

**THE GOLDEN AGE OF DIGITAL PIRACY: CURBING COPYRIGHT
INFRINGEMENT IN NIGERIA**

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**BEING A LONG ESSAY WRITTEN AND SUBMITTED TO THE
FACULTY OF LAW, UNIVERSITY OF BENIN, BENIN CITY IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE
AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL. B) OF THE
UNIVERSITY OF BENIN, BENIN CITY.**

NOVEMBER 2022

CERTIFICATION

I, **Eloghosa Daniel IMUETINYAN**, with Matriculation Number **LAW1604666**, do hereby certify that, apart from the references made to other persons' works, which have been duly credited, this entire project work is the product of my personal research and that this project has neither in whole nor in part been presented elsewhere for any other degree.

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APPROVAL

We the undersigned, certify that this project work was written and completed by, **Eloghosa Daniel IMUETINYAN** with Matriculation Number **LAW1604666**, in partial fulfilment of the requirements for the award of the degree of Bachelor of Laws (LL. B).

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DEDICATION

I dedicate this project to Almighty God, my ever present help and the source of my strength, for the successful completion of my study. I also dedicate this work to my parents for their never ending love, care and support.

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The Copyright Act, Cap C28 LFN 2004

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The Copyright Act of 1842

The Copyright Act of 1911

The Copyright Act of 1976

International Treaties and Conventions

World Intellectual Property Organization, Copyright Treaty (adopted 20 December 1996, entered into force 6 March 2002) (WCT)

The Agreement on Trade-Related Aspects of Intellectual Property Rights (entered into force 1 January 1995) (TRIPS)

TABLE OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
All ER	All England Law Reports
ALL NLR	All Nigerian Law Reports
BSA	Business Software Alliance
CIPAM	Cell for IPR Promotion and Management
CLAMP	Copyright Litigation and Mediation Programme
CMOs	Collective Management Organizations
FHCLR	Federal High Court of Nigeria Law Report
ICT	Information and Communication Technology
IPRs	Intellectual Property Rights
MTCPS	Medium-Term Corporate Plan and Strategy
NAN	News Agency of Nigeria
NCC	Nigerian Copyright Commission
NWLR	Nigerian Weekly Law Reports
STRAP	Strategic Actions Against Piracy
NLIPW	Nigerian Law Intellectual Property Watch
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights

UNCTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

ABSTRACT

Copyright refers to the rights that creators have over their works. These works include literary works, musical works, artistic works, cinematograph films, sound recordings and broadcasts. When a person creates a work such as a musical piece, it is expected that such owner or creator reaps the benefits of their creation. These benefits could include monetary benefits that accrue from the sales of such work. It is therefore expected that a person who copies or sells another person's work for personal benefits without the direction or permission of the owner has committed an infringement of the creators copyright.

The development of the internet has led to a rapid increase in the rate of online copyright infringement. This is because different sources of information are now easy to access in digital format and are globally accessible, leading to a growth of piracy in the last decade, especially in Nigeria in which the rate of unauthorized online reproduction has become rampant, and as some might argue, normalized. The Internet has proven to be one of copyright's most difficult challenges. This development calls for greater copyright protection, because copyright is not also important to creators, but is equally important for the development and progress of every economy. In order for copyright holders and stakeholders to reap their pecuniary benefits, there must be properly regulated laws and policies that accommodate copyright protection in light of recent digital trends.

In Nigeria, The Nigerian Copyright Act is the statute regulating copyright in the country. The Act contains relevant provisions for copyright protection, as well as the establishment of the Nigerian Copyright Commission, which is the body responsible for all matters relating to copyright in the Country. The current condition of copyright law in Nigeria, and the attitude of the commission to curbing same will be discussed in this research. The study will also examine and address copyright difficulties that have arisen in the digital age.

This project recognizes the frustrations that today's creative minds are experiencing as a result of internet piracy. The ease of infringement via the internet and its rampant reoccurrence is the motivating force behind this study, hence it is referred to as the “Golden Age”.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 INTRODUCTION

Copyright is an aspect of Intellectual Property Law that deals with the rights of copyright owners to reproduce, distribute, adapt or copy their works. ¹This promotes creative innovation in the economy. Copyright owners should be able to reap the benefits of their creation without having to worry about copycats and pirates who distribute works that they have not contributed to in any form, for their own personal interests. These pirates are often unbothered as many people do not concern themselves with the possible punishments that could arise from such acts, while others, fully aware of their actions, deliberately infringe the rights of copyright owners for their own personal benefit.

The emergence of the internet has made it easier to illegally download, copy, share or distribute digital works without any permission or attribution to the creators of such works. The result of this is widespread online copyright infringement. The absence of proper rules and regulations governing copyright will lead to a creative decline in the country. The rights of creative must be protected hence, they must be provided appropriate remedies when these rights are infringed upon and offenders must not go unpunished.

The need for copyright protection in this digital era cannot be overemphasized. The Nigerian Copyright Commission is tasked with the problem of copyright infringement and has since taken various steps to enforce copyright in the country.

1.2 STATEMENT OF THE PROBLEM

¹ World Intellectual Property Organization (WIPO) 'Understanding Copyright and Related Rights' (2nd edn, Wipo.int, 2016) 4

Piracy is a global problem that is faced in economies all around the world which may be carried out in various forms. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings”². The unauthorized copying and transmission of works harms the original owner as well as the economy at large.

In Nigeria, the streets are plagued with unauthorized vendors who sell pirated CD’s of music and video content. Similarly, online sites offer free music and movie downloads, all of which can be easily accessed and shared with the help of the internet. This leads to a loss of revenue in different sectors in the economy especially the creative industry.

The eighth annual global software piracy study, conducted by The Business Software Alliance (BSA), revealed that the rate of software piracy in Nigeria as at 2010 was 82%, emphasizing the need for combating copyright in the country. According to the study, software piracy cost the Nigerian economy \$225 million in 2010, a \$69 million increase over 2009.³ The rate of piracy is alarming and needs further attention. Assessing the state of the problem, Adonu⁴ observes that:

Piracy and rights infringement in their different forms are the bane of the knowledge economy in Nigeria. It has discouraged many creative minds from the industry, resulted in loss of revenue to the copyright owners and the government, loss of foreign investment in the knowledge economy among several other consequences to the Nigerian economy.

The primary goal of copyright law is to ensure that authors receive a portion of any money or prestige generated by the exploitation of their own original work.⁵ The rate of piracy makes this goal far from reality in Nigeria because copyright infringement affects not just the creators but the entire creative industry and its stakeholders. Measures must be put in place to

² World Intellectual Property Organization 'What Is Copyright' (*Wipo.int*, 2022)

<https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf> accessed 4 January 2022

³ Business Software Alliance (BSA) ‘Eighth Annual Global Software Piracy Study’ (2010)

<<https://www.bsa.org/reports/eighth-annual-global-software-piracy-study>> accessed October 3, 2022

⁴ Adonu G, ‘Copyright Piracy in Nigeria: Untying the Gordian Knot’ (SSRN, 2018)

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3162475> accessed October 27, 2022

⁵ Cavendish JM and Pool K, ‘Handbook of Copyright in British Publishing Practice’ (Cassell,1993)

Preventing misuse of people's original works, to ensure a record of ownership, to enable creators benefit economic gain and to encourage creativity in the Country. According to Waziri⁶ :

In the face of the current economic challenges, the government and all other stakeholders must work together to create an enabling environment for people to apply their creativity to developing new sources of revenue that will mitigate our current dependence on oil.

1.3 AIMS AND OBJECTIVES OF THE RESEARCH

The aim of this project is to shed light on the rampant rate of digital piracy and other forms of copyright infringement in Nigeria, as well as suggest feasible solutions to curb piracy and infringement. The objectives of this project are;

1. To provide a detailed understanding of copyright.
2. To shed light on the nature of copyright infringement in the digital era.
3. To educate creators for protection of their rights.
4. To examine the provisions for curbing copyright infringement under Nigeria as well as international statutes.
5. To suggest feasible solutions for the protection of copyright in Nigeria.

1.4 RESEARCH METHODOLOGY

This study will be carried out using the Doctrinal methodology. A doctrinal approach to research focuses on case-law, statutes and other legal sources. Therefore, this study will rely on statutory and judicial authorities, as well as books, journals, periodicals, online references, and other publications in local as well as international jurisdictions.

1.5 EXPECTED FINDINGS

⁶ Waziri KM, 'Intellectual Property Piracy and Counterfeiting in Nigeria: The Impending Economic and Social Conundrum'(2011)<https://www.researchgate.net/publication/266469113_Intellectual_Property_Piracy_and_Counterfeiting_in_Nigeria_The_Impending_Economic_and_Social_Conundrum> accessed October 27, 2022

This research's expected findings includes the examination of copyright protection provisions as well as the provisions for copyright infringement in order to find feasible solutions to the issues of copyright infringement and piracy, including the challenges that currently plague the Nigerian Copyright Commission in the fight against piracy.

1.6 CONTRIBUTION TO KNOWLEDGE

This research is expected to contribute to the body of knowledge in the field of Copyright law. The recommendations that will be made in this research are expected to address some of the issues raised in this study. This research aims to:

- a) Create an understanding of the nature of copyright protection
- b) Shed light on the various types of copyright infringement
- c) Contribute to the body of knowledge as it relates to copyright in Nigeria
- d) Enlighten creators of their rights and procedures for enforcement
- e) Outline recommendations for curbing copyright infringement in Nigeria

1.7 RESEARCH ORGANIZATION

This work is divided into five chapters.

Chapter one is the general introduction of the subject matter of the research. This chapter includes the statement of the problem, aims and objectives of the research, research methodology, organizational layout and conclusion.

The second chapter provides a better understanding of the concept of copyright. The chapter defines the term "copyright" and further explains the history of copyright, extending to the development of copyright in Nigeria, the Nigerian Copyright Act, and the Nigerian Copyright Commission.

The third chapter sheds light on the nature of copyright infringement. It highlights the works eligible for copyright protection, the types of infringement as well as the exceptions and limitations.

The fourth chapter discusses the provisions for fighting infringement and piracy in Nigeria, which is the primary focus of this research. It highlights the anti-piracy measures put in place by the Nigerian Copyright Commission .The chapter also outlines the various procedures for proving infringement against an infringer and the liability for infringement. Furthermore, the chapter provides an analysis of some anti-piracy measures in other jurisdictions and the challenges that are presently being faced by the Nigerian Copyright Commission in the fight against piracy.

The fifth chapter summarizes the findings and makes recommendations on curbing copyright infringement in Nigeria, as well as how to ensure that the Nigerian Copyright Commission meets its mandate.

1.8 CONCLUSION

This chapter introduces the topic broadly, introducing the problem of piracy that is currently plaguing the creative industries and the need to curb it for the sake of the economy as well as to protect the rights of a creator. This study aims to assess the current fight against piracy while also proposing solutions to combat copyright infringement and piracy in Nigeria.

CHAPTER TWO

LITERATURE REVIEW

2.1 WHAT IS COPYRIGHT?

Copyright refers to the bundle of exclusive rights given to the owner of literary works, musical works, artistic works, cinematograph films, sound recordings and broadcasts to reproduce, publish, sell, or distribute such works¹. It is the “right to copy”. Copyright law is integral in that it aims to protect the moral and material interests of the creator. Anyone who violates any of the rights granted to the copyright owner is committing infringement, hence the owner of the copyright has the right to claim ownership of his work and to seek redress in the event that it is modified.

The Black’s Law Dictionary defines ‘copyright’ as:

the right to copy; specifically, a property right in an original work of authorship (including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, and architectural works; motion pictures and other audiovisual works; and sound recordings) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work.²

This definition represents the belief that the right to copy an original work, is an exclusive right given to the owner of such work.

