for royalties. The trial judge, dismissing the appellant claim, held that it could be inferred from his conduct that he had given a non-exclusive license to the respondent to publish the book, hence an appeal was lodged. The court of appeal, after considering relevant provision under the defunct 1970 decree, allowed the appeal and thereby upheld the right of the appellant to enforce his copyright in the work. Under the Copyright Act, the owner's right of action for infringement of copyright exists, whether the infringement was intentional, malicious or innocent; whether the right to property is real or personal, corporeal or incorporeal.

⁹ Section 15 of the Copyright Act Cap28 Laws of the Federation 2004

¹⁰ Section 16 of the Copyright Act Cap28 Laws of the Federation 2004

4.1.5. Poor funding

The National Copyright Commission (NCC) by its functions and enforcement procedure needs adequate funds to operate and carry out its responsibilities efficiently. Sadly and surprisingly too, the NCC is not adequately funded.. This automatically hinders necessary and comprehensive investigations and reduces the quantum of information gathered as a result affects the commission's optimum performance.

4.1.6 Substantial copying

This has the tendency of resulting in loss of revenue for the owner of the copyright work. For an act of copying to be considered as fundamental, it must be a substantial taking of the work. The basic consideration behind the intervention of copyright law is to protect the product of Intellectual endeavours of persons against Infringement. In construing Infringement the court will consider whether the application of the work covered by copyright by another party had the potential of hurting the proprietary interest of the owner of the copyright work. Substantial copying is a major challenge with regards the protection of copyright works, it is for the courts to consider the quality of what is taken and not the quantity. It is the quality that gives the work or the copied version the value. Infringement may necessarily not be the whole book. It will pass for copying if the work was copied without authorization.

4.1.7. Mobility of officials

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

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

4.1.8 Technological advancement

From its inception, copyright law has developed largely in response to technological change and the factor has had a greater impact on copyright law than any other. Changes in technology tend to upset the balance set by copyright law in favour of either the copyright owner, who may be able to exclude others from his work more effectively or the user, who may make use of some technological innovation to access or exploit more easily a protected work. The problem of copyright infringement becomes more acute as this innovation becomes available to individuals in the home especially when the availability is widespread.

The Information and Communication Technology (ICT) is an area which has experienced tremendous changes over the years. The area is growing faster than any other communication vehicle in the history of mankind. Such development includes the invention of digital technology and existence of Internet culture that is changing people's lifestyle. These developments have brought changes in various aspects of life including legal, social and economic arena. As technology creates new opportunities, it also poses new challenges, copyright is one amongst the most complicated area of law which has been affected by the development of ICT and is facing the greatest challenge. Such challenges involves difficulties in defining fair use, unclear and unidentified internet activities which are regarded as amounting to copyright Infringement.¹¹

¹¹ Grace Nolasco, ' The Challenges of ICT Development with Regards to Copyright Protection in Tanzania'. IJERT Vol 5 issue 06 June 2016

Digital communication became economical for wide spread adoption after the invention of the personal computer. The digital revolution converted the technology that previously was analog into a digital format, by doing this; it became possible to make copies that were identical to the original. In digital communication, for example, a hardware device was able to amplify the digital signal and pass it on with no loss of information in the signal. Of equal importance to the revolution was the ability to easily move the digital information between media and to access or distribute it remotely.

The technological advancement has had enormous impact on the world's legal system, disrupting traditional modes of protection of Intellectual property and had left the law completely in a state of flux.¹²

4.1.9 Language barriers

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

4.1.10. Cyber fraud

¹² H.P. Faga and O. Ngozi; Limits of Copyright Protection in Contemporary Nigeria: Re-examining the Relevance of the Nigerian Copyright Act in Today's Digital and Computer age. Nnamdi Azikiwe University Journal of International Law and Jurisprudence Vol 2 (2011).<https://www.ajol.info/index.php/naujilj/article/view/82405>.

