

# Visual Arts and the Legal Issues of Copyright and Contract in Nigeria

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## Abstract

This paper examines a number of legal issues that impinges on the works of the visual artist in the society, which if well tackled, will make positive impact in the economic growth and development of nations. This is essentially on copyright practices on intellectual properties. It is observed that perhaps due to lack of information on the part of the creative minds or a result of non enforcement by governments of countries on copyright agreements duly reached by member countries, the artist is not only being shortchanged but that the member countries also experience loss in harnessing the potentials of creativity for national development. Copyright is an important asset of creators that gives them legal rights and opportunities to generate income, irrespective of the ownership of their physical creation. Through a review of a number of literatures and critical examination of international treaties signed to regulate the creative efforts of member countries, a number of issues bordering on copyright and visual art practices were discussed and highlighted. They include the visual Arts under the Nigerian law, the concept of copyright and contracts, Moral Rights for the Visual Artists and the cultural policy in Nigeria. Others are the international Treaties on copyright, the Nigerian copyright commission and the legal issues for the visual artists. It is found out that these legal issues discussed are indispensable information for the visual artists, who wish to make a mark in their chosen career and that creativity is the bedrock of every civilization. When the intellectual properties are well protected, it will fastrack a wider dissemination of works of the human mind and thereby increase international understanding.

**Keywords:** Copyright, Infringement, Creativity, Visual Arts, Berne Convention, Intellectual Property, fixed medium, legal issues.

## 1. Introduction

In today's world, creative efforts are made daily by individuals, group of persons and organizations to add value to societal living. This is encouraged by government at different levels of governance in developing economies. While this is ongoing, some miscreants rather than make their own input to national growth are busy engaging themselves in acts of what the writer regards as "thievery" and piracy on the works of these patriots.

This to a large extent discourages creativity and invention, with consequent under development of the country. This, thus deprive these creative citizens of the desired benefits accruing from their efforts. The Visual Arts could be considered as fertile or veritable platform where the creative ingenuity of the artists could be tapped, from which windows of opportunities and other benefits could be derived. The visual Arts comprise artforms such as Drawing, painting, engraving, print making, photography, digital arts, sculpture, installations, cartoon and graphic arts amongst others.

While genuine efforts are made by some persons to create art works, a number of other persons exploit the gains expected from these efforts by engaging in acts of piracy, plagiarism and other copyright infringement to the detriment of the artists and authors of these works of art. Apart from these exploitation, it is presently observed that the quality of some of these creative works is also adversely affected and reduced as a result of this uncharitable behaviours (tendencies). Furthermore, a number of these creative artists/authors hardly know their rights and privileges inherent from the works created. It is on this backdrop that the writer seeks to study the legal issues that visual artists often come across, particularly legal information on copyright, contract and moral rights in contemporary society. This will highlight acts that are inimical to creative growth and development. This, also will to a large extent create awareness to budding and practicing artists and authors of works of arts on their rights and privileges inherent from their creativity. It will enable them too to think straight in the quest to make a better and healthy society.

Furthermore, the attention of governments and concerned institutions in both developing and developed countries will be drawn to the idea of exercising sanctions on culprits/infringers of this damnable acts, so as to move the economy not only forward but to higher level. In consequence, effort will be made in this article, to state the composition of the Visual Arts under the Nigerian law, the concept of copyright and contracts, Moral Rights for the Visual Artists and the cultural Policy in Nigeria. A peep into the international treaties arising from these legal issues and state of affairs will be made. This will include the Berne convention of 1886, the universal copyright convention of 1952, the Rome Convention, the TRIPS (Trade Related Aspects of Intellectual Property Rights) and WIPO (World Intellectual Property Organization). The writer will also look into the Nigeria copyright commission and legal issues for the Visual Artists. These expositions will no doubt

create new insight to acts inimical to creativity and perhaps put Nigerians and other nationals on a new pedestal to growth culminating in the creation of a sane society devoid of the academic crime of plagiarism, moral rights and copyright infringement by way of full adoption and implementation of the content of these treaties. By so doing, it will encourage creative activities and promote the protection of intellectual property throughout the world.

## 2. The Visual Arts under the Nigerian Law

The Visual Arts are artforms such as ceramics, drawing, painting, sculpture, printmaking, design, crafts, photography, video, filmmaking and architecture. Many artistic disciplines (performing arts, conceptual art, textiles) involve aspects of the visual arts as well as arts of other types. Also included within the visual arts are the applied arts such as industrial design, graphic design and decorative art (Wikipedia).