According to the World Intellectual Property Association (WIPO):

Copyright (or author’s right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.³

¹ Copyright Act Cap C28 LFN 2004

² BA Garner ‘Black’s Law Dictionary’ (9th edn, West Publishers) 386

³ World Intellectual Property Organization 'What Is Copyright' (2022) <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf> accessed 4 January 2022

This captures the broad nature of copyright protection which covers a variety of works. This is because the importance of creativity in any economy cannot be overlooked.

According to UNCTAD (United Nations Conference on Trade and Development) “creativity” refers to:

The formulation of new ideas and to the application of these ideas to produce original works of art and cultural products, functional creations, scientific inventions and technological innovations. There is thus an economic aspect to creativity, observable in the way it contributes to entrepreneurship, fosters innovation, enhances productivity and promotes economic growth”.⁴

The advantages received by the public from the labors of creators is the focus of copyright law, hence rewarding the copyright owner or author is a secondary concern.⁵

2.1.2 FEATURES OF COPYRIGHT

- I. The copyright law is governed by a statute. The statutory law on copyright in Nigeria is the **Copyright Act Cap C28 LFN 2004**.⁶
- II. The works eligible for copyright protection include the following;
 - a. literary works;
 - b. musical works;
 - c. artistic works;
 - d. cinematograph films;
 - e. sound recordings; and
 - f. Broadcasts.⁷
- III. Copyright is a negative right. Negative rights entails freedom from the interference of another person or group of persons. Copyright is considered a negative right because it puts a negative duty on others, prohibiting them from using the author's work for their

⁴ Creative Economy Report ‘The Challenge of Assessing the Creative Economy: Towards Informed Policy-Making’ (UNCTAD, 2008)

⁵ Leaffer MA, ‘Understanding copyright law’ (7th edn, Carolina Academic Press, 2019)

⁶ CA 2004

⁷ Ibid s1(a)-(f)

own gain without the author's approval or license. As a result, the general idea is that protected works cannot be exploited without the permission of the rights owner.

IV. Copyright is a bundle of rights. Copyright is a bundle of moral, neighboring and economic rights.

- 1) Moral rights: This includes the right of attribution, the right to the integrity of the work. They are unique author rights that exist independently of the author's economic rights, and they exist even after the author's economic rights have been transferred.
- 2) Neighboring rights: The Copyright Act grant special rights to broadcasting companies and performers. Under international conventions, these are referred to as "neighboring rights." The neighboring rights statutorily recognized in Nigeria include performance rights and rights to the expression of Folklore.⁸
- 3) Economic rights: Economic rights allow owners of copyright to profit financially from the use of their work by others. In Nigeria, copyright in a work
 - a. Shall be the exclusive right to control the doing in Nigeria of any of the following acts; reproduce the work in any material form; publish the work, perform the work in public; produce, reproduce, perform or publish any translation of the work, make any cinematograph film or a record in respect of the work; distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement; broadcast or communicate the work to the public by a loudspeaker or any other similar device; make any adaptation of the work.⁹

V. Copyright protection subsists from the time the work is created in a fixed form. This means that Copyright does not vest in an idea but in an original work which has been

⁸ CA 2004, s32

⁹ Ibid s6

expressed by the author in a definite medium of expression. The concept of originality is to protect works that are original to the author and are not plagiarized. It was in line with this principle that the House of Lords in *LB (Plastics) Ltd. v. Swish Products Ltd*¹⁰ opined that protection subsists in a material work and not in ideas. In the words of Whitford J :

No originality of thought is needed to sustain a claim to copyright. Under copyright ideas are not protected, only the skill and labour needed to give any given idea some particular material form, for it is the form in which the work is presented that is protected by copyright¹¹.

This means that the term "original" in this context does not imply that the work must express original or inventive thought; rather, the requisite originality relates to the expression of thoughts. A mere copyist does not obtain copyright in his copy¹². A literary, musical or artistic work shall not be eligible for copyright unless - (a) sufficient effort has been expended on making the work to give it an original character; (b) the work has been fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.¹³

- VI. Copyright has its limitations; the owner's copyright is not an absolute right it is subject to certain limitations. The law specifies a duration during which the copyright owner's economic rights are valid. After that, the work is released into the public domain. In Nigeria, copyright duration is contained in the first schedule of The Copyright Act 2004¹⁴. In Nigeria, Copyright duration in literary or musical works lasts seventy years after the end of the year in which the author dies; in the photographs case of government artistic works other than or a body corporate, seventy years after the end of the year in which the

¹⁰ [1979] RPC 551

¹¹ Ibid

¹² *Walter v Lane* [1990] House of Lords, 539 AC

¹³ CA 2004, s1(2)

¹⁴ first schedule of The Copyright Act 2004

work was first published. Furthermore, copyright in cinematograph films lasts fifty years after the end of the year in which the work was first published. In the case of sound recordings. Fifty years after the end of the year in which the recording was first made. Lastly, copyright duration in broadcasts is fifty years after the end of the year in which the broadcast first took place.¹⁵

VII. Copyright is alienable. Copyright is the proprietary right of the owner. It is transferable just like any other property. The owner of the copyright can assign it to anyone. The law allows the original right owner to transfer all economic rights in a work to a third party, but moral rights are usually not transferable. Authors have the option of selling the commercial rights to their works to companies or individuals.¹⁶ In Nigeria, copyright is transmissible by assignment, by testamentary disposition or by operation of law, as movable property.¹⁷ The law also recognizes collecting societies, which may be formed in respect of any one or more rights of copyright owners for the benefit of such owner.¹⁸ Hence, copyright may be transferred or alienated by the rights owner with his or her permission, the absence of which will amount to infringement.

2.2 HISTORICAL ORIGIN OF COPYRIGHT

The concept of literary property emerged simultaneously with the invention of printing, not as a right of the author, but as a privilege for a period of time granted by the state, to the printer as a reward for the effort of publishing.¹⁹

The historical origin of copyright, from the United Kingdom perspective can be traced back to the activities of the stationers company in England. The Company of Stationers, often known as the Stationers Company, was a London craft guild or 'company' which was founded

¹⁵ CA 2004

¹⁶ World Intellectual Property Organization (WIPO) 'Understanding Copyright and Related Rights' (2nd edn, *Wipo.int*, 2016) 4

¹⁷ CA 2004, s11

¹⁸ *Ibid*, s39

¹⁹ Masterson SC, 'Copyright: History and Development' (1940) 28 California Law Review 620

in 1403, when Text writers, as well as individuals who were involved in binding and selling of books, applied to the government for authorization.²⁰ Furthermore, the printing business proved to be very capital intensive, requiring printers to seek protection. The business model of printing differed greatly from that of manuscripts, the former required more capital as well as specialist equipment. The printing industry's economics were not for the faint of heart. Furthermore, as the printed book industry grew, a new risk emerged; the risk of someone else publishing and selling someone else's already published work. This spurred publishers to look for measures to safeguard their investments.²¹

The notion of safeguarding one's right to print a certain work was developed during the next decade by a series of royal grants prohibiting others from printing identified works for a set period of time.²² Royal grants of monopoly to print certain works were made until the seventeenth century. The impact of these royal grants and privileges was that it eventually became a custom strong enough to establish a common-law right.²³ These were considered as new developments as Masterson put it:

The power of the sovereign was at its height during the reign of the Tudors, and it was not unnatural for an infant industry, regardless of its other claims to protection, to seek royal sanction for its undertaking".²⁴

Prior to the mid-sixteenth century, the vast majority of printers and publishers in England were members of London companies, and thus were subject to their individual company regulations regarding printing. When it came to seeking protection for one's publications, however, such 'freedom' created a problem: because no single company 'owned' printing or publishing, no company could protect its members from the activities of those in other

²⁰ Alexander I and Gómez-Arostegui T 'Research Handbook on the History of Copyright Law' (Edward Elgar Publishing 2018) 81

²¹ Ibid 82

²² Ibid 83

²³ Masterson (n19)

²⁴ See (n 19)

companies.²⁵ Moreover, there was no easy mechanism for resolution when it came to the protection of any new work covered by an existing privilege. Disputes would, ultimately, have to lead to proceedings in the Court of Chancery. Finally, such privileges were never permanent: even if the monarch felt generous, the period could not normally last longer than the recipient's lifespan, and a change of monarch would almost certainly necessitate a renewal. The ideal solution would be a system of publishing privileges that was administered with sufficient authority among the trade as a whole, provided a simple means of resolving disagreements and did not interfere with or challenge existing or future Crown privileges, and did not require periodic renewal.²⁶

This led to the city's formal recognition of the Stationers' Company in 1403 and its jurisdiction was confided to the city. However, the only way for the Stationers' Company to gain formal control over printing and publishing was to be incorporated by the Crown.²⁷ The Stationers Company's eventual incorporation in May 1557 gave it near-exclusive nationwide jurisdiction over printing. As a result, no one could set up or operate a printing press in England unless they were a member of the Stationers' Company or had a direct privilege from the Crown.²⁸ According to Blaney

The printing monopoly they enjoyed from 1557 was not something the Stationers achieved by successfully eliminating their alien competitors and provincial rivals until the field was theirs alone: it was something they had to ask the Crown to confer on them".²⁹

The stationers' register was a system established to regulate the copying and publication of works. Any member who wanted to publish a work had to go to Stationers Hall and ask the senior officers for approval, who would consider whether the work in issue would have a

²⁵ Alexander and Arostegui (n 20)

²⁶ Ibid 80

²⁷ Ibid 87

²⁸ Ibid 90

²⁹ M. Blaney, 'The Stationers' Company and the Printers of London: 1501-1557'(Cambridge University Press 2013)

harmful effect on any other member's existing publication³⁰. This constituted an early form of control and regulation. Although the Stationers' Register did not eliminate all 'piracy,' or the printing of another publisher's work without permission, but it did give a fast method for restitution in the event that the 'pirate' in question was a Company member.³¹ The stationers company played a key role in laying foundations for what would become the statutory law of copyright.

In 1710, the British parliament enacted the Statute of Anne³². It is considered the first copyright statute in the United Kingdom, and the first full-fledged copyright statute in the world, was named after Anne, Queen of Great Britain. It was passed in the year 1710 and took effect on April 10, 1710. The Statute offered book publishers legal protection for 14 years. It also gave any book already in print 21 years of protection. If the author was still living at the end of the first 14-year copyright term, the copyright reverted to him or her for another 14-year term. The statute stated that the sole liberty of printing and reprinting' a book was the copy, and that this liberty could be infringed upon by anybody who printed, reprinted, or imported the book without permission. Those who violated copyright had to pay a fine for each sheet of the book, with a portion of the fine going to the author and the rest to the Crown. The book in question was also to be destroyed. According to the statute, the title must have been recorded in the Stationers' Company's register before publication before an action against infringement could be initiated. Users were able to discover the proprietors of protected works thanks to the formal registration procedures.³³

The Statute of Anne, was a milestone in the history of copyright law. Although it addressed several issues at the time, many consider that The Statute of Anne was a narrowly defined

³⁰ See (n 20) 88

³¹ Ibid 89

³² Act for the Encouragement of Learning 1710

³³ 'The Statute of Anne: The First Copyright Statute: History of Information'

<<https://www.historyofinformation.com/detail.php?entryid=3389>> accessed January 9, 2022

measure targeted at regulating the book trade at the time it was passed³⁴. The long-lived 1842 Copyright Statute³⁵, which replaced the 1710 Statute of Anne, was more specific and restrictive in its declared goals than its predecessor, being described as an act "to offer greater encouragement to the development of literary works of lasting benefit to the world" in the purview.³⁶ It cannot however be denied that the Statute of Anne paved the way for several copyright legislations to come, as copyright laws continue to evolve in the face of contemporary copyright issues.

