

Intellectual Property Rights in Nigeria: A Critical Examination of the Activities of the Nigerian Copyright Commission

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Abstract

Academic work like a paper written, a play, an engineering design, an invention, an art work, a poem, a novel, a research output, a process designed to accomplish a task, a computer program or software, breed of crop or livestock, a service symbol, a song or piece of music etc., are products of the intellect and therefore referred to as intellectual properties. Intellectual properties, because of their intangible nature, are more vulnerable to stealing and illegal appropriation. As such, creators of such works need some form of right and protection to prevent other persons from illegally appropriating their intellectual assets. Such form of protection is often referred to as Intellectual Property Rights. Nevertheless, Nigeria do not vigorously enforce intellectual property laws, making illegal copying, or piracy, a major threat to the credibility of the nation's integrity. The main objective of this study is to explain the basic concept of Intellectual Property as a form of protection for authors in Nigeria, give an overview of the activities of the Nigerian Copyright Commission and proffer recommendations for an improved implementation of copyright laws in Nigeria.

Keywords- Intellectual Property, Nigerian Copyrights commission

NATURE AND DEFINITION OF INTELLECTUAL PROPERTY

Intellectual property law is an area of law which deters others from copying or taking unfair advantage of the work or reputation of another and provides remedies where this arises. Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as literary, and artistic works; discoveries and inventions; words, phrases, symbols, and designs. Intellectual property laws reward creators of intellectual property by preventing others from copying, performing, or distributing their works without permission. The main purpose of this protection is to provide incentives for people to produce scientific and creative works that benefit the society at large. It is important to note that some types of intellectual property are automatically protected by law from the moment of their creation whereas other types require the creator to request a specific grant of rights from a government agency before they can be protected by law. Nearly all nations of the world have laws protecting intellectual property, of great import to this paper the Copyrights Act, Laws of the Federation of Nigeria 2004 which is applicable in Nigeria

FORMS OF INTELLECTUAL PROPERTY

The principal types of intellectual property are patents, copyrights, and trademarks. Patent law protects inventions that demonstrate technological progress. Copyright law protects a variety of literary and artistic works, including paintings, sculpture, prose, poetry, plays, musical compositions, dances, photographs, motion pictures, radio and television programs, sound recordings, and computer software programs. Trademark law protects words, slogans, and symbols that serve to identify different brands of goods and services in the marketplace. The one paramount to this study is Copyrights.

It is important to note that Intellectual property also includes certain related fields of law, such as trade secrets and the right of publicity. Trade secret law protects confidential information that belongs to a business and gives that business a competitive advantage. For example, the formula for making the Soft drink- Coca-Cola is a trade secret protected by intellectual property laws. Right of publicity law protects the right to use one's own name or likeness for commercial purposes. For example, a famous Film Actor may profit by using his or her name to endorse a given product. Using a person's name to endorse a product without their permission is a violation of right of publicity law.

Intellectual property differs from other forms of property because it is intangible—that is, it is a product of the human imagination. The intangibility of intellectual property makes it possible for many people to use it without authorization.

For instance only one person can drive a car at a time, but if an author publishes a book; many people can read the work at the same time. As such, Intellectual property is much easier to copy than it is to create. It may take many months of work to write a novel or computer program, but with a photocopy machine or a computer others could copy the work in a matter of seconds. Without intellectual property laws, however, it would be easy to duplicate original works and sell them for very low prices, leaving the original creators without any chance to secure economic rewards for their efforts. The legal system avoids this problem by making it unlawful to reproduce various forms of intellectual property without the permission of the creator.

Another dynamic nature of intellectual property right is that it expires after a specified period. This permits the rest of society to benefit from the work after the creator has had an opportunity to earn a fair reward. For example, after the inventor of a patented telecommunications device has profited from the work for a specified period, anyone may manufacture that same device without paying the inventor royalties, thereby encouraging competition that allows others to benefit from the invention as well. The one exception to limited periods of intellectual property rights is in the field of trademark law. Trademark rights never expire, so long as a merchant continues to use the trademark to identify a given product.

LEGAL ISSUES ARISING FROM COPYRIGHTS PROTECTION

Intellectual property was not always recognized as a single field of law. Historically, the fields of patent, copyright, and trademark developed independently. In the late 20th century, however, legal experts began to recognize that these various fields of law had a great deal in common because they all pertained to intangible products of the mind.

In all branches of intellectual property, the legal system seeks to balance two competing concerns. On the one hand, protection must be strong enough to encourage authors and inventors to invest the necessary effort in innovation. On the other hand, the law must also allow people some freedom to use the intellectual property of others. This is because artistic, technological, and commercial progress always requires building on the work of others. To strike this balance, all branches of intellectual property law confer general rights on creators but also limit those rights with a variety of exceptions. For example, in patent law, a scientist may use someone else's invention to conduct experiments. Similarly, copyright law allows a literary critic to quote passages of a novel in a review. Under trademark law, a company may use a competitor's brand name in a comparative advertisement. In all these ways, intellectual property law tries to be flexible enough to protect the property rights of the creator while also allowing the public to benefit from the protected work.