According to the Organization for Economic Cooperation and Development (OECD) recommendation of 1986 cyber fraud includes computer related crimes, it is also considered as any illegal , unethical or unauthorized behaviour relating to the automatic processing and the transmission of data. With the advent of computer age and as technology improves, the rise of technology and online communication has not only created a dramatic increase in the incidence of piracy. Companies that distribute products directly over the internet are facing legal problems with copyright violation. Their products are being downloaded, copied and distributed without their consent.¹³ Despite the immense benefit derived from the copyright act and its efforts at protecting ingenuity and product of creativity. Nigeria has been bedevilled by challenges in protecting online products especially online educational materials and other e-learning products.¹⁴

4.1.11 Desire to be famous amongst artistes

The desire to be famous has led many artistes to appreciate those who play their songs without their consent. This misconception that publicity of a song (even if it is in contravention of IP right) dictates its worth worsens its situation, coupled with the Nigerian mentality that easy access and sharing enhance popularity. The reverse is the case in developed countries where the value of a work is measured by the ability and willingness of consumers and end users to pay for it. It is therefore important to re-orientate the members of the entertainment industry in Nigeria on the importance of

¹³ Alaba Ibironke Kekere and Akin Olawale Oluwadayisi, ' In the Realm of Intellectual Property: Cyber fraud as a Major Challenge to the Copyright Protection in Nigeria' (2018) 70 JL Pol'y and Globalization 24.

¹⁴ Michael Sunday Afalayan, 'Legal Challenges of Intellectual Property and Copyright Protection of Online and Digital Data in Nigeria' (2018) 79 JL Pol'y and Globalization 139.

their intellectual property right. It is wrong to think that widespread popularity and commonness of a creative work measures its worth. It is recommended that there should be an awareness campaign on the economic importance of copyright in general.

4.1.12 Contentment

Furthermore many of the artistes are contented with the little they are getting from contracts with producers and are too busy to care about enforcing their legal rights in the event of an infringement. In fact, to do many of the artistes, the time spent in enforcing their legal rights in court can be meaningfully spent on producing more work.

4.1.13 Installation of unlicensed software

Installation of unlicensed software on personal computers, peer to peer file sharing, live streaming, illegal downloading of films and songs online, amongst others have been identified as some of the Challenges posed by the Advent of digital technology.

4.1.14 Lack of moral milieu for Nigeria

Law is an aspect of the society; hence the function of law in sociological terms is dependent on its contribution to the maintenance of existing socio-economic institutions from the economic contribution of the entertainment industry and the overview of available IP laws in Nigeria, it is evident that what is lacking is the moral milieu for Nigeria to live in compliance with the law. The failure of Nigerian law to shape and change 'Nigerian Mentality' on pirated works contributes to the lawlessness that is seen around today.

4.1.15 Emergence of a digital platform

The emergence of a digital platform for easy access has led to an increase in cybercrimes, infringement of Intellectual Property rights (IPRs) online and unauthorized copying and sharing of legally protected copyright materials without the consent of the owners.

4.1.16 Ineffective border control

Ineffective border control is a bane to the entertainment industry, the essence of the regulation on optical disc is to regulate the possession of replicating plants so as to regulate production of optical disc in Nigeria. However, the volume of pirated disc in the market without any indication of its source reveals that there are companies in the country with unlicensed replicating plants under the cover of another legitimate business, it is important that efforts should be made to uncover such illegal business. Indeed copyright pirates are not ordinary men on the streets but highly placed business men/women who can afford to purchase optical disc replicating plants, hence corruption has been identified as a factor that has made it impossible to detect them at the point of entry.

4.1.17. Flooding of the market outside the country

This is another challenge to the entertainment industry, because of the rate at which copyright protected works are flooding the markets outside the country.

4.1.18 Provision on punishment under the Copyright Act

The penalties on criminal infringement as provided under S.20 (2) of Copyright Act is too small and may not even serve as a deterrent to an infringer. This makes it difficult to convince the police that piracy is a crime which needs immediate and maximum attention.

4.2 Enforcement problems

There exist problems associated with enforcing application laws for the protection of copyright works. They include;

4.2.1 Penalties

Although there are provisions for Infringement to be a crime, the penalties are so low that the law is not a credible deterrent. It is difficult; to convince even the police that it is a crime which should be taken seriously. The maximum penalty at present under Section 20 of the Copyright Act is a fine of N 100 for every copy or imprisonment for 6 months or to both such fine and imprisonment.