The current usage of the term “visual arts” includes the fine art as well as the applied, decorative arts and crafts but this was not always the case. Before the Arts and crafts movement in Britain and elsewhere at the turn of the 20<sup>th</sup> century, the term “artist” was often restricted to a person working in the fine arts (such as painting, sculpture or printmaking) and not the handicraft, craft or applied art media. The distinction was emphasized by artists of the Arts and crafts movement, who valued vernacular artforms as much as high forms. Art schools made a distinction between the fine arts and the crafts, maintaining that a craftsman could not be considered a practitioner of the arts. (World Wide Arts, 2009).

The increasing tendency to privilege painting and to a lesser degree sculpture above other arts has been a feature of Western art as well as East Asian art. In both regions, painting has been seen as relying to the highest degree on the imagination of the artist and the furthest removed from manual labour. In Chinese painting, the most highly valued styles were those of “scholar-painting” at least in theory practiced by gentleman amateurs. The Western hierarchy of genres reflected similar attitudes (Barnes, 1937). The United States of American copyright definition of visual arts states that, a work of visual art is.

- A painting, drawing, print or culture existing in a single copy. In a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author or in case of a sculpture, in multiple cast carved or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author.
- A still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

According to this United States of American copyright definition, a work of visual art does not include

- (i) Any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion pictures or other audio visual work, book, magazine, newspaper, periodical, database, electronic publication or similar publication.
- (ii) Any merchandising item or advertising promotional, descriptive covering or packaging material or container.
- (iii) Any portion or part of any item described in clause (i) and (ii)
- Any work made for hire.
- Any work not subject to copyright protection under this title (Shelley, 2010).

Having previewed a global perspective on the nature and composition of visual arts, the Nigerian copyright law section one, sub-section 1, provides us with what could be termed visual arts. They include paintings, drawings, etching, lithographs, woodcut, engravings, carvings of sculpture, photograph and other diverse artistic expression that have been expressed in a fixed medium. Section 39 of the law, which is the definition section does not specifically define visual arts but describes “artistic work” irrespective of the artistic quality as

- Paintings, drawings, etching, lithographs, woodcut, engravings and prints.
- Maps, plans and diagrams.
- Works of sculpture.
- Photographs not comprising cinematographic film.
- Works of architecture in the form of building models.
- Works of artistic craftsmanship and also (subject to section 1 (3) of this Act, pictorial woven tissues and articles of applied handicraft and industrial art (Fagbenro-Byron, 2011).

From the foregoing, it is obvious that there is a clear distinction between the fine arts and the applied arts particularly in the area of crafts and handiwork practices, in the definition of visual arts, as reflected in the argument of the Arts and Crafts movement in Britain and elsewhere, at the turn of the 20<sup>th</sup> century. It is clear therefore to state that the visual arts task the intellect of the artist on a high imaginative and academic dimension in the creation of these art forms. A good work of art therefore as a judgmental criteria should embrace the basic elements and principles of art in its creation for it to give a clearer definition of the term “visual arts”.

### 3. The Concept of Copyright and Contracts

Copyright is the exclusive right to control reproduction and commercial exploitation of your creative work. It is an important asset of creators that gives them legal rights and opportunities to generate income irrespective of the ownership of their physical creation and irrespective even whether that creation still exists. Copyright is a bundle of economic rights which give their owner the exclusive right to do certain things in relation to the object it protects. Copyright protection is automatic upon creation of the work. There is no need to register a work in some official register. The symbol © is used for notification purposes, to put people on notice that the work is protected by copyright, but is not required for the protection to exist. Copyright is a form of intellectual property which gives the creator of an original work exclusive rights for a certain time period in relation to that work, including its publication, distribution and adaptation, after which time the work is said to enter the public domain. It applies to any expressive form of an idea or information that is substantive and discrete. (Kattwinkel, 2007).

Although the origin of copyright dates back to the 1700s in England, Copyright law is founded in the constitution of the United States. The constitution explicitly grant congress the power to create copyright law. Specifically, congress has the power: to promote the progress of science and useful Arts, by securing for limited times to Authors and inventors the exclusive Right to the respective writings and discoveries. Article 1, Section 8, Clause 8 (the copyright clause). Copyright was originally not just to benefit the author, but society as a whole. Modern copyright law has evolved greatly with the advent of technology and changes in US and operative international law is rooted in the copyright law of 1976. (Wikipedia).

Copyright protects “subject matters” being films, sound recordings, broadcasts and published editions. It also protects “works” being literary works, dramatic works, musical works and artistic works including works of artistic craftsmanship. If a creation of the mind does not fall into any category of “works” or “subject matters” other than works, copyright does not apply in order to attract copyright protection, a subject matter must be expressed in a “material form”. Copyright does not protect information; ideas, concepts, styles and methods. It only protects the expression of ideas in any of the categories mentioned above. As a result, copyright arises when an idea, concept or information is written down, expressed visually, filmed, recorded or stored on the hard disk.