2.3 DEVELOPMENT OF COPYRIGHT LAW IN NIGERIA

Nigeria's legal framework has been made up of the Common Law of England, Doctrines of Equity and Natural Justice, as well as Statutes of General Application that were in force in the England on January 1, 1900. These laws were extended to Nigeria through Orders-In-Council, which provided legal backing to English legislation in the British Empire's colonial territories and protectorates. The Copyright Act of 1911³⁷, which was recently enacted in England at the time, was one of these extended statutes. The 1911 Act was extended to Nigeria via an Order-In-Council (Order No. 12, of June 1912), and consequently, copyright in creative works became legally recognized in Nigeria.³⁸ The adoption of the English Copyright Act of 1911 in Nigeria had minimal impact on ordinary Nigerians, and this was likely owing to cultural differences between those who created Act and those to whom it was now being applied in Nigeria³⁹. In England, writing had become a way of life by the time the 1911 Act was enacted, and expressing ideas, whether original or non-original, in fixed tangible forms had become the general mode of communication, and constituted important

³⁴ See (n 20) 174

³⁵ Copyright Act 1842

³⁶ Bently L, Kretschmer M and Deazley R 'Privilege and property: Essays on the history of copyright' (Open Book Publishers 2010)

³⁷ Copyright Act 1911

³⁸ Bilderberg Esq 'Copyright in Nigeria: Historical Development'

<<https://bilderbergesq.wordpress.com/2015/02/11/copyright-in-nigeria-historical-development/>> Accessed 8 February 2022

³⁹ Kunle Ola, 'Evolution and Future Trends Of Copyright In Nigeria' (2014) (2) Journal of Open Access to Law

elements in the 'fixation and originality' requirements for what would qualify as a copyright work. However, in Nigeria, verbal and non-written ways of communication, such as singing, were the major modes of communication at the time. Musical and dramatic works were rarely expressed as literary works, with the exception of sculptures and other artistic works that were naturally expressed in fixed form.⁴⁰ Additionally, The Nigerian tradition of communal ownership, which promotes a culture of togetherness and free sharing, conflicted with the individualistic and proprietary nature of current copyright principles. The laws did not exist in the eyes of the average person, and they would have been dismissed as just another administrative process imposed by the colonial masters.⁴¹

Consequentially, the 1911 Act had a very limited reach in terms of the categories of works that were eligible and the exclusive rights that were granted to owners. The Act's primary goal was to protect "literary works" from being "reproduced" and distributed illegally. There were no provisions for any regulation on copyright administration, compliance with, or enforcement of the Act's provisions⁴². This Act remained in force until the first indigenous Copyright Act was enacted in 1970.

2.3.1 THE NIGERIAN COPYRIGHT ACT

The 1970 Copyright Act⁴³

The 1970 Act was promulgated as a decree on December 24, 1970, by the then-military government of Nigeria, led by General Gowon. It included works eligible for copyright, copyright conferment, the nature of copyright in some works, first ownership, assignment, and licensing, as well as infringement and infringement actions. The Act included provisions for the appointment of a competent authority to handle copyright licensing disputes, however

⁴⁰ Ibid

⁴¹ Ibid

⁴² See (n 38)

⁴³ 1970 Copyright Act

these provisions were never used during the legislation's lifespan.⁴⁴ The Act's First Schedule addressed the term of copyright, which was interestingly decreased from 50 years after the author's death, as represented in previous CA 1911 legislation, to 25 years for literary, musical, and artistic works. In the case of pictures, it provided for a period of 25 years following the end of the year in which the work was first published, as opposed to the CA 1911, which provided for a period of 50 years following the original's creation. This amounted to a reduction of 25 years.⁴⁵

The 1970 Act also established the first legal framework for collective copyright administration in Nigeria, allowing for a voluntary licensing system with a compulsory licensing component.⁴⁶

Unfortunately, the 1970 legislation did not establish a statutory body in Nigeria to administer and enforce copyright. The act's provisions were later determined to be insufficient as a legitimate reaction to the country's growing piracy problem. As a result, all stakeholders in the affected industry, including publishers, authors, and artists, raised their voices in support of reform.⁴⁷ Concerns over the inadequacy of the 1970 Act sparked criticism in the copyright-based industries, leading to the enactment of the 1988 Copyright Act.

The 1988 Copyright Act⁴⁸

Following the end of the Nigerian civil war in 1970, entertainment provided solace and grew into a significant industry in Nigeria. In the face of all of these changes in the entertainment industry, technological advancements facilitated the introduction of the cassette player and cassettes, which made copying more affordable and convenient. Piracy issues in the

⁴⁴ See (n 39)

⁴⁵ Ibid

⁴⁶ See (n 38)

⁴⁷ Odion J and Ojukwu-Ogba N 'Essays On Intellectual Property Law: Copyright, Trade Marks, Patents, Industrial Designs' (Ambik Press Ltd 2010)

⁴⁸ 1988 Copyright Act

entertainment sector arose as a result of the growth of facilities to mass create works on cassettes. The high amount of piracy affected producers, authors, and performers alike. The publishing business was also affected by the same factors. Legislative reform was regarded by the Nigerian copyright sector as one of the most important solutions in combating the challenges created by piracy.⁴⁹

Following a series of discussions, the 1988 Copyright Act was enacted, marking the first change to the 1970 Act in nearly two decades. The Act was passed as a decree because it was passed during a military administration. Until the Ibrahim Babaginda administration passed the Copyright (Amendment) Decree No.98 of 1992, the 1988 Act regulated copyright law and practice in Nigeria. The Act was amended twice, the first in 1992 and the second in 1999.⁵⁰The usual changes to important provisions of the 1970 Act were made, including, but not limited to, expanding the scope of works eligible for copyright protection and copyright holders' exclusive rights.⁵¹

The principal modification by the Decree was the introduction of the regulating body clause that had been previously omitted. This time, the new Decree went above and beyond the 1970 Act, not only by (re)establishing a body to regulate and administer copyright in Nigeria and giving it a name, the Nigerian Copyright Council (NCC), but also by giving it the authority to make regulations in accordance with its statutory mandate.⁵² In 1993, the NCC enacted the Copyright (Collecting Society) Regulations, which comprised requirements for the administration of collecting societies, currently known as collective management organizations, within its jurisdiction to establish regulations (CMOs). The 1992 Amendment Decree provided the country's first substantial regulatory framework for copyright and its

⁴⁹ See (n 39)

⁵⁰ Ibid

⁵¹ See (n 38)

⁵² Ibid

administration, addressing problems such as nomenclature, formation, approval criteria, and the illegality of acting as a CMO without the NCC's consent.⁵³ The act also provided for the establishment of a governing board for the commission, a development intended to strengthen and enforce the functions of the commission.⁵⁴ The laws were re-codified in 2004 under the laws of the Federal Republic of Nigeria. The numbering of the parts were changed in the recodification, but the contents remained the same.⁵⁵

The 2004 Copyright Act

The Copyright Act was re-codified in 2004 under the laws of the Federal Republic of Nigeria as The Copyright Act Cap C28 Laws of the Federation of Nigeria 2004⁵⁶. The numbering of the sections were modified in the recodification, but the contents remained the same. The Act contained 41 sections when it was passed in 1988, but the combined effect of the recodification and modifications to the Act has increased the number of sections to 53, while keeping the original number of parts and schedules, namely four parts and five schedules.⁵⁷

2.3.2 THE NIGERIAN COPYRIGHT COMMISSION (NCC)

The 1999 amendment to the Copyright Act, established the Nigerian Copyright Commission, which is responsible for all matters relating to copyright in Nigeria. Although the Nigerian Copyright Act was passed in 1988, it was not until August 1989 that the Nigerian Copyright Council was founded by Decree No.47 of 1988, and it was not until 1996 that the Nigerian Copyright Commission was approved by the government. The Act was amended in 1999 to give statutory effect to the government's prior approval.⁵⁸

⁵³ Ibid

⁵⁴ See (n 47)

⁵⁵ See (n 39)

⁵⁶ CA 2004

⁵⁷ See (n 39)

⁵⁸ Ibid

General Ibrahim Babangida, GCFR, then President and Commander-in-Chief of the Nigerian Armed Forces, authorized the establishment of the Nigerian Copyright Council in 1988, and it was inaugurated in August 1989 with a Governing Board. It was given the full responsibility for the administration, protection, and enforcement of all copyright issues in Nigeria. In 1996, the Council's status was modified to a Commission in order to better match it with the rising trend in worldwide copyright administration and enforcement. The creation and upgrading of the Commission's status, as well as the revisions to the Copyright Act, were justified in order to appropriately address the copyright industry's growing national and international duties, as well as new issues in the global domain of copyright.⁵⁹

Section 34 the Copyright Act provides for the establishment and functions of the Commission. The section is represented below;

- (1) There is hereby established a body to be known as the Nigerian Copyright Commission (in this Act referred to as "the Commission")
- (2) The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Commission shall-
 - (a) Be responsible for all matters affecting copyright in Nigeria as provided for in this Act;
 - (b) Monitor and supervise Nigeria's position in relation to international conventions and advise Government thereon;
 - (c) Advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country;
 - (d) Enlighten and inform the public on matters relating to copyright;
 - (e) Maintain an effective data bank on authors and their works;

⁵⁹ 'About NCC – NCC' (Copyright.gov.ng, 2022) <<https://copyright.gov.ng/about-ncc/>> accessed 12 February 2022.

(f) Be responsible for such other matters as relate to copyright in Nigeria as the Minister may, from time to time, direct.⁶⁰

Composition of the Governing Board;

The Commission is supervised by a Governing Board established under section 36 of the Act and constituted as follows:

- (a) A Chairman, who shall be a person knowledgeable in copyright matters, to be appointed by the President on the recommendation of the Minister;
- (b) The Director-General of the Commission;
- (c) One representative of the Federal Ministry of Justice;
- (d) One representative of the Federal Ministry Education;
- (e) One representative of the Nigeria Police Force, not below the rank of a Commissioner of Police;
- (f) One representative of the Nigeria Customs Service, not below the rank of a Comptroller of Customs;
- (g) Six other persons, to be appointed by the Minister, who shall represent as far as possible the authors in the following areas - literary works, artistic works, musical works, cinematograph films, sound recordings and broadcasts.⁶¹

The representatives of the Ministries are required to be officers not below the rank of Director and the Board is at liberty to adopt its own rules of procedure and method of operation. The day-to-day administration of the Commission is under a Director General who is designated as the Chief Executive of the Commission. The Director General is appointed by the President on the recommendation of the Minister. The current Director General of the

⁶⁰ CA 2004 s34

⁶¹ Ibid s25

commission is John O. Asein, who was appointed on 8 January 2019, to serve for a period of 4 years.⁶²

The Commission has eight Departments each of which is headed by a Director. The departments include Enforcement, Prosecution and Legal, Administration, Finance and Accounts, Public Affairs, Planning, Research and Statistics, Regulatory department, and the Lagos Office constitutes an eighth department. There is, in addition, a Copyright Institute.⁶³

⁶² 'About NCC – NCC' (Copyright.gov.ng, 2022) <<https://copyright.gov.ng/about-ncc/>> accessed 12 February 2022.

⁶³ Ibid.

CHAPTER THREE

NATURE OF COPYRIGHT INFRINGEMENT AND PIRACY

3.1 INTRODUCTION

The digital era is marked by technological advancements that boost the pace and scope of knowledge exchange within the economy and society. According to Baghdadi,

The digital era is characterized by intense socio-economic transformation on a scale similar to that of the Industrial Revolution¹.

Information and Communication Technology is the driving force of this digital age that can be described as knowledge based². Changes brought about by the digital era have already resulted in a number of important shifts such as the widespread use of e-mail, the growing importance of websites, corporate information networks, the evolution of electronic services for various customer groups, a major shift from paper-based to electronic record-keeping and so on.³ As the world continues to digitalize, some are questioning the continuing relevance of classical copyright law due to advances in information technology, which may have as much potential for societal revolution⁴. The digitalization of information was ushered in by the advent and widespread adoption of digital computers as well as the internet. This has effectively led to a high rate of copyright infringement, especially via the internet.