In the United States and other countries, intellectual property has gained increased protection with advances in technology and international trade. However, some countries still tolerate the widespread sale of counterfeit versions of intellectual property products, such as software, movies on videotape, brand-name athletic goods, and even patented medicines. Violations of intellectual property rights cost the owners of the rights billions of dollars each year. These costs stem from lost royalties and sales in markets dominated by counterfeit products. In an attempt to reverse this situation, most nations of the world signed the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) in 1994. Administered by the World Trade Organization (WTO), TRIPS strengthened legal protection for intellectual property around the world.

In the last years of the 20th century, the growth of the Internet and related digital technologies began to pose new problems for intellectual property owners. Unauthorized parties began using trademarks as domain names for Web sites, which made it difficult for consumers to find the trademark owner's official Web site.

Copyright owners found that their works, particularly music and movies, could be perfectly duplicated by parties using file-sharing software. New devices were sold that made it possible to defeat copy-control features, such as those designed to prevent duplication of digital video discs (DVDs). Some nations of the world have attempted to respond to these developments by adopting several new laws protecting intellectual property. These laws became controversial. On the one hand, intellectual property owners claimed that the laws failed to provide full protection against unauthorized use of their property. On the other hand, various consumer groups argued that the laws interfered with the public's rights to engage in free speech and may also invade privacy.

ADMINISTRATION OF COPYRIGHT IN NIGERIA

Prior to the copyright law which was enacted in 1988, there was no effective administrative infrastructure of copyright practice in Nigeria. The Copyright Decree of 1970 was in disarray as the then Federal Ministry of Trade, on whom the responsibility of administering copyright was vested, did not establish a competent authority to administer copyright. However, with the establishment of the Nigerian Copyright Commission by the Copyright Act, the administration of copyright in Nigeria has been more effective. Sections 34-40, Part III of the Copyright Act 2004 provide for the administration of copyright in Nigeria.

The administration of copyright law is carried out majorly by the Nigerian Copyright Commission in conjunction with Copyright Societies, specialized legal practitioners and the judiciary. There are also other stakeholders such as the Nigerian Police and the Customs and Excise Department who assist in the implementation of the mandate of the NCC.

THE NIGERIAN COPYRIGHT COMMISSION

The Nigerian Copyright Commission, initially known as the Nigerian Copyright Council, was established in 1988 under the Nigerian copyright decree and was formally inaugurated in August 19th, 1989.

By virtue of the Copyright Act LFN 2004,

“There is hereby established a body to be known as the Nigerian

Copyright Commission (in this Act referred to as the Commission)”).

FUNCTIONS OF THE COMMISSION

The Commission has some functions to perform which include the following

1. Responsibility for all matters affecting copyright in Nigeria;
2. To monitor and supervise Nigeria’s position in relation to international conventions and advise government there on;
3. To advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country on copyright affairs;
4. To enlighten and inform the public on matters relating to copyright;
5. To maintain an effective data bank on authors and their works;
6. Responsibility for such other matters relating to copyright in Nigeria.

The Commission also has the powers to receive and grant applications for compulsory License. Also, the Commission is vested with the powers of approving and registering a Copyright Society for operation. The Commission may also appoint Copyright Inspectors as it may deem it fit.

The Commission constitutes principal instrument for the realization of the goals, functions and matters of copyright in Nigeria. By this institutional arrangement, the essential elements of practicalising the new copyright law were effectively put in place.

PROCEDURE FOR COPYRIGHT REGISTRATION IN NIGERIA

It is important at this juncture to tell this strange but true story. Mr. B started the construction of a building in a sub-urban area of Lagos, Nigeria over twenty years ago. He spent over twelve years trying to complete the building. Unfortunately he could not complete the building because he is just a poor civil servant. A rich neighbor, Mr. Y, who had been watching his struggle these past years decided to take over the building and complete it for himself. He mobilized workmen and all the necessary resources to complete the building.

Within a few months the house was completed following Mr. B’s (the original owner) building plan with modifications. The moment this rich intruder started working on the building, Mr. B, the original owner, started running around to recover his property. He had a certificate of occupancy and an approved building plan. Rich Mr., Y” did not have any document to back up his claim over the property. However he had lots of money to throw around. Mr. Y then began a court case to permanently dislodge Mr. B and appropriate this property for himself. Poor Mr. B did not have money to even hire a lawyer to defend his claim over the property. While the case dragged on for two years, Mr. Y had moved into the property asserting his authority. Soon, the case of Mr. B got the attention of some human rights lawyers who decided to step into the matter. Mr. B eventually got his building back because he had proof of ownership and the law on his side. If Mr. B did not have an approved building plan and certificate of occupancy he would have lost his property to the rich Mr. Y. Even though Mr. B. was not rich, he had the law to back him up and protect him. The scenario painted above shows the importance of having a legal backing to once intellectual property by registering same with the appropriate copyright institution.