Therefore, a creator cannot rely on copyright law if someone stole his/her idea if it had not yet been expressed in a material form. Secondly, to attract copyright protection, the work must be “original”. The work does not have to be innovative or artistic to be original but must be attributable to the authors’ skill and labour and not copied. This requirement does not apply for subject matters other than works. To a large extent, copyright last for 70 years after the death of the author of the work. In the case of subject matters other than works, copyright last for: 70 years from the year the first publication of a sound recording or film, 50 years from the year the television or sound broadcast was made, 25 years from the first publication of a published edition of a work.

Copyright lapses after the relevant time and the work is in the public domain. This means that anyone can use it.

Contract, on the other hand, is a voluntary, deliberate and legally binding agreement between two or more competent parties. Contract are usually written but may be spoken or implied, and generally have to do with employment, sale or lease or tenancy. A contractual relationship is evidenced by (1) an offer, (2) acceptance of the offer and (3) valid (legal and valuable) consideration. Each party to a contract acquires rights and duties relative to the rights and duties of the other parties. However, while all parties may expect a fair benefit from the contract (otherwise courts may set it aside as inequitable) does not follow that each party will benefit to an equal extent. Existence of contractual-relationship does not necessarily means the contract is enforceable or that it is not void or voidable. Contracts are normally enforceable whether or not in a written form, although a written contract protects all parties to it.

Some contracts (such as sale of real property, installment plans or insurance policies) must be in writing to be legally binding and enforceable. Other contracts are assumed in and enforced by law whether or not the involved parties desired to enter into a contract. (Sundara & Mira, 2006). There is a contract affecting ownership, such as Joint authorship. In this case, two or more people can own copyright jointly if they are joint authors of copyright material or if they have entered into an agreement to that effect, regardless of their contribution to the creation of the copyright material. If authors jointly own copyright, each owner must get the consent of the other before exercising copyright (e.g. allowing someone else) to use your jointly owned material.

There is also the issue of All-Rights Contracts, whereby, publishers draft all-rights contracts to discourage authors and artists from invoking their moral rights. The whole purpose is to undermine the crucial principle that each right in a contract must be claimed separately and specifically, and that any right not claimed remains with the author (Updike, 2001). For instance, an author submitting a manuscript without error and a publisher introducing grammatical and spelling mistakes when the manuscript is *edited* and typeset. Surely, the publication of such a work would embarrass the author.

Furthermore, publishers may create derivative works of several authors’ writings. The resulting publications may be poorly received by the public, thus humiliating the authors. If the publisher chooses not to

include the authors' names on a good publication, those authors will not receive favourable public reaction to their works. Consequently, despite years of legislation, the various view points of publishers and authors remain conflicted.

#### 4. Moral Rights for the Visual Artists

Moral rights are personal rights that connect the creator of a work to their work. Moral rights safeguard personal and reputational rights, which permit authors to defend both the integrity of their works and the use of their names. As a visual artist, moral rights mean that:

- People must know that you are the creator of your work that is shown in public.
- No one else can be named as the creator of your work.
- Your work cannot be treated in way that hunts your reputation

You should have an opinion on how your work is to be shown and how your name appears with your work. If someone is going to show your work in public, make sure you tell them how you want it to be seen by other people.

Moral rights are rights of creators of copyrighted works generally recognized in civil law jurisdictions and to a lesser extent, in some common law jurisdictions. They include right of attribution, the right to have a work published anonymously or pseudonymously, and the right to the integrity of the work. The preserving of the integrity of the work bars the work from alteration, distortion or mutilation. Anything else that may detract from the artist's relationship with the work even after it leaves the artist's possession or ownership may bring these moral rights into play. Even if an artist has assigned his or her copyrights to a work to a third party, he or she maintains the moral rights to the work (Wikipedia).

According to (Ardito, 2002), in countries that legally recognize moral rights, authors have redress to protect any distortion, misrepresentation or interference of their works that could negatively affect their honour. Moral rights are often described as "inalienable". French law recognizes perpetual moral rights. In Germany, moral rights end when the author's copyright expires (70 years after he or she dies), while in other countries, moral rights terminate with the author's death. For a span of years, various authors and artists have filed lawsuits regarding the use of their works or, in the case of Samuel Clemens, the use of their names on works they did not authorize. The first legal international treaty to recognize the concept of moral rights was the Rome Act of 1928. Article 6bis of the current Berne Convention treaty includes a moral rights clause that protects authors' rights to decide whether and when to publish works, claims of authorship after the work is published, and preservation of the work's integrity:

- (1) Independently of the author's economic rights and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.
- (2) The rights granted to the author in accordance with the preceding paragraph shall after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.
- (3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed (Wikipedia).