¹ Baghdadi Y and Harfouche A, 'ICT for a Better Life and a Better World: The Impact of Information and Communication Technologies on Organizations and Society' (Springer, 2019)

² Ibid

³ Doukidis GI, Mylonopoulos N and Pouloudi N 'Social and Economic Transformation in the Digital Era' (Idea Group 2004)

⁴ Leaffer MA, 'Understanding copyright law' (7th edn, Carolina Academic Press, 2019)

People have engaged in a variety of practices that may be classified as copyright infringement, including downloading movies and music from torrent sites and sharing music with friends or even strangers. Individuals uploading copyrighted material and making them available to potentially large audiences from the comfort of their homes.⁵ For years, online piracy has been on the rise all around the world. Online piracy consumes over a quarter of all worldwide Internet bandwidth, resulting in billions of dollars in lost revenue.

According to statistics, the Motion Pictures, Sound Recording, and Music Products sub-sector of the copyright industry contributed about N9 trillion to the economy in 2014. Nollywood, the world's third largest film producer, contributed approximately N1.72 trillion to GDP⁶. However, piracy has continued to plague the industry, leading to a loss of revenue, jobs and opportunity. Online video piracy costs the United States between 230,000 and 560,000 jobs each year⁷. Piracy has infiltrated every digital media type, from television and movies to music, software, video games, and even books, despite attempts to combat it. In 2020, pirate websites received over 130 billion visits.⁸

3.2 NATURE OF COPYRIGHT INFRINGEMENT AND PIRACY

WIPO's diplomatic conference in 1996 resulted in the approval of the WIPO Copyright Treaty (WCT).⁹This consolidated copyright standards and confirmed that the exclusive rights of reproduction, distribution of copies, and public communication of works would apply in the digital world.¹⁰ This is because provisions for infringement must be adapted to include online environments.

⁵ Meese J, 'Authors, Users, and Pirates: Copyright Law and Subjectivity' (The MIT Press, 2018)

⁶ Adonu G, 'Copyright Piracy in Nigeria: Untying the Gordian Knot' (SSRN, 2018)
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3162475> accessed October 27, 2022

⁷ 'Online Piracy in Numbers - Facts and Statistics [Infographic]' (2021) <<https://www.go-globe.com/online-piracy>> accessed March 31, 2022

⁸ Ibid

⁹ World Intellectual Property Organization Copyright Treaty (1997)

¹⁰ WCT arts 1, 6, and 8

The term infringement is often used interchangeably with piracy. Copyright infringement means the exploitation of a copyrighted work without the permission or authority of the owner. According to Adonu¹¹:

Piracy and rights infringement in their different forms are the bane of the knowledge economy in Nigeria. It has discouraged many creative minds from the industry, resulted in loss of revenue to the copyright owners and the government, loss of foreign investment in the knowledge economy among several other consequences to the Nigerian economy.

The Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, to which Nigeria is a signatory ¹²defines piracy in the following manner:

Pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.¹³

Similarly, The United Nations Educational, Scientific and Cultural Organization (UNESCO), defines Piracy to include:

The reproduction and distribution of copies of copyright-protected material, or the communication to the public and making available of such material on on-line communication networks, without the authorization of the right owner(s) where such authorization is required by law. Piracy concerns different types of works, including music, literature, films, software, videogames, broadcasting programs and signal.

Pirated materials can be spread digitally through a variety of methods, including direct user-to-user interactions (such as between family members or between friends) or the internet in general. Peer-to-peer networks, streaming sites, and other internet-based solutions such as file transfer protocols are all examples of internet-based distribution techniques.¹⁴

¹¹ Adonu (n 6)

¹² Nigeria is a signatory to TRIPS Agreement effective January 1995

¹³ Article 51 of the Trade Related Aspects of Intellectual Property Agreement

¹⁴ See (n 3)

When media such as films are converted into a computer file, it can be e-mailed to millions of people in seconds. Furthermore, the copies will be flawless because digitally, it can be replicated with absolute fidelity. Additionally, online pirates don't have any development expenses, and they don't even have to pay for paper or blank cassettes, thus they don't have a profit margin.¹⁵ The development of online file sharing illustrates how new technologies constitute a fundamental dilemma for copyright enforcement. Computers and the Internet have made information transmission easier than ever before¹⁶.

Piracy must be tackled in the interest of economic development. The owner of copyright in a work has the right to fully enjoy the arising interest. Although the copyright owner has the option of transferring his interest to an assignee or an exclusive license, if an individual copies a copyrighted work without first obtaining the necessary authority or license, the individual may be held accountable for copyright infringement in the duplicated work.¹⁷

3.3 WORKS ELIGIBLE FOR COPYRIGHT PROTECTION

The works eligible for copyright protection include the following:

- a. literary works;
- b. musical works;
- c. artistic works;
- d. cinematograph films;
- e. sound recordings; and
- f. broadcasts.¹⁸

3.4 TYPES OF INFRINGEMENT

¹⁵ Torr JD 'Internet Piracy' (Greenhaven Press/Thomson Gale 2005)

¹⁶ Ibid 6

¹⁷ Odion J and Ojukwu-Ogba N 'Essays On Intellectual Property Law: Copyright, Trade Marks, Patents, Industrial Designs' (Ambik Press Ltd 2010) 29

¹⁸ CA 2004, s1(a)-(f)

Copyright infringement or piracy may be in the form of direct, indirect or vicarious infringement.

(a) Direct Infringement

Direct infringement occurs when a copyright infringer engages in any prohibited act, without proving that he was licensed or authorized by the copyright owner, or that he was statutorily permitted to do so.¹⁹ According to Zimmerman

There is little doubt that capturing copyrighted videos, CDs, works of art, and/or books to digital files constitutes the fixing of those works in a tangible medium of expression which can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device. There is equally little doubt that P2P (Person to Person) sharing of these files over the internet, without the owner's consent or otherwise permitted under copyright law, constitutes copyright infringement by those directly involved²⁰

To sustain an action for infringement, the copyright owner must prove: ownership of a valid copyright in the work, copying by the defendant, and that the defendant's copying constitutes an improper appropriation.²¹

The infringing or prohibited acts include the following:

1. The act of reproduction in any form
2. The act of publication
3. The act of translation of the work
4. The act of public performance
5. The act of adaptation
6. The act of communicating to the public by mass media

¹⁹ Odion and Ojukwu-Ogba (n 17)

²⁰ M. Zimmerman 'P2P File Sharing: Direct and Indirect Copyright Infringement' (The Florida Bar 2004) <<https://www.floridabar.org/the-florida-bar-journal/p2p-file-sharing-direct-and-indirect-copyright-infringement/>> accessed November 5, 2022

²¹ Leaffer (n 4)

7. The act of distribution to the public for commercial purposes.²²

(b) Indirect or Secondary infringement

Secondary infringement occurs when an individual aids and abets primary infringement. The Copyright Act expressly specifies copyright owners' rights by referring to certain activities that only the owner can perform or authorize. He is granted exclusivity of these acts. These are the actions that are prohibited under copyright.

The Copyright Act provides that the right of the copyright owner will be deemed to be infringed by any person, who, without the license or authorization of the owner of the copyright, does any of the following acts:

- a) Does, or causes any other person to do an act, the doing of which is controlled by copyright;
- b) Imports or causes to be imported into Nigeria any copy of a work which, if it had been made in Nigeria, would be an infringing copy under this section of this Act;
- c) Exhibits in public any article in respect of which copyright is infringed under paragraph (a) of this subsection;
- d) Distributes by way of trade offers for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed under paragraph (a) of this subsection;
- e) Makes or has in his possession plates, master tapes, machines, equipment or contrivances used for the purpose of taking infringed copies of the work;
- f) Permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware, and had

²² See (n 17)

no reasonable ground for suspecting that the performance would be an infringement of the copyright;

- g) Performs or causes to be performed, for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists.²³

(c) Vicarious Infringement

Copyright may also be infringed vicariously, according to Nwabachili:

Copyright may be infringed vicariously, where a person without the permission of the copyright owner authorizes another to do a restricted act.²⁴

If a person has the authority and ability to oversee infringing behavior and also has a direct financial interest in it, he is responsible for vicarious infringement. A copyright owner must demonstrate some act of direct infringement, that the defendant had the power or ability to control the direct infringer, and that the defendant gained a direct pecuniary advantage from the direct infringement in order to prove a vicarious infringement claim.²⁵ An example of vicarious infringement can be seen in *Dreamland Ball Room, Inc. v. Shapiro, Bernstein & Co*, where the operator of an entertainment venue had control over the premises and received a direct financial advantage from the audience who paid to see the infringing performance, the operator was held liable for the infringing performance.²⁶

A copyright holder whose right has been violated by any of the aforementioned activities may seek redress through civil or criminal proceedings, or both.

²³ CA 2004, s15(a)-(g)

²⁴ C. Nwabachil 'The Infringement of Copyright in Nigeria: An Overview'
<<https://globalacademicgroup.com/journals/knowledge%20review/Nwabachili.pdf>> accessed November 14, 2022

²⁵ See (n 20)

²⁶ [1929] 36 F.2d 354

3.5 EXCEPTIONS AND LIMITATIONS

It is common that every general rule of law may have its exceptions. The provisions relating to exceptions of copyright infringement are contained in the second and third schedule of the Act. A general exception is the principle of fair use.

Principle of Fair Use

In determining infringement, the court will consider whether another party's use of the work protected by copyright has the potential to harm the proprietary interest of owner of the copyright. If the act is insignificant, it may not be regarded an infringement of copyright.

²⁷The Act provides that;

The right conferred in respect of work by section 5 of this Act does not include the right to control –

- (a) The doing of any of the acts mentioned in the said section by way of the dealing for purposes of research, private use, criticism or review or the reporting of current events, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its authorship except where the work is incidentally included in a broadcast.²⁸

A general fair use exemption considers non-commercial uses of a work to be non-infringing if they do not impair a copyright owner's market through substitution of the work.²⁹

Librarians and educators emphasize the necessity of fair use exceptions to copyright in order to increase the availability of educational resources. Much of what users do online with copyrighted material, such as backing up their music collection in the cloud, formatting

²⁷ See (n 17)

²⁸ CA 2004 paragraph (a), second schedule

²⁹ Dreyfuss RC and Pila J 'The Oxford Handbook of Intellectual Property Law' (Oxford university press 2018)

music to listen to it on a mobile device, tweeting images they like, and sharing news articles, would almost certainly be considered fair uses. These sorts of actions usually include private noncommercial copies of copyrighted works that do not constitute a significant risk of harming the market for the original works.³⁰ In *Obe v Grapeville Communication*³¹ where the defendant published the plaintiffs photograph without permission, the court held it to be an infringement, refusing the defense of fair use. The courts will weigh in the aforementioned factors to determine fair use.

In *Sony Corp. v. Universal City Studios*³², Universal, the owner of the copyright, failed to present any concrete evidence that the usage of Betamax had lowered their audience or negatively impacted their company.