It is not surprising that both pirates in Nigeria do not regard the criminal law as a threat. That level of fine is not even petty cash to people who can import full container-loads of pirate tape a quarter of a million cassettes at a time. The low penalty level also makes it difficult for right owners to get the help of the police. They do not regard piracy as a "real crime". However, because of huge profits to be made, piracy certainly attracts criminal elements. We would wish to see Nigerian penalties brought up to a realistic level. Because of the huge profits to be made, we believe that the fine should depend on the number of product seized and that there should be no maximum so that the courts would inflict much heavier penalties on the greater offender.

4.2.2 The offenses themselves

Even with the toughest penalties on paper, any law will only be effective if it is capable of enforcement. The Nigerian law provides a hostage to fortune by requiring that an offence must be committed "knowingly". Knowledge is a state of mind which is difficult to prove to the degree required in a criminal prosecution in the absence of an admission. We would therefore propose that once the infringement itself is proved as fact, it should be for the accused to prove that he did not know and that he had no reason to believe that any copy was no infringing copy I.e. that the accused should have to prove that he acted in good faith. This means, in effect, that unless he both proves good faith and gives all reasonable help to the authorities, guilt is automatic. The current law poses further problems for the authorities in that for an offence to be proved, they must show either that the accused actually sold the goods or at least "exposes or offers for sale or hire". This has been found to be difficult and time-consuming and such a drain on public funds that few prosecutions have been brought and criminals have been able to escape punishments.

Finally, we believe that in view of the increased penalties proposed, it would be only right to differentiate between the more serious forms of infringement such as manufacturer or importation of pirate material and the lesser offenses of selling, offering for sale or possession by way of trade.

4.2.3 Problem of enforcement

Copyright is a very complex area of law. To bring a successful prosecution involves proving technical legal rights rather than simple facts. Consequently, police forces have

shown marked reluctance to bring criminal cases. Some countries have made this an excuse to maintain that copyright generally is really a civil problem whatever the law might say so that the criminal provisions will remain unused. We need effective protection from the authorities through the use of the criminal law. However, we do appreciate the problems of the ordinary police. There are two things that can be done to ease the problem.

1. The authorities could designate a unit of police to work specifically, on copyright protection.
2. The new offenses and penalties could be brought within the Copyright Act itself.

4.2.3 Difficulty in proving copyright

Both civil and criminal proceedings are currently hampered by the difficulty of proving copyright. This is particularly so in the case of international recording which allows an action to be brought by a local exclusive license.

4.4 Conclusion

Rights of author of musical works, producer of sound recordings and performers are recognized because of their creativity give life to musical, dramatic and choreographic work. Hence the need to provide the legal support mechanism that is needed to protect individual interpretation of each of these works and thereby reap the fruits of their labour. To create awareness in this respect it is important that each one should reach one, each one should tell one, that having IP laws is not enough compliance with the law. It is very important if everyone will say no to piracy, no to counterfeiting, no to

bootlegging, the entertainment industry in Nigeria will be able to contribute more to the GDP, thereby redeeming the country from the bondage of a mono-economy. The state of our laws regarding the grant of copyright protection, ascertainment of infringement and the remedies therefore require urgent review. The principal position of enforcement of civil remedies granted under the law is the difficulty of proof of the subsistence of copyright. The problem of enforcement of criminal remedies lies in the personnel trusted with the job.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATION

5.0 Introduction

The study has extensively talked about the application laws that protects copyright works, with practical reference to the challenges and enforcement problems that are been faced with the protection of copyright works.

5.1 Summary

Protecting the creation and development of ideas, lies at the heart of intellectual property law, of which copyright is a form of. A person's right to exclude others from possession and using a physical object can be justified when such exclusion is necessary for this person's own possession and unhindered use. From the forgoing, the study has shown the various copyright laws that protect copyright works and are applicable in Nigeria, also copyright are conferred on works arising from international treaties published in a country that is a party to an obligation. Having a moral right to the fruits of one's labour might also mean having a right to possess and personally use what one develops. The value of protecting individual freedom guarantees this right as long as the creative labour, and the possession and use of its product do not harm others.