In Nigeria moreover, to register one’s work in the case of physical submission, one can submit an application for registration to any of the Commission's office nationwide. One will need to submit to the Commission, a completed registration form, along with two (2) copies of the work, and evidence of payment of the prescribed fee. Registration forms are obtainable from the Commission's offices in Nigeria.

It is also important to note that Copyright protection is essentially territorial in nature. By virtue of membership of certain international copyright treaties and conventions, works of Nigerian citizens enjoy protection in territories of member countries of such treaties to which Nigeria is a party, including the Berne Convention.

RIGHTS ENJOYED BY COPYRIGHT OWNERS

The rights which an author or copyright owner enjoys in a work include the right to be acknowledged in any use made of his work and also to prevent any derogatory use; alteration; distortion or mutilation of same (referred to as moral rights). More importantly, he enjoys the right to earn money from his work by determining the condition under which the work may be commercially used by a third party (economic rights).

Note also, that an author can prohibit or authorize the following acts;

The reproduction of the work in various forms such as printed publication, photocopying or making a recording in any media;

The public performance of work such as staging a play in a theatre

The recording of work in the form of compact disks, cassettes, videotapes, etc;

The broadcasting of the work by radio, cable or satellite;

The translation of the work into other languages or its adaptation such as from a novel to a screenplay;

The distribution of the work commercially by way of sales, hiring or rental.

BENEFITS OF REGISTRATION WITH NCC

Registration of a work with the commission has several advantages, including the following: (1)The record generated by the Commission provides an independent source of verifying data relating to a work or its author to the general public.(2)The acknowledgement certificate issued to the author who notifies the Commission of his work provide prima facie evidence of the facts shown on it; (3).The scheme provides a depository for preserving original copies of works notified;(4)The information and data contained in the Notification database offers reliable rights management information to members of the public and prospective licensees to the work.

When one registers ones work with the Commission, it becomes part of the databank of copyright authors and works required to be kept by the commission under the copyright Act, and therefore forms part of a public record. All the information you provide on your copyright registration is available to the public and will be available on the Internet. However, copies of the work can only be made available to third parties with the authorization of the author or copyright owner.

As to the duration of the protection, the rights enjoyed by the owner of Copyright are however, limited. The author of a work does not own his Copyright indefinitely. The author of a literary, artistic or musical work enjoys copyright throughout his lifetime and for 70 years after his death. In the case of films, sound recordings, performances etc., the owner enjoys Copyright for 50 years from the time the work was first published. The work goes to the public domain when the term of protection expires and third parties are allowed free use.

THE NIGERIAN COPYRIGHT e-REGISTRATION SYSTEM (NCeRS):

The Nigerian Copyright e-Registration System (NCeRS) offers a platform for creators of copyright works or persons who have acquired rights in these works to register the work online with the Commission. The NCeRS is to upscale the existing data collection scheme of the copyright Notification, to enable the Commission provide more efficient services and wider access to its authors and works database to copyright authors, and members of the public.

The NeCRS offers additional advantage of

- o Documentation of one's creation from any part of the world;
- o Full protection of copyright in all countries signatory to International Copyright Instruments to which Nigeria is signatory;
- o Conduct of Search of the NCeRS database for information relating to any copyright work;
- o E-payment platform for services offered by the Commission;
- o Efficiency and prompt delivery.

SEARCH FEATURES

Provision has been made for members of the public to conduct searches on the **NCeRS** database for information regarding titles of works and other related particulars.

Any of the following information is required for an effective search

- o Name of author of a work
- o Copyright Owner
- o Title of Work
- o Registration Number

PERSONS ENTITLED TO COPYRIGHT IN NIGERIA

By virtue of the provision of the Copyright Act, the following persons are entitled to copyright in Nigeria:

1. Persons who are either Nigerian citizens or domiciled in Nigeria.
2. Persons whose works are first published or made in Nigeria;
3. Persons who are employed to make a work in the course of their employments;
4. Persons who are commissioned to make a work;
5. Proprietors whose works are made by authors in course of their employment by the proprietor for the purpose of publication in a newspaper, magazine or similar periodicals;
6. Persons to whom the copyright has been transferred either by assignment or testamentary dispositions;persons to whom license have been granted;
- 7 The Government, where it has commissioned someone to make a work;
8. Companies registered in Nigeria which produces works of copyright;
9. Non- Nigerians who are neither domiciled in Nigeria but belong to a Convention Country to which Nigeria is a party provided their works are first published in such convention country, or by the United nations, the African Union or ECOWAS.