*4.1 Moral Rights in the U.S:* The U.S resisted joining the Berne convention for over 100 years, mainly because it needed to significantly revise its copyright law to become more harmonious with the treaty. One major issue for the U.S was its lack of willingness to accept copyright protection on unregistered works and works without copyright notices. When the U.S. finally joined the Berne Convention in 1989 congress had enacted legislation to protect author's copyrights regardless of whether or not they had registered their works or placed copyright notices within their publications. A secondary concern for the U.S, but one without much press coverage, was the moral rights issue. Although the U.S has not enacted moral rights legislation for literary or digital works, various national and state laws regarding copyrights, libel, defamation, misrepresentation, trademarks and unfair competition (the Lanham Act) seemed to satisfy the Berne Convention's requirements, thus allowing the U.S to become a signatory.

Soon after the U.S joined the Berne Convention, the concept of moral rights gained popularity within the visual arts community. The following year, congress signed into law the Visual Artists Rights Act of 1990 (VARA). Under VARA, authors of visual works (paintings, drawings, sculptures, photographs, prints) are granted two rights: the right of attribution and the right of integrity. The right of attribution allows an author "to claim authorship, to prevent the use of his or her name as the author of any work of visual art which he or she did

not create and to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honour or reputation. The right of integrity permits an author “to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honour or reputation and to prevent any destruction of a work of recognized stature”. Both rights last for the author’s lifetime. They are not transferred to heirs, as in the case of copyrighted works (Ardito, 2002).

Although literary and digital moral rights are widely recognized in Europe, they continue to be limited in scope within the U.S. Some countries have enacted national laws to expand moral rights as outlined in the Berne Convention. In addition to the rights of integrity and attribution, France, for example, includes the right of disclosure (i.e. an author can decide when and where to publish, including providing written consent to a publisher about any modifications to the works), the right to withdraw or retract works (i.e. if an author’s views change, the author may purchase all remaining copies of the works and prevent the printing of additional copies), and the right to reply to criticism. French laws ever allows these moral rights to be transferred to author’s heirs. (Kwall, 2010).

## 5. Cultural Policy in Nigeria

Nigeria is one of the largest and geographically, socially and culturally most diversified African country. Nigeria is in the process of socio-economic restructuring and adjustment. The rights and various attempts of the people of Nigeria to develop their culture have been supported by both the civilian and military government and have been given consideration in the Nigerian constitution. However, neither the systematized cultural policy, nor the set of main aims of cultural policies within the states have not been presented. Some of the clearly set directions of cultural policies are:

Analysis and understanding of the Nigerian cultural life, cultural values and cultural needs and expectations of people.

- Affirmation of the authentic cultural values and cultural heritage
- Building up of a national cultural identity and parallel affirmation of cultural identities of different ethnic groups
- Development of cultural infrastructure and introduction of new technologies in cultural activities
- Establishment of links between culture and education, as well as between education and different cultural industries, particularly mass media.

National cultural policy is generally regarded as an instrument of promotion of national identity and Nigerian unity, as well as of communication and cooperation among different Nigerian or African cultures, while the federal, states cultural policies stand for the affirmation and development of particular (ethnic) cultures. (UNESCO, 1982).

5.1 *Administrative and Institutional Structures:* Ministry of Culture and Social Welfare has two departments responsible for administering and implementing cultural policies. The Federal Department of Culture is responsible for the formulation and execution of the national cultural policies, for the financing and promotion of all national cultural organizations and for international cultural relations. The National Council for Arts and Culture encourages and develops all aspects of Nigerian cultures and interacts with private or public organizations. Other Federal bodies partly involved in cultural life and policies are ministry of information and Ministry of Education. Different cultural sectors are covered by the statutory bodies at the Federal level, such as the National Commission for Museum and Monuments, National Library of Nigeria, Centre for Black and African Arts and Civilization, National Gallery of Modern Art, Federal Radio Corporation of Nigeria, Nigerian Television, Authority, Film Corporation of Nigeria, State or provincial authorities have all established State Art Councils set up by law. These art councils have the responsibility to develop, administer and promote state cultural policies.

5.2 *Cultural Heritage:* Cultural heritage is widely recognized as the most important input in defining the national and ethnic cultures in Nigeria. Nigeria inherits great cultures of the Benin Plateau, but also an impressive body of plastic, music and literary arts. All Nigerian governments, notwithstanding their political backgrounds and developmental orientations, proclaimed their intention to preserve cultural heritage and allow for its full recognition.

The National Archives, the National Museum, the National Library and all the existing universities have taken over the task to work on research, restoration and preservation of the cultural heritage. Both Federal and a few State agencies working in this field are fully supported from the Federal funds.