In a nutshell intellectual property is an aspect of law that protects products of Intellectual endeavour, of which Copyright is a form of. Various laws and domestic regulations are been enacted to protect works of eligible copyright owners. However there exist a lot of challenges and enforcement problems which have been discussed

exhaustively in previous chapter. From the challenges highlighted there exist some findings that are yet to be solved. This includes:

Findings

1. The penalties imposed are minimal. Criminal penalties, apart from the difficulty that would be encountered in obtaining their names and addresses to enable court processes to be served, the punishment prescribed is very minimal. In view of this the owner of a copyright work cannot rely on criminal law for his remedy in view of the magnitude of the loss he has sustained through the action of such infringer.
2. Most owners of copyright works and also the public at large are ignorant on the rights in copyright works. Lack of ignorance is very obvious in the society and as result of that many persons and also copyright owners do not know what constitutes infringement, when the work has been infringed on and also do not know their right and benefits accrued from the work.
3. Increase in technological advancement has to a higher degree promoted piracy. It has caused more damage than good as people now just download contents online without consents of these copyright owners.
4. The failure of copyright owner to take adequate preventive measures against flagrant infringement on their IPR's before placing their work online is equally worrisome. Most copyright owners feel content with the little they get so they don't really care if their works are being infringed by individuals in the society so they fail to take adequate measures because of the processes involved in proving copyright infringement.

5. The growing presence of extremely sophisticated counterfeit software in our market indicated the existence of organized crime syndicates.

6. No commitment in tackling criminal that infringe on copyright works. The personnel faced with this tasks, most times are lackadaisical in performing their duties in tackling criminals that infringe on copyright works.

7. The Nigerian mentality that easy access and sharing enhances popularity is wrong. This is one of the challenges faced. The notion that easy access to works provides popularity is not true because at the end of the day the owner of that work loses money, effort and capital and what is gotten most times is "cheap popularity" which cannot afford to pay bills

8. No legal support mechanism to create awareness. Most times no provision for platforms to create awareness on the ills of piracy, Cyber fraud etc and the effects it can bring to the society at large.

9. The National Copyright Commission are faced with challenges of corruption and poor funding. Most officials in the NCC are corrupt and take bribes instead of bringing an infringer to court to face charges. Corruption is a cankerworm and it has eaten deeply into the fabrics of the society. Also the commissions are poorly funded by the government and in this regard the commission cannot carry out their functions concurrently and effectively and this is regarded as a big hindrance in bringing infringers to face the law.

10. Giving the volume of laws that help protects copyright works in Nigeria one will believe that it will be get rid of piracy, but the reverse is the case. In spite of the laws

pirated copies of Kunle Afolayan 'October 1' we're sold publicly all over Nigeria in 2015.

11. Although, there is an anti-piracy law in Nigeria that focus on punishment for violation of the intellectual property of an individual or corporate organization, lack of strict implementation has always been the bane. Even when perpetrators are arraigned before the court by litigants, the damages stipulated in the statues book is too insignificant for both an individual and a corporate body that has breached another person intellectual property.

5.2 Recommendation

Having examined the challenges and enforcement problems faces in the protection of eligible works if copyright owners with regards to the legal framework of these laws. This study will recommend significant measures which can be adopted to tackle the challenges and enhance the Nigerian Copyright Systems.

1. Creating more awareness on Copyright industry

Giving the geometrics increase in the contribution of copyright to the GDP, it is important to create more awareness on the economic impact of copyright industries in a digital economy, especially in regards to the entertainment industry. Nigeria as a country should leave no stone unturned in it's drive to continually promote socio-economic objectives in line with the provisions of section 18(2) and 16(2) of the 1999 Constitution of the Federal Republic of Nigeria 1999. Under section 18(2) of the 1999 Constitution the promotion of science and technology is one of the educational

objectives of the government. While section 16(2) provides for the promotion of a planned and balanced economic development as one of the objectives of government.