EXCEPTIONS TO COPYRIGHT PROTECTION

It is important note that to every general rule there is an exception, the Copyright Act has stipulated circumstances where someone may use or appropriate another person's intellectual property. Listed below are some of such circumstances as stipulated by the relevant provisions of the copyright Act LFN 2004.

1. Fair 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 acknowledgment of the title of the work and its authorship except where the work is incidentally included in a broadcast;
2. The inclusion in a film or a broadcast of an artistic work situated in a place where it can be viewed by the public;
3. The reproduction and distribution of copies of any artistic work permanently situated in a place where it can be viewed by the public;
4. The incidental inclusion of an artistic work in a film or broadcast;
5. The inclusion in a collection of literary or musical work which includes not more than two excerpts from the work, if the collection bears a statement that it is designed for educational use and includes an acknowledgment of the title and authorship of the work;
6. The broadcasting of a work if the broadcast is approved by the broadcasting authority as an educational broadcast;
7. Any use made of a work in an approved educational institution for the educational purposes of that institution, subject to the condition that, if a 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 the period of twelve months after it was made;
8. The making of a sound recording of a literary or musical work, and the reproduction of such a sound recording by the maker or under licence from him, where the copies thereof are intended for retail sale in Nigeria and the work has already been previously recorded under licence from the owner of the relevant part of the copyright whether in Nigeria or abroad, subject to such conditions and to the payment of such compensation as may be prescribed;
9. The reading or recitation in public or in a broadcast by any person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgment provided that such reading or recitation is not for commercial purpose;
10. Any use made of a work by or under the direction or control of the Government, or by such public libraries, noncommercial documentation centers 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;
11. The reproduction of a work by or under the direction or control of a broadcasting authority where the reproduction or any copies thereof are intended exclusively for a lawful broadcast and are 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.
12. The broadcasting of a work already lawfully made accessible to the public and subject (without prejudice to the other provisions of this Schedule) to the condition that the owner of the broadcasting right in the work shall receive a fair compensation determined, in the absence of agreement, by the court;
13. News of the day publicly broadcast or publicly communicated by any other means;
14. The communication to the public of a work, in a place where no admission fee is charged in respect of the communication, by any club whose aim is not profit making;
15. The making of not more than three copies of a book (including a pamphlet, sheet or music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such a book is not available for sale in Nigeria;
16. The reproduction for the purpose of research or private study of an unpublished literary or musical work kept in a library, museum or other institutions to which the public has access;
17. 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 person.

CONCLUSION AND RECOMMENDATIONS

No doubt the Nigeria's intellectual property and copyright protection efforts have in recent times received a quantum leap resulting mainly from the dynamic impetus put into the modality of Nigeria's creative rights administration by the leadership of the Nigerian Copyrights Commission which has among other things initiated sectorial and multi- sectorial collaborative measures to control piracy of intellectual properties and enhance the

administration, enforcement and prosecution of copyright works and laws.

It is important to note however, that for Nigeria to enjoy the economic benefits of Intellectual Property Rights, it should update its national copyrights laws in order to implement World Intellectual Property Organization WIPO obligations and create strong enforcement mechanism as required by the World Trade Organization. Tough anti-piracy laws also should be introduced and the government should dedicate its resources to the challenges of Copyright infringement.

There is also a need for the government to introduce intellectual property enforcement unit, cross border co-operation and more training for law enforcement agents. Other measures should also include improvement in public education and awareness as well as leading by example by requiring the public sector to use only legitimate software.

Although, there is anti-piracy law in Nigeria that focus on punishment for violation of the intellectual property of an individual or corporate organization, lack of strict implementation has always been the bane. Even when perpetrators are arraigned before the court by litigants, the damages stipulated in the statues books is too insignificant for both an individual and a corporate body that has breached another's intellectual property. Such law stipulates a mild punishment which does not normally deter pirates from committing such misdemeanor the second time. Again, as the sole agency under the law to supervise and administer the copyrights system in Nigeria, the NCC should continue to devise fresh strategies for fighting piracy. Nigeria is a very large country and it is believed that violators of copyright are found in all parts of the country. The NCC Should set up, where it has not done so, offices in all states of the federation to enable it co-ordinate the fought against piracy and other infringements.

Therefore, considering the impact which copyrights industries such as publishing, music, communications, artifacts, films, broadcasting can make or are making on the economy, there should be increased efforts to attract investments in these sectors through a most conducive investment climate in the country. Government should provide what would attract the investors. Nigeria has a large market for the products of copyrights industries which can sustain the economy and provide employment to more than 45 percent of the population and above all contribute enormously towards the nation's revenue including foreign earnings.

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