The need to integrate cultural activities and values in all spheres of life has been very loudly pronounced in the post-independence development of Nigeria. General ideas on Nigerian development were linked to the authentic cultural values. Generally speaking, the cultural life in Nigeria is to a large extent marked

by tradition and traditional forms of cultural events are most popular: festivals exhibitions, performing, playing music and dancing in the open. On the other side, the cultural life is very much influenced and defined by the cultural industries, particularly mass media. Cultural industries bring into Nigerian cultural life new civilization and technological standards that are easily accepted by the majority of population. (Ason, 1987).

## 6. International Treaties

In the quest to bring about sanity among nations of the world as it affect copyright matters a number of international agreements were reached and signed for the protection of visual art objects and other creative efforts that are fixed in a tangible medium, which the writer considers, as aspect of Intellectual Property Rights. These international treaties to be discussed here, will to a certain extent, give background to emerging copyright practices among developing and developed economies in the world. There are:

- 6.1 *Berne Convention*
- 6.2 *Universal Copyright Convention*
- 6.3 *Rome Convention*
- 6.4 *TRIPS (Trade Related Aspects of Intellectual Property Rights)*
- 6.5 *WIPO (World Intellectual Property Organisation)*

### 6.1 *Berne Convention*

Berne convention for the protection of literary and Artistic works is an international agreement governing copyright which was first accepted in Berne, Switzerland in 1886. The Berne convention requires its signatories to recognize the copyright of works of authors from other signatory countries in the same way as it recognizes the copyright of its own nationals. For example, French copyright law applies to anything published or performed in France regardless of where it was originally created. In addition to establishing a system of equal treatment that internationalized copyright amongst signatories, the agreement also required member states to provide strong minimum standards for copyright law. Copyright under the Berne convention is automatic with the creation of the work and thus prohibits formal registration. Under Article 3, the protection of the convention applies to nationals and residents of signatory countries to works first published or simultaneously published, under Article 3(4). "Simultaneously is defined as within 30 days" in a signatory country. In the Internet age, publication online may be considered publication in every sufficiently internet-connected jurisdiction in the world.

In *Kernel v Moslev*, a US court "concluded that a work created outside of the United States, uploaded in Australia and owned by a company registered in Finland was nonetheless a US work by virtue of its being published online" (Fitzgerald et al, 2011).

The Berne convention states that all works except photography and cinematography shall be copyrighted for at least 50 years after the author's death, but parties are free to provide longer terms, as the European Union did with the 1993 directive on harmonizing the term of copyright protection. For photography, the Berne convention sets a minimum term of 25 years from the year the photograph was created, and for cinematography, the minimum is 50 years after first showing or 50 years after creation if it has not been shown within 50 years after the creation. If the author is unknown, the convention provides for a term of 50 years after publication.

However, if the identity of the author becomes known, the copyright term for known authors applies i.e 50 years after death.

Although the Berne convention states that the copyright law of the country where copyright is claimed shall be applied, Article 7(8) states that "unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work. The Berne convention also authorizes countries to allow "fair" uses of copyrighted works in other publications or broadcasts.

The Berne Convention was developed at the instigation of Victor Hugo of the Association Litéraire et Artistique Internationale. Thus, it was influenced by the French "right of the author" (*droit d'auteur*) which contrasts with the Anglo-Saxon concept of "copyright" which only dealt with economic concerns. Under the convention copyrights for creative works are automatically in force, upon their creation, without being asserted or declared. An author need not "register" or apply for" a copyright in countries adhering to the convention. As a work is "fixed" that is, written or recorded on some physical medium, it's author is automatically entitled to all copyrights in the work and to any derivative works, unless and until the author explicitly disclaims them or until the copyright expires (Fishman, 2011).

The Berne convention was revised in Paris in 1896 and in Berlin in 1908, completed in Berne in 1914, revised in Rome in 1928, Brussels in 1948, in Stockholm in 1967 and in Paris in 1971 and amended in 1979. The first version of the Berne convention treaty was signed on September 9, 1886 by Belgium, France, Germany, Haiti, Italy, Liberia, Spain, Switzerland, Tunisia and the United Kingdom. Although UK signed in 1886, it did not implement large parts of it until 100 years later with the passage of the copyright, designs and patent Act

1988. The United States initially refused to become a party to the convention not until on March 1, 1989, after the U.S Berne Convention Implementation Act of 1988 was enacted and the US Senate advised and consented to ratification of the treaty. As of September, 2014, there are 168 states that are parties to the Berne Convention. This includes 167 UN member states plus the Holy see (Molotsky, 1988).