Furthermore, the copyright act clearly stipulates exceptions to the rule on copyright infringement. These exceptions may be considered to be formed out of the general fair use exception. They are;

1. Research and Private Study
2. Photograph of works in public places
3. Educational usage
4. Use in judicial proceedings
5. Library and archives
6. Criticism and review
7. Reproduction of copyright works in braille
8. Reproduction for lawful broadcast

³⁰ Ibid 6

³¹ [2007] 5 IPLR

³² [2006] 543 US 388

9. Reproduction or use for public interest³³

1. Research and Private Study; this exception is part of the general exception of fair use, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgment of the title of the work and its authorship.³⁴

2. Photograph of works in public places; this will not amount to infringement of an artistic work permanently situated in a place where it can be viewed by the public.³⁵

3. Educational Usage; It has been observed that copies of media documents are frequently used by schools, colleges, and universities, as well as students, all over the world. Examples include photocopying excerpts from books as part of class handouts or showing recorded television programs in class. ³⁶ This fosters growth in the educational system and enables easy learning. If a strict application enforcement of the exclusivity of the rights granted to copyright owners is adopted, educational institutions will be unable to use such works for educational purposes without first obtaining permission from the owner of the copyright of the book intended for teaching purposes, this will create a stumbling block and an additional level of difficulty for the educational institution's development and access to knowledge.³⁷

To mitigate this hardship, the Act provides;

The right conferred in respect of work by section 6 of this Act does not include the right to control-

³³ CA 2004, s15

³⁴ CA 2004, Paragraph (a), Second Schedule

³⁵ CA 2004, Paragraph (d), Second Schedule

³⁶ Oloko T 'Assessing the Limitations and Exceptions to Copyright Infringement: Nigeria in Perspective' (Nnamdi Azikiwe University Journal of International Law and Jurisprudence)

<<https://www.ajol.info/index.php/naujilj/article/view/225877>> accessed October 14, 2022

³⁷ Ibid

(h) Any use made of a work in an approved educational institution for the educational purposes of that institution, subject to the condition that, if reproduction is made for any such purpose it shall be destroyed before the end of the prescribed period, or if there is no prescribed period, before the end of twelve months after it was made.³⁸

This provision requires that the educational institution must be “approved” and the reproduction destroyed within the period of one year. This provision promotes learning as some educational institutions are ill-equipped. However, it is argued that while this provision fosters education, its vagueness may also promote some form of infringement by private business people such as photocopying shops prevalent in campuses.³⁹

4. Use in Judicial proceedings; any use made of a work for the purpose of judicial proceeding will constitute an exception.⁴⁰

5. Library and Archives; the act also spells out an exception regarding the use of public libraries. It provides as follows;

The right conferred in respect of a work by section 5 of this Act does not include the right to control-

(k) Any use made of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centres and scientific or other institutions as may be prescribed, where the use is in the public interest, no revenue is derived there from and no admission fee is charged for the communication, if any, to the public of the work so used.⁴¹

³⁸ CA 2004, Paragraph (h), Second Schedule

³⁹ Oloko (n 36)

⁴⁰ CA 2004, Paragraph (p), Second Schedule

⁴¹ CA 2004, Paragraph (k), Second Schedule

The act further provides that if a book is not available for sale in Nigeria, the person in charge of a public library may direct that copies be made, as long as the number of copies does not exceed three⁴². The provision of the Act makes it clear that the only circumstance in which such a directive may be made is where such a book is not available for sale in Nigeria; even in such circumstances, the copies made must be no more than three copies of a book, and the copies must be made "by or under the direction of the person in charge" of the public library.

6. Criticism and review; The act provides an exception for criticism, review or the reporting of current events, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgment of the title of the work and its authorship.⁴³
7. Reproduction of copyright works in braille; a strict interpretation to the exclusivity of the rights granted to creators of copyrighted works will pose a risk to the visually impaired and disabled community. To circumvent such hardship and to promote equality of access, the Act provides an exception;

The right conferred in respect of work by section 5 of this Act does not include the right to control-

- (s) reproduction of published work in Braille for the exclusive use of the blind, and sound recordings made by institutions or other establishments approved by the Government for the promotion of the welfare of other disabled persons for the exclusive use of such blind or disabled persons.⁴⁴
8. Reproduction for lawful broadcast; the condition for this exception is that the reproduction of the work is done under the direction of a broadcasting authority, it

⁴² CA 2004, Paragraph (q) Second Schedule

⁴³ CA 2004, Paragraph (a) Second Schedule

⁴⁴ CA 2004, Paragraph (s) Second Schedule

must be intended exclusively for a lawful broadcast and it must be destroyed before the end of the period of six months immediately following the making of the reproduction or such longer period as may be agreed between the broadcasting authority and the owner of the relevant part of the copyright in the work.

9. Reproduction for use for public interest⁴⁵; the provision implies that private libraries, research institutions, and documentation centers that are for profit cannot benefit from this exception, even if they benefit the public.

⁴⁵ CA 2004, Paragraph (k) Second Schedule

CHAPTER FOUR

CURBING COPYRIGHT INFINGEMENT IN NIGERIA

4.1 ANTI-PIRACY MEASURES BY THE NIGERIAN COPYRIGHT COMMISSION (NCC)

The Nigerian Copyright Commission is a body established under the copyright act¹.The Commission is a body corporate with perpetual succession and a common seal and therefore it may sue and be sued in its corporate name.²The Commission is responsible for all matters affecting copyright in Nigeria which include the following;

- a) To monitor and supervise Nigeria's position in relation to international conventions and advise Government thereon.
- b) To advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country.

¹ CA 2004 s34(1)

² Ibid s34(2)

- c) To enlighten and inform the public on matters relating to copyright.
- d) To maintain an effective data bank on authors and their work.
- e) To be responsible for such other matters as relate to copyright in Nigeria as the Minister³ may, from time to time, direct.⁴

In addition to the aforementioned functions, the commission also has the authority to appoint copyright inspectors.⁵ The Copyright Inspector shall have the authority to:

- a. Enter, inspect and examine at any reasonable time any building or premises which he reasonably suspects is being used for any activity which is an infringement of copyright under this Act.
- b. Arrest any person who he reasonably believes to have committed an offence under this Act.
- c. Make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with.
- d. Require the production of the register required to be kept under section 14 of this Act and to inspect, examine or copy it.
- e. Require any person who, he finds in such building or premises to give such information as it is in his power to give in relation to any purposes specified in this Act.
- f. Carry out such examination, test or analysis within or outside the premises as is required to give effect to any provision of this act and to take instant photographs where such examination, test, analysis or photograph is carried out within the premises and such examination, test, analysis or photograph shall be required to be endorsed by the occupier of the premises or his agent but a refusal by an occupier to

³ Minister of Culture, Tourism and National Orientation

⁴ CA 2004 s34(3)(a-f)

⁵ Ibid s38(1)

endorse any document containing the result of an examination, test, analysis or photograph shall not invalidate the result or finding of the examination, test, analysis or photograph; and

- g. To exercise such other powers as the Commission may delegate to it to give effect to the provisions of this Act.⁶

In addition, a copyright inspector may prosecute, conduct or defend before a court any charge, information, complaint or other proceedings arising under this Act⁷, and any person who obstructs a copyright inspector in the performance of his duties shall be guilty of an offence and liable on conviction either to a fine or to imprisonment or to both.⁸

The Copyright Act also provides anti-piracy measures,⁹ Section 21 provides;

The Commission shall have powers, with the consent of the Minister, to prescribe any design, label, mark, impression or any other anti-piracy device for use on, in, or in connection with any work in which copyright subsists. ¹⁰Any person who sells, rents, hires or offers for sale, rent or hire, any work in contravention of the prescription made pursuant to subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding N100,000 or imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

¹¹Any person who without the permission of the Commission imports into Nigeria or has in his possession, any anti-piracy device prescribed under this section or any machine, instrument or other contrivance intended for use in the production of the antipiracy device, commits an offence and is liable on conviction to a fine not exceeding N500,000 or

⁶ Ibid s38(2) (a-g)

⁷ Ibid s38(3)

⁸ Ibid s38(4)

⁹ Ibid s21

¹⁰ Ibid s21(1)

¹¹ Ibid s21(2)

imprisonment, for a term not exceeding 5 years, or to both such fine and imprisonment.¹² Any person who without the permission of the Commission is in possession of, or reproduces, or counterfeits, any anti-piracy device prescribed under this section commits an offence and is liable on conviction to a fine not exceeding N50,000 or imprisonment to a term not exceeding 5 years, or to both such fine and imprisonment.¹³ The Commission shall have power, with the consent of the Minister, to make regulations specifying the conditions necessary to give effect to the purpose of this section.¹⁴ The Copyright Commission also has power to approve the functioning of a collecting society.¹⁵

The purport of this section with that of section 38 is that the NCC is the sole government organization mandated with the administration of copyright in Nigeria, including curbing copyright infringement and piracy.

The commission has a huge responsibility considering the high rate of piracy, which has almost become a norm in Nigeria. This has not stopped the NCC from taking several initiatives such as the Strategic Actions Against Piracy (STRAP) and the Copyright litigation and mediation programme (CLAMP) both aimed at enforcing copyright and fighting piracy in the country.

STRAP covers all aspects of copyright, from film to music, software and books to broadcasting. It is aimed at enlightenment, to provide stakeholders with knowledge of their intellectual property rights and how to defend them, as well as to promote and encourage creativity. It is also aimed at enforcement, which is initiated by complaints from rights holders, includes the seizure of counterfeit products as well as the prosecution of suspected infringers. Another aim is rights administration which includes collective management,

¹² Ibid s21(3)

¹³ Ibid s21(4)

¹⁴ Ibid s21(5)

¹⁵ Ibid s39

notification and management of intellectual property rights, and ensuring that manufacturing plants operate legally. CLAMP, a component of STRAP, was created to allow small rights holders to negotiate out-of-court settlements and licenses with these infringers.¹⁶

The Nigerian Copyright Commission has used a variety of techniques to carry out the aforementioned functions over time. The Commission began the Strategic Action against Piracy (STRAP) in 2005. This plan included an alternative dispute resolution (ADR) component known as the Copyright Litigation and Mediation Programme (CLAMP), which allows for out-of-court settlements in the case of disagreements. The Commission's current administration has renamed STRAP a Medium-Term Corporate Plan and Strategy (MTCPS). The Commission's goal, whether through STRAP, CLAMP, or MTCPS, is to harness and maximize Nigerians' creative talent for national growth and worldwide impact through the distribution of copyright information, effective rights administration, and rights protection¹⁷.

The importance of having a statutory body to regulate and enforce copyright in light of contemporary digital piracy issues cannot be overemphasized. The Nigerian Copyright Commission serves a great responsibility in the global fight against copyright infringement. On the 21st of March 2022, The NCC publicly destroyed infringing articles worth N10.5 million including pirated books, musical CDs, VCDs, and other copyright infringing devices such as broadcast cables and decoders seized by NCC Akwa Ibom State Office operatives over the last five (5) years. The purpose of the public destruction and disposal of the seized pirated works, according to the commission, was to discourage piracy in its entirety and to

¹⁶World Intellectual Property Organization 'Strap and Clamp - Nigeria Copyright Commission in Action' (World Intellectual Property Organization 2008)

¹⁷ Kunle Ola, 'Evolution and Future Trends Of Copyright In Nigeria' (2014) (2) *Journal of Open Access to Law*

create an enabling environment for creators of copyright works to benefit from their creative endeavors.¹⁸

As of 9th march 2022, the commission boasts of 2456 Submitted Petitions, 200 Ongoing Cases, more than 100 Convictions & Judgments and more than 1000 Anti-Piracy Activities.¹⁹

4.2 PROOF OF INFRINGEMENT

When a copyright holder discovers that his or her work has been taken and published without permission, he or she must still prove that the work is theirs and that the person reproducing it lacks the necessary permissions or authority. If the party asserting a claim of copyright infringement can demonstrate that the necessary facts asserted are true, that party has met the standard of proof and should prevail on that claim by providing evidence that support all of the elements of the claim.²⁰

Obtaining evidence in proof of infringement is critical and requires prompt action to avoid alerting the infringer and giving him the advantage of either destroying or concealing the materials that would allow the copyright owner to prove his case against the infringer.²¹ In this regard, four procedures are available to assist the claimant in obtaining evidence to successfully prove his case. They are:

- a) Search order for inspection (Anton Piller order)
- b) Freezing order for the retention of assets (Mareva injunction)
- c) Disclosure (Norwich Pharmacal action)

¹⁸ Copyrightgov 'NCC Destroys Seized Pirated Works Worth N10.5m in Akwa Ibom' (NCC, 2022) <<https://copyright.gov.ng/ncc-destroys-seized-pirated-works-worth-n10-5m-in-akwa-ibom/>> accessed May 9, 2022

¹⁹ 'Search Cer Database' (NCC,2022) <<https://copyright.gov.ng/#>> accessed May 9, 2022

²⁰ Loren L, and Reese R 'Proving Infringement: Burdens Of Proof In Copyright Infringement Litigation' (Papers.ssrn.com, 2019) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3458667> accessed 27 July 2022

²¹ Odion J and Ojukwu-Ogba N 'Essays On Intellectual Property Law: Copyright, Trademarks, Patents, Industrial Designs' (Ambik Press Ltd 2010)

(a) Search Order for Inspection (Anton Piller order)

An Anton Piller order, also known as a search order, is a Court order requiring one party (Respondent) to allow the other party (Applicant) to enter the Respondent's premises in order to inspect, remove, or copy documents or other items that may form evidence in an action or proposed action against the Respondent.²²

The procedure is named after the landmark case of *Anton Piller KG v Manufacturing Processes Ltd*²³. In this case Lord Denning described that not only does the order put the defendant under pressure to grant permission, it actually orders him to give permission, with the implication that if he does not give permission, he is in contempt of Court.