2. Amendment of the existing legal framework

There should be review of the existing copyright act to reflect increase in the penalties for criminal infringement. For example, the fine or infringement per copy should be increased from N100 to N500. While the imprisonment for serious offences under the Act should be between 3 to 8 years. The civil liability for copyright Infringement should be not just 'damages' but exemplary damages. Furthermore the proposed amendment should include provisions which make it an offence to circumvent technological protective measures such as encryption used by right holders to protect their works online.

3. Public enlightenment

There should be enlightenment and awareness campaigns that will be taken down to the grass root on piracy and its ills. This can be achieved through seminars, symposia, workshops, conferences and advertisement in the media, in a way that the layman on the street will understand. Emphasis should be laid on the bad effects of piracy, the use of pirated products and how to identify pirated works.

4. Monitoring of Infringing works by right owners and public

Right owners and the general public should monitor pirated works in contradistinction with genuine and original products, so as to report incidences of piracy to copyright inspectors. Economic and financial crime commission and the police, individuals, right owners should try as much as possible to self protect (self defense) their work.

5. Adequate findings of regulatory bodies

The copyright regulatory bodies like the Nigerian copyright commission, the National film and video censor's board should be adequately funded by the government to be well equipped to effectively and efficiently carry out the piracy raids.

6. Protective technological measures

With respect to computer software, the best measure of protection is by adopting a technology created by a software expert on behalf of his firm (info logic software incorporation) A consulting and software firm in the United states) and modified in 2009 . This technology is called the 'software envelope' and refers to a situation where copyright works are transmitted in an encrypted form into a single envelope such as automatic messages are sent to a central authorizing site at regular intervals.

7. Orientation of artistes

It is important to re- orientate artistes (though few) to understand that IPR is a personal right which each author must take steps to protect before going into production. Furthermore to curb international piracy border control should be intensified and corruption should be discouraged. The misconception that free access enhances publicity should be disabused.

8. Provision of effective laws

The problem created by the emergence of digital platform for easy access can be regulated through the provision of effective laws in this respect. Content, coverage and enforcement are three important factors necessary for an effective copyright regime in

Nigeria. Hence the content of the law must be adequate, its coverage must be wide enough to cover all incidence of infringement and enforcement of available laws by the enforcement and regulatory agencies will promote creativity.

9. Aligning national law with minimum standards of protection

This will go a long way to align national laws with minimum standards of protection provided under the international conventions highlighted.

10. Non-compliance with the corresponding duty not to infringe these rights

Development of law is interwoven with rights and corresponding duties. However, the problem of the years has been with non-compliance with the corresponding duty not to infringe these rights. In order to enhance the development of the law the two must go hand in hand, hence the need to educate and re-orientate the public on the values attributable to creative works.

11. Establishment of a special intellectual property tribunal

It is important that a special intellectual property tribunal that will be composed of experts be established for a more effective adjudication on copyright matters in the face of today's digital revolution.

12. International co-operation

Copyright piracy like terrorism is a trans-border problem. Therefore, co-operation amongst nations should be emphasized. Facts are there are recent increases in piracy in Nigeria. The influx of pirates into Nigeria is due to our large market and again because Nigeria is due to our large market and again because of illicit copyright piracy.

Consequently, it is advised that harmonization of copyright policies globally could help in assuaging the Menace.

5.3 Conclusion

In conclusion there is need for the government to introduce intellectual property enforcement unit, cross border co-operation and more training for law enforcement agents. Other measures also include improvement in public education and awareness as well as leading by example by requiring the public sector to use only legitimate software. Therefore considering the impact which the copyright industries such as publishing, music, communication, artifacts, films, broadcasting can make or are making on the economy, there should be increased effort to attract investments in these sectors through a most conducive investment climate in the country. For any nation to progress economically it must not play down the development of its intellectual resources. The only way to ensure the protection of original intellectual works is by tightening provisions for the safeguard of copyright products and works and especially liberalizing provisions. It is important to say that for Nigeria to enjoy the economic benefit of Intellectual property rights. It should update its national copyright laws in order to implement world intellectual property organization (WIPO) obligations and create strong enforcement mechanism as required by the world trade Organization. Tough laws should be introduced and the government should dedicate its resources to tackle the challenges associated with protecting copyright works and its enforcement problems.

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