### 6.2 *Universal Copyright Convention:*

The universal copyright convention adopted in Geneva, Switzerland, in 1952, is one of the two principal international conventions protecting copyright, the other is the Berne convention. The UCC was developed by United Nations Educational, Scientific and Cultural Organisation (UNESCO) as an alternative to the Berne Convention for those states which disagreed with aspects of the Berne Convention but still wished to participate in some form of multilateral copyright protection. These states included developing countries as well as the United States and most of Latin America. The former thought that the strong copyright protections granted by the Berne convention overly benefited Western, developed, copyright exporting nations, whereas the latter two were already members of the Buenos Aires convention, a Pan-American copyright convention that was weaker than the Berne Convention. The Berne Convention States also became party to the UCC, so that their copyrights would exist in non-Berne Convention States. In 1973, the Soviet Union joined the UCC. The United States only provided copyright protection for a fixed renewable term, and required that in order for a work to be copyrighted, it must contain a copyright notice and be registered at the copyright office. The UCC permitted those states which had a system of protection similar to the United States for fixed terms at the time of signature to retain them. Under the second protocol of the Universal copyright convention (Paris text), protection under US copyright law is expressly required for works published by the United Nations by UN specialized agencies and by the organization of American States (OAS). The same requirement applies to other contracting states as well, as stated in Article 1 thus: each contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works including writings, musical, dramatic and cinematographic works and paintings, engraving and sculpture (House Report No. 94-1476, 1952).

The contracting States moved by the desire to assure in all countries copyright protection of Literary, scientific and artistic works, convinced that a system of copyright protection appropriate to all nations of the world and expressed in a universal convention, additional to and without impairing international systems already in force, will ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts. It is also persuaded that such a universal copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding (UCC, 1971).

### 6.3 *Rome Convention*

The Rome Convention for the protection of performers, producers of phonograms and Broadcasting organizations was accepted by members of BIRPI, the predecessor to the modern world intellectual property organization on October 26, 1961. The agreement extended copyright protection for the first time from the author of a work to the creation and owners of particular physical manifestations of intellectual property such as audio cassettes or DVDs.

Nations drew up the convention in response to new technologies like tape recorders that made the reproduction of sounds and images easier and cheaper than ever before.

Whereas earlier copyright law, including international agreements like the 1886 Berne Convention expounded to the new circumstances of ideas variously represented in easily reproduced units by covering performers and producers of recordings under copyright.

6.3.1 Performers (actors; singers, musicians, dancers and other persons who perform literary or artistic works) are protected against certain acts they have not consented to such acts are the broadcasting and the communication to the public of their live performance; the fixation of their live performance, the reproduction of such a fixation if the original fixation was made without their consent or if the reproduction is made for purposes different from those for which they gave their consent.

6.3.2 Producers of phonograms enjoy right to authorize or prohibit the direct or indirect reproduction of their phonograms.

6.3.3 Broadcasting organizations enjoy the right to authorize or prohibit certain acts namely, the broadcasting of their broadcasting; the fixation of their broadcasts, the reproduction of such fixations, the communication to the public of their television broadcast if such communication is made in places accessible to the public against payment of an entrance fee.

The Rome Convention allows the following exceptions in national laws to the above mentioned rights:

- Private use.
- Use of short excerpts in connection with the reporting of current events.
- Ephemeral fixation by a broadcasting organization by means of its own facilities and for its own

broadcasts.

- Use solely for the purpose of teaching or scientific research.
- In any other cases – except for compulsory licenses that would be incompatible with the Berne Convention where the national law provides exceptions to copyright in literary and artistic works.

Furthermore, once a performer has consented to the incorporation of his performance in a visual or audiovisual fixation, the provisions on performer's rights have no further application (Wikipedia).

#### 6.4 TRIPS (*Trade Related Aspects of Intellectual Property Rights*)

The agreement on Trade-Related Aspects of Intellectual property Rights (TRIPS) is an international agreement administered by the World Trade Organisation (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation as applied to nationals of other WTO members. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994. The Trips agreement: Introduced Intellectual Property law into the international trading system for the first time and remains the most comprehensive international agreement on intellectual property to date (Henry & Stiglitz, 2010).

In 2001, developing countries, concerned that developed countries were insisting on an overly narrow reading of TRIPS, initiated a round of talks that resulted in the Doha Declaration. The Doha declaration is a WTO statement that clarifies the scope of TRIPS, stating for example that TRIPS can and should be interpreted in light of the goal "to promote access to medicines for all (WTO, 2003).

Specifically, TRIPS requires WTO members to provide copyrights, covering content producers including performers, producers of sound recordings and broadcasting organizations, geographical indications, including appellations of origin, industrial designs, integrated circuit layout design; patents, new plant varieties, trademarks, trade dress and undisclosed or confidential information. TRIPS also specifies enforcement procedures, remedies and dispute resolution procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations (WestKamp, 2003).