The primary goal of an Anton Piller order is to prevent a Respondent from interfering with discovery or causing a trial to be delayed by destroying documents or evidence. They also help an Applicant quickly determine the presence of infringing items. Applications for Anton Piller orders are made *ex parte* (without the presence of the Respondent).

Furthermore, the Act explicitly provides that in any action for infringement where an *ex parte* application is made to the court, supported by affidavit, that there is reasonable cause for suspecting that there is in any house or premises any infringing copy or any plate, film or contrivance used or intended to be used for making infringing copies or capable of being used for the purpose of making copies or any other article, book or document by means of or in relation to which any infringement has been committed, the court may issue an order upon such terms as it deems just, authorizing the applicant to enter the house or premises at any reasonable time by day or night accompanied by a police officer not below the rank of an Assistant Superintendent of Police, and to seize, detain and preserve any such infringing copy

²² 'Anton Piller Orders' (Brisbane Technology, 2020) <<https://www.dundaslawyers.com.au/anton-piller-orders-preventing-evidence-destruction/>> accessed July 28, 2022

²³ [1976] 1 All ER 779

or contrivance, to inspect all or any documents in the custody or under the control of the defendant relating to the action. And any person who knowingly gives false information under this section shall be guilty of an offence and liable on conviction to a fine of N 1,000.²⁴

Anton piller procedure has been applied in Nigeria in the case of *Island Records v Pancos & Pandum*.²⁵

(b) Freezing Order for the Retention of Assets (Mareva injunction)

An Anton Piller order is frequently combined with a Mareva injunction, allowing an applicant to have the respondent's assets frozen so that they cannot be used to evade the judgment. The procedure has its origin from the case of *Mareva Compania Naviera v International Bulk Carriers*.²⁶ The reasons for this is to ensure that those assets are not removed from jurisdiction.²⁷ However, before such a heavy order granted, the following conditions must have been met;

- a) The respondent faces an extremely strong prima facie case.
- b) The potential or actual damage must be severe for the applicant.
- c) There is a real risk of the defendant's assets dissipating.
- d) Given the circumstances of the application, the court deems it just and proper to issue the order.

The principle has been encapsulated as Order 30, rule 1(1) (a) – (c) of the Federal High Court (Civil Procedure) Rules 2019.²⁸

²⁴ CA 2004 s(25)

²⁵ [1993] FHCLR 318

²⁶ [1980] All ER 213

²⁷ Odion and Ojukwu-Ogba (n 21)

²⁸ Order 30, rule 1(1) (a) – (c) of the Federal High Court (Civil Procedure) Rules 2019.

(c) Disclosure (Norwich Pharmacal action)

A Norwich Pharmacal Order is a disclosure order that allows information to be obtained from third parties who have documents or information concerning wrongdoing, assisting victims in investigating, pursuing those ultimately responsible, and recovering their losses.²⁹

The procedure is named after the landmark case of *Norwich Pharmacal Co. v. Customs and Excise Commissioners*³⁰. In this case the United Kingdom House of Lords established held:

A party may request the court to compel the disclosure of information where there has been or may have been wrongdoing by a third party and the information is required in order to seek justice in respect of that wrongdoing.

The appellants, the owners and licensees of a chemical compound patent, filed a lawsuit against the Customs and Excise Commissioners in order to obtain the names and addresses of importers they intended to sue for infringement. The House of Lords reasoned that, unless there is some consideration of public policy that prevents it, a person who unwittingly facilitates the commission of a wrong must disclose relevant information.³¹

Criteria for obtaining a Norwich Pharmacal Order:

A Norwich Pharmacal Order is a discretionary remedy that will be granted only if it is deemed necessary and proportionate in all the circumstances. In order to obtain a Norwich Pharmacal Order, the victim must meet certain criteria, and they include;

1. Demonstrate that there is a strong argument that wrongdoing occurred.

²⁹ Herring A 'Disclosure: A Guide to Seeking Norwich Pharmacal Orders' (Pinsent Mason, 2022) <<https://www.pinsentmasons.com/out-law/guides/disclosure-guide-seeking-norwich-pharmacal-orders>> accessed October 6, 2022

³⁰ [1974] RPC 101 HL

³¹ 'Norwich Pharmacal Co. v. Customs and Excise Commissioners' (Global Freedom of Expression, 2019) <<https://globalfreedomofexpression.columbia.edu/cases/norwich-pharmacal-co-v-customs-excise-commissioners/>> accessed October 6, 2022

2. Demonstrate that the victim requires the order in order to take action against the wrongdoer.
3. Demonstrate that the respondent was 'mixed up' or involved in the wrongdoing.
4. Demonstrate that the respondent is likely to possess important and relevant documents or information.³²

The importance of the Norwich Pharmacal Order cannot be over looked in the realm of copyright and intellectual property as a whole. This is because in many situations, the owner of an infringed copyright may be aware of third parties who have information which can point out the head perpetrators of such infringement. This order has made it possible for compulsory disclosure especially where such would have been difficult.

4.3 LIABILITY FOR INFRINGEMENT

Fine/Conviction

A copyright infringer may also face criminal charges for his/her offence. The Act provides that any person who makes or causes to be made for sale , hire, or for the purposes of trade or business any infringing copy of a work in which copyright subsists or imports or causes to be imported into Nigeria a copy of any work which if it had been made in Nigeria would be an infringing copy, or makes, causes to be made, or has in his possession, any plate, master tape, machine, equipment or contrivance for the purposes of making any infringing copy of any such work shall, unless he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy was an infringing copy of any such work, or that such equipment was not for the purpose of making infringing copies of any such work, be guilty of an offence shall be liable on conviction to a fine of an amount not exceeding NI,000 for every

³² See (n 29)

copy dealt with in contravention of the Act or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment.³³

Additionally, any person who sells or lets for hire or for the purposes of trade or 'business, exposes or offers for sale or hires any infringing copy of any work in which copyright subsists or distributes for the purposes of trade or business any infringing copy of any such work or has in his possession other than for his private or domestic use, any infringing copy of any such work has in his possession, sells, lets for hire or distribution for the purposes of trade or business or exposes or offers for sale or hire any copy of a work which if it had been made in Nigeria would be an infringing copy, shall, unless he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy was an infringing copy of any such work, be guilty of an offence under this Act and shall be liable on conviction to a fine of N100 for every copy dealt with in contravention of this section, or to a term of imprisonment not exceeding two years or in the case of an individual to both such fine and imprisonment.³⁴

Similarly, any person who, without the consent of the owner, distributes in public for commercial purposes copies of a work in which copyright exists by way of rental, lease, hire, loan, or similar arrangement shall be guilty of an offence under this Act and shall be liable upon conviction to a fine of N 100 for each copy dealt with, or imprisonment for six months, or both such fine and imprisonment.³⁵

4.4 REMEDIES FOR INFRINGEMENT

³³ CA 2004 s20(1)

³⁴ CA 2004 s20 (2)

³⁵ Ibid (3)

There Are Penalties for Infringement at both the Civil and Criminal Levels. Civil and criminal actions may be simultaneous, that means it shall be permissible for both criminal and civil actions to be taken simultaneously in respect of the same infringement.³⁶

Article 14 of the World Intellectual Property Organization (WIPO) Treaty provides provisions on enforcement of copyright:

(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.³⁷

Section 15 (1) of the copyright Act stipulates the acts which constitute copyright infringement³⁸. According to the Act, infringement of copyright is actionable by three categories of persons. They are:

- a) The copyright owner
- b) The assignee of the copyright; and
- c) The exclusive licensee.³⁹

Civil Remedies

Copyright is generally treated as a civil matter. This means that if someone violates copyright law, the rights holder must take action. This is also why most people do not go to jail for downloading a song. Instead, those who violate copyright are forced to compensate the

³⁶ Ibid s24

³⁷ Article 14 of the WIPO Copyright Treaty

³⁸ CA 2004 s15(1) (a-g)

³⁹ Ibid s16(1)

copyright holder for the damages they cause.⁴⁰ Moreover, civil proceeding is attractive because the standard of proof is less burdensome than that of criminal proceedings only.⁴¹

According to the Copyright Act, infringement of copyright shall be actionable at the suit of the owner, assignee or an exclusive licensee of the copyright, as the case may be, in the Federal High Court exercising jurisdiction in the place where the infringement occurred; and in any action for such an infringement, all such relief by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.⁴²

The available civil remedies are;

- a) Injunctions
- b) Damages
- c) Delivery up; and
- d) Conversion Right.

(a) Injunction

An injunction is judicial order restraining a person from beginning or continuing an action which invades the legal right of another person. Injunction is a veritable relief because when granted it prevents the infringer from continuing in the infringing act. However, the issuance of an injunction is always at the discretion of the court, it cannot be demanded as a matter of right. An injunction could be Interim, interlocutory or perpetual injunction. A court must consider the factors of the case before issuing such preliminary injunctive relief: the likelihood of harm to the copyright owner if such interim relief is not granted and the

⁴⁰ Fisk NW 'Digital Piracy' (Chelsea House 2011)

⁴¹ See (n 21)

⁴² CA 2004 s16(1)

likelihood that the copyright owner will succeed on the merits should be considered.⁴³ The traditional four-factor test applied by courts of equity when considering whether to award injunctive relief to a plaintiff will be considered. That test requires a plaintiff to demonstrate:

- (1) That it has suffered an irreparable injury;
- (2) That remedies available at law are inadequate to compensate for that injury;
- 3) That considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and
- (4) That the public interest would not be disserved by a permanent injunction.

The court's decision to grant or deny such relief is an act of equitable discretion, which can be challenged on appeal for abuse of discretion.⁴⁴

The purpose of an interlocutory injunction is to protect the status quo by granting temporary relief prior to a full trial of an infringement action, thereby preventing irreparable damage to the plaintiff's right.

(b) Damages

The primary goal of the damages remedy in copyright law is to compensate the copyright owner for any injuries or losses caused by the infringer, and to return the copyright owner to the position he would have been if his right was not infringed. The relief of damages is compensatory in nature because infringement hurts the pecuniary interest of the owner. In recovery of damages, a recoverable loss must first be demonstrated.

⁴³ Dreyfuss RC and Pila J, *The Oxford Handbook of Intellectual Property* (Oxford University Press 2018)

⁴⁴ *eBay Inc. v. MercExchange* [2006] 547 US 388

According to the Act, a copyright owner, assignee or an exclusive licensee is liable to damages⁴⁵. Additionally, where an action for infringement of copyright is proved or admitted, and the court in which the action is brought, having regard (apart from all other material considerations) to- (a) the flagrancy of the infringement; and (b) any benefit shown to have accrued to the defendant by reason of the infringement, is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing damages for the infringement, shall have power to award such additional damages by virtue of this subsection as the court may consider appropriate In the circumstances.⁴⁶

This means the act recognizes both actual and statutory damages. An infringer of copyright is liable for either the copyright owner's actual damages and any additional profits of the infringer or statutory damages.