#### 6.5 WIPO (*World Intellectual Property Organisation*)

The World Intellectual Property Organisation (WIPO) is one of the 17 specialized agencies of the United Nations. WIPO was created in 1967 to encourage creative activity, to promote the protection of intellectual property throughout the world. The predecessor to WIPO was BIRPI (Bureaux Internationaux Ré unis pour La Protection de la Propriété Intellectuelle-this is the French acronym for United International Bureaux for the Protection of Intellectual Property), which had been established in 1893 to administer the Berne Convention for the Protection of Literary and Artistic works and the Paris Convention for the Protection of Industrial Property. WIPO was formally created by the Convention establishing the world intellectual property organization, which entered into force on April 26, 1970 under the article 3 of this convention, WIPO seeks to promote the protection of intellectual Property throughout the world (WIPO 2008).

WIPO became a specialized agency of the UN in 1974. The agreement between the United Nations and the World Intellectual Property Organisation notes in Article 1 that WIPO is responsible "for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development, subject to the competence and responsibilities of the United Nations and its organs, particularly the United Nations Conference on Trade and Development, the United Nations Development Programme and the United Nations Industrial Development Organisation as well as of the United Nations Educational, Scientific and Cultural organization and of other agencies within the United Nations system". The agreement marked a transition for WIPO from the mandate it inherited in 1967 from BIRPI, to promote the protection of Intellectual property, to one that involved the more complex task of promoting technology transfer and economic-development (WIPO, 2013).

### 7. Nigerian Copyright Commission (NCC)

The vision of the Nigerian copyright commission is to harness the potentials of creativity for national development, with a mission to advance the growth of the creative industry in Nigeria through the dissemination of copyright, knowledge efficient administration and protection of rights.

As part of its strategies, the commission is geared to strengthen the policy and legislative framework for a more efficient copyright protection as follows:

- Increase the level of copyright awareness.
- Promote effective and proactive enforcement of rights.
- Strengthen human resource and institutional capacity for better service delivery.
- Maintain a policy of strategic engagement with stakeholders.



The commission is guided by the following core values with the acronym CORE, as stated thus;

- C - Commitment to the mandate
- O - Openness and transparency
- R - Responsiveness to Stakeholder's needs
- E - Efficiency in service delivery

Decree No. 61 of 1970 was the first indigenous legal instrument regulating issues relating to copyright in Nigeria. This decree was promulgated just after the Nigerian Civil War ended, but salient provisions in the law did not foresee the rapid socio-economic development as well as influx of products of advanced technology into the country, which made illegal reproduction of works protected by copyright much easier. The consequence of the inadequacy of Decree 61 to protecting creativity and scholarship was high scale piracy that robbed creators, organizations and individuals who helped produce or disseminate creative works as well as the society of potential income.

As a result of increased pressure from artistes, authors and creators who are originally the copyright owners, the then Federal Military Government promulgated into law, the copyright Decree No. 47 of 1988 which now exist as copyright Act Cap C 28 Laws of the Federation of Nigeria 2004. The Act which has been aptly described as one of the best of its kind, not only created most favourable conditions of actualization of authors potential through comprehensive protection of creative works but also incorporated establishment for the first time of a machinery for the administration of copyright and neighbouring rights matters in Nigeria i.e. Nigerian Copyright Commission.

Owing to the need to align the council with the emerging trend in global copyright administration and enforcement, its status was changed to a commission in 1996. Subsequently, the Nigerian Copyright Act was amended twice by the copyright (Amendment) Decree No. 98 of 1992 and copyright (Amendment) Decree No. 42 of 1999.

Prior to the 1992 Amendment of the Copyright Act (Decree No. 47 of 1998), the commission has no power of enforcement of or apprehending offenders of the provisions of the Act. The 1992 Amendment gave rise to the appointment of copyright inspectors with specific power to enforce the law. This also led to the establishment of the then National Anti-Piracy committee made up of representatives of authors associations and other interest groups with the mandate to reduce the scourge of piracy in the country (Wikipedia).

## 8. Legal Issues for the Artists

Most legal issues that Visual Artists come across are about copyrights and moral right. Whether you make art just for pleasure or you want to make money from your work, the artist definitely needs information that will help protect his or her rights. The copyright law is one of the most difficult subjects for artists to understand. This issue thus affect the artists in several ways. A number of these issues will be discussed briefly below, so as to sensitize the artists and enable them to be well guarded in the execution of a number of creative works and to enable them protect their rights and consequently reap the fruit of their efforts.

First, many artists do not realize that they need permission from photographers if they use somebody else photograph as reference for painting. When an artist uses a photograph for reference, the painting or artwork is called a "derivative work". While the artist can maintain some ownership over their own work, they first need permission from the original photographer to use the photo for reference. There are however clauses in copyright law that allow for compilations and uses of existing work freely if used in part, or if the original work has been so modified that it can't be recognized as a reference. There are many nuances here and although, there are legal cases that set precedence, there is no absolute ruling. Each case must be evaluated on its own merit in a civil court (copyright infringement is considered a civil issue and is not punishable by criminal law).

Secondly, if you are a portrait artist or figure artist and you plan on selling work of art using somebody else's likeness, you will need a model release in order to sell the work and in many cases you will need a model release in order to enter juried art shows. The reason is that the person being painted has certain rights about their own likeness, and just because a model sits for you, as a photographer or artist, does not mean that model assigned reproduction rights or copyrights to you. That needs to be an explicit contract between the model and the artist or photographer, which includes a model release form.

Thirdly, artists often worry about the copyright of their own work and what the rights are in regard to their work. Many questions arise from this, such as "what if somebody steals my work and uses it on their home page on the internet? And can somebody take my art work off the internet and make cards and sell them? Infact, there are many artists who are afraid to put their art on the internet for fear that somebody will steal their work, or see it and recreate it, thereby stealing their ideas. Unfortunately, there are risks involved in promoting your work and providing even low resolution digital versions for promotion, blogs, web sites and email.

Copyright does not cover ideas and information themselves. It is only the form or manner in which they are expressed, which means that, you cannot stop people from copying a style or genre. However, the alternative to taking risk is really only to keep your work in a box where nobody can see it, and your art never

gets exposed to the general public. In this case, of course, your art is safe but will never be known. The subject of copyright is very complex and is not only constantly changing, but its also vague and open to interpretations (bellevuefineart.com).

There is also the case of fair use. Fair use is a doctrine in the United States copyright law that allows limited use of Copyrighted material without requiring permission from the rights holders, such as use for scholarship or review. Fair use deals with the concept that even though a work is copyrighted, and the artist, photographer or writer has exclusive rights, certain uses do not constitute copyright infringement. Some artists are under the misconception that once a work is out there in the wild, that any use requires permission. Copyright attempts to balance the need for copyright protection with the need for the public to freely exchange knowledge for both educational, artistic and political reasons. While corporations have been voracious regarding any use of copyrighted materials and have overstepped their bounds and hijacked copyright law to the detriment of freedom of expression, the courts have often eventually ended in favour of free speeches.

## 9. Conclusion

Having x-rayed the genesis and perhaps facets of copyright Agreements from the global perspective and in the Nigerian context as it affects the visual arts, it is crystal clear that the legal issues discussed are indispensable information for the visual artists who wish to excel in their chosen profession. It is obvious that creative works are tangible manifestation of creative efforts in the diverse areas but have in common a degree of arbitrariness such that, it is improbable that two people would independently create the same work.

According to the Director-General, Nigerian Copyright Commission, Ezekude (2014), creativity is the bedrock of every civilization and the truth of this assertion cannot be more obvious than in the rapid changes that have been brought about in the wake of the internet and digital revolution.

The potentials and possibilities available on the various platforms are limitless. Availability in real time, even across geographical divides, has become more critical in this rapidly changing world.

Consequently, Governments in all countries will stand to gain more, if stringent measures are intensified to check the menace of copyright infringers. This will to a large extent, protect intellectual property rights and fastract a wider dissemination of works of the human mind and increase international understanding. A knowledge of these legal issues thus will provide a way for the artists to protect and monetize their creativity.

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### **Biography**

Dr. Godwin Ogheneruemu Iriwieri is a prolific creative writer since 1986, author of a number of books since 1997; has already published two articles among several others titled "Selective Determinants of Advertisement Appeal for a Product or Service" and 'Art Exhibition as Advert Promo and Facilitator for Artistic Production in Colleges and Universities in Vol. 22, 2014 in the *Journal of Arts and Design Studies iiste*, a Graphic and Advertising Practitioner in 2000; Art Historian and Art critic since 2005. He is also a Senior Lecturer and a former Head of Department of Fine and Applied Arts, Delta State University, Abraka, Nigeria in 1999 and 2006 respectively. He is a fellow of the Strategic Institute of Human Resource and Development, Abuja, Nigeria in 2011.

Iriwieri hails from Oria-Abraka, Delta State, Nigeria. Born on June 16, 1956. He attended Government College, Ughelli, the University of Benin, Benin City and Delta State University, Abraka Nigeria. He obtained a B.Ed (Hons) degree (Second Class (Hons) Upper Division, in *Fine and Applied Arts* in 1986, MFA degree in *Graphics* in 1991 from the University of Benin, Benin City, Nigeria.

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