The rationale for statutory damages is that actual damages in copyright, cases are commonly difficult to prove. As a result, if an owner cannot prove a counterfeiter's profits because the counterfeiter destroyed all sales records, the copyright holder has the option of electing statutory damages and obtaining some compensation from the defendant.⁴⁷

(c) Delivery Up

The court, whether or not the alleged offender is convicted, may order that all copies of the works, plates, master tapes, machines, equipment, and contrivances in the alleged offender's possession that appear to be infringing copies of the works be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the court sees fit.⁴⁸

⁴⁵ CA 2004 s16 (1)

⁴⁶ Ibid s16 (4)

⁴⁷ Dreyfuss and Pila (n 43)

⁴⁸ Ibid (4)

Where an article is seized by a police officer or an authorized officer in connection with a suspected offence under this Act, a court may, on the application of the Attorney General of the Federation or the owner of the copyright in connection with which such offence is suspected to have been committed, order that the article be destroyed or delivered up to the owner of the copyright, or otherwise dealt with as the court deems fit, notwithstanding that no person has been charged with the offence.⁴⁹

(d) Conversion Right

All infringing copies of any work in which copyright exists, or any substantial part thereof, and all plates, master tapes, machines, equipment, or contrivances used, or intended to be used, for the production of such infringing copies shall be deemed to be the property of the copyright owner, assignee, or exclusive licensee, as the case may be, who may consequently take proceedings for the recovery of possession thereof or the conversion thereof.⁵⁰

4.4 ANALYSIS OF ANTI-PIRACY MEASURES IN OTHER JURISDICTIONS

Anti-Piracy Measures in India

India is presently one of the most populated countries in the world. The existence of such a large population of people combined with recent technological advancements as well as having one of the biggest online markets in the world have all contributed to the large scale consumption of online material in the country. A recent study shows that India is the third

⁴⁹ Ibid (5)

⁵⁰ CA 2004 s18

global location for piracy website visits with more than 6.5 billion piracy website visits between January and September 2021.⁵¹

It is pertinent at this point to consider the anti-piracy measures by the Indian government. The introduction of the *National IPR Policy* in 2016, which brought profound changes to copyright issues, marked the beginning of India's march toward IPR protection and enforcement. The Policy was enacted in order to encourage creativity and innovation while also recognizing the importance of intellectual property rights in economic development.⁵²

Objective 1 of the Policy is aimed at creating awareness of the economic, social and cultural benefits of IPRs. This objective has led to the establishment of the Cell for IPR Promotion and Management (CIPAM) under the umbrella of the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India. CIPAM has taken significant steps to raise awareness and strengthen enforcement of intellectual property rights.

CIPAM, in collaboration with the Film and Television Producers Guild of India and Viacom18, has launched an anti-piracy campaign featuring informative animated videos on piracy awareness. To increase the impact of these videos on the audience, a number of top celebrities have been involved in delivering these anti-piracy messages. These videos are shown in various cinemas across the country, including PVR cinemas, India's largest cinema chain.⁵³

Furthermore, CIPAM has also specially developed its activities to focus on children and educational institutions in order to raise awareness about intellectual property rights at a young age. Videos have also been created to appeal to children and explain IPRs in an easy-

⁵¹ 'State of the Internet / Security: Pirates in the Outfield' <<https://www.akamai.com/resources/state-of-the-internet/soti-security-pirates-in-the-outfield>> accessed October 11, 2022

⁵² LexOrbis 'Combating Copyright Online Piracy In India: Governments Initiatives And Judicial Enforcement' (LexOrbis, 2020) <<https://www.lexorbis.com/combating-copyright-online-piracy-in-india-governments-initiatives-and-judicial-enforcement/>> accessed October 11, 2022

⁵³ LexOrbis (n 52)

to-understand manner. A series of anti-piracy videos featuring cartoon characters with the message "Say No to Piracy" has been broadcast. India has also created its first IPR mascot, "IP Nani", to raise awareness about the importance of IPRs, particularly among children.⁵⁴

Furthermore, over 100 schools have benefited from CIPAM's IP awareness programs, which began in 2017 in collaboration with the International Trademark Association (INTA). Any teacher or educational institute that wishes to organize an IP awareness campaign in their school could also contact CIPAM. IPRISM, an annual intellectual property competition, has also been launched to involve college and university students in its anti-piracy campaign.⁵⁵

Lastly, CIPAM has also collaborated with WIPO and the National Judicial Academy of India (NJA) to organize IPR training and awareness programs for high court and district court judges.

One of the major objectives of the National IPR Policy is creating effective awareness of IPRs as a means to tackle piracy in India and this initiative has gone a long way in reforming the general attitude of people regarding piracy while also promoting creativity.

Anti-Piracy Measures in the United States of America (U.S.A)

Online piracy costs US almost \$30bn a year, with pirated videos viewed over 200 billion times according to the United States Chamber of Commerce.⁵⁶The United States was the number one location for piracy website visits, with more than 13 billion piracy website visits between January and September 2021⁵⁷.

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ USC '2022 International IP Index' (U.S. Chamber of Commerce, 2022)

<<https://www.uschamber.com/intellectual-property/2022-international-ip-index>> accessed October 11, 2022

⁵⁷ See (n 51)

This alarming rate of online copyright infringement calls for strict anti-piracy measures to curb piracy. One of the measures put in place by the United States Copyright Act⁵⁸ is the provision of remedies in the form of statutory damages, which is available to a plaintiff who complies with the Act's registration requirements⁵⁹. According to the act the copyright owner may elect to recover an award of statutory damages for all infringements involved in the action, for which the infringer may be liable to pay a sum of not less than \$750 or more than \$30,000 per infringing work as the court deems fit.⁶⁰ Furthermore, where the infringement is willful the infringer may be liable to pay as much as \$150,000 per instance for the infringement.⁶¹ The third scenario involves innocent infringement. If the court determines that the infringer was unaware or had no reason to suspect that his actions violated copyright, the court may reduce the statutory damage award "to a sum not less than \$200." Additionally, infringers may be imprisoned for up to 5 years and fined up to \$250,000, or both. And infringers who have previously been convicted of criminal copyright infringement under the act may be sentenced to a maximum of 10 years imprisonment, a \$250,000 fine, or both.⁶²

The courts have not fallen short in the enforcement of these provisions. In *Feltner v. Columbia Pictures Television, Inc.*⁶³ the Supreme Court stated that statutory damages may serve purposes of compensation and punishment, hence, the jury awarded \$72,000 in statutory damages for each of the 440 works infringed, for a total award of \$31.68 million.

It is clear that the provisions have a deterrent factor which is intended to discourage people from engaging in acts of piracy.

Anti-Piracy Measures in the United Kingdom

⁵⁸ Copyright Act, 1976

⁵⁹ Ibid s.412

⁶⁰ Ibid s.504

⁶¹ Ibid

⁶² Ibid

⁶³[1998] 523 U.S. 240

The United Kingdom has taken bold steps to curb the growing rate of online piracy in the recent decade. One of the most interesting developments is enforcement method of blocking access to sites that promote piracy as well as sending letters of infringement to users who have either uploaded or downloaded pirated material from these websites. This is a clever strategy that is intended to convince consumers of digital content to access these contents via legal streams.

When files are copied from popular file sharing services online, users are commonly uploading and sharing the same content. The IP addresses of all users who are currently sharing the file are visible. Copyright owners have systems in place to collect IP addresses where they believe users are sharing material without their permission. A copyright owner may then apply to the court for a Norwich Pharmacal Order. If granted by the court, this order requires an ISP (Internet service provider) to provide copyright owners with the names and addresses of users alleged to have committed copyright infringement based on IP address information. The user may then be sent a letter, notifying him/her of the infringement.⁶⁴

It was discovered in a recent study by Carnegie Mellon University, that blocking 53 piracy website sites in 2014 resulted in a 90% drop in visits to the blocked sites. Furthermore, blocking the sites reduced total piracy (including blocked and unblocked sites) by 22% for all UK users of the blocked sites, and 16% for all UK internet users. Finally, blocking these sites resulted in a 10% increase in video views on legal ad-supported streaming sites like BBC and Channel 5, as well as a 6% increase in use of legal subscription streaming sites like Netflix.⁶⁵

⁶⁴ Office IP 'Letters Alleging Online Copyright Infringement' (GOV.UK, 2021) <<https://www.gov.uk/government/publications/letters-alleging-online-copyright-infringement/letters-alleging-online-copyright-infringement>> accessed October 13, 2022

⁶⁵ Smith MD, 'The Effect of the UK November 2014 Blocks on Consumer Behavior' <<https://techpolicyinstitute.org/wp-content/uploads/2016/04/UK-Blocking-2-0-2016-04-06-mds.pdf>> accessed October 13, 2022

This method has led to some significant drop in online piracy rate in U.K. It is a concise effort to tackle piracy online, from these results, persistent blocking of these piracy sites could yield a more significant result.

4.5 CHALLENGES FACED BY THE NIGERIAN COPYRIGHT COMMISSION

Given the Commission's massive regulatory and enforcement mandates, which include powers of investigation, inspection, anti-piracy raids, seizure of copyright infringing materials, and arrest, detention, and prosecution of offenders, among other things, it is clear that the Commission can easily be overburdened and thereby faces its challenges. These challenges include:

1. **Insufficient Funding;** In order to fulfil its mandate as a commission, proper funding will continue to be at the forefront of requirements. This is because it is difficult to achieve concise results and carry out its responsibilities as a commission without adequate financing. Despite the massive regulatory and enforcement mandates of the commission, it is yet to be adequately funded.

Prof. Animi Esther Sylvanus-Pepple, the Chairman of the Governing Board, Nigerian Copyright Commission (NCC), in an interview with the News Agency of Nigeria (NAN), has revealed that the commission is 'grossly underfunded'. She stated that the Commission's lack of revenue or funds is a compelling reason for the approval of the copyright levy order. Given that the Commission's mandate encompasses the entire federation, the Commission is grossly underfunded. She then urged the government for more funding and approval to collect copyright levy to enable it to discharge its mandate effectively.⁶⁶

⁶⁶ News Agency of Nigeria 'Copyright Commission Grossly Underfunded, Can't Fight Piracy' (Peoples Gazette, 2021) <<https://gazettengr.com/copyright-commission-grossly-underfunded-cant-fight-piracy-board-chair/>> accessed October 6, 2022

The copyright levy order was gazetted in 2012, but the Commission has yet to receive approval from the Federal Ministry of Finance, Budget, and National Planning to begin collecting.

It is evident that the Commission is overburdened. As a result, it requires adequate budgetary allocation and internally generated revenue to effectively discharge its mandates.

2. **Shortage of Staff;** In order for the commission to meet its mandate, it is required that each unit or department duly performs its functions. This will be nearly impossible where there is a shortage of staff, this means shortage of labor and therefore shortage of performance, as is the case with the National Copyright Commission.

According to the Board's Management briefing, the Commission has only 324 employees spread across 14 state offices, 194 staff are at its Headquarters in the Federal Secretariat in Abuja, FCT.⁶⁷ Furthermore, the Commission has been given powers such as the power of investigation, power of arrest, power of prosecution, power of confiscating materials that infringe copyright. This requires a lot of labor and it is thereby important to have an adequate number of trained staff. This is a big constraint in performance as the Commission is operating in only 14 states out of the 36 states of the Federation.

3. **Poor Infrastructure;** According to the Board's Management briefing, the Commission does not own any property other than its office building in Lagos, which is in a bad condition and requires urgent renovation. Similarly, the other NCC State Offices are either allocations in Government Secretariats or private stakeholder buildings; some are only one or two rooms, demonstrating that the Commission

⁶⁷ See (n 66)

desperately needs funding.⁶⁸It will be difficult to fulfil its responsibilities in the absence of proper infrastructure and equipment.

4. **Corruption;** corruption is a major setback and abuse of power. It is unfortunate that some of the NCC officials who are responsible for fighting piracy have turned their back on their given tasks and decided to transact with the pirates for personal benefits.⁶⁹
5. **Language Barrier;** Nigeria is a multi-lingual federation; hence, language barrier poses an issue where officials do not understand the local dialect of a particular area where they have been posted for duty. This issue is amplified by the lack of funding and shortage of staff making it difficult for real-time language translation where it is necessary.
6. **Enforcement;** Implementation and enforcement of intellectual property laws is critical in the fight against piracy. The involvement and role of law enforcement agencies such as police, army customs, and officers from other relevant government agencies is pivotal. Similarly, copyright litigation and enforcement must be given importance. Enforcement of copyright laws is yet to be given priority, especially within the law enforcement agencies where copyright infringement issues are not regarded as important issues. The lack of proper enforcement of copyright laws and slow judicial response to copyright cases will continue to encourage pirates to infringe copyrighted articles.
7. **Low Criminal Punishment;** The copyright act provides that an infringer shall be liable on conviction to a fine of N100 for every copy dealt with in contravention of

⁶⁸ Ibid

⁶⁹ Eyo B 'Piracy: Blame Nigerian Copyright Commission the Nation Newspaper' (The Nation Newspaper August 11, 2015) <<https://thenationonlineng.net/piracy-blame-nigerian-copyright-commission/>> accessed October 6, 2022

the Act, or to a term of imprisonment not exceeding two years or in the case of an individual to both such fine and imprisonment.⁷⁰

The fine for criminal infringement is considerably low and does not adequately discourage infringement by pirates.

8. **Lack of Piracy Awareness;** Piracy is at the forefront of infringement. It is unfortunate that it has been accepted as a norm especially in developing countries like Nigeria. The general attitude towards piracy is acceptance. The lack of awareness in the public makes it difficult to fight a common enemy that has been accepted by most people as a way of life. The absence of judicial or legislative intervention and general public awareness of copyright will lead to a decline of creative reward in the country.

9. **Information and Communication Technology;** the world is now a global village. Piracy is no longer constrained to physical but also online materials as well.

The emergence of the internet has made duplication, reproduction and transfer of online content faster and easier than ever. The fight against internet piracy can only be made possible with ICT literacy and proper equipment.

This has posed an issue on the commission as most of the staff are not computer literate.

In order to detect and investigate infringers on the internet, the staff must be properly trained and equipped with the adequate technology.

4.6 JURISDICTION

The jurisdiction to hear intellectual property law cases is given under section 251 (1) (f) of the Constitution of the Federal Republic of Nigeria 1999 (as amended 2011), exclusively to the Federal High Court. The constitution provides in section 251;

⁷⁰ CA 2004, s.27

(1) notwithstanding anything to the contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters

(f) Any Federal enactment relating to copyright, patent, designs, trademarks and passing-off, industrial designs and merchandise marks, business names, commercial and industrial monopolies, combines and trusts, standards of goods and commodities and industrial standards.⁷¹

Additionally, the copyright act provides that The Federal High Court shall have exclusive jurisdiction for the trial of offenses or disputes under this Act.⁷²

⁷¹ Section 251 of the Nigerian Constitution, 1999

⁷² CA 2004, s.46

CHAPTER FIVE

SUMMARY, RECOMMENDATION AND CONCLUSION

5.1 SUMMARY

This project examined the nature of copyright and digital piracy with major focus to curbing copyright infringement in Nigeria. The relevant provisions of the Nigerian Copyright Act ¹, which is the main statute regulating copyright in Nigeria were also examined.

This research discusses the features of copyright as a protector of creative reward and as a formal protection of creativity. Furthermore, the project discusses the historical origin of copyright from the days of the Stationer's company to the enactment of the Statute of Anne. The analysis of the historical origin of copyright emphasizes how the demand for a means of formal protection by early printers looking to safeguard their printing rights against copiers led, although gradually, to the early recognition of copyright.

Furthermore, the development of the internet has led to a rapid increase of copyright infringement in online environments. Infringement entails copying a person's work without permission. This ease of infringement emphasizes the need for digital copyright protection and regulation. The copyright Act provides the acts which constitute copyright infringement². Exceptions such as the principle of fair use are considered when the use of another person's work does not harm the pecuniary interest of the owner. In the event that a person's copyright is infringed upon, the act provides for remedies as well as criminal punishment.

The Nigerian Copyright Commission (NCC) serves as the regulatory body for all matters relating to copyright in Nigeria.³The Commission has taken several initiatives such as the Strategic Actions Against Piracy (STRAP) and the Copyright litigation and mediation

¹ CA 2004

² Ibid s.15(a)-(g)

³ Ibid s.34(1)

programme (CLAMP) both aimed at enforcing copyright and fighting piracy in the country. However, it is worth mentioning that major challenges are being faced by the NCC in its fight against copyright infringement in Nigeria.

5.2 RECOMMENDATIONS

It is apparent that the Nigerian Copyright Act is the effective statute for all copyright matters in Nigeria, while the Nigerian Copyright Commission is the regulatory body in charge of all copyright matters in the Country. Hence, any copyright development must flow from the aforementioned authority. There is no doubt that the NCC has taken due steps in the enforcement and protection of copyright in Nigeria, however these actions have not been the most effective. This is due to the challenges being faced by the NCC in the ongoing fight against piracy. Hence, copyright issues which have risen in the digital era have gone unanswered in Nigeria. In order for the commission to meet its mandate and make a difference, it is important that the commission overcomes some of these challenges. There are some important recommendations which must be considered for the commission to overcome these challenges. These include;

1. **Adequate Financial Provisions:** Inadequate funding has been a major drawback in the commissions fight against piracy. The commission has been given a duty to manage all matters concerning copyright in Nigeria, this is a herculean task that requires enough manpower and adequate funding. Despite the regulatory and enforcement mandates of the commission, it is yet to be adequately funded. In order to bridge the gap that has risen from this short coming, the government must focus on allocation of funds to the commission to enable it meet its mandate. Furthermore, there must be legislative action to approve and implement the copyright levy order, which was gazetted in 2012, but is yet to receive approval from the Federal Ministry of Finance, Budget, and National Planning. This order

will enable the commission improve its current financial situation by the imposition of copyright levies. A practice which has been approved in other jurisdictions. Furthermore, the commissions is in need of proper funding for its infrastructure, with the present facilities operating in terrible condition, hereby requiring urgent renovation. The issue of infrastructure can be seen in NCC State Offices which are either allocations in Government Secretariats or private stakeholder buildings. This lack of proper infrastructure leads to a shortage of staff, which means shortage of labor and therefore shortage of performance. According to the Board's Management briefing, the Commission has only 324 employees spread across 14 state offices, 194 staff are at its Headquarters in the Federal Secretariat in Abuja, FCT.⁴The commission can also work with stakeholders in the private sector, to generate revenue. In order for the commission to fulfil its duties, and to combat the menace of piracy in Nigeria, there must be adequate financial provisions and accountability for the funds allocated.

2. **Improved Public Enlightenment:** The Lack of piracy awareness has contributed massively to the rate of piracy in Nigeria. A large percentage of piracy consumers are uninformed. The public must be enlightened on the nature of copyright and the implications of copyright infringement and piracy. The Nigeria Copyright Commission should improve on its publicity and campaign. Inspiration can be taken from India, where CIPAM (Cell for IPR Promotion and Management) has specially developed its activities to focus on children and educational institutions in order to raise awareness about intellectual property rights at a young age. This is a development that can be implemented in Nigeria. In order for this to become a reality, there must be a cooperative synergy with the educational sector. Intellectual Property should be added to the school curriculum in private and public institutions. There must be continuous campaigns by the NCC to inform the public on the dangers of copyright

⁴ News Agency of Nigeria 'Copyright Commission Grossly Underfunded, Can't Fight Piracy'(Peoples Gazette, 2021) <<https://gazettengr.com/copyright-commission-grossly-underfunded-cant-fight-piracy-board-chair/>> accessed October 6, 2022

infringement and the implications of piracy on the economy. Public enlightenment on the issue of piracy will surely lead to a reform of the current attitude of the public towards piracy.

3. **Legislative Action:** There is need for legislative intervention as the current copyright act is in need of urgent amendment. This is because copyright issues that have risen in the digital era have gone unanswered in Nigeria. Additionally, the provisions provided by the act for punishing copyright infringement lacks a deterrent factor. The current copyright Act CAP C28 LFN, 2004 does not adequately cater for contemporary copyright issues. However, The introduction of The Nigerian Copyright Act (Amendment) Bill 2022 sheds hope on the situation. The National Assembly, on April 6th 2022 passed the Bill for an Act to repeal the current Copyright Act.

Section 26 of the Bill criminalized circumventing technological protection measures on online platforms while Section 27 of the Bill prohibits any person from uploading false information about the owner and rights of a work. Further to this, Section 29 of the Bill makes it possible for the owner of copyright in a work which has been infringed to issue a notice to take down the infringing site. Section 31 of the Bill empowers a service provider to suspend an infringing account while Section 36 empowers the NCC to block access to infringing online content.

This Bill recognizes the need for copyright protection in online environments.

Furthermore, the punishment for copyright infringement under the present act is barely a deterrent factor. The copyright act provides that an infringer shall be liable on conviction to a fine of N100 for every copy dealt with in contravention of the Act, or to a term of imprisonment not exceeding two years or in the case of an individual to both such fine and

imprisonment.⁵This provision may not even trouble an infringer as the sum is too low. There is need to amend this provision and provide strict punishment to deter infringers from committing piracy. Inspiration can be drawn from the United States of America (U.S.A), for which the infringer may be liable to pay a sum of not less than \$750 or more than \$30,000 per infringing work as the court deems fit.⁶Furthermore, where the infringement is willful the infringer may be liable to pay as much as \$150,000 per instance for the infringement.⁷Such heavy fines must persuade a person to think twice before engaging in any act of copyright infringement.

4. **Improved Copyright Enforcement:** In order to tackle copyright infringement and piracy, there must be improved copyright enforcement, even in online environments. The commission must work with the necessary law enforcement agencies such as the police, in order to effectively enforce copyright. Collaboration with law enforcement agencies will solve the issue of insecurity which is being faced by the commission. For example, when executing search orders to seize pirated articles, these NCC officials often face danger, as some infringers may be violent or even armed. Furthermore, an interesting development in the U.K. is the enforcement method of blocking access to sites that promote piracy as well as sending letters of infringement to users who have either uploaded or downloaded pirated material from these websites. This is an act of enforcing copyright even in digital environments. Additionally, there must also be judicial enforcement of copyright. Presently, many Nigerians do not concern themselves with copyright litigation. It is observed that Nigerian Weekly Law Reports (NWLR) which is one of the most popular law reports in Nigeria, barely contain reported cases that involves the commission, however the Nigerian Law Intellectual Law Intellectual Property Watch (NLIPW) has the most reports on Nigerian

⁵ CA 2004 s.27

⁶ Copyright Act 1976 s.504

⁷ Ibid

Copyright Commission. The result of this is that many Nigerians are not aware of the activities of the commission, hence the rate of copyright litigation is low. Lastly, delays in the judicial and enforcement system discourages copyright litigation and enforcement. In order to tackle copyright infringement and piracy, there must be improved copyright enforcement.

5. **Improved Training of Officials:** There is need for the staff and officials of the NCC to be qualified. Lack of proper Information and Communication Technology (ICT) training is one of the current challenges being faced by the commission. It is not possible to tackle online copyright infringement without computer knowledge and training. The fight against internet piracy can only be made possible when the NCC officials are ICT literate and provided with the proper equipment. Furthermore, the proper training of officials would ensure that the NCC staff are qualified, consequently reducing the rate of corruption within the commission.

5.3 CONCLUSION

In conclusion, copyright aims to protect the moral and material interests of creators. This is important because it creates major benefits, not just for the creator, creativity leads to economic growth and it must be utilized. In Nigeria especially, the creative sector is a sleeping goldmine which could help reduce the country's current dependence on oil.

However, this is yet to be a reality as copyright piracy continues to plague the creative industries. This has discouraged several creative minds and resulted in a loss of revenue. In order for true exploitation of creative effort, the regulation and enforcement of copyright must be priority. The Nigerian Copyright Commission has since taken initiatives to curb piracy but has met several challenges. The recommendations tendered in this project would go a long way in curbing the menace of piracy in Nigeria